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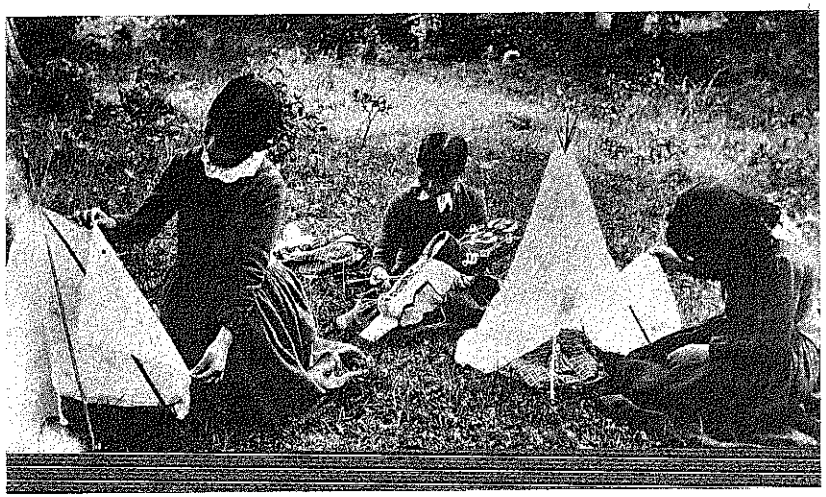
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Excerpted from Beth H. Piatote, *Domestic Subjects: Gender, Citizenship, and Law in Native American Literature* (New Haven, CT: Yale University Press, 2013).

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***** The excerpt below contains an error. The correct term is "entwined consent," not entangled consent.



*Lapwai Schoolchildren.* Elizabeth Penney Wilson, Jane Pankin, and Jane Swan, 1892. E. Jane Gay Collection, Idaho State Historical Society, #63-221.22

# INTRODUCTION

A PHOTOGRAPH FROM 1892 shows three Nez Perce girls kneeling on a grassy slope, their faces turned away from the camera, their hands and minds intent upon the worlds of their making. Rising on her knees, the girl on the left draws a tipi canvas taut across miniature lodge poles, perhaps playing house. In the middle of the frame, a girl nestles a cradleboard in her lap, gently tugging the laces to secure a baby doll inside. The beaded flowers of the cradleboard create a floral interplay with the petals of the girl's lace collar. Emerging from different aesthetic and cultural traditions, the collar and the beadwork here gain unity, or complementariness, perhaps the shared creations of a young girl's hands. On the right, a girl with cropped hair gazes at her doll tucked in bed; she holds the tipi flap open in a gesture that may be saying, *táʔc kulé·wit/good night* or *táʔc mé·ywi/good morning* or *kíne wé·s/here I am.* Occupied by their thoughts, none of the girls seems to care that the camera's eye is fixed upon them, yet surely they are aware of it. It is the late nineteenth century, and surveillance is a fact of life on the reservation. Every detail of this photograph—the girls in their school dresses, their fashioning of Indian domesticity, the very ground upon which they play—is a site to be surveyed, documented, measured, and changed under the terms of American assimilation.[1]

The assimilation period in American Indian history is broadly understood to be between 1879 and 1934, its beginning marked by the opening of Carlisle Indian School and its end by the passage of the Wheeler-Howard Act, or the Indian Reorganization Act. These events inaugurated and suspended the two most dominant policies of the era: the forced removal of indigenous children from their families to attend government-funded boarding and day schools and the allotment of reservation land in severalty. The policy of compulsory school attendance originated with the commissioner of Indian affairs in 1884 and was adopted by Congress in 1891.[2] The law was enforced

through a range of military and reservation agency apparatuses, from the withholding of rations to the imprisonment of Indian parents.[3] The allotment policy, known as the Dawes Act, was passed by Congress in 1887. It required the survey and division of communally held reservation lands into individual allotments, assigning fee simple title to individual Indians after a period of trust and opened so-called surplus lands to nonnative homesteaders.[4] While these laws emerged through different processes, they nonetheless extended from a shared point of origin: the advocacy of eastern humanitarian groups collectively known as the Friends of the Indians. The first groups, the Boston Indian Citizenship Committee and the Women's National Indian Association, were founded in 1879. Three years later the Indian Rights Association (IRA) was established in Philadelphia. In 1883 an umbrella group, the Lake Mohonk Conference of the Friends of the Indian, began to hold annual meetings at which delegates would debate and determine the objectives of Indian policy.[5] To these advocates, policies of assimilation—that is, the systematic conversion of communal Indian land and cultural practices into individuated "civilized" forms amenable to market capitalism and liberal democracy—were preferable to the policies of bloody annihilation that had dominated much of the nineteenth century.[6]

Yet the end of bloodshed did not mean the end of violence. In many ways the efforts of the Friends of the Indians can be understood as oppositional to the Indian Wars; in other ways their advocacy depended upon and extended military violence. In the former sense, Indians as a population were no longer targeted for extinction. In the latter, Indian economies, lands, kinship systems, languages, cultural practices, and family relations—in short, all that constituted the Indian home—became the primary site of struggle. The battle, although not the stakes, moved from the indigenous homeland, what I call the tribal-national domestic, to the familial space of the Indian home, or the intimate domestic. In the assimilation era, the tools of conquest were not so much armed commanders as



administrative circulars. The cavalry man was supplanted—or, rather, supplemented—by the field matron, the Hotchkiss by the transit, and the prison by the school. A turn to the domestic front, even as the last shots at Wounded Knee echoed in America's collective ear, marked not the end of conquest but rather its renewal.

## Foreign Domesticity

A rich body of scholarship has brought attention to the relationship between domesticity as an ideology that orders the home and nation and the work of U.S. national expansion domestically and abroad.[7] Anne McClintock has shown that the elements that produce the domestic—the order of the home, the nation, and its affective and material labors—are not a naturally occurring or universal set of facts, but an elaborately constructed ideology that strives to conceal its genealogy. Linking the nineteenth-century "cult of domesticity" with the imperial work of "domestication" of colonial land, animals, and native populations, McClintock shows that these projects were deeply interdependent.[8] In *Tender Violence*, Laura Wexler argues that the staging of white, middle-class domesticity functions to elide and buttress violence and that literary and photographic tropes that valorize this idea of domesticity participate in the "expansive, imperial project of sentimentalism" itself.[9] The "affective values" produced through sentimental fiction's construction of the white, middle-class home as the model of nurture "supplied the rationale for raw intolerance to be packaged as education," thus making policies such as Indian child removal thinkable, framed in the terms of paternalistic benevolence.[10] At the same time, as Wexler, Hazel Carby, Lora Romero, and others have argued, the deployment of domestic imagery and discourse offers possibilities for critique by those who were positioned differently in the domestic order. In Romero's words, such ideologies "give people an expansive logic, a meaningful vocabulary, and rich symbols through which to *think* about their world."[11] The political dimensions of domesticity, then, shape the production of its aesthetic.

Much of the scholarship that interrogates the interpenetrating workings of the domestic and the foreign relies on a binary construction of terms. As Amy Kaplan writes in *The Anarchy of Empire*, "Domestic and foreign spaces are closer than we think, and the dynamics of imperial expansion cast them into jarring proximity."[12] But from the perspective of Native American polities during the assimilation era, the categories foreign and domestic were not so much proximal as coterminous. That is, Native American domesticity, that which constitutes family and domicile, was largely located within the tribal-national domestic, an entity both foreign and domestic to the United States in territorial and political terms. During the assimilation era, these interlinked Indian domesticities became the battleground in a contest with a third, foreign domesticity: U.S. settler-nationalism. The existence of what I term the foreign domestic is a force known to colonized internal populations who maintain a political national status within the larger nation. From the perspective of the indigenous subject there exist not one but two national domesticities, occupying the same contested space: the tribal-national domestic and the settler-national domestic. Kaplan's productive analysis relies upon a binary that cannot fully account for this multiplication of domesticities. Like Puerto Rico and other unincorporated territories, the political status of tribal nations, that is, domestic dependent nations, remains both foreign and domestic under U.S. legal constructions, just as the United States remains foreign and yet intimate to the tribal-national.[13] The primary objective of this book is to make visible the resilience of the tribal-national domestic by centering the intimate domestic (the Indian home and family) as the primary site of struggle against the foreign force of U.S. national domestication.

The photograph that opens this book, then, reveals that, in the hands of Indian girls, fixtures of Indian domesticity are not merely symbolic representations of a larger political struggle but are themselves constitutive of the struggle. At stake in this contest is control over Indian futures—children, culture, land, and imagination—the very subjects of



the photograph. Assimilation-era policies, as many scholars have established, were driven by the notion that the tribal-national polity, as a competing national sovereignty, must be destroyed. And the way to break up the tribe was to break up the Indian family and to cultivate children's allegiance to the United States rather than to the tribe. Domesticity served as the structure of the assimilation argument and operated at three interconnected registers. First, the compromised legal status of Indians was defined in familial terms. In a ruling of 1831, *Cherokee Nation v. Georgia*, the U.S. Supreme Court recognized that the nationhood of Indian tribes was limited primarily by U.S. military conquest. It defined the tribal political organizations as "domestic dependent nations" and their members as "wards of the nation," existing in "a state of pupilage." The ruling continues, "Their relation to the United States resembles that of a ward to his guardian. They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father."[14] Through this ruling, the same domestic and familial metaphors that rationalize the order of the settler state serve as the legal and material structure of political relations. A fundamental feature of this paternalistic structure is the purported alignment of interests between the benevolent father and his dependent wards. In the second register, domestic discourse undergirds a larger wave of nineteenth-century national domestication, in which American territories and diverse populations were brought under federal jurisdiction. The existence of tribal-national polities, with powers and territories beyond those of states (as states did not enter into treaties with the United States), represented a threat to the sole sovereignty of the nation. The national domestication projects of settlement and expansion corresponded with the proliferation of domesticity as an ideology, clearly articulated in such publications as the sentimental novel, the housekeeping manual, the family portrait, and the advertising circular.[15]

Third and finally, the workings of domesticity and all of its attendant relations, labors, and affects offered the mechanisms through

which to reach these national domestication goals. The Indian Rights Association was particularly concerned with the tribal structure as a political entity and its interdependence with what the IRA considered aberrant family forms, such as an extended kinship network, lateral rather than lineal distribution of resources, nonnuclear family gender roles, and marriage practices that accommodated divorce and polygyny. A prominent activist in the IRA, Merrill Gates, named the family as the key to breaking down the tribal polity. Bringing together the three registers of domestic discourse, Gates offers a paradigmatic argument in this excerpt from a speech he gave in 1885:

> The question whether [Indian] parents have a right to educate their children to regard the tribal organization as supreme, brings us at once to the consideration of the family. And here I find the key to the Indian problem. More than any other idea, this consideration of the family and its proper sphere in the civilizing of the races and in the development of the individual, serves to unlock the difficulties which surround legislation for the Indian. The family is God's unit of society. On the integrity of the family depends that of the State. There is no civilization deserving of the name where the family is not the unit of civil government. . . .
>
> The tribal organization, with its tenure of land in common, with its constant divisions of goods and rations per capita without regard to service rendered, cuts the nerve of all that manful effort which political economy teaches us proceeds from the desire for wealth. True ideas of property with all the civilizing influences that such ideas excite are formed only as the tribal relation is outgrown.[16]

Again linking the fate of the Indian home with that of the tribal nation, Gates exhorts, "We must as rapidly as possible break up the tribal organization and give them law, with the family and land in severalty as the central idea. We must not only give them law, we must force law upon them. We must not only offer them education, we must force education upon them."[17] That there is no logical or rhetorical distance between Gates's call to "give" and "force" forms of domesticity, private property, and education upon Indians reveals much about the deployment of foreign domesticity in the everyday lives of Indian families during the assimilation era.



The restructuring of Indian economies, reassignment of labor, and reshaping of gender roles extended from the paired workings of allotment and boarding schools. A number of studies have made explicit the link between the domestication regime of Indian boarding schools, the dispossession of Indian lands through allotment, and the particular burdens borne by Indian women. As Tsianina Lomawaima argues, the military-style organization of the schools, the mandatory uniforms, the requirements of labor and obedience, and the constant surveillance went hand in hand with the dismantling of the reservation land base and tribal political system. The school practices "were exemplars of the federal practice of organizing the obedient individual whereas policy aimed to disorganize the sovereign tribe. Federal vocational and domestic education for Indian women was an exercise in power, a reconstruction of her very body, appearance, manners, skills, and habits. Federal educators hoped to manufacture civilized and obedient souls in civilized and obedient bodies."[18] But, as Lomawaima and others have pointed out, such efforts did not go unchallenged, as Indian students and their communities responded by resisting, subverting, and reimagining the terms of domestication.

## Domestic Subjects

The title of this book refers to two interdependent conditions that shaped the lives of Indian communities during the assimilation era: their legal status as "domestic subjects" of the U.S. settler state and the contest over national domesticity that centered on the Indian home and family. The category of domestic subject is positioned in opposition

to U.S. citizenship, marking its place as within but not of the settler nation.[19] An opinion of 1856 by the U.S. attorney general provides this distillation: "Indians are not citizens of the United States, but domestic subjects."[20] This subjectivity extended from the settler-national conceptualization that, as Mark Rifkin argues, indigenous lands were always already domestic to the United States and its indigenous peoples inevitable subjects of nationalization.[21] In constructing a passage from domestic subject to citizen, domesticity emerges as a central category linking personal bodies with national bodies. The mechanism of citizenship through which individuals come to belong to a nation works through the personal to produce the national. Political rights that attach to domestic relationships among individuals, particularly those that involve marriage, divorce, and child rearing, are defined and policed through state regulation. For this reason, cultural and social attitudes that define what counts as love, home, and kin directly shape political rights and subjectivities. *Domestic subjects*, then, refers to the book's focus on competing legal and literary representations of home, family, and nation in Native American literature.

Central to the understanding of domestic subjects is the complex history of Native American citizenship in the U.S. settler nation. While most studies of U.S. citizenship treat the Native American experience as somewhat anomalous or even irrelevant in the dominant narrative of immigration, this book argues that Native American citizenship deserves a more central consideration in American studies scholarship. Native Americans as domestic subjects by law were legal wards of the nation: living within and under U.S. control but lacking representation and full rights as individuals. Even after the passage of birthright citizenship in 1924, Native Americans have continued to suffer impaired rights both in reservation regulations and in voting, which is part of a larger history of American citizenship. In her history of immigration, Mae Ngai argues that immigration restrictions that began in the 1920s "produced the illegal alien as a *new legal and political subject*, whose inclusion within the nation was simultaneously



a social reality and a legal impossibility. . . . The illegal alien is thus an 'impossible subject,' a person who cannot be and a problem that cannot be solved."[22] Ngai's analysis is productive for thinking about continuities between the status of Native Americans as domestic subjects—a different, though equally impossible form of subjectivity—throughout the century prior to the passage of the Indian Citizenship Act of 1924. Ngai's study begins in 1924, with the passage of the Johnson-Reed Immigration Act, which established a national origins quota system to restrict immigration. I argue that one must consider these two acts as being related or coextensive, giving rise to the argument that the illegal alien replaced the domestic subject and that some form of impossible subjectivity has been a feature of U.S. citizenship from the origins of the nation.

While this book asserts the centrality of Indian domesticity as the site through which the settler state has exerted force to gain control over the tribal-national entity, the domestic is also the locus through which Indian families and nations have expressed resistance. Examining the "intimacies of empire," as Ann Stoler argues, reveals the incompleteness of colonial projects. Through intimate spaces "relations between the colonizer and colonized could powerfully confound or confirm the strictures of governance and the categories of rule."[23] By examining the literary works of indigenous authors with an eye toward the ways in which assimilation policies are depicted and contested, I reveal that colonial programs are not only incomplete, but also fraught entrapments for the colonizers themselves. In addition, these stories uncover the workings of an anticolonial imaginary: visions of alternative futures that may explain, in part, how Indian communities survived the violence of the assimilation era.

## Literature and Law

This book focuses on the literary works of five writers of the assimilation era who illuminated the layered, complex meaning of domestic

subjects: E. Pauline Johnson, Mohawk; John Milton Oskison, Cherokee; S. Alice Callahan, Creek; Mourning Dove, Okanogan; and D'Arcy McNickle, Cree/Salish. Methodologically I consider both literature and law as partial texts that, when viewed together, provide a broader (though still incomplete) view of a historical situation. As Stoler suggests, literature "portrays sensibilities, sentiments, and states of distress that remain outside our history writing, that haunt and hover on the descriptive fringes of scholarly histories of the colonial."[24] In this project, literature illuminates the web of social relations that law seeks to dismantle. The law names particular subjects, but unnamed subjects remain within its grasp. By viewing law and literature together, it is possible to see the effects upon the unnamed as well as the named subjects in the ordering of social hierarchies and the distribution of political rights. Literature challenges law by imagining other plots and other resolutions that at times are figured as nonresolution or states of suspension. The intertextual reading of law in literature also deepens one's understanding of aesthetics and form. The authors I discuss here use genre to great effect by combining the comforting familiarity of plots and tropes with a disquieting critique of social relations. In contesting law, writers like Callahan and Mourning Dove encounter the representational limits of their respective genres, the sentimental novel and the western, calling upon and also changing the conventions of these forms.

While the transnational turn has grown increasingly prominent in the field of American studies in recent years, it has, for the most part, had relatively little to do with Native American studies.[25] This book demonstrates, however, that any examination of Native Americans during this period is of necessity transnational at its core, centering on the contest between two forms of sovereignty—settler-national and tribal-national rule—as competing national formations. In addition, this book explores the ways in which Canadian contexts shaped these writers' works. For example, in the early chapters the Indian Act in Canada affords an illuminating



counterpoint to Johnson's work and offers a powerful example of the ways in which gender was construed in colonial laws. In the later chapters, the indigenous territories and routes that were partitioned by the U.S.–Canadian border are revealed to be critical to an ongoing anticolonial imaginary in works by Mourning Dove and McNickle.

The five writers I examine were not the only ones responding to political conditions through their literary work, as a number of recent and compelling studies in Native American literature have shown.[26] Many of the writers of this prolific generation—those named above as well as Sarah Winnemucca, Charles Eastman, Zitkala-Ša, Laura Cornelius Kellogg, Luther Standing Bear, Carlos Montezuma, Arthur Parker, Alexander Posey, and others—distinguished themselves in both the literary and political realms. In selecting works to focus on here, I was drawn to those that figured the interpenetrating workings of law with gender, illuminating the particular burdens borne by Indian women, who found themselves on the front lines of defending home and family during the assimilation era. This project is in direct dialogue with the productive and problematic aspects of Native American literary nationalism. While it shares the movement's keen attention to the political dimensions and stakes of indigenous writing, it seeks to foreground the relational nature of "nation" and aesthetics across time.[27] In referring to the tribal polity, I tend to use *tribal-national* rather than *national* to indicate the hybrid, contingent nature of indigenous nationalism as it takes shape in the vexed conditions of settler-nationalism. My work aligns with Romero's contention that the political nature of cultural production "resides in local formulations—and in the social and historical locations of those formulations—rather than in some essential and ineluctable political tendency inhering within them."[28] I hope that through intertextual readings of literary works and legal renderings of multivalenced domestic subjects, this book will bring greater attention to the deeply political dimension of works by these early writers as well as contribute to a broader definition of what counts for politics and aesthetics in Native American literature.

Chapter 1, "Entangled Love: Marriage, Consent, and National Belonging in Works by E. Pauline Johnson and John M. Oskison," considers the legal mechanism of marriage as a site that joins notions of love and consent with the apparatus of state regulation, analyzing the rupture of an interracial union in Canada and the pressure to dissolve a polygamous marriage among Creeks during the drive to Oklahoma statehood. Drawing on Canada's Indian Act and antipolygamy campaigns in the United States, the chapter analyzes the structure of consent as entangled by the demands of competing national domesticities. I introduce the term *entangled consent* to identify the structure of settler-national laws that sought to transfer property and cultural rights from indigenous polities into the settler-national domestic under the rubric of consent and love. The chapter examines the operation of the tropes of Indian suicide and religious conversion as forms of voluntary surrender within both the legal and literary texts and analyzes how Johnson's and Oskison's stories aesthetically and politically contest the voluntary extinguishment of Indian claims to life, home, and nation.

In chapter 2, "Unnatural Children: Adoption and Loss in S. Alice Callahan's *Wynema* and E. Pauline Johnson's "Catharine of the 'Crow's Nest,'" I focus on the meaning of unnatural children in two senses: the adoption of nonbiological children and the legal invention of Indians as wards of the nation and perpetual minors under law. I explore how Callahan and Johnson called upon the sentimental genre to make maternal love legible against cultural and legal discourses that framed Indian mothers as unfit and dangerous to Indian children, thus legitimizing the mass removal of Indian children to government-funded boarding schools. I offer the concept of *tiered maternalism* as a way to examine how cultural meanings of motherhood are stratified by race and underwritten by a structure that subordinated Indian women as legal wards. I consider the tension between representations of Indian women as competent mothers and as sexual agents in both the literature and the law, showing how the criminalization of Indian women's sexuality and the oversexualized representations of Indian



women by non-Native authors placed limits on Native literary representations of Indian women's sexuality and agency.

The third chapter, "Preoccupations: Labor, Land, and Performance in Mourning Dove's *Cogewea*," considers the legal concept of occupation as a multiply inflected term in the novel and analyzes the function of indigenous preoccupation as it motivates claims to land and self-determination. The chapter links preoccupation as a territorial claim and as the iteration of both anxiety and alternative imaginaries in the novel, or what I call the *dialectic of preoccupation*. The chapter also considers the representation of labor and performance in light of how occupational changes were central to the legal rationale for and the force of allotment and boarding school policies. Both sought to shift Indian occupations from traditional economies into agricultural and manual and domestic wage labor. As part of a wider discussion of labor, gender, and the construction of citizenship, I introduce the idea of a *performative taxonomy of citizenship* as a way to understand how the federal competency commissions worked to assign political and land rights during this period of uneven citizenship for Indians. The term *taxonomy* recognizes the construction of citizenship as a set of dynamic, weighted categories that are measured through the normalizing gaze of the state, and the performative aspect identifies the bodily submissions that are required in the movement from domestic subject to citizen, while at the same time affirming the multivalent possibilities of performative acts.

Chapter 4, "The Long Arm of *Lone Wolf*: Disciplinary Paternalism and the Problem of Agency in D'Arcy McNickle's *The Surrounded*," analyzes the closed circuit of legal circumscriptions that extend from the structure of government paternalism and wardship. Based on the concept that Indians were the children of the "Great Father" in the U.S. national family, wardship offered the legal fiction that the interests of the father were naturally coextensive with those of the ward. The chapter examines how legal rulings such as *United States v. Kagama* (1886) and *Lone Wolf v. Hitchcock* (1903) constructed Indian interests as being aligned, rather than oppositional, to U.S. domestic

policy. Because the acts of the father cannot be legally conceptualized as outside of the interests of the ward, Indian agency is severely limited, a problem illuminated by the novel's motif of escape. I introduce the term *disciplinary paternalism* as an alternative to the widely accepted language of benevolent paternalism, arguing that Indian policy advocates and the law understood surveillance and violence as regrettable but necessary features of the assimilation process. Because of the assumed alignment of father and ward, such measures against Indians could be understood only as being for their own good. This chapter analyzes the book's critique of disciplinary paternalism, explores the representation of legal incommensurability through unequal discourse, and highlights the agency of women in reconstructing alternative visions of indigenous autonomy. In particular, the chapter argues that Catherine and Elise, the central women in the book, critique available forms of agency and citizenship as distributed through a liberal, individual rights system. A brief conclusion considers the history of domestic subjects in light of the contemporary struggles of indigenous families and communities as well as of national debates over same-sex marriage and immigration policy more broadly.

Finally, a note on photographs. Most of the photographs I selected for this book were taken between 1890 and 1915. I found them in the course of conducting research in state and university archives in the Pacific Northwest. Each photograph is meant to reflect and engage the primary themes of the chapter it introduces as well as critically exhibit a range of photographic practices of the era.[29] Yet there is another narrative that threads through this collection. From the cover image to the acknowledgments, the photographs evoke the pages of a family photo album. Like any family album, it features a range of candid, staged, and studio images taken on ordinary and special days that tell the stories and affiliations of the family. I want the photographs to be understood this way, as a family collection, for two reasons. One is to bring into focus the complex intertwining of personal archives with public collections and the quotidian



intimacy of the family that forms the base of public history. The other reason, however, is more important. I want readers of this book to see and think about Indian families, to recognize the distinctive worlds in which they lived, and to look upon their faces as I do, with wonder, respect, and love.