

Accounting for Conquest: The Price of the Louisiana Purchase of Indian Country

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The price of the Louisiana Purchase has long signaled one of world history's most spectacular real estate windfalls. Henry Adams called it "unparalleled, because it cost almost nothing." At the sesquicentennial of the purchase, Bernard DeVoto cited the "fantastically small" cost and dubbed it the most important "event in all American history." A recent historian of the deal uncovered a fanciful offer to take the land off federal hands at cost, "about 4 cents an acre," and he mused that those making the offer "would have made a killing." For generations of students, the \$15 million price tag has embodied the story of a bargain that doubled a national domain for pennies on the acre, glossing over the fact that France had precious little real estate to sell.¹

Over most of the area covered by the Louisiana Purchase the United States bought a territorial abstraction known to adherents of the doctrine of discovery as preemption. As legal scholars and historians have pointed out, preemption overlaid indigenous occupancy rights with exclusive authority to obtain Indian title by conquest or contract. For \$15 million, the United States increased its buy-in to this colonial confidence game, and at no great discount. Napoleon Bonaparte reportedly considered Louisiana worth 50 million francs, making the American promise of 60 million francs in principal plus 20 million in debt relief hardly a masterstroke of negotiation. What ultimately made the 1803 purchase different played out over the following years, through acquisitions of Indian country by treaties and agreements that remade this region as a place to build and reproduce communities. A violence-backed power imbalance favored U.S. negotiators but never eliminated

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¹ Henry Adams, *History of the United States during the First Administration of Thomas Jefferson* (2 vols., New York, 1909), II, 49. Bernard DeVoto, "Celebrating 150 Years of the Louisiana Purchase," *Collier's*, March 21, 1953, pp. 44–58, esp. 45. Jon Kukla, *A Wilderness So Immense: The Louisiana Purchase and the Destiny of America* (New York, 2003), 335.

Indian leverage completely, resulting in a piecemeal take-over Stuart Banner aptly describes as “conquest by contract.”²

Descriptions of a “supposed ‘preemption’ right” or “a fictive ‘doctrine of discovery’” abound in recent scholarship of American colonialism, but missing are reappraisals of the Louisiana Purchase’s most vaunted legacy—its price. So its reputation endures. College textbooks still describe the purchase as “one of history’s greatest real-estate bargains” while popular imagery reduces it to a singular, stunning event. A 2003 online poll ranked the purchase treaty among “milestone documents” at the National Archives. As the “real estate deal of the millennium,” it came in fourth, just behind the Bill of Rights. “For roughly four cents an acre, the United States doubled its size” the Web site crows, adding to a refrain that continues to obscure how the purchase tripled the amount of unceded Indian land claimed by the United States. (See figure 1.)³

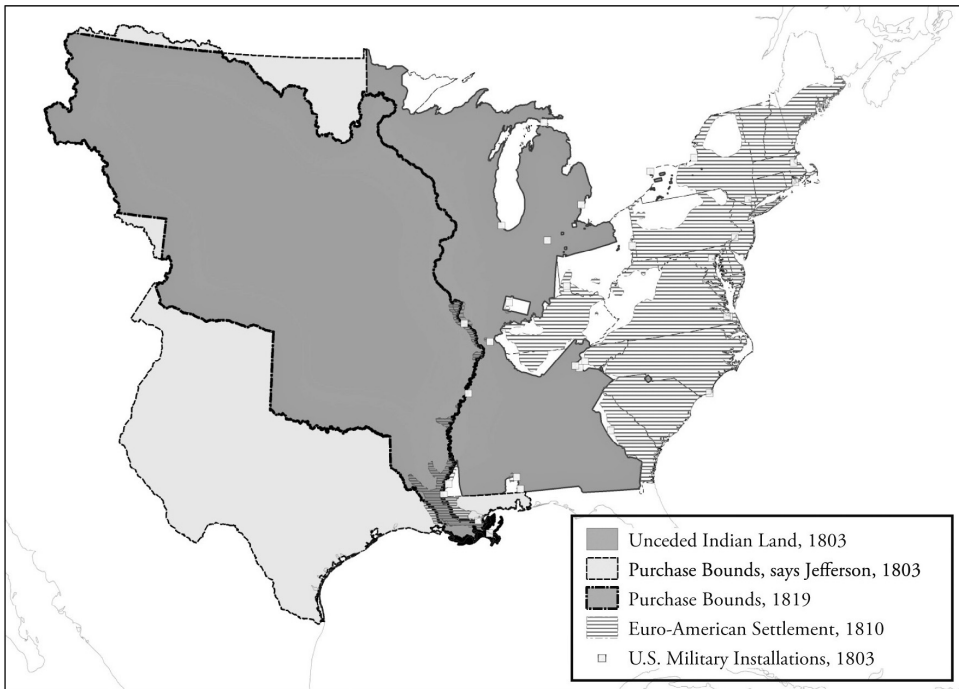
How much, then, did the United States pay Indians for their soil rights within this expanse? The sheer scope of the exchange has discouraged active investigation of this question. Hundreds of treaties, agreements, and land seizures carved chunks out of Indian country. Promises of future goods and services as consideration have prevented agreements from projecting costs reliably. Broken treaties, altered agreements, and fragmented compliance combine to make it far more difficult to assess the amount expended for Indian title with anywhere near the ease with which historians have identified the preemption costs. To tally them would require compiling actual rather than promised payments for Indian land cessions. This information exists in records of partial remittances that might cover an annuity, a blacksmith’s salary, tools, food, or myriad other obligations trickling out of federal coffers over years, decades, or longer. A few payments remain ongoing today—the largest is an annual \$30,000 appropriation for a Pawnee cession of 10 million acres made in 1857. These payments resist easy analysis, which explains why scholars interested in the total disbursed by the United States for Indian title within the Louisiana Territory are still citing a questionable estimate from the 1940s.⁴

This article revisits that estimate and offers a new one. To do so, it draws on a type of source historians have generally eschewed: financial audits for legal proceedings, now known as forensic accounting investigations. Since the 1880s, tribes have doggedly pursued claims for economic damages caused by broken or inequitable treaties, compelling federal auditors to dredge up information otherwise obscured by the splintered complexity of payments. This research filled reports sometimes covering “the entire fiscal relations between such tribes and the United States” and shaped hundreds of cases that added to historical disbursements for Indian title. The expenditures they reveal, when organized in a geographic

² Robert J. Miller et al., *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (New York, 2010), esp. 74–76; Robert A. Williams Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York, 1990). For related legal debates, see Blake A. Watson, “The Doctrine of Discovery and the Elusive Definition of Indian Title,” *Lewis and Clark Law Review*, 15 (Winter 2011), 995–1024. François Marquis de Barbé-Marbois, *History of Louisiana and of Its Cession to the United States of Northern America*, trans. “an American Citizen” (Philadelphia, 1830), 301–2, 311–12. Stuart Banner, “Conquest by Contract: Wealth Transfer and Land Market Structure in Colonial New Zealand,” *Law and Society Review*, 34 (no. 1, 2000), 47. See also Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Boston, 2009).

³ Alan Taylor, *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York, 2007), 11; Williams, *American Indian in Western Legal Thought*, 99. Eric Foner, *Give Me Liberty! An American History*, vol. 1 (New York, 2006), 262. “The People’s Vote,” *Our Documents*, <http://www.ourdocuments.gov/content.php?page=vote>. “Louisiana Purchase Treaty (1803),” *ibid.*, <http://www.ourdocuments.gov/doc.php?doc=18>.

⁴ J. E. Winston, “How the Louisiana Purchase Was Financed,” *Louisiana Historical Quarterly*, 12 (April 1929), 189–201. “Subactivity—Claims and Treaty Obligations,” in *Budget Justifications and Performance Information Fiscal Year 2015: Indian Affairs*, by Department of the Interior (Washington, 2015), p. IA-MISP-6.



| <i>U.S. Dominion Claimed in 1803</i> | <i>Square Miles</i> | <i>Multiple Increase - Total Land Area</i> | <i>Multiple Increase - Indian Land Area</i> |
|---|---------------------|--|---|
| Louisiana Territory (smallest bounds) | 811,284 | 198% | 300% |
| Louisiana Territory (largest bounds) | 1,271,732 | 253% | 413% |
| East of Mississippi River - Total Land | 829,929 | **** | **** |
| East of Mississippi River - Indian Land | 406,083 | **** | **** |

Figure 1. This map illustrates the Louisiana Purchase as an expansion of preemption. In 1803 the United States claimed about 406,000 square miles of unceded Indian land east of the Mississippi River. At its smallest (the limits finalized in 1819, outlined in the thick black line), Louisiana added about 811,000 square miles of unceded Indian land to the United States, effectively tripling the area over which it claimed preemption. By the bounds Thomas Jefferson asserted in 1803, it more than quadrupled claims on Indian homelands (see figures in the table below the map). The map also displays how little of this land fell under the practical reach of its preemptors. The striped zone east of the Mississippi shows non-Indian U.S. population density at over 2 persons per square mile, according to the census of 1800. West of the river shows the same for 1810, the first census with comparable density data for the region. A generous estimate of the area over which the United States gained practical governing authority in 1804 is about 18,000 square miles (i.e., the striped “Euro-American Settlement” area inside Louisiana). That U.S. sovereignty was an abstraction beyond this was a distinction with difference to those managing Indian relations at U.S. forts and fur trading factories. *Map and figures created in ArcGIS. Projected Coordinate System: USA Contiguous Albers Equal Area Conic.*

information system (GIS) that links digital maps of land cessions to data on payments for treaty compliance and legal settlements, allow us to aggregate disbursements made from 1804 to 2012 for discrete Indian cessions within the Louisiana Territory, and, consequently, to assemble a solution to a seventy-year-old puzzle. Once tallied and visualized, the results

show, not surprisingly, that the United States drastically underpaid Indian nations. Unexpected, however, is the total actually paid by the U.S. government: a price tag of over \$2.6 billion that dwarfs the \$15 million deal for of preemption. Adjusted for inflation, this new figure is comparable to roughly \$418 million in 1803 dollars or more than \$8.5 billion in 2012—far more than historians have thought. No less significant for being unknown, the price of the Louisiana Purchase of Indian country is a statistic in need of story.⁵

Felix Cohen's \$300 Million Question

The "Louisiana Purchase" entry in *The Encyclopedia of United States Indian Policy and Law* (2009) tells readers that "one scholar calculated that the U.S. paid tribes over \$300 million to buy the lands they were willing to sell within the Territory." This scholar was Felix S. Cohen, an Interior Department lawyer who helped draft the Indian Reorganization Act (1934) and stewarded the production of the *Handbook of Federal Indian Law* (1941). In the 1930s Cohen watched as tribal suits for historical damages filled the dockets of the Court of Claims (a court created in 1855 to adjudicate monetary claims against the federal government), and he joined those advocating for the creation of a commission to resolve grievances arising from broken treaties. He championed the passage of the Indian Claims Commission Act (ICCA) in 1946, and defended the legislation in an influential law review article, "Original Indian Title" (1947), which argued that Indians had received twenty times as much as France had for Louisiana. That estimate has been quoted ever since.⁶

Cohen wrote that article to refute the idea that the Indian Claims Commission (ICC) would depart from historical precedent by recognizing indigenous soil rights. In a subsection titled "How We Bought the United States," he observed "that practically all of the real estate acquired by the United States since 1776 was purchased not from Napoleon or any other emperor or czar but from its original Indian owners." To elaborate he explained "that after paying Napoleon 15 million dollars for the cession of political authority over the Louisiana Territory we proceeded to pay the Indian tribes of the ceded territory more than twenty times this sum." Cohen knew this estimate was rough. He defended it as hampered by hard-to-pinpoint values of goods and services, and added insulation by nesting it in a larger total paid for all Indian land, "somewhat in excess of 800 million dollars." The numbers performed double-duty in support of the ICC. Their existence refuted critics who denied the precedent of paying Indians for title; their size assured opponents that the outstanding debts were minimal. The ICC, Cohen argued, would not rewrite history so much as scribble restitution in the margins.⁷

⁵ For a work (by a geographer) that is an exception to the rule that historians have not really thought about the potential of these financial sources, see David J. Wishart, "Compensation for Dispossession: Payments to the Indians for Their Lands on the Central and Northern Great Plains in the 19th Century," *National Geographic Research*, 6 (Winter 1990), 94–109. D. Larry Crumbley, "Forensic Accounting: Older than You Think," *Journal of Forensic Accounting*, 2 (Dec. 2001), 181–202. Department of the Treasury, *Annual Report of the Comptroller General of the United States* (Washington, 1928), 66. All inflation conversions in this article are based on 2012 consumer price index factors assembled at Robert Sahr, "Consumer Price Index (CPI) Conversion Factors 1774 to Estimated 2024 to Convert to Dollars of 2012," *College of Liberal Arts, Oregon State University*, <http://liberalarts.oregonstate.edu/files/polisci/faculty-research/sahr/inflation-conversion/pdf/cv2012.pdf>.

⁶ "Louisiana Purchase," in *The Encyclopedia of United States Indian Policy and Law*, ed. Paul Finkelman and Tim Alan Garrison (2 vols., Washington, 2009), II, 503. Indian Reorganization Act, 48 Stat. 984 (1934). Felix S. Cohen, *Handbook of Federal Indian Law* (Washington, 1941). Indian Claims Commission Act, 60 Stat. 1050 (1946). Felix S. Cohen, "Original Indian Title," *Minnesota Law Review*, 32 (Dec. 1947), 35–36.

⁷ Cohen, "Original Indian Title," 35–36.

Over time, the political motivation for the piece faded, and “Original Indian Title” emerged as a classic in its field. In 2016 the legal database HeinOnline ranked it as the eleventh-most-cited article on Indian law in its collection and the only one in the top one hundred published before 1950. While agreement does not always follow citation, Cohen inspired both, thanks in no small part to his sterling reputation. His figures have become staples in legal scholarship and have cross-pollinated works by historians, geographers, political scientists, and economists. Citations in recent histories of the doctrine of discovery, Indian affairs, and treaty making continue to burnish their authority. With this track record, Cohen’s \$300 million belongs in an encyclopedia.⁸

What remains unexamined, however, is a problem with Cohen’s methodology, or to be more precise, his lack of any discernible methodology. Rather than citing sources, he adapted the “How We Bought the United States” section from an article of the same name he published a year before in the popular magazine *Collier’s*. Few who have cited Cohen’s numbers have traced them to this earlier piece, and none have asked how he arrived at them. Instead, these later works buffer references to Cohen with praise for “perhaps the most thorough legal scholar of Indian property rights,” a “close and sympathetic student of Indian affairs,” the “eminent scholar of Indian law Felix Cohen.” Cohen was all these things, and more. In this case, he wrote less as a meticulous scholar than a gifted policy advocate.⁹

“How We Bought the United States” began as a speech to the Indian Rights Association in January 1945. His first draft asserted that the United States had paid Indian tribes “something in excess of a billion dollars” for two million square miles. Later that month Cohen pitched it to *Collier’s* and offered to provide a map of tribal cessions. When editors asked how much was paid for each of the map’s sections of land, Cohen replied by highlighting the difficulty of compiling payments, “the value of which is not specified in the agreement of cession.” He suggested that it would be “better not to attempt any specific breakdown” and reiterated this point when he brought the map to a hearing on the ICCA before the House of Committee on Indian Affairs in March. At the hearing he also offered a comparative quip about the Louisiana Purchase to suggest the ICC would be economical:

⁸ “American Indian Law Collection,” *HeinOnline*, <http://heinonline.org/HOL/AILArticles?collection=amindian&sort=cited>. Examples in legal scholarship include Robert Braucher, “The Supreme Court 1954 Term,” *Harvard Law Review* (1955), 150n123; Gordon I. Bennett, “Aboriginal Title in the Common Law: A Stony Path through Feudal Doctrine,” *Buffalo Law Review*, 27 (Winter 1977–Spring 1978), 626; Russel L. Barsh, “Indian Land Claims Policy in the United States,” *North Dakota Law Review*, 58 (no. 1, 1982), 7; John P. Lowndes, “When History Outweighs Law: Extinction of Abenaki Aboriginal Title,” *Buffalo Law Review*, 42 (Winter 1994), 86; Michael C. Blumm, “Retracting the Discovery Doctrine: Aboriginal Title, Tribal Sovereignty, and Their Significance to Treaty-Making and Modern Natural Resources Policy in Indian Country,” *Vermont Law Review*, 28 (2003–2004), 716; Joshua L. Seifert, “The Myth of *Johnson v. McIntosh*,” *UCLA Law Review*, 52 (Oct. 2004), 299; and Hamar Foster, “We Are Not O’Meara’s Children: Law, Lawyers, and the First Campaign for Aboriginal Title in British Columbia, 1908–28,” in *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights*, ed. Hamar Foster, Heather Raven, and Jeremy Webber (Vancouver, 2007), 263n13. Examples outside of legal scholarship include Wilcomb E. Washburn, *Red Man’s Land/White Man’s Law* (New York, 1971), 109–10; Terry L. Anderson and Fred S. McChesney, “Raid or Trade—An Economic Model of Indian-White Relations,” *Journal of Law and Economics*, 37 (April 1994), 56; Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley, 1994), 230; Terry L. Anderson, *Sovereign Nations or Reservations* (San Francisco, 1995), 74; Jack Utter, *American Indians: Answers to Today’s Questions* (Norman, 2001), 93–94; Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny* (Lincoln, 2008), 71; Paul VanDevelder, *Savages and Scoundrels: The Untold Story of America’s Road to Empire through Indian Country* (New Haven, 2009), 89; Stephen J. Rockwell, *Indian Affairs and the Administrative State in the Nineteenth Century* (New York, 2010), 56; and Colin Calloway, *Pen and Ink Witchcraft: Treaties and Treaty Making in American Indian History* (New York, 2013), 164.

⁹ Felix S. Cohen, “How We Bought the United States,” *Collier’s*, Jan. 19, 1946, pp. 23, 62; Anderson, *Sovereign Nations or Reservations*, 74; Prucha, *American Indian Treaties*, 230; Calloway, *Pen and Ink Witchcraft*, 164.

[Mr. COHEN:] I have not tried to figure out how much the United States paid in dollars and cents for these acquisitions, but my guess would be between \$500,000,000 and \$1,000,000,000.

[Rep. William] GALLAGHER. More than the land was worth at the time the deal was made?

Mr. COHEN. I would say, by and large, the Indians did not get such a bad deal, considering the values of land at the time the various cessions were made. At least, the Indians got more for the Louisiana Purchase than Napoleon did.

Later that year, in a third article, "Indian Claims," penned to persuade Indian rights activists to rally behind the ICCA, Cohen reiterated his "best guess" for payments was "somewhere between 500 million and 1 billion dollars" and again drew a comparison to the amount paid to Napoleon.¹⁰

Reading the "Indian Claims" article next to the *Collier's* piece underlines Cohen's skill at buttressing policy with history. "Indian Claims" appeared in the *American Indian*, the journal of the American Association of Indian Affairs, whose audience needed less convincing of the need for a commission than reason to support the specific provisions of the ICCA. For these like-minded readers, Cohen described the act as a corrective to a past shaped by "pseudo-scientific" racism with parallels to "Nazi racist literature." For *Collier's* national audience, unlikely to welcome such a harsh survey, Cohen whitewashed the record. When he mentioned Nazi literature in "How We Bought the United States" it was not to draw a parallel but rather to dismiss "Jap, Nazi and Fascist propagandists" who accused Americans of stealing a continent "in the name of a superior race." The ICC, he argued, would fix the errors of a few unscrupulous individuals as it extended a tradition, "to the everlasting credit of the American people," of justly compensating Indians. Privately, Cohen defended having "overstated," in his *Collier's* article, "the high standards embodied in our treaties" by suggesting such exaggeration would "prove helpful in arousing critical attention to lapses from those standards."¹¹

It was apparently toward this end that his estimates sharpened. His "best guess" in January 1945 of \$500 million to \$1 billion for the continent inexplicably reappeared as a "conservative estimate" of \$800 million in the 1946 *Collier's* article. For the *American Indian* audience, he characterized the amount paid to Indian tribes as "at least" more than Napoleon got for Louisiana; for the *Collier's* readers, the amount became "more than twenty times" \$15 million. When Cohen reworked the piece for the 1947 law review article, "Original Indian Title," he retained the more precise figures, along with a caveat that "nobody has ever calculated the total sum paid by the United States for more than two and a half million square miles of land." Transferred from a popular to an academic venue, this disclaimer came to read like the "Blackstone of American Indian law," hedging a careful answer to a knotty question. The challenge of tallying this information within

¹⁰ Felix S. Cohen, "Memorandum for Mr. Harper and Mr. Collier," Jan. 12, 1945, folder 1040, box 65, Felix S. Cohen Papers (Beinecke Rare Book and Manuscript Library, Yale University, New Haven, Conn.); Felix S. Cohen, [draft copy of "How We Bought the United States"], [1945], folder 1034, *ibid.*; Felix S. Cohen to Mark Ross, Jan. 12, 1945, folder 1040, *ibid.*; Cohen to I. D. MacCammond, March 8, 1945, *ibid.* U.S. Congress, House, Committee on Indian Affairs, *Hearings on H.R. 1198 and 1341: Creation of the Indian Claims Commission*, 79 Cong., 1 sess., 1945, p. 69. Felix S. Cohen, "Indian Claims," in *The Legal Conscience: Selected Papers of Felix S. Cohen*, ed. Lucy Kramer (New Haven, 1960), 269.

¹¹ Cohen, "Indian Claims," 265. Cohen, "How We Bought the United States," 62. Cohen to Harold Ickes, Jan. 22, 1946, folder 1041, box 64, Cohen Papers.

the time frame of these publications and Cohen's own description of the difficulty of adding figures to the map that framed his *Collier's* article indicate that his specificity resulted from a political calculation, not an arithmetic one.¹²

As politics, the move paid off. When the ICCA became law, Harry S. Truman became the first to cite, officially at least, one of Cohen's figures; Cohen wrote the president's signing statement. As historical statistics, however, Cohen's estimates beg for reconsideration. Repetition gave them an authority he almost certainly never intended, but this accumulation of citations attests to persistent interest in a question he deserves credit for raising. At the time, he could have defended his guess about payments for Indian land within the Louisiana Territory by explaining that a more precise accounting would have taken teams of investigators, millions of dollars, and decades to accomplish. In part because of Cohen's political efficacy, this effort, funding, and time is exactly what the financial histories of hundreds of Indian cessions received.

An Archive of Indian Claims Accounting

Indians claims have been in continuous litigation since 1881. That year, Choctaw representatives persuaded Congress to pass a jurisdictional act allowing them to sue the United States in the Court of Claims for an unpaid debt from an 1830 land cession. After they won an appeal that garnered a \$2.8 million judgment from the Supreme Court, a wave of similar suits followed, cresting in the 1930s and building pressure for a dedicated forum for tribal claims. From 1946 to 1978, the ICC heard hundreds more cases; after this period, claims subsided but never ceased. This litigation ultimately offered "hollow justice," as the scholar David E. Wilkins put it, with accounting investigations making up one of the most basic but least-understood features of Indian claims cases. Revisiting why federal auditors exhumed records of capital expenditures made to extinguish Indian title is essential to seeing how their findings can be utilized to answer Cohen's \$300 million question.¹³

Indians rarely got satisfaction in the Court of Claims. Dismissals were frequent, and victories reduced by "offsets" deducted from awards. The Choctaw case was among a minority with a positive outcome prior to the creation of the ICC. That decision found the government liable for over \$8 million, but the court allowed over \$5 million in offsets to be deducted from that total for the cost of survey and sale of land, education, a council house, and Choctaw removal west. A Blackfeet, Blood, Piegan, and Gros Ventre case for over 12 million acres taken by executive order in 1874 fared similarly. Offsets slashed the award nearly 90 percent by deducting expenditures for "agents, Indian police, judges, interpreters, miscellaneous employees, agency buildings and repairs, superintendents and teachers, surveying, and other like items," and over a quarter million dollars spent on children "recruited" to boarding schools. These cases were exceptional not because offsets reduced the awards, but because they did not erase them entirely.¹⁴

¹² Cohen, "How We Bought the United States," 23, 64. Cohen, "Original Indian Title," 36. Board of Authors and Editors, "Introduction," in *Felix Cohen's Handbook of Federal Indian Law*, ed. Rennard Strickland (Charlottesville, 1982), viii.

¹³ David E. Wilkins, *Hollow Justice: A History of Indigenous Claims in the United States* (New Haven, 2013). *Choctaw Nation v. United States*, 22 Ct. Cl. 489 (1886); *Choctaw Nation v. United States*, 119 U.S. 1 (1886).

¹⁴ John R. White, "Barmecide Revisited: The Gratuitous Offset in Indian Claim Cases," *Ethnohistory*, 25 (Spring 1978), 179–92. Thirty-four of 118 suits prior to the creation of the Indian Claims Commission (ICC) won awards. See Nancy O. Lurie, "The Indian Claims Commission Act," *Annals of the American Academy of Political Science*, 311

Offsets, calculated to the penny, came from claims accounting performed ad hoc until 1924, when an increased case load prompted the formation of an Indian Tribal Claims Section (ITCS) at the General Accounting Office (GAO). To justify the need, the comptroller general, the head of the GAO, pointed to a Santee Sioux case that had required reviewing 40,127 “claim settlements” dating back to 1868. “Claims settlements” was jargon for approved federal expenditures. Since the 1790s, government “disbursing officers”—Indian agents, for example—had forwarded “claims” on the federal purse to the Treasury Department documented by “vouchers,” which auditors reviewed, or “settled.” With the Santee Sioux investigation only half finished and more coming, the GAO faced “long and tedious searching” for offsets. The solution, the ITCS, was “a special force” of thirty employees, “a part of them examining Indian Office records, a part drawings vouchers, a part analyzing the vouchers, and another part making the tabulations.” The work began when the Department of Justice (DOJ) forwarded a tribe’s petition to the ITCS. Clerks then analyzed “all of the old accounts and claims that have been settled through the old accounting office, and the disbursing office accounts,” tying outlays to treaties, agreements, and executive orders. Some of the records had “been in storage so long that they break up like a piece of charcoal,” the chief of the GAO’s Audit Division reported in 1935. The ITCS repaired vouchers, indexed them, and transcribed details into subreports that contributed to final reports for the DOJ.¹⁵

Reports sometimes covered the “entire fiscal relations between such tribes and the United States,” but only if such thoroughness served strategic legal goals of gathering “gratuities allowable as offsets.” Often just called gratuities, gratuitous offsets were disbursements unrelated to the claim under litigation but still linked to a plaintiff tribe. They were deducted from an award simply because jurisdictional acts authorized it. These types of offsets, which took more time and effort to uncover but added up quickly, included the costs of roads, health care, education, personnel, and—especially galling in a process geared toward reconciliation—removal to reservations. Alternatively, nongratuitous offsets covered disbursements directly related to the claim before the court, such as treaty payments. Always relevant to awards, these types of offsets were consistently tabulated. The approach was additive, resulting in well-documented financial portraits whose detail came from intense scrutiny of records by officials motivated by the pursuit of offsets. That each portrait is restricted to only the plaintiff tribe or tribes in a given case is a serious shortcoming but one mitigated by the scores of tribes who pushed their claims across

(1957), 57n4. Clara Sue Kidwell, *The Choctaws in Oklahoma: From Tribe to Nation, 1855–1970* (Norman, 2007), 121–36; *Choctaw Nation v. United States*, 22 Ct. Cl. 489; *Choctaw Nation v. United States*, 119 U.S. 1. *The Blackfeet v. United States*, 81 Ct. Cl. 101, 137 (1935). Before the passage of the Indian Claims Commission Act, tribes recovered 1.17% of specified damages (\$20,127,228 of \$1,716,453,656 claimed). See Barsh, “Indian Land Claims Policy in the United States,” 79, appendix 1. In the Choctaw case the original award was for \$8,206,165.80, less offsets of \$5,097,367.50, leaving an actual payout of \$2,858,798.30. In the Blackfeet case the original award was \$6,130,874.88, less offsets of \$5,508,409.31, leaving an actual payout of \$622,465.57.

¹⁵ Twenty-two cases were decided before 1920 and 112 between 1920 and 1946. See Michael Lieder and Jack Page, *Wild Justice: The People of Geronimo vs. the United States* (New York, 1997), 57. U.S. Department of the Treasury, *Annual Report of the General Accounting Office* (Washington, 1924), 19. Frederick C. Mosher, *The GAO: The Quest for Accountability in American Government* (Boulder, 1979), 73–78; Roger R. Trask, *Defender of the Public Interest: The General Accounting Office, 1921–1966* (Washington, 1996), 204–5. For the “a special force” and “a part of them” quotations, see U.S. Congress, House, Committee on Appropriations, *Independent Offices Appropriation Bill, 1925: Hearing before the Subcommittee of House Committee on Appropriations*, 68 Cong., 1 sess., 1924, p. 195. U.S. Congress, Senate, Committee on Indian Affairs, *Survey of Conditions of the Indians in the United States: Indian Claims against the Government Part 25*, 72 Cong., 1 sess., 1932, pp. 13416–17.

decades and against poor odds. Without their persistence, the RTCs would have neither existed nor produced such an enormous volume of research.¹⁶

And *enormous* only begins to describe their undertaking. By 1928, the RTCs employed eighty-two people devoted to “the immense task” that produced over 35,000 pages of final reports by the late 1930s. The most complex early case, a Sioux petition for the taking of the Black Hills, took seven years to sift through 600,000 vouchers from 7,279 disbursing officer files and 1,900 appropriations from fifty-one funds going back to 1831. The report cost \$177,344.89 (in 1931 dollars) and listed \$34,260,097.93 in potential offsets that were relentlessly mined to turn every claim from the case that had escaped dismissal before the creation of the ICC into a pyrrhic victory. Such outcomes alarmed Indian supporters, while the amount of time cases required disturbed opponents who viewed lengthy litigation as a roadblock to the pursuit of terminating the federal recognition of tribal sovereignty. By 1946, advocates of tribal self-determination and apostles of tribal dissolution supported a claims commission as a “*more efficient and economical way*.”¹⁷

If ICC advocates believed a commission would economize the process, they were disappointed. Because the ICC had over eight hundred claims to process, Congress extended the commission four times until 1978. Most cases involved land from broken treaties, uncompensated seizures, and charges of “unconscionable consideration,” which alleged an agreement had provided so shockingly little in payment that it merited additional compensation. Even during the ICC era, every case faced a long and complex process built for scrutiny rather than speed. For land claims, federal law required tribes to establish that they were an “identifiable group” who exclusively occupied an area. Next came their arguments on the land’s market value at the time possession had been lost and on how much the United States had paid. Awards equaled the market value at transfer minus past payments and offsets. The ICC barred most gratuitous offsets (a policy change that benefitted claimant tribes), but it continued excluding interest from the amount the government owed, except in rare instances. When the ICC ended, 58 percent of the 550 completed claims had resulted in awards. The rest returned to the Court of Claims. Inequities built into the claims process—a calculation of losses in which market values trumped cultural ones, a general exclusion of interest that ignored the time value of damages, delays that denied justice, legal categories that pigeonholed cultures, and refusals to return land—underpin a persuasive critique of this litigation system as politics masquerading as law. The understandable scholarly focus on the failure of claims litigation as a forum for meaningful redress, however, has coincided with a dearth of attention on the historical evidence amassed through accounting investigations, which further ballooned under the ICC.¹⁸

¹⁶ U.S. Department of the Treasury, *Annual Report of the Comptroller General of the United States* (Washington, 1928), 66; U.S. Department of the Treasury, *Annual Report of the Comptroller General of the United States* (Washington, 1939), 48.

¹⁷ Brookings Institution, *The Problem of Indian Administration* (Baltimore, 1928), 810. U.S. Department of the Treasury, *Annual Report of the Comptroller General of the United States* (Washington, 1937), 84; U.S. Congress, House Committee on Indian Affairs, *Creation of Indian Claims Commission*, 79 Cong., 1 sess., 1945, p. 174. Cohen, “Indian Claims,” 271. Emphasis in original.

¹⁸ Ralph A. Barney, “Legal Problems Peculiar to Indian Claims Litigation,” *Ethnohistory*, 2 (Fall 1955), 315–25, esp. 316, 318; Pamela S. Wallace, “Indian Claims Commission: Political Complexity and Contrasting Concepts of Identity,” *ibid.*, 49 (Fall 2002), 743–67. Ralph A. Barney, “Indian Claims,” *Appraisal Journal*, 31 (April 1963), 169–77. *United States Indian Claims Commission, August 13, 1946, September 30, 1978. Final Report* (Washington, 1979), 125. Wilkins, *Hollow Justice*; Vine Deloria Jr. and Clifford M. Lytle, *American Indians, American Justice* (Austin, 1983); Imre Sutton, ed., *Irredeemable America: The Indians’ Estate and Land Claims* (Albuquerque, 1985); H. D.

Produced to mitigate payouts to Indian nations who refused to go unheard, ITCS accounting absorbed thousands of person-years of labor and cost millions of dollars. From 1954 to 1965 the ITCS spent over \$5 million on an average of sixty-eight full-time accountants, claims examiners, secretaries, typists, and file clerks. About a quarter of nearly two hundred reports were still in the preparation stage when the ITCS moved to the General Services Administration in 1965. As the work shifted to the federal administration of tribal trust funds generated by various treaties and agreements, the unit was rechristened the Indian Trust Accounting Division (ITAD). Slated to finish in the early 1970s, a ruling that required updated accounts further extended its life. By the 1990s, it had more than fifty full-time equivalents working on reports that could take as many as “40 staff years” to complete. In 2006 the final legacy case ended and ITAD shut down. Reflecting on the closure, the Environmental and Natural Resource Division (ENRD) of the DOJ, which had inherited the cases, reported a total of “approximately \$3.5 billion in judgments or settlements of the ICCA cases” and made clear this was a considerable *savings*: “This figure represents a fraction of the amounts actually claimed by the Tribes. It was only through intensive litigation efforts that ENRD was able to so limit the awards.”¹⁹

Its completion ended an era but not Indian claims. New tribal trust fund suits, cases for land lost during the ICC’s tenure, and a series of treaty-like settlement acts have all added to the government’s expenditures for Indian title, some for parts of the Louisiana Territory. The richest materials on disbursements in that region are 18,000 cubic feet of ITCS documents at the National Archives. These records say far less about Indians’ receipts than federal outlays, but on that score they say much where other sources fall silent. Up close they look like a pile of minutia. Step back and ask, for instance, how \$200 “For 40 barrels of salt, 4th Art: treaty, 21st Sept., 1832” listed in an ITCS subreport figured into an ICC award citing a nongratuious offset of \$745,741.79 disbursed for a Sac and Fox cession of 4,484,800 acres, and the magnitude of it all begins to set in. The only thing more difficult to fathom is that historians have let this unintentional record of conquest and colonization languish. Among the opportunities it presents is a chance to unearth the price of the Louisiana Purchase of Indian country.²⁰

The Louisiana Purchase Puzzle

Answering Cohen’s \$300 million question requires assembling a puzzle within a puzzle within a puzzle. The first identifies Louisiana’s bounds. The second locates Indian cessions within these borders. The third aggregates expenditures for each. As the scale expands, the pieces multiply: a single preemption outline encircles hundreds of cessions

Rosenthal, *Their Day in Court: A History of the Indian Claims Commission* (New York, 1990); Christian W. McMillen, *Making Indian Law: The Hualapai Land Case and the Birth of Ethnohistory* (New Haven, 2007).

¹⁹ U.S. Department of the Treasury, *Annual Report of the Comptroller General of the United States for the Fiscal Year Ended June 30, 1965* (Washington, 1965), 214, 356; U.S. Department of the Treasury, *Annual Report of the Comptroller General of the United States for the Fiscal Year Ended June 30, 1960* (Washington, 1960), 214. U.S. Congress, House, Committee on Appropriations, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1992*, 102 Cong., 1 sess., 1991, p. 135. U.S. Department of Justice, *U.S. Department of Justice Department & Natural Resources Division (ENRD) FY 2008 Performance Budget OMB Submission, Part 33*, 110 Cong., 1 sess., 2007, p. 723.

²⁰ Robert Svenningsen, “Accessions,” *Prologue: The Journal of the National Archives*, 4 (Summer 1972), 118. “Transcript 4038. Fulfilling Treaties with the Sacs and Foxes, Act March 3, 1837,” folder 1 “Transcripts: 4035–4046,” “RG 407 Box 407,” Records of the General Accounting Office, RG 411 (National Archives, Suitland, Md.); 20 Indian Cl. Comm. 505 (1969).

that channeled thousands of disbursements. Assumptions shape each stage, leading to *an* answer, not *the* answer, and the records available ensure every answer is an estimate. The approach pursued here compiles disbursements for Indian title in the form of original payments on agreements, court awards, and settlements. This approach makes it possible to estimate that between 1804 and 2012 the United States spent *no less* than \$2.6 billion on 222 cessions from Indian nations within the Louisiana Territory.

The limits of French preemption need to be defined first. When asked Louisiana's extent, the French foreign minister Charles Maurice de Talleyrand-Périgord refused, saying "I suppose you will make the most of it." Thomas Jefferson declared it reached west to the Rockies, south to the Rio Grande, and north to the Lake of the Woods (in present-day northern Minnesota and into Canada); British and Spanish authorities disagreed. Historians have dismissed Jefferson's assertions as diplomatic posturing. Confronted by Spanish records from the Archive of the Indies, a U.S. claim to Texas looked particularly absurd. But as recent borderlands scholarship has emphasized, Spanish settlements "formed a mere edging" to areas controlled by the Comanche, Apache, Wichita, and others. Indigenous polities, some more powerful than others, held sway on the ground, making imperial claims on a greater or lesser Louisiana look more alike as postures than different as ostensibly valid or invalid readings of the doctrine of discovery. Spanish, English, and American preemption was only as real as it was recognized by rivals. And because the United States could not dictate terms, it spent the next sixteen years trying to make the most of the imperial boundaries of Louisiana after the 1803 deal.²¹

Figure 2 illustrates the conclusion of these efforts through 1819. By then, the reach of U.S. preemption attributable solely to France's sale had contracted by more than a third, from nearly 1.3 million square miles to roughly 811,000 square miles. This reduced area, shown as the lightest gray in figure 2, outlines the extent of the Louisiana Purchase adopted in this article. It represents the unclear extent of French preemption at its smallest. Because it covers a region never imperially (re)purchased by the United States, (re)ceded by other preemptors, or otherwise lost, conquered, or annexed, this choice of area obviates the need to account for the costs of extinguishing overlapping preemption claims. As a relatively smaller area, it also restricts the number of Indian cessions within. The area therefore maximizes the cost of French preemption (the price paid by the United States per square mile increases as the area shrinks) and minimizes the amount disbursed to Indians, making it the least likely choice to overstate the difference. As the table with figure 2 shows, payments for France's claim (depending on the total price tag used in the calculation) were somewhere from 2.2 cents to 4.5 cents an acre for this smaller area. Using the \$15 million figure, the cost was 2.9 cents. As the price of preemption, it too merely edged something much larger.²²

Locating Indian cessions within Louisiana's outline is the next puzzle. The ways the Indian estate was reduced ranged from the voluntary to the violently coerced and were

²¹ Marquis de Barbé-Marbois, *History of Louisiana and of Its Cession to the United States of Northern America*, 454. Thomas Jefferson, "The Limits and Bounds of Louisiana," 1803, in *Documents Relating to the Purchase & Exploration of Louisiana* (New York, 1904), 37, 44. Frank Bond, *Historical Sketch of "Louisiana" and the Louisiana Purchase* (Washington, 1912), 5; J. C. A. Stagg, *Borderlines in Borderlands: James Madison and the Spanish-American Frontier* (New Haven, 2009), 2–3, 7, 39. Pekka Hämäläinen, *The Comanche Empire* (New Haven, 2008), 69.

²² Hairs could be split further by accounting for the discount on Louisiana Purchase bonds, financing commissions, administrative costs, and diplomatic costs. See Edward M. Douglas, *Boundaries, Areas, Geographic Centers and Altitudes of the United States and the Several States with a Brief Record of Important Changes in Their Territory and Government* (Washington, 1930), 249.

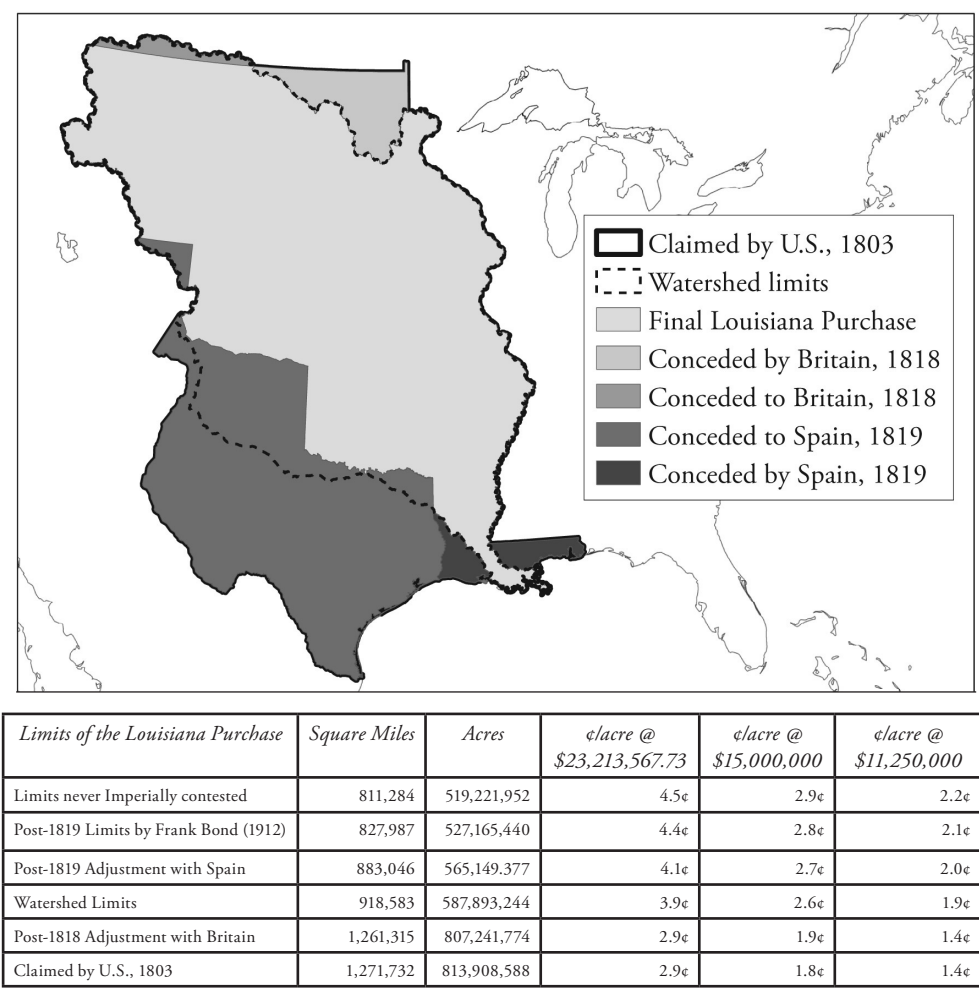


Figure 2. This map shows a range of possible cartographic representations of the Louisiana Territory. From the 1870s to the 1930s, historians and geographers debated these bounds as they catapulted the deal into the American civic imagination as a phenomenal real estate bargain. Henry Adams inaugurated a tradition of labeling the ambitious bounds asserted by the Jefferson administration (the area bounded by the thick black line, “Claimed by U.S., 1803”) along a spectrum from cynical to absurd. A 1912 pamphlet by Frank Bond, the chief clerk of the General Land Office, announced that the purchase area covered 827,987 square miles (listed in the table below the map). When rounded to 828,000, this became the standard area cited. Once divided by \$15 million, Bond’s work spawned an oft-repeated conclusions that Louisiana cost 3 cents per acre. The lightest grey area represents the portion of the Louisiana Territory claim made in 1803 that the United States was never forced to reacquire from other imperial preemptors. As the table makes clear, it outlines the Louisiana Purchase at its smallest and, as a result, most expensive per acre as an acquisition of preemption. It is the area adopted here in this essay to frame the question of how much the United States compensated Native Americans for their soil rights within Louisiana, and an important reason why this analysis produces a conservative estimate, not the final word. *Map and figures created in ArcGIS. Projected Coordinate System: USA Contiguous Albers Equal Area Conic.*

recorded in an array of documents. Treaties were most prevalent. After Congress unilaterally ended official treaty making in 1871, transfers continued with treaty-like agreements,

executive orders, and federal acts that reduced reservations, took surplus reservation land left after parcels were allotted to individual Indians, and seized land by eminent domain. The first Indian cession in Louisiana, the Sac and Fox treaty of 1804, offers a clear instance of the “relinquishment of land.” So does the last, 687.3 Ho Chunk acres condemned by eminent domain in 1970 for the Missouri River Recreation Lakes Project.²³

As Vine Deloria Jr. and Raymond DeMallie have noted, an obstacle to providing a comprehensive view of the reduction of the Indian estate remains that “no single source has a complete list” of treaties, agreements, orders, and acts. Cross-referencing several compilations—the most comprehensive of which are Deloria and DeMallie’s *Documents of American Indian Diplomacy* (1999) and Charles C. Royce’s schedule of cessions in the *Eighteenth Annual Report of the Bureau of American Ethnology* (1899)—yielded 222 cessions between 1804 and 1970. Some did not neatly conform to Louisiana’s limits, with twenty-two straddling the border. Again, making a conservative assumption, I calculated the percent of each in Louisiana and prorated disbursements accordingly.²⁴

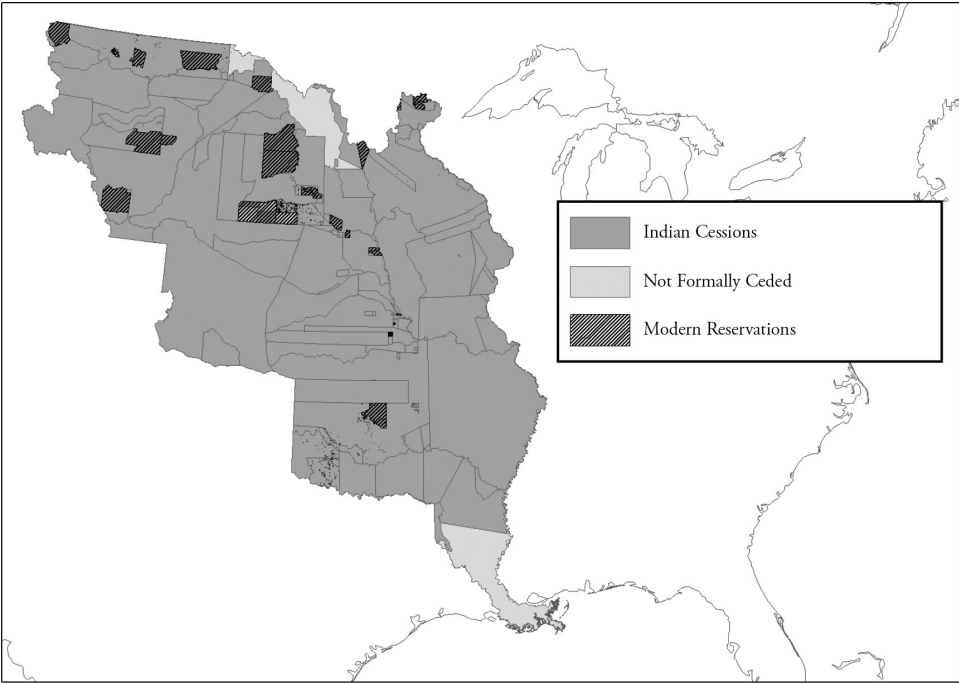
These 222 cessions covered over 576 million acres, 57 million more than contained in the Louisiana Territory. The excess comes from overlapping cessions. A region in western Oklahoma north of the Canadian River offers an extreme example of how this worked. The Osage included this region in a large 1825 cession, which was reconfirmed in 1839. In the intervening years, the United States ceded part of the region to the Creek upon their removal, who retroceded it in 1856. Another huge cession of nearly 127 million acres by the Comanche and Kiowa in 1867—less than 7 percent inside Louisiana—overlapped the same. Two years later, the Ulysses S. Grant administration included the area in a reservation for the Cheyenne and Arapaho, who, “ceded, conveyed, transferred, relinquished, and surrendered” their interest in an allotment act opening surplus to homesteaders. Not surprisingly, the overall scope of tribal cessions is easier to grasp visually. Figure 3 maps them.²⁵

The acreage figures, which are listed in table 1 of an appendix I have made available online, come predominantly from litigation, and otherwise from treaties, statutes, or Bureau of Indian Affairs (BIA) reports. The remainder were calculated from digitized cession maps. Multilateral treaties, which involved the federal government and multiple tribes, covered the greatest portion of Indian country. The next highest amount came from the Lakota, or Teton Sioux. Lakota territory obtained by the United States included both the largest, and perhaps most infamous, cession: the taking of over 7 million acres of the Black Hills in a “sell-or-starve” agreement that brazenly violated the Treaty of Fort Laramie (1868). The case spent sixty years in the Court of Claims and the ICC before reaching the Supreme Court, which ordered the federal government to pay nearly \$106 million for the stolen land in 1980. The money sits in an account that has since grown to over \$1.3 billion, refused by the Sioux, who have continued to press for the repatriation of parts of

²³ “Treaty with the Sauk and Foxes, 1804,” in *Indian Affairs: Laws and Treaties*, vol. II, *Treaties*, ed. Charles J. Kappler (Washington, 1904), 75. Charles C. Royce, comp., “Indian Land Cessions in the United States,” in *Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Institution, 1896–97* (Washington, 1899). For tables that shows these 222 cessions, see “Federal Disbursements for Indian Title in the Louisiana Territory, 1804–2012,” <http://repository.upenn.edu/mead/27/>. On the 687.3 acres of Ho-Chunk land, see *United States v. 687.3 Acres of Land*, 451 F.2d 667 (8th Cir. 1971), *cert. denied*, 405 U.S. 1026 (1972).

²⁴ Vine Deloria Jr. and Raymond DeMallie, *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775–1979* (2 vols., Norman 1999), I, 181.

²⁵ Indian Appropriation Act, sec. 13, 26 Stat. 1022 (1891).



| <i>Descriptions</i> | <i>Square Miles</i> | <i>Acres</i> |
|---|---------------------|--------------|
| Indian Cessions with the Louisiana Purchase | 900,493 | 576,315,508 |
| Louisiana Purchase Preemption Area | 811,284 | 519,221,760 |
| Preemption Area Not Covered by Indian Cession | 43,233 | 27,669,375 |
| Modern Reservations within Louisiana Purchase | 34,167 | 21,866,861 |

Figure 3. This map shows 222 cessions by Indian nations with the Louisiana Purchase from 1804 to 1970. It surely misses some and just as likely identifies most. They were effected by treaties, agreements, executive orders, and federal acts between 1804 and 1970. The most important source in identifying them was the 67 state-level cession maps compiled by Charles Royce. While widely used, Royce’s maps, as Imre Sutton and Dan Cole have shown, are not perfect: they sometimes use uncorrected survey lines, reflect poor information about unsurveyed areas and relevant drainage patterns, and exhibit edge-matching problems. They also stop in 1894, which meant turning to a variety of other sources to complete this visualization. As a result, the utility of this map lies less in the absolute precision of each cession (very difficult to appreciate on this scale) than the general accuracy of the pattern it conveys.

The table summarizes one of those patterns. About 5% of the surface area of the area ringed by Louisiana was appropriated without transfer of Indian soil rights and modern reservations cover another 4% (34,167 square miles). Yet 111% of the area ringed by French preemption was ceded by Indians. In other words, tribes ceded both less than the surface area of Louisiana and more acres than it contained. Frequent overlaps and multiple removals, particularly in Kansas and Oklahoma, explains this paradox. *Map and figures created in ArcGIS/Appendix. Projected Coordinate System: USA Contiguous Albers Equal Area.*

the Black Hills. One of the smallest comes from an 1899 allotment act stipulating the sale of surplus Potawatomi and Kickapoo reservation land in Kansas. It was never litigated but BIA reports indicate 980 acres were sold.²⁶

²⁶ Robert Lee, “The True Cost of the Louisiana Purchase,” *Slate*, <http://www.slate.com/louisianapurchase>. Edward Lazarus, *Black Hills, White Justice: The Sioux Nation versus the United States, 1776 to the Present* (Lincoln,

Analyzing these cessions reveals long-term trends. The period from roughly 1845 to 1910 was most active in terms of the number of cessions. A more revealing pattern emerges when we examine average acres ceded by year. A preponderance of large cessions peaked early in the nineteenth century, as multi-million-acre transfers became increasingly contemporaneous with smaller cessions. For instance, while there were two fewer territorial transfers in the 1820s than in the 1950s, the United States obtained over 172 times as many acres (70,413,005 versus 407,500) in the former period. More generally, despite nearly a quarter of the total cessions occurring in the twentieth century, nineteenth-century cessions accounted for 97.9 percent of the total land ceded. By 1871, when the United States ended formal Indian treaty making, nearly 77 percent of the total area had been ceded. At the outbreak of the Civil War, it had already exceeded half.

Cession sizes also reveal patterns. Large cessions remained predominately east of the one hundredth meridian prior to the Civil War, radiating outward from St. Louis. Afterward, they concentrated on the northern plains as they closed in around the formidable Sioux and Blackfeet. Smaller-scale cessions clustered around removals from Kansas in the mid-nineteenth century, flashed across reservations subjected to allotment at the turn of the twentieth, and later tacked with reclamation projects that flooded sections of reservations to create massive reservoirs such as Lake Oahe in the Dakotas. As episodes in U.S.-Indian relations, some of these encounters have received more attention than others. The Plains wars and breakup of reservations after the Dawes Act (1877) have generated shelves of studies. Mid-nineteenth-century removals and twentieth-century reclamation projects, while less well known, have garnered detailed attention from specialists. Oddly, the first of these movements—the series of large cessions emanating from St. Louis, concentrated in the modern-day states of Missouri, Arkansas, Oklahoma, Kansas, and Iowa, and accounting for about half of the total area ceded by tribes within Louisiana—is perhaps the least familiar, not because this era lacked for study but because attention has focused on eastern removals. By reconstituting stories usually subdivided by time or tribe along a common thread of land loss, the long history of the conquest of Louisiana emerges from these cessions.²⁷

The outlines of these 222 acquisitions present the final puzzle: How much did the United States disburse to extinguish title to each? The claims accounting used by courts to determine the “consideration,” or nongratuious original payments for treaties, enables us to arrive at sturdy estimates for most. This analysis flows from Court of Claims, ICC, and post-ICC cases, and settlement acts related to these 222 cessions. It uses decisions, in conjunction with ITCS, BIA, and congressional reports to collate original payments, court awards, and settlements connected to these events. The findings appear in tables I have archived in an appendix available online.²⁸

1991). Francine Uenuma and Mike Fritz, “Why the Sioux Are Refusing \$1.3 Billion,” Aug. 24, 2011, *PBS NewsHour*, http://www.pbs.org/newshour/updates/north_america-july-dec11-blackhills_08-23/. Department of Interior, *Annual Report of the Commissioner of Indian Affairs* (Washington, 1917), 87.

²⁷ For an examples of the scholarship on mid-nineteenth-century removals, see H. Craig Miner, William E. Unrau, *The End of Indian Kansas: A Study in Cultural Revolution, 1854–1871* (Lawrence, 1977). For an example of the scholarship on twentieth-century reclamation projects, see Mike Lawson, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944–1980* (Norman, 1994).

²⁸ For the archived tables, see “Federal Disbursements for Indian Title in the Louisiana Territory.” These data are also explorable in a digital format at Lee, “True Cost of the Louisiana Purchase.”

Total Acres Ceded by Year in Louisiana Purchase, 1804–1970

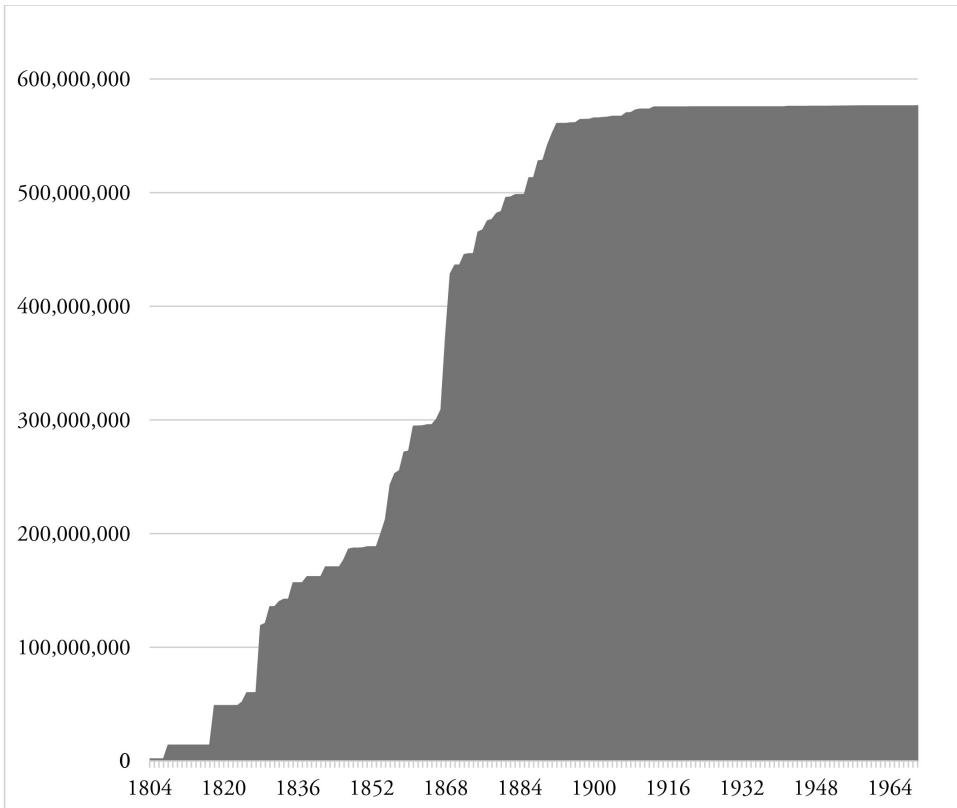


Figure 4. This graph shows the accumulation of 576 million acres across 222 Indian land cessions made within the Louisiana Purchase from 1804 to 1970. Large cessions cause steep jumps in 1818 and 1825, when Quapaw and Osage treaties transferred lands used for eastern removal, during a spurt of treaty making in the mid-1850s that facilitated a second removal era from Kansas, and in 1868, when the second Treaty of Fort Laramie reduced Sioux territory to the Great Sioux Reservation. Almost all of the land was ceded by World War I, though a number of cessions for reclamation projects followed. SOURCE: See tables at “Federal Disbursements for Indian Title in the Louisiana Territory, 1804–2012,” <http://repository.upenn.edu/mead/27/>.

The Court of Claims and ICC did not challenge the earlier RTCS methodology, but they did contest some expenditures' inclusion in the “consideration” as nongratuitous offsets. For example, in a Ponca claim decided in 1971 for over 2 million acres ceded in 1858, federal defendants argued that the government, citing RTCS findings, paid for a mill for seventeen years instead of the treaty-stipulated ten, making the consideration \$515,080. The ICC sided with the Ponca, excluded the extra seven payments as chargeable against the Ponca, and accepted the remaining \$455,500 listed by the RTCS as the original payment. The Ponca ended up with a \$1,878,500 award for their claim. The range of those dueling assertions suggests the total historical payment for the ceded 2 million acres fell somewhere between \$1.00 and \$1.02 per acre. When it came to past payments, judgments determined down to the penny laid a patina of precision that historians should question over a core of accuracy they cannot afford to ignore. Disputes over whether the total known payments for this Ponca tract amounted to \$2.33 million or \$2.39 million

ultimately matter less than the ability to confidently report the total disbursed was around \$2.3 million.²⁹

One method for calculating consideration strayed from simply adding up figures culled from vouchers. It came into play in a Sac and Fox case for the treaty of 1804, a controversial cession of 3.6 million acres straddling the Mississippi River. The treaty stipulated a gift of \$2,234.50 in goods and a permanent annuity worth \$1,000 per year. The RTCs uncovered in 1960 \$130,687.14 in "Disbursements for the Sac and Fox Tribe of Indians pursuant to the treaty of November 3, 1804," but the ICC in 1973 named \$20,000 as the consideration. To do so, it excluded the gifts as a cost of establishing relations. Next, following the RTCs report, the ICC noted the \$1,000 annuity had been capitalized at 5 percent and commuted (discharged for its present face value, for a one-time payment) for \$20,000 in 1909. As a method for pricing assets by discounting their future returns into present values, capitalization led the ICC to define more than a century of annuity payments as 5 percent interest on a (theoretical) \$20,000 principal revealed by the capitalization rate. The decision resulted in the kind of definitive figure that enabled the specific calculation of economic damages in dollars and cents, but it obfuscated the complexity involved in pinning down such historical statistics.³⁰

Variations between GAO findings and court decisions suggest that each example must be inspected individually and information extracted according to a set of rules, with an understanding that different assumptions will alter results. My analysis follows a preference hierarchy that corresponds with the level of scrutiny cessions received, preferring determinations of nongratuious considerations in the following order: ICC or post-ICC decisions and settlement acts, Court of Claims decisions, RTCs and other expert reports, and, when cases were never litigated, treaties and agreements, BIA reports, and federal statutes. Adopting the ICC's determination of \$20,000 for the Sac and Fox cession of 1804 over the RTCs's reported \$130,686.14, is yet another indicator that the figures assembled here are conservative.

This method yielded a total of a little over \$188 million in original payments for cessions. Using an inflation index to convert payments into constant dollars, this amounts to about \$191 million in 1803 dollars or \$3.9 billion in 2012. In 1803 dollars the price of French preemption was about 2.9 cents per acre. For the acquisition of Indian title from 1804 to 1970, the United States disbursed in original payments an average of 31.3 cents per acre. While over ten times the preemption price, these payments are well documented as vast *underpayments* on the value of the land to federal authorities. That the government grossly underpaid is perhaps better revealed by the much lower median of 3.4 cents per acre spent in original disbursements.³¹

But original payments are only part of the story. Over more than a century of litigation, tribes clawed back over \$2.4 billion in court awards, legal settlements, and settlement acts. They won a little over \$17 million in twenty Court of Claims cases and more than \$372 million in 106 ICC cases. The ICC also heard several trust accounting cases

²⁹ "The Ponca Tribe of Oklahoma, et al., v The United States," 1969, in *Decisions of the Indian Claims Commission* (43 vols., New York, 1973—1989), XX, 278–80, <http://digital.library.okstate.edu/icc/v20/icc20p272.pdf>.

³⁰ "United States General Accounting Office Report Re: Petition of the Sac and Fox Tribes of Indians of Oklahoma, et al., Indian Claims Commission No. 83," 1960, typescript, box 164, RG 411 (National Archives), 16; "The Sac and Fox Tribe, et al., v. The United States," 1973, *Decisions of the Indian Claims Commission*, XXXII, 320.

³¹ Lee, "True Cost of the Louisiana Purchase." Appendix table 1, "Federal Disbursements for Indian Title in the Louisiana Territory." The median price per acre comes from a Blackfeet cession of nearly 12 million acres in 1855.

related to cessions. As these cases are often impossible to associate with a single land cession, I have separated them out and combined them with a series of trust settlements with tribes in 2012—altogether these totaled nearly \$262 million. Yet another stream of payments comes from post-ICC settlements and settlement acts tribes negotiated since the 1970s as alternatives to litigation. Fourteen between 1992 and 2011 are pertinent here and garnered almost \$1.8 billion. These few recent awards involve tiny areas, but monetarily are dramatically larger because they involved either interest payments or accounted for the value of natural resources. They indicate both a limited turn toward more equitable compensation and a reminder of just how little was provided by the Court of Claims and ICC in many more cases, involving much more land.³²

In sum, all of the nominal disbursements I found total roughly \$2.6 billion. In 2012 this would have exceeded \$8.5 billion, as shown in figure 5. In 1803 dollars, it approximated \$418 million. This bar chart reveals a paradoxical and tragic legacy: even though the government massively underpaid Indian tribes for their land cessions, the bar representing these federal disbursements still towers over the price of preemption (which, at 294 million 2012 dollars, accounts only for roughly 3.5 percent of the historical total paid for Louisiana). In constant dollars, moreover, the greatest portion of payments came from the notoriously parsimonious original payments on 222 cessions. The handful of recent post-ICC settlements pertain to less than 1 percent of the area, but those payments nearly equal the accumulated awards from scores of cases related to hundreds of millions of acres litigated by the Court of Claims and ICC. Figure 6 geolocates and extrudes these quantities. Shown in towering stacks, the money spent after the original purchase dwarfs the price of French preemption. This map outlines a process of territorial acquisition more than two centuries in the making, a living history of conquest by contract, extended by the court, and backed by the sword. That these were underpayments only makes the differential all the more profound and the conclusion more apparent: this acquisition was not a bargain because of how little the United States paid France; it was cheap because of how little it paid Indians.

Conclusion

If the amount the United States invested in the reduction of Indian country clashes with deeply rooted stories about the world's greatest real estate deal, it is because those stories conceal more than they reveal. Next to the \$15 million paid for French preemption, the \$2.6 billion paid for Indian title suggests that reducing these later episodes of encroachment and dispossession to an epilogue of the 1803 transaction in Paris is more than a little off balance. The price of the Louisiana Purchase of Indian country points to how this land actually became part of the United States.

One lesson is worth retaining from the dominant vision of the Louisiana Purchase as a grand real estate bargain: historical statistics take on meaning through narratives. That the cost of Indian title towers over the price of French preemption and that it did so before court awards added to the total are facts. From these facts, however, it would be easy, and wrong, to conclude that Indians received their due. They gave up far more than the French did when it bargained away its preemption rights. Federal officials who pored over

³² Lee, "True Cost of the Louisiana Purchase." Appendix tables 2–5, "Federal Disbursements for Indian Title in the Louisiana Territory."



Figure 5. This bar graph compares the total disbursements for French preemption rights (on the left) and Indian title (on the right) calculated in 2012 dollars using an inflation index. For the figures used to calculate these sums, see tables 1–5 in the appendix, “Federal Disbursements for Indian Title in the Louisiana Territory, 1804–2012.” SOURCE: See tables at “Federal Disbursements for Indian Title in the Louisiana Territory, 1804–2012,” <http://repository.upenn.edu/mead/27/>.

unconscionable deals to deliver nominal appeasement at best expose a long-term differential between the value federal authorities saw in Indian land and the amounts they paid. That Indians were shortchanged is not news. That the aggregate—so much smaller than

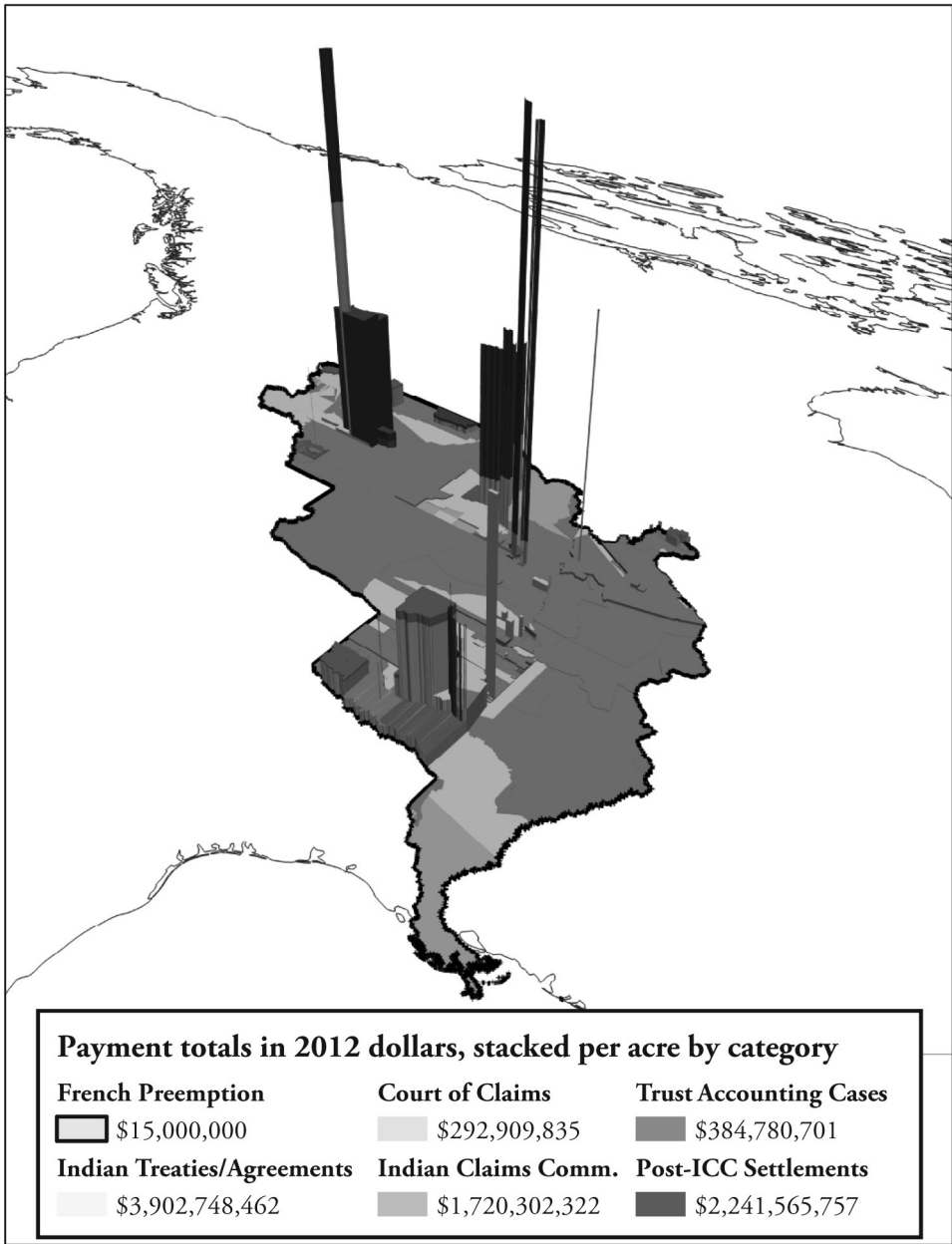


Figure 6. This map locates total disbursements by category and stacks the amounts vertically to show the geographic distribution of payments per acre in 2012 dollars. The highest payments are for relatively small areas, typically for more recent land cessions and settlements. While these towers suggest a turn toward more equitable settlements of Indian claims cases of late, their scarcity highlights how little the federal government paid to obtain most Indian land. SOURCE: See tables at “Federal Disbursements for Indian Title in the Louisiana Territory, 1804–2012,” <http://repository.upenn.edu/mead/27/>.

it should be—was still so far beyond the price of preemption and far more than scholars have assumed for nearly seventy years is startling and calls out for explanation.

Of course, there are good reasons to question this \$2.6 billion, or \$418 million, or \$8.5 billion price for Indian title. Claims accounting did not reconstruct disbursements perfectly; trials yielded inconsistent “considerations”; inflation indices are constructions; as new claims emerge, old totals slip out of date. Indeed, this has already happened. In September 2016, as this article moved toward publication, the Obama administration announced a \$492 million settlement with seventeen tribes for outstanding trust fund claims. Details have not yet been released, but it is clear enough that part of these new payments link back to the long history of Indian dispossession within the Louisiana Purchase. Choices about how to define the Louisiana Territory and, even more importantly, how to expand the analysis to include direct and indirect civil and military expenditures that supported U.S. ambitions would change the results considerably. They would also push the estimate presented here upward, further widening the gulf between the costs of preemption and Indian title. This \$2.6 billion, then, offers not a final word but a starting point, a base line to reconsider how the United States acquired Louisiana by attending to its living legacy.³³

Debate over how to assess the capital flowing into the massive project of Indian dispossession is unlikely to produce consensus. And that is not a bad thing. Disagreements over mass quantification tend to render the qualitative issues attached to them more difficult to ignore. Unresolved arguments over the impact of virgin soil epidemics or the productivity of slave labor, for instance, have trained spotlights on the magnitude of indigenous population loss and the links between slavery and capitalism. Further excavating the costs of conquest could make the scope and implications of the reduction of the Indian estate more difficult to overlook.³⁴

The complexity of the documentary record has played a role in preventing the colonial world articulated through the administration of Indian land cessions from anchoring histories of nineteenth-century territorial expansion. This has relegated Indian dispossession by treaty—what Philip Deloria has called a “fundamental condition of empire” in the United States—to filler in stories studded by transfers of preemption. Yet none of the economic markers that historians have traditionally used to explain the fortune the Louisiana Purchase brought to the United States—the region’s contribution to gross domestic product, the value of its real estate, the range of its agricultural output, the volume of its extracted mineral wealth—can be explained without reckoning with the subjugation of indigenous peoples. An increasingly prominent body of scholarship on settler colonialism would instantly recognize this as a prime example of how settler states “obscure the conditions of their own production.” The vast forensic accounting record amassed through Indian claims litigation offers a vital resource for clarification, a source to track down not what the United States said it was doing but what it did to turn territorial abstractions cast across Indian homelands into governed jurisdictions, tax bases, and national resources.³⁵

³³ Rebecca Hersher, “U.S. Government to Pay \$492 Million to 17 American Indian Tribes,” Sept. 27, 2016, NPR: *The Two-Way*, <http://www.npr.org/sections/thetwo-way/2016/09/27/495627997/u-s-government-to-pay-492-million-to-17-american-indian-tribes>.

³⁴ For brief points of entry into these ongoing debates, see, for example, David S. Jones, “Virgin Soils Revisited,” *William and Mary Quarterly*, 60 (Oct. 2003), 703–42; and John Clegg, “Capitalism and Slavery,” *Critical Historical Studies*, 2 (Fall 2015), 281–304.

³⁵ Philip J. Deloria, “From Nation to Neighborhood: Land, Policy, Culture, Colonialism, and Empire in U.S.-Indian Relations,” in *The Cultural Turn in U.S. History: Past, Present, and Future*, ed. James W. Cook, Lawrence B. Glickman, and Michael O’Malley (Chicago, 2008), 351. Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (London, 2010), 14.

As an answer to a narrow query, then, this \$2.6 billion price tag raises a more expansive question: If the United States acquired the Louisiana Territory for far less than it was worth, and almost all of what it spent went toward extinguishing Indian title, how should historians account for U.S. state formation in this region? From the perspective of resource allocation, this process was unmistakably, overwhelmingly about Indian relations. The Louisiana Purchase of 1803 was its prologue.