Federal law and American Indian identity

Gina Rose Wernimont

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Federal law and American Indian identity

by

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A thesis submitted to the graduate faculty
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

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Program of Study Committee:
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Iowa State University
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2003
Graduate College
Iowa State University

This is to certify that the master's thesis of

Gina Rose Wernimont

has met the thesis requirements of Iowa State University

Signatures have been redacted for privacy
I dedicate this thesis to those most instrumental in its construction:

All of those individuals who provided me with information through interviews,

My thesis committee,

All other faculty and graduate students at the Iowa State University Anthropology Department who have encouraged and supported me and fostered my growth as a student of Anthropology,

My Family,

&

In loving memory of my grandfather, George Mooney.
Born August 17, 1917
Born to Eternal Life April 13, 2003
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CHAPTER 1: INTRODUCTION

In various poly-ethnic societies racial, ethnic, and political identities are critical issues for many peoples. Due to the salience of these issues, the analysis of identity formation processes is of crucial importance for many American Indian groups. This is primarily due to the fact that these groups are constantly required to legitimize their identity as political entities to outside groups in order to retain and exercise their sovereign position within the larger nation of the United States. Throughout this study I examine the processes by which American Indians formulate their tribal/national identity through laws and policies created by the United States federal government. I also propose that such laws and policies impact the contexture of American Indian national identities in various ways.

Specifically, I analyze certain occurrences of legal communication between the United States federal government and American Indian nations with regard to historical and current federal definitions of who is legally considered Indian. This is illustrated through a dissection of concepts such as race, ethnicity, and American Indian sovereignty. I also incorporate interviews conducted by myself and published accounts in an attempt to more comprehensively convey how such issues affect daily life, images of the self, and alterations in national identity.

Research Significance

There are many reasons to anthropologically assess governmental institutions and their effects upon those they govern. One of the most prominent reasons for such study of governmental institutions in democratic nations, which ideally reflect the sentiment of their citizenry, is that law and policy hold "a mirror up to our values and prejudices, to our
conceptions of equality, and to our convictions about what is fair and just…” (Mooney 1982:4). In other words, by understanding law, we are able to understand the mindset, or worldview, of a nation. Further, I propose that such an analysis can also be applicable in varying ways to everyone affected by law and policy. However, due to their unique political position, I find that American Indian nations display the relationship between those who govern and those who are governed particularly well.

One short-term consequence of such an analysis is to create a better understanding of how law and policy affect identity formation, not only of native peoples, but of all people. However, because law and policy reform tend to take an extensive period of time, there is little possibility for tangible short-term implications. As for more long-term implications of reform, an opportunity exists for the encouragement of more appropriate law and policy decisions instead of creating and instituting reactionary policy. It is through fostering comprehension of the processes by which those who govern and those who are governed interact that law and policy changes may come to fruition.

Finally, it is important to recognize that my thesis does not claim that law and policy are the only, or even the primary, variables affecting identity formation. Certainly a complex concept such as identity cannot be created via a single component. Instead, it is a conglomeration of language, experience, place, religion, race, and ethnicity, to name just a few. Also, it is not my intention to speak for Indians, nor define “Indianness.” Instead, through interviews and an analysis of published sources, I interpret processes and effects of identity formation and change in connection with law and policy.
Methods

From June of 2002 to January of 2003, I conducted ten interviews with individuals either in American Indian communities or in some way connected to these communities through aspects of United States federal law. A large portion of this field research consisted of semistructured interviews (Bernard 2002: 205). These interviews were utilized due to their informal, open-ended qualities and use of an interview guide, which is beneficial in situations in which the interviewer may have limited time in which to interview a particular person (Bernard 2002:205). This method also provides the flexibility required to adequately access important information that may be difficult to acquire from a formal interview (Bernard 2002:205).

Unstructured interviews were also used throughout my research. In such interviews, interviewees were encouraged to speak at length about legal and policy issues of choice, thereby helping to remove any leading of responses by an intense question and answer period. In other words, I attempted to allow interviewees to speak freely so that I could gather what was of importance to them instead of what was suggested as important by myself.

The interviewee selection process that was utilized enabled me to locate those beneficial to my work because of certain qualities they embody. Thus, many of the people I interviewed were older and/or professionals. Those who are older tend to be more advanced in the ability to convey more a comprehensive view, since they have lived through many policy changes and can give accounts of the people they knew while they were growing up, and the generations of today. Furthermore, by interviewing academics and professionals in the legal field, Indian and non-Indian, I was able to interview people
who are well versed in the abilities of observation and analysis. Due to these reasons, the individuals selected are the most appropriate for this type of research.

It should also be stated that some people were reluctant to participate in such interviews and this has undoubtedly affected my analysis. I respect their right to privacy and base my analysis on the information presented to me by willing participants. Some reasons for not wishing to participate may have been lack of time or interest. It is important to recognize that some American Indians may not see law and policy as significant in their identity formation. Also, due to previous negative experiences and specific cultural norms, some individuals may see an anthropologist, or the discussion of identity, as intrusive and therefore may have been hesitant to be interviewed.

While interviews provided vast amounts of information, I did not confine my research only to these methods. In-depth library research was also conducted in order to supplement interviews and strengthen my understanding of the United States governmental system and its policy relations with American Indian nations historically and presently. As with all data collection methods used in fieldwork, mine would have been altered if I knew then what I know now. However, I consider my research to be a solid pilot study for guiding future research.

Analyses of such relationships are quite difficult for multiple reasons. One of the main difficulties encountered in my analysis is that of a logical time order (Bernard 2002:59). Essentially, in determining a logical time order one is forced to examine the chicken and the egg paradox. Thus, one must ask, ‘Does identity affect law and policy-making or does law and policy affect identity? Or is it in fact, a two way street?’
Historically, certain events occur around the same time and causal relationships are not always clear (Bernard 2002:59).

I believe that the relationship discussed herein is not spurious, however, it can be difficult to determine at certain times whether Indian identity has affected law or if law affects Indian identity. Obviously, there are many things that affect law and policy-making, the identity of Indian nations being one of them. I propose that the relationship is most practically seen as a bilateral one, with an increase in influence in one direction or the other at various times due to specific historical situations. Unfortunately, both aspects cannot be fully researched in a single MA thesis. Thus, I attempt to explain the operation of how law and policy-making processes affect identity and not the other way round. However, I strongly encourage further research in other areas of law and policy making relationships.

**Literature Review**

While the literature directly linking law and identity formation is decidedly slim, much can be inferred about such relationships when one surveys the literature of each field separately. Thus, in order to ground such a discussion, we must review and attempt to synthesize the anthropological literature assessing the formation of identity and law, or more broadly, governmentality.

**Identity Ascription**

Ethnic identity is oftentimes viewed as an inherent attribute dependent largely upon a shared ancestry (Geertz 1973:259). While anthropologists have generally disagreed with the biological reality of such an evaluation of ethnic identity, it is important to note and understand the social reality of such a conception; that many groups utilize such notions of ethnicity in order to comprehend their own identity and to define group membership
(Geertz 1973: 259). Thus, it may be anthropologically unwise to disregard beliefs about the familial inheritance of identity at work in many ethnic groups. Given the social reality of ethnic groups, theories pertaining to the formation and maintenance of ethnic identity are relevant.

In his 1969 book, *Ethnic Groups and Boundaries*, Fredrik Barth states the importance of focusing on the processes by which ethnic identity is formed through the ascription of membership by those within a group. According to Barth, this ascription is conducted in contrast to cultural attributes held by members of outside groups and is thus created and reified through contact and interactions with such groups. Therefore, Barth sees the term “culture” as somewhat problematic due to the fact that cultures are often envisioned as enclosed entities and that many view issues of “boundary maintenance [as] unproblematic” (Barth 1969:11).

While Barth does allude to some aspects of the institutionalized relationships between ethnic groups in poly-ethnic societies (Barth 1969: 31), he does not fully discuss the possibilities of external ascription of identity. This particular mode of ascription is the process by which an outside group, usually a group exerting power over the group being defined, defines certain ethnic group membership criteria and determines a group’s worth in poly-ethnic societies. External ascription in these societies, such as the United States, is oftentimes instituted through legal and political processes.

While Barth focuses on the processes of relationships with outside groups as pivotal to the formation and maintenance of ethnic identity, DeVos (1995) principally focuses on the internal factors utilized by group members to assert and define their identity. Primary in his discussion are issues of unique religious, economic, aesthetic, and linguistic conceptions
of the Self, which in turn create "a subjective sense of continuity in belonging" (DeVos 1995:24). Both Barth and DeVos primarily focus on the internal ascription of ethnicity by group members in opposition to outside groups to determine membership and belonging.

DeVos also theorizes on certain characteristics evident in specific cultures that may lead to a higher retention rate of cultural characteristics, group cohesion and self-esteem, characteristics which he terms as lending to an "accommodation of minority status" (DeVos 1995:37-41). For example, DeVos compares specific cultural characteristics that have attributed to the success or demise of certain immigrant ethnic groups, specifically Japanese and Mexican immigrants to the United States. However, while focusing primarily on the internal characteristics of a culture, and essentially ignoring certain structural relations between minority and majority groups, DeVos’ evaluation tends to lend credence to a "blame the victim" mentality.

Thus, both Barth and DeVos focus primarily on internal aspects of culture and ethnicity. Barth does so in order to explain the process of determining group membership, and DeVos primarily in order to explain group success of immigrant ethnic groups in poly-ethnic societies. While both discuss such concepts of internal characteristics, they only briefly touch on the processes and effects of identity creation through external ascription. Such ascriptions are often negative in nature and can have lasting effects on those being defined. This subject can more concretely be discussed through the works of postcolonial theorists.
Process

In Leela Ghandi's 1998 text, *Postcolonial Theory: A Critical Introduction*, the ideologies of colonialism are spoken of as persisting into current postcolonial thought. For example, according to numerous postcolonial authors, the colonized have often been unable to break from the ideologies of the ex-colonizer and are thus left to struggle in search of a more empowering and conducive identity for themselves. This is due to the fact that the colonizers' usually negative definitions and conceptions of the colonized still linger in the everyday thought and action of the ex-colonized or those currently in the struggle of defining themselves within poly-ethnic societies. For example, in Ghandi’s interpretation of postcolonial author Homi Bhabha (1994), she briefly describes the effects of colonization of the mind, and why it may be difficult to be released from such colonialist credo:

"Bhabha's account of the therapeutic agency of remembering is built upon the maxim that memory is the submerged and constitutive bedrock of conscious existence. While some memories are accessible to consciousness, others, which are blocked and banned-sometimes with good reason-perambulate the unconscious in dangerous ways, causing seemingly inexplicable symptoms in everyday life." [Ghandi 1998:9]

Thus, due to the colonizing of not only the body, but also the mind, it is often difficult for the colonized to be released from the memories that cause such symptoms. Or as anti-colonial writer, Albert Memmi (1968), states in the same text, "The colonised lives for a long time before we see that really new man." (Ghandi 1998:6).

Ghandi’s work relates well to Pierre Bourdieu’s, *Practical Reason*, and his theory of the state. Bourdieu argues against notions of the state as a natural, unbiased, and inherently rational institution (Bourdieu 1998). Instead, he theorizes that such bodies are no more than
institutions created and utilized in order to reinforce specific cultural norms. This is due to the fact that governing institutions are not made up of super-rational individuals, but instead of citizens of a state. As such, they are also subject to many of the same cognitive structures that are applied by the state, as are all other citizens.

Bourdieu states that these cognitive structures are applied to citizens of the state through specific state institutions, such as schools (Bourdieu 1998:46). Thereby producing hegemonic citizens. In other words, Bourdieu believes that schools, and other state institutions, are primary instruments of the state utilized to create citizens who consent to rule because they are involved in a doxic submission to the state (Bourdieu 1998:56). As such, the state need not involve itself in certain types of overt coercion in order to control the citizenry.

Bourdieu essentially employs the approach primarily associated with David Hume, that the citizenry actually reinforce the legitimacy of the state (Hume 1997). However, Bourdieu furthers this theory by actually explicating the cause for Hume’s notion of legitimacy through consent. Specifically, Bourdieu states that while such processes may appear to be unilaterally applied by the state, or by the citizenry to the state, in fact, they are cyclical in nature, “State injunctions owe their obviousness, and thus their potency, to the fact that the state has imposed the very cognitive structures through which it is perceived…” (Bourdieu 1998:55).

Finally, it is important to discuss Michel Foucault’s thoughts on power and knowledge, or more correctly, power-knowledge. In his work, Foucault (1980) states that power and knowledge are interdependent and thus result from one another. Furthermore, he declares that there are specific individuals in a society who are validated in their
statements of the truth. In other words, since these individuals are given legitimacy by the society, they are able to actually produce socially valid forms of knowledge and truth through which power is executed. Thereby leaving all other forms of knowledge as subjugated knowledges, since the people associated with the production of such knowledges are not seen as able or authorized to produce valid truths. In Foucault’s words, “…knowledges that have been disqualified as inadequate to their task or insufficiently elaborated: naïve knowledges, located low down on the hierarchy, beneath the required level of cognition or scienticity” (Foucault 1980:82).

Linguistic Approaches

Ideologies held by the state or colonizer are often expressed through law and policy, thus legally legitimizing racial, ethnic, class, and political domination. Since law and policy are usually central to relationships between colonized and colonizer, it is important to analyze the language utilized in such doctrines as the primary forms of communication between those who govern and those who are governed. For example, Jeff Greenberg et al (1988) discuss derogatory ethnic labels (DELs) are applied by certain groups in order to repress others and maintain power hierarchies. Thus, such terms are used to communicate powerful and often negative sentiments about dominated groups and validate such social situations. It is through these types of analyses that an understanding of such a relationship can be founded.

In his 1976 article, A Classification of Illocutionary Acts, Searle describes the multiple functions of various speech acts. Primary to this discussion is his account of “fit.” In short, Searle claims that illocutionary acts either attempt “to get the words…to match the world” or “to get the world to match the words” (Searle 1976:3). Searle then goes on to
describe the illocutionary acts of declarations. It is through declarations, Searle claims, that individuals attempt to get the world to match their words. Further, declarations are not only an attempt to create a reality, but they, in fact, actually do create a reality or truth. In order to successfully accomplish such a task, declarations need to be connected to an “extralinguistic institution,” which has authority, or an individual within that institution that is granted such declarative authority (Searle 1976:13-16).

Finally, since many effects of law and policy are not directly dealt with in the text of such doctrines, it is important to differentiate between law and its unwritten and intended or unintended effects. Thus, we must understand M.A.K. Halliday’s theory of “text in action.” It is through this “text in action” that laws officially turn mainstream sentiment into policy and policy, in turn, dictates mainstream sentiment. Such theories are often especially applicable in literate societies, which tend to place an extreme importance upon written text. Thus, in such societies, the written word makes it very easy to create certain conceptions of the truth, while concurrently making it very difficult to later deconstruct them (Goody and Watt 1990).

Externalization and Identity as Invention

Significant aspects of identity existent in poly-ethnic societies are the display and contemplation of group identity. Some social scientists describe that such factors are prominent in poly-ethnic societies due to the presence of an Other,

“In a simple independent culture the sense of self is relatively uncomplicated...One’s sense of belonging and social meaning...are defined without contradiction in a unified belief system. This unified sense of belonging is disrupted, however...when several ethnic groups are coercively unified within a single political framework” [DeVos 1995:25].
Thus, it is only in the presence of the Other that a conception of the Self can develop (Barth 1969). Such phenomena of display and contemplation can be seen in the internalization or externalization of ethnic identity.

On one hand, it appears that Culture and its symbolic displays are largely internalized when the group is in the dominant position. By “internalization” it is meant that identity is largely not consciously considered or discussed among dominant populations. This may be more clearly captured in that many mainstream Americans do not see themselves as even having a culture. Instead, Other peoples are seen as the bearers of culture. For instance, mainstream, especially white, Americans are viewed as the default identity, which contains certain connotations of normalcy and purity as described by Faye Harrison in her analysis of Frankenberg, “According to Frankenberg’s analysis, whiteness is...a set of cultural practices that is usually unmarked, unnamed, and normatively given. This relative invisibility both enhances and is an effect of its dominance” (Harrison 1995:62).

On the other hand, multiple minority ethnic groups in poly-ethnic societies are oftentimes forced to externalize their identity in certain ways. Externalizing one’s identity is to consciously consider, discuss, and symbolically display one’s cultural identity. While DeVos states that externalization is the result of ethnic resurgence in relation to forms of advantageous economic and political adaptation, he does not fully discuss the reasons for this resurgence (DeVos 1995:22). Mooney, however, described such reasons in his analysis of the Ghost Dance and other revitalization movements (Mooney 1896). Through Mooney’s assessment one can see that ethnic resurgence is often the result of external stresses being placed upon the group and is not utilized simply in the hopes of gaining
power over others in a poly-ethnic society. Instead, it is often a coping mechanism utilized in order to deal with the stresses of change in general.

DeVos speaks of ethnic identity as invented for some purposes such as, “consolidation and legitimization of political power; enhanced social status; or economic advantage” (DeVos 1995:24). Yet, while these may seem like advantageous ventures, it is important to recognize that identity as invention is often the forced externalization of identity. In other words, because of stress imposed by outside factions, groups often externalize their identity in various ways in order to cope. Thus, since identity is not internalized, it is viewed by many outside of the particular culture as invented or inauthentic. Furthermore, some people still perceive many minority ethnic groups as traditional and are thus supposed to change slowly, if at all, because of some sort of inherent or enhanced sense of tradition. In many ways, groups are judged by the dominant group’s views of cultural authenticity (Fabian 1983, Torgovnick 1998, Tsing 1993, and Tsing 1994).

Allan Hanson is probably most well known for writing of identity as invented, however, in some ways he is often misrepresented. In his article, The Making of the Maori, Hanson states that, “‘Traditional culture’ is increasingly recognized to be more an invention constructed for contemporary purposes than a stable heritage handed on from the past” (Hanson 1989:890). However, if one views these inventions as coping strategies, often based in and develop from traditional aspects, then in many ways these inventions are still “handed on from the past.” The inventions may look quite different from previous ways, but the groups involved are dealing with quite different environments, which can lead to rather unique adaptations.
Inventions of ethnic identity are largely spoken of as a mechanism utilized by minority ethnic groups to cope with unequal power distributions and while this may be a useful model, it is important to recognize that not only minorities do so. For example, one can see that national identities of majority populations are often changed through the writing of history in order to portray an historical identity that they have created for themselves (Bourdieu 1998). In short, while many in mainstream cultures view their own cultural change as natural and often ‘progressive,’ groups whose cultural alteration opposes mainstream notions of evolution, are often seen as backwards, inauthentic, and impure.

However, if we adhere to Barthian notions of identity alteration, we can see that although the ‘cultural stuff’ of an ethnic group can and does change, the group is still a separate entity due to the maintenance of particular ethnic boundaries. These boundaries are not only maintained by the minority ethnic group, but also the majority population in order to retain their position in power hierarchies. Thus, ethnic groups will not deteriorate because of contact with one another, but will be maintained because of contact with one another (Barth 1969).

**Overview**

In Chapter 2, I review and analyze data collected from conducted interviews. Chapter 3 reviews the language utilized in the political relationships between American Indian nations and the United States government. Chapter 4 assesses issues of blood quantum in relation to American Indian national identity. Finally, I discuss possibilities of representation and sovereignty for American Indian nations in the United States federal government in chapter 5.
CHAPTER 2: ANALYSIS OF DATA

The primary data collected consists of ten interviews with individuals who belong to an Indian community or are associated with one. Of these ten individuals nine are American Indian, with eight Indian nations represented from eight states. One interviewee is a non-Indian lawyer. (Refer to Table 1 for a breakdown of interviewee characteristics and demographics.) Of these ten interviews, only four were tape-recorded. This was due to the fact that at times I was asked not to do so, and at other times it was simply inappropriate to do so. Therefore, the majority of the quotations analyzed are from the same four individuals whose interviews were taped. As for the unrecorded interviews, I kept copious notes in order to gather small, usable quotes and a gloss of sentiments concerning the issues discussed.

This section consists of an analysis of the main categories discussed in the interviews in order to extract what was of importance to the interviewee’s understanding of the relationship between law and identity. Many of the interviewees discussed very similar issues and sentiments in an open-style discussion in which they usually initiated the topic. In other words, without further questioning from myself about the specific topic. At other times, prompting was used in order to specifically lead the discussion towards the relationship between law and identity. For example, while many interviewees discussed the issue of sovereignty in quite general terms, I would at times attempt to narrow or further define the conversation by asking a question regarding a specific element of sovereignty. In the cases where I did such questioning, the interviewees were able to present valuable and coherent information, which has led me to believe that these individuals had previously
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<td>Ponca</td>
<td>Penobscot</td>
<td>N/A</td>
<td>Lakota</td>
<td>Coeur d'Alene</td>
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<td>Natural Resource Manager</td>
<td>Minority Liaison Officer</td>
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<td>NAME/DESIGNATION</td>
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<td>BLP</td>
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<td>Dr. Jerry Stubben</td>
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<td>Dr. David Getches</td>
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*indicates approximate age
thought about and solidified opinions about such issues. Please refer to Table 2 to view what was discussed in each interview.

Table 2: Topics discussed in each interview

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<th>TOPIC DISCUSSED\INTERVIEWEE</th>
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<td>Federal recognition of Indian nation</td>
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Before moving on, it is important to mention that many of these topics and issues overlap in various ways. I have attempted to present them here in a linear fashion. However, it has been quite difficult to break down and compartmentalize this information due to two main factors. First, such issues naturally overlap and interpenetrate one another. Second, such information was presented to me in a very nonlinear fashion. The majority of ellipses throughout this work are used to replace certain linguistic characteristics like "um," "uh," "you know," and certain grammatical inconsistencies in order to promote readability.

Sovereignty

Issues of sovereignty were presented by all ten interviewees. In relation to sovereignty issues were topics such as economics, blood quantum or membership definitions, and federal recognition of tribal status. I consider these topics to be underneath the wide umbrella of the main topic of sovereignty. These topics show certain ways in
which American Indian nations are able to gain and implement their sovereignty. In short, sovereignty and its practice were the overarching theme that appeared to be tied to identity.

One example of the relationship between sovereignty and identity is described by Dr. David Getches, Raphael J. Moses Professor of Natural Resource Law at the University of Colorado Law School,

"The inherent sovereignty does shape the identity of Indian people. They know, or at least the people who are tribal officials and elders of tribes understand that they are in charge of the activities and the land that are within their reservations and uh they strongly and jealously guard that sovereignty...Anytime you expand that sovereignty, including through delegation of even greater powers...I think strengthen the coherence of the tribe and its...entity as a people..." [Dr. David Getches interview, June 25, 2002]

In other words, it may be said that it is one thing to know who you are and another to practice who you are. Since American Indian nations are legally not a minority, but a political entity, they must act like it by exerting their sovereignty in order to be recognized as such by the Self and the Other.

The primary issue in all of the interviews was that of American Indian national sovereignty. I have decided to select one of the subtopics of sovereignty and focus on it specifically. The topic of choice concerns issues of identification, including blood quantum and descendency and the problems they can create within American Indian nations. I will, however, allude at certain points throughout my thesis to the overarching theme of sovereignty.
Blood Quantum, Descendency, and Community Acceptance

Out of the ten interviews conducted, the issue of blood quantum was mentioned and discussed a total of eight times. Five of the eight times, interviewees discussed this theme without me leading or channeling the discussion. Issues of blood quantum were discussed on various levels. Of the eight individuals that spoke of blood quantum issues, six individuals spoke of such issues as potentially harmful to those who may be ostracized from their communities or not be able to receive the benefits stemming from tribal enrollment. For instance, one American Indian man I spoke to described the rift that blood distinctions have caused on his home reservation,

“One problem that existed was the division created by these...blood distinctions...there are people in the Indian community who were born in that community, raised in that community, and for all intents and purposes they were Indians. But because they didn’t have that quarter blood and weren’t enrolled in the tribe, other people were fully aware of that...people who were more than a quarter blood, and it created problems. So when I was there...those two groups would fight with each other, literally. Get into fistfights and stuff like that, just pound the shit out of each other. It’s really sad and really depressing to see...so one of the things I’m really concerned about is this whole question of blood and...using blood, using genetics to determine who’s Indian and who’s not...I’ve seen the problems that it’s created for my family...for my reservation community, and the like. And...I know that it creates these divisions, it creates these problems...”[CIM interview, August 10, 2002]

Six of the eight interviewees that discussed blood quantum also discussed the notion that blood, or genetics, does not always determine American Indian identity. However, this concept was viewed in very complex ways by all six interviewees. To various extents, all six interviewees stated that it was important for individuals to have both Indian blood and Indian culture to be identified as Indian. However, one interviewee tended to believe that it was more important for an individual to have Indian culture, regardless of the degree of
Indian blood. He, along with another interviewee stated that even American Indians who are defined as "full-blood" are not always to be seen as Indian, due to a lack of Indian culture. Therefore, blood quanta may not be a good way to determine American Indian status:

"...you run into Indians who are just totally assimilated...into the white world. I mean where's the Indian there? I mean they have Indian blood and stuff, but where's the Indian there?" [CIM interview, August 10, 2002]

"And there's another dilemma...we have full bloods...but even some of them...grew up in the city, they were raised by white people, and they really don't know anything...most of the urban Indians...don't speak their language, a lot of them misuse the ceremonies, or don't know the ceremonies, or they go off with some holy man and pretty soon they're selling a sweat lodge." [Dr. Jerry Stubben interview August 29, 2002]

Another American Indian man I interviewed described a recent attempt occurring in his Indian nation to move away from old stereotypes about what it is to be Indian. For instance, he recognizes many of the terms like "real Indians," "full-blood," "quarter-blood" are what he terms as "mind-binding" (JLP interview, July 16, 2002). Further, he stated that blood quantum has nothing to do with culture and the terminology should be abandoned since all that results from such language is a "pecking order." Instead, he and many others are suggesting mutual recognition or forms of descendency to determine tribal membership (JLP interview, July 16, 2002).

Through the interviews conducted, it appears that many American Indian individuals and nations also feel that blood quanta should be eradicated, lowered, or replaced with descendency or community acceptance. For example, Dr. Jerry Stubben explains that blood may not be that important in defining group membership in the community,
"...this is what I think is the most important thing, is when you’re acknowledged by your own people...you kind of have to be known...people have to know you. They have to know that you were around." [Dr. Jerry Stubben interview August 29, 2002]

Thus, recognition by the federal government may not be all that important in defining American Indian status.

Some of the reasons mentioned by interviewees for getting rid of blood quanta is that such notions of identity were introduced by the federal government and are not traditional ways of determining group membership. Instead, the federal government enforced such conceptions of identity in order to eradicate American Indian populations. Further, several interviewees claimed that traditional ways of determining membership made more sense:

"...I see this quarter blood policy as the federal government’s way of defining Indians out of existence...so I see it as basically as an act of genocide...[you] can understand why the government wants to do that because as soon as they can get rid of the Indians, then the sooner all these treaty obligations go away. So you can see they have very, very much an invested interest in, in defining Indians out of existence...and...there’s other issues as well...most relating to sovereignty...both historically and looking ahead to the future. If you look at the history of Indian nations in this country and the history of European settlement, it quickly becomes evident that at the time, at the times of initial contact, Indian nations very readily and very easily accepted and adopted non-Indians into their nations, fully integrated them into their societies, fully assimilated them." [CIM interview, August 10, 2002]

There is also great diversity in how blood quantum is and has been applied by American Indian nations. For example, Dr. Jerry Stubben talks about how the Bureau of Indian Affairs and the federal government formerly determined membership, and how American Indians have interpreted and utilized it in the past and how it is seen today,
"But that’s changed a lot in the last...ten years...the Poncas, we have a roll, that’s a tribal roll, and there’s a certified BIA roll and...the only difference is...the one’s that are on the certified BIA roll are a quarter or above. And that’s kind of strange too, because that also can be determined by the tribe. So you could actually have somebody who’s grandfather might have been 1/8 back in 1900, but because of the continuous changes in rolls in 1934 they could’ve been written down as a full blood. And today...their descendents could be a half to a quarter...so...it really varies a lot.” [Dr. Jerry Stubben interview, August 29, 2002]

**Other Specific Policies**

**Self-Governance**

Four interviewees also discussed the importance of the Self-Governance Act in connection to current tribal identity. For instance Dr. Jerry Stubben relays some of these effects,

“I think since the 80s and again the self-governance act basically, the key component of that act is you are different and you are sovereign nations. So that’s a lot of pride.” [Dr. Jerry Stubben interview, August 29, 2002]

However, he further went on to mention that,

“I think the tribes have always thought that in terms of identity only they know what is true. So I can’t say it’s so much that the law changed them as much as their persistence made the laws that were previous like termination stuff ineffective. And so the laws had to be changed.” [Dr. Jerry Stubben interview, August 29, 2002]

While his two statements may be seen as contradictory, in fact such statements could lend to the notion that such a relationship is bilateral. In other words, law and policy affect American Indian identity, and American Indian identity also affects law and policy. Thus, as mentioned above, this relationship can be seen in a cyclical way, or as bilateral with one affecting the other. Such seemingly contradictory statements were apparent in all four of these interviews.
Three individuals also noted a growing sense of tribal pride in the past fifteen to twenty years. It is interesting to note that this is also the time when many of the Self-Governance/Determination policies were being enacted in Indian nations. Thus, the recent "renewal" of sovereignty through self-governance may coincide in certain ways with such a "revitalization" of pride.

Last, it is important to recognize that not every American Indian recognizes law and policy as vital to their everyday lives. However, as Dr. Jerry Stubben notes, American Indians are able to recognize that changes are occurring,

"I think the problem is that if you live on a reservation, unless you’re involved in the politics, you don’t even know about ‘em. Hell, I didn’t even know the Poncas were terminated…I didn’t know nothing about termination, till I got into college….most Indian people don’t know about these things, unless they’re involved in the politics. But, they do know things are changing and they’re very protective right now. They want to expand their tribal lands, they want to take more control of their tribal lands, and they want progress, from their point of view… But…their everyday life really isn’t wrapped up around Indian affairs, but it is part of it…” [Dr. Jerry Stubben interview August 29, 2002]

Thus, it may not be necessary for American Indian individuals to know the specifics of American Indian federal law and policy to understand that it affects them.

**Policies Designed to Destroy the American Indian Familial System**

Five interviewees mentioned policies that were designed to dismantle the traditional family system. These policies include programs such as adoption, relocation, and boarding schools. For example, in the following statement, Sandy White Hawk describes why many of the governmental policies aimed at destroying American Indian identity through the destruction of the extended family system were often times effective:
“...the part that I think is not said is that it [adoption policy] destroyed the extended family system and that’s where we get our identity from is our families.” [Sandy White Hawk interview, January 14, 2003]

She further added that,

“But the way to do that is to adopt us out and to marry out and get lighter and lighter and lighter. In fact that’s what I told my children...and I don’t mean it in a racist way, I guess in a mean way or in a hostile way...I did it this way when my children were growing up I told them I said, ‘I want you to marry Indian, and I want you to marry Indian because if you don’t then you’re most likely your children will marry white and their children will marry white. And I will have just been a story. Our great, my great-grandchildren will just be saying, ‘Our great-grandmother was a Lakota.’” And I said, ‘I don’t want that. I want Indian grandbabies, and I want our blood to stay strong’...So...I told them, I said, ‘If you don’t...this is what will happen,’ and I said, ‘Then they will have won.’” [Sandy White Hawk interview, January 14, 2003]

In short, it may not actually be that American Indians lose their identity through the loss of skin pigmentation, as is initially proposed, but through the loss of a primarily American Indian family system.

**Federal Recognition of Tribal Status**

Three individuals also mentioned the impact of federal recognition of tribal status as primary to American Indian identity. Dr. David Getches stated,

“...identity, and not the identity that the people feel for themselves, in the first instance, but the identity that is doled out by called federal government through the federal recognition process. Now called federal acknowledgement of tribes.” [Dr. David Getches interview, June 25, 2002]

Thus, through recognition of tribal status by the federal government, American Indian nations are able to exert their sovereign powers thereby acknowledging and asserting their sovereign identity. Further, it is not the internal acknowledgement of identity, since many Indian nations acknowledge their identity as such, but the external ascription of such status that plays a primary role in such identity formation. It is also important to note that two of
the individuals that mentioned such recognition are also from tribes that recently received such status.

Termination

Three interviewees mentioned the effects of the termination era on American Indian tribal status and identity. This issue was only mentioned in passing in the interviews. Generally, the effects of termination are closely linked with those of recognition of tribal status mentioned above. Just as in those cases where the American Indian communities acknowledges and are insistent about their identity as American Indian, they are left without a way to practice their sovereignty and thus are often unable to tangibly exert their political identity.

Economics

Six interviewees mentioned the importance of economic control in their identity as sovereign nations. Such notions were usually tied to Indian gaming. Most interviewees only mentioned economics in passing. Overall, it appears that by participating in gaming and other economic ventures, American Indian tribes are able to exert their sovereign status. Such economic ventures also assist in other areas of identity development in the fact that profits stemming from gaming are used in the education of tribal members. This is primarily done through the establishment of Indian schools, language programs, cultural events, and other educational programs.
Conclusion

Aspects of sovereignty were expressed through discussions concerning blood quantum, self-governance, policies designed to destroy Indian familial systems, federal recognition of tribal status, termination, and economics. Issues of blood quantum centered around the idea that American Indian identity may best be based on cultural affiliation rather on degree of American Indian blood. Recent changes in tribal self-governance were described in general as having a positive effect on the esteem of many American Indian nations. Discussions concerning the various policies involving the destruction of American Indian familial systems centered on the loss of American Indian cultural affiliations as reducing the Indian population. Interviews regarding the recognition of tribal status, including termination, focused of the difference between the identity bestowed on tribes by the federal government and the identity federally unrecognized tribes feel themselves. Discussions of economics centered on tribal sovereignty attained through a level of financial autonomy. In sum, these interviews focused primarily on the active expression and exertion of sovereign powers in direct relation to the formation and maintenance of American Indian national identities.
CHAPTER 3: LEGALESE & ITS UTILITIES

The language used in law, or legal rhetoric, is well known for its often times confusing aspects of doublespeak and archaic grammar and vocabulary. Due to the use of this jargon, many legal documents can be interpreted several different ways. Thus, legalese serves multiple intentional and unintentional objectives of the original authors of legal documents in the United States legal system. Law and policy, in their written form, are unique in that they are able to alter social truths and realities. The following is an assessment of the processes and effects of legalese on American Indian nations through an analysis of interpretative capabilities, functions, operations, and social impacts of laws and policies. These effects are well documented in the legal history of the relationship between American Indian nations and the United States federal government.

Legalese

It is fairly obvious that without some formal training in the language of law, the reading and comprehension of legal documents by a layperson can prove to be nearly impossible. The application of certain terms in current and historical United States law demonstrates some attempt to provide a distinct level of poise and utmost clarity. However, these terms are usually not well understood by lay persons. Since lawyers and others in the legal profession are specially trained not only in the interpretation of the law, but also in locating law, lay people have had to rely on lawyers.

Although initially confusing, the current legal terms in use by law and policy makers are applied in a very specific manner. Laws and policies are written with the intention of supplying the ability for precision in application, thereby attempting to inhibit
reinterpretation. However, it can also be argued that by employing this specialized
terminology, law and policy are made so completely incomprehensible to those outside of
the legal profession that little argument can be made against these laws and thus power
remains in the hands of a few. Or as Maley explains,

“There is of course strong precedent throughout history and in various
cultures for the powerful and elite reserving for themselves a special
language which serves both to set them apart socially and to reinforce and
perpetuate power by depriving the less powerful classes of access to its
mysteries…”[Maley 1994:11]

Although some inside and outside of the legal profession are now calling for the reform of
this exclusionary language, and the fact that some reform has occurred, “the gap between
legal discourse and everyday discourse is still very wide.” (Maley 1994:13)

Most of the support for the reform of legalese can be established in the principle of
an ideal democracy. On this basis, it would then be logical to ask, if people have the right
to access certain governmental information and are not able to comprehend it due to
complex language usage, is it then in actuality information that is accessible to the masses?
Although some individuals involved in law and policy would argue that there are other
avenues in which this knowledge can be obtained, such as texts written to make law
comprehensible to lay persons, this access is indirect.

**Basis of Interpretation**

Confusion regarding the legal status of American Indian nations is due to the fact
that not only those outside of the legal profession misinterpret the intention of laws
obscured with legalese, but also those within the profession. This confusion has
contributed to the ever-changing legal and political status of American Indian nations.
Also, the interpretation of such laws is continuously affected by mainstream American
sentiment, which often does not fully understand the basis of American Indian legal status. In other words, public opinion influences federal policies pertaining to American Indian nations. This continual alteration in status is perpetuated and executed through selective terminology used by law and policy makers.

American law is written with the intention of inhibiting reinterpretation. Yet, with regard to certain treaties and many other legal documents, reinterpretation is actually quite feasible. The way in which these documents can be interpreted varies greatly. For example, time is a principle influence on interpretation. While a Supreme Court justice may read and interpret the language of a treaty in its present context, American Indian nations may do so in the contextual language of two hundred years ago, or vice versa. As such, there have been multiple arguments regarding the accurate application of treaties since their inception.

It is beneficial, while simultaneously detrimental, to American Indian groups that treaties and laws offer a flexible language for reinterpretation. Although American law is intended to be rigid, the natural essence of language is fluid. Therefore, while the United States government attempts to provide an inflexible structure for its laws through written language, it is, in fact, incapable of defeating the fluid nature of language. The one region wherein law has achieved some inflexibility is through precedents. It is precedents, institutionalized through written language and the execution of law, which add rigidity in that previous rulings provide models that influence later cases, thereby constructing a framework of continuance (Kairys 1993).
Historical & Current Interpretations of Indian Political Status

United States law and policy are forms of what Michel Foucault (1980) would call power-knowledge. Foucault states that reality, or truth, is viewed as determined by those who are socially legitimized to exercise power through the written word. Thus, we are able to see that many of the alterations in American Indian status are the result of governmental power-knowledge. In short, the United States federal government alters the status of American Indian nations by creating various realities through legal discourse.

This constant changing of American Indian status is accomplished through a specific type of illocutionary act defined by Searle. Although Searle focuses his discussion on speech acts, if one views law and policy as the primary form of communication between American Indian nations and the United States government, this type of communication can be defined as a speech act. Thus, it is through what Searle defines as declarations that American Indian status is altered (Searle 1976:13-16). It is important to note that declarations are not simply statements. They are in fact statements that stem from authority. Thus, declarations are normally tied to what Searle (1976) terms as “extra-linguistic institutions.” These institutions lend authority to statements thus forming declarations. Law and policy are excellent examples of this type of illocutionary act. They transform reality through words in combination with authority. Through certain illocutionary acts individuals and institutions create Foucault’s power-knowledge. Foucault (1980) and Searle (1976) provide the context for further discussion of legal documents and cases.
The language of law, pertaining to American Indians has frequently changed over the years. At one time, the United States government recognized American Indian nations as being sovereign. Sovereign nations, as defined by Snow and Brown are, "...states possessing supreme authority..." (Brown & Snow 1997:3). This acknowledgement of sovereignty is apparent through the fact that the United States government has previously created treaties with these Native nations (Canby 1998:68).

With Marshall's 1831 ruling in *Cherokee Nation v. Georgia*, the status of American Indian nations officially changed from sovereign to that of wards of the federal government. This was accomplished through Marshall's interpretation of American Indian nations as being, "domestic, dependent nations." Subsequently, since Marshall's ruling, this phrase has persisted in federal law and policy pertaining to American Indian nations.

The United States' government previously referred to American Indian nations as wards of the government, as though the United States completely determined the fate of these nations. Currently, the United States appears to have gradually altered its stance to a support of these nations in official policy. This is apparent through a recent Congressional statement:

"...the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the needs of Indian communities; and the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons." [U.S. Code as of: 01/05/99. Sec. 450 Congressional Statement of findings]

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1 See Cases Cited
Through this excerpt from the congressional findings of 1999, a definite change in the federal government's stance on the political existence of American Indian nations can be seen. Not only does the federal government state its support of American Indian nations, but also admits failings in its past policies directed towards these nations.

The federal government's admittance of not only its past failings, but the actual extent of these failings is especially noticeable in terms like, "prolonged Federal domination," "retard rather than enhance," and "depriving Indians of the full opportunity." At the same time, the federal government proclaims its new support of American Indian nations. This is recognized throughout the rest of the statement and also through the general tone of this opening paragraph.

By utilizing accusative terms against itself, the federal government appears to be accepting fault for previous mistakes and also accepting partial responsibility for the future success of American Indian nations. Although a distinction between written and spoken support and the actual practice of such policies still exists, this event remains a major change in official policy regarding political relations with American Indian nations. It has yet to be seen if the written word has changed the actual sentiment of American people and government.

**Cultural Impact**

In each changing description of American Indian status concerning their relationship with the United States government has tribal identity also changed? Since many American Indian groups still maintain to be separate, political entities, it does not appear to be so. While they may have some affiliation with the United States in various forms, it appears that their actual legal status has had little impact upon their identity as separate ethnic
groups. Due to this unchanging identity as a separate peoples, many American Indian groups still struggle for certain claims of sovereignty.

By analyzing the language utilized in law, citizens are then able to better understand why law is written as it is. Also, being that every nation has differing sets of laws, it is only logical that these laws reflect a society’s values. This mirroring effect, as described above by Mooney, not only represents a society’s sentiment towards a people through actions exercised through law or policy, but through the actual wording of such policies (Mooney 1982). Terms like “wards,” “uncivilized,” and other terms used historically, which contain negative connotations or effects, reflect actual attitudes about a cultural group:

“Because DELs [derogatory ethnic labels] have the power to communicate all the negative beliefs about a given group in a single word, they are likely to be especially potent communicative devices. Words have the power to make a concept seem like something that actually exists…[They] crystallize [negative] beliefs into a concept or prototype that has a sense of concrete reality to those who use the term. Essentially the DEL is a cultural legitimization of a negative conception of members of a particular out-group; the mere existence of the term implies at least some cultural sanctioning of the concept it represents.” [Greenberg et al. 1988:76]

This is not then to say that these actions and words affect all American Indians, or American Indian nations, in the same way, or that this is the only cause for certain effects. However, it is important to realize that words can have a profound effect on people, especially when the power of words is so strong that they have the ability to determine a people’s existence. Through written words, American Indians can politically vanish (Searle 1976). This is the power of not simply words, but when these words are put into action, or what Halliday (1985) terms as, “text in action.”
It is through text in action that laws officially turn sentiment into policy. While these types of words decide the fate of many in the United States, it is not on the same level as for American Indians. American Indian political existence has changed dramatically numerous times, not just with regard to their rights or privileges, but their existence as political entities, as was the case for many American Indian nations during the Termination Era of the 1950s and 60s. While mainstream Americans’ rights may change, the United States government has never legally challenged their existence as Americans through written language.

In American society, where the written word holds supreme authority, the effects of such terminology can be more damaging to certain cultural groups:

"Talk and writing are major means of communicating status...Institutional settings provide contexts for repeated exposure to and maintenance of social inequalities. Authority is manifested not in obvious displays of force...but in the much more efficient means of seemingly benign interactions. Through influence over what is said, what is not said, and by whom and to whom, privileged people are able to perpetuate their status.”

[Bonvillain 2000:386]

Conclusion

The assessment of language used in legal documents demonstrates how power relations are formed and maintained through law and policy. Herein I have stipulated how these words affect the people they constrain or liberate. This type of study may be highly beneficial when attempting to understand how people view themselves and their community. Also, I described some of the processes involved in creating and reifying power structures through law and policy.
CHAPTER 4: AMERICAN INDIAN IDENTITY

Sherman Alexie

1.

I cut myself into sixteen equal pieces
keep thirteen and feed the other three
to the dogs
tired of U.S. Commodities, white cans
black letters translated into Spanish
“Does this mean I have to learn
the language to eat?” Lester Falls Apart asks
but directions for preparation are simple:
a. WASH CAN; b. OPEN CAN; c. EXAMINE CONTENTS

OF CAN FOR SPOILAGE; d. EMPTY CONTENTS
OF CAN INTO SAUCE PAN; e. COOK CONTENTS
OVER HIGH HEAT; f. SERVE AND EAT.

2.
It is done by blood, reservation mathematics, fractions:
Father (full-blood) + mother (5/8) = son (13/16).

It is done by enrollment number, last name first, first name last:
Spokane Tribal Enrollment Number 1569; Victor, Chief.

It is done by identification card, photograph, lamination:
IF FOUND, PLEASE RETURN TO SPOKANE TRIBE OF INDIANS,
WELLPOINT, WA

3.
The compromise is always made
In increments. On this reservation
We play football on real grass
Dream of deserts, three inches of rain

In a year. What we have lost:
Uranium mine, Little Falls Dam
Salmon. Our excuses are trapped
Within museums, roadside attractions
Totem poles in Riverfront Park.  
I was there, watching the Spokane River  
Changing. A ten-year-old white boy asked  
If I was a real Indian. He did not wait  

For an answer, instead carving his initials  
Into the totem with a pocketknife: J.N.  
We are what we take, carving my name  
My enrollment number, thirteen hash marks  

Into the wood. A story is remembered  
As evidence, the Indian man they found dead  
Shot in the alley behind the Mayfair.  
Authorities reported a rumor he had relatives  

In Minnesota. A member of some tribe or another  
His photograph on the 11 o'clock news. Eyes, hair  
All dark, his shovel-shaped incisor, each the same  
Ordinary identification of the anonymous.  

When my father disappeared, we found him  
Years later, in a strange kitchen searching  
For footprints in the dust: still  

Untouched in the shelves all the commodity  
Cans without labels-my father opened them  
One by one, finding a story in each.  

[Alexie 1991, alteration in alignment added]  

I have altered the original format of Sherman Alexie’s 1991 poem in order to  
visually portray the disjuncture and fracture that blood quantum issues have placed upon  
American Indian tribal and individual identities. Blood quantum in connection with  
identity was discussed more than any other issue discussed in the interviews conducted.  
Numerous discussions of blood quantum also arise in various legal and historical texts.  
(Cohen 1941; Jaimes 1992; Larson 1991) Blood quantum is one of the primary bases of  
American Indian law. All law and policy applicable to American Indians stems from the
basic determination of who is and is not Indian. Therefore, the issue of blood quantum in
relation to conceptions of Indian identity, past and present, is discussed further.

Throughout the world, issues of identity are becoming increasingly prominent due
to a higher occurrence of various cultures coming into contact and interacting with one
another. In many poly-ethnic nations, identity issues are of such prominence and extreme
importance due to their political and social ramifications. Herein, I assess processes by
which American Indians formulate their national identity through, or in opposition to,
United States federal law and policy and how such processes and concepts are
anthropologically and socially evaluated.

In his article, Native American Aesthetics, Sidner Larson states that, “At the present
time, Native Americans are a minority defined by the majority culture and as a result they
are dependent upon notions of identity developed by others.” (Larson 1991:53) Thus, I
propose that in certain ways the United States federal government actually determines
American Indian national identities through the application of a type of perceived identity,
or external identity. Specifically, I analyze legal communication between the American
federal government and American Indian nations with regard to historical and current
federal definitions of who can legally be considered Indian. Last, I briefly examine the
concept of identity as invention, specific to American Indian nations and what political
ramifications could occur if such a notion were adopted by the United States federal
government.
History of Indian Law & External Ascription

The concept of external ascription, as discussed in the introduction, shows that the United States government has applied its perceived identity of American Indians onto Indian nations throughout the political relationship between the United States federal government and American Indian nations. The perceived identity of American Indians held by the United States federal government has often changed. Such alterations are then reflected through transformations in various law and policy eras. In other words, the United States federal government ascribes a perceived or external identity upon American Indian nations and legitimizes this identity institutionally through law and policy.

Table 3: Major Federal Indian Law & Policy

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<tr>
<th>ERAS</th>
<th>KEY CASES, ACTS, &amp; STATUTES</th>
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<tbody>
<tr>
<td>Allotment 1887-1934</td>
<td>General Allotment (Dawes) Act of 1887, 24 Stat. 388; 8 U.S.C.A. §1401 (b)</td>
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Source: Adapted from Canby 1998
For example, toward the beginning of their official relationship with the American government, American Indians were seen as in the way of progress and this is reflected in such policies as *The Indian Removal Act* of 1830. While this policy of removal of American Indians was initially described as the only way that Indian nations could persist in the United States, this policy was later militarily enforced upon those who did not leave voluntarily. Thus, land acquisition became the focus of the policy, and may have always been. Resistance to federal policies also began to be regarded as hostile acts by the American government, although according to the initial policy, removal was voluntary (Cohen 1941:13).

At a later time, American Indians were perceived by the American government as child-like and in need of supervision and guidance and thus paternalistic policies, such as *The General Allotment* or *Dawes Act* of 1887, 25 U.S.C.A., were created. Such acts were infused with the notion that Indian tribes were unable to govern themselves. And while some of this inability was blamed on the United States government itself and its previous misdealings with Indians, tribes were also partly seen as unable to do so because of inherent inferiority (Cohen 1941).

After the Allotment Era, the federal government created the *Indian Reorganization Act* of 1934, also known as the *Wheeler-Howard Act*. 25 U.S.C.A. This act essentially states that, “tribes not only would be in existence for an indefinite period, but that they *should* be.” (Canby 1998:24) Thus, the United States government encouraged tribes to set up their own tribal constitutions and formal governments. However, while the act did prevent further loss of tribal land bases resulting from the *General Allotment Act* 25 U.S.C.A., the tribal constitutions that were adopted were not as successful (Canby 1998:25). Such
constitutions were often influenced by Western conceptions of governance, through the suggestions of federal authorities. (Canby 1998:25) Therefore, such constitutions were often not adapted to tribal notions of governance and were too culturally inappropriate to be fully functional.

Directly after the Reorganization Era was the Termination Era of the 1950s and 60s. It may seem curious that after only twenty years, the United States government decided that self-governance of Indian nations was no longer to be encouraged. According to Gary Orfield it was the notion of many in the federal government that Indian nations should be freed of the paternalistic system apparent in such a relationship (Orfield 1993:230). Yet, it did not appear to be the purging of the paternalistic system that worried many Indian nations, but the destruction of their nationhood and existence as a people. Throughout this era, it appears as though the federal government planned on getting rid of the Indian problem once and for all by terminating the political relationship.

Currently, we are able to see another transformation of perceived identity reflected in self-determination policies, such as The Indian Self-Determination and Educational Assistance Act of 1975 25 U.S.C.A. § 450 et ses., although many aspects of paternalistic ideology of historical policies have not been completely eradicated. We have yet to see the full results of such policies, although it appears as though these policies are considered somewhat beneficial by many tribal members, or at least more appropriate than previous policies. (Robbins 1992)
The General Allotment Act & Blood Quantum

In order to understand the phenomenon of external ascription more fully, I specifically examine one of the primary ways in which the United States federal government has altered American Indian national identity, through the application of The General Allotment or Dawes Act of 1887.

The General Allotment Act is an attempt to break up Indian land bases by distributing them among individual Indians and selling any surplus land to settlers. Although not specifically stated in the General Allotment Act, the notion of blood quantum as an indicator of Indian identity was established primarily through its application. Blood quantum was used to determine who was or was not entitled to the original land allotments by virtue of the individuals either being Indian or not. It should be noted that the federal government also acknowledged community acceptance of one’s Indian membership to be identified as such, however, it was usually necessary that they also have some verifiable American Indian ancestry (Cohen 1941:2).

While according to general American Indian law, Indian nations have always been able to legally determine tribal membership, it is the federal government which ultimately decides who is and who is not Indian and thus determines who can relate politically as an Indian with the United States government. For instance, Cohen provides various examples of this policy,

“At various times Congress has delegated to the Department of the Interior much of its sweeping power over the determination of tribal membership. During the periods when the federal policy was designed to break up the tribal organization, this power was one of the most important administrative powers, since the sharing in tribal property usually depended upon being placed upon a roll prepared by the Department or subject to its approval. At present, under the policy of encouraging tribal organization, membership
problems are not usually as crucial as formerly. However, they may be important for other purposes, such as determining the right to vote in a tribal election.” [Cohen 1941:114]

In other words, during the majority of the political relationship between American Indian nations and the United States, the federal Bureau of Indian Affairs determined what constituted Indian identity.

The notion of blood quantum was also instituted in the employment of the Burke Act of 1906. According to this act, Indian allottees must prove competence in order to sell their allotments (Cohen 1941:169). Although degree of Indian blood was not mentioned in the Burke Act, competency, as viewed by many federal officials, was often determined by blood quantum (Cohen 1941:169). For example, Cohen quotes the 1917 Annual Report of Commissioner of Indian Affairs:

“While ethnologically a preponderance of white blood has not heretofore been a criterion of competency, nor even now is it always a safe standard, it is almost always an axiom that an Indian who has a larger proportion of white blood than Indian partakes more of the characteristics of the former than of the latter. In thought and action, so far as the business world is concerned, he approximates more closely to the white blood ancestry.” [Sells 1917:3, quoted in Cohen 1941:169]

Cohen also cites cases in which the United States federal courts have upheld such conceptions of blood quantum in relation to perceived competency. For example, in the case of United States v. Shock, 187 Fed. 862 (C. C. E. D. Okla. 1911) the court determined that:

“The varying degrees of blood most naturally become the lines of demarcation between different classes, because experience shows that generally speaking the greater percentage of Indian blood a given allottee has, the less capable he is by natural qualification and experience to manage his property.” [United States v. Shock 1911:870 quoted in Cohen 1941:169]
Thus, members of the federal government essentialized American Indian identity through the conception of blood quantum, thereby hierarchizing white race and culture by contrasting it with Indian race and culture.

It is important to recognize that these laws and policies were applied not by those who created them, but by Indian agents and commissioners. Such occurrences were actually quite normal for the time due to the decentralized nature of the United States and its federal government. For example, Dawes commissions were often created by appointment of the Secretary of the Interior, when authorized by Congress, to distinguish between competent and incompetent Indians. (Cohen 1941:169) The individual members of these commissions exercised their own understanding of the law and of American Indian peoples in the application of the General Allotment and Burke acts.

While ethnic identity is fluid in many ethnic groups (Barth 1969), the General Allotment Act and its rolls, and the Burke Act have worked to crystallize the membership of American Indian communities, thereby restricting growth. These Dawes rolls were originally taken by tribal officials and members of the Dawes Commission, working in conjunction with one another. However, due to various political factors, many individuals were on the rolls when they were not acknowledged by American Indian nations as members and many who were generally recognized as tribal members were omitted from such rolls. (Jaimes 1992; Larson 1991; Speakthunder 2002)

Sidner Larson discusses similar occurrences in his historical analysis of the enrollment process for the General Allotment Act on the Fort Belknap Reservation in Montana, home to traditional enemies the Gros Ventre and the Assiniboine. In Larson's assessment, political rivalries between the two tribal nations affected the constitution of
tribal rolls, mainly through the exclusion of seventy-six individuals (Larson 1991:58).

Thus, the *General Allotment Act* has served not only to divide up Indian land, but also tribes and individuals.

**Blood Quantum & Indian Identity Today**

In discussing issues of identity formation apparent in American Indian nations today, I write of these nations in very general terms because there are currently 562 federally recognized American Indian tribes in existence in the United States (Tribal Court Clearinghouse 2003). These groups vary drastically in their historical relationships with the United States, their cultural attributes, and their conceptualizations and treatment of identity issues. Therefore, I write in a general manner of basic trends in American Indian nations at present.

Returning to the postcolonial theories discussed in the introduction, one is able to see that Western notions of blood quantum utilized to determine American Indian membership, have been adopted by many American Indian nations when determining Indian identity. Such processes involved with the colonization of the mind are described by Ngũgĩ wa Thiong’o:

“But its [colonialism’s] most important area of domination was the mental universe of the colonised, the control, through culture, of how people perceived themselves and their relationship to the world. Economic and political control can never be complete or effective without mental control. To control a people’s culture is to control their tools of self-definition in relationship to others.” [Thiong’o 2001:359]

Thus, American Indian groups are involved in what Bourdieu (1998) classifies as doxic submission to the state and have been led to believe that blood had something to do with identity. In the following quote, AIM (American Indian Movement) activist Russell Means
expresses similar sentiments concerning the colonization of the mind in American Indian experience,

“The situation is absurd. Our treaties say nothing about your having to be such-and-such a degree of blood in order to be covered... when the federal government made its guarantees to our nations in exchange for our land, it committed to provide certain services to us as we defined ourselves. As nations and as a people. This seems to have been forgotten. Now we have Indian people who spend most of their time trying to prevent other Indian people from being recognized as such, just so that a few more crumbs-crumbs from the federal table-may be available to them, personally. I don’t have to tell you that this isn’t the Indian way of doing things. The Indian way would be to get together and demand what is coming to each and everyone of us, instead of trying to cancel each other out. We are acting like colonized peoples...” [Russell Means as quoted in Jaimes 1992:130, emphasis added]

The same opinions are also expressed by Charles E. Dawes, tribal leader of the Ottawa Indian Tribe of Oklahoma:

“What could not be completed over a three hundred year span [by force of arms] may now be completed in our life-span by administrative law... What I am referring to is the continued and expanded use of blood quantum to determine eligibility of Indian people for government entitlement programs... We as tribal leaders made a serious mistake in accepting [genetic] limits... we must fight any attempt to limit any program by blood quantum every time there is mention of such a possibility... Our commitment as tribal leaders must be to eliminate any possibility of genocide for our people by administrative law. We must dedicate our efforts to insuring that... Native American people[s] will be clearly identified without reference to blood quantum... and that our sovereign Indian Nations will be recognized as promised. [Dawes quoted in Jaimes 1992:134, emphasis added]

Obviously, it must be noted that while the United States federal government applies Western cognitive structures upon American Indian people, this does not then mean that such structures cannot be broken or rebelled against.
Historically and currently, many Indians refute Western notions of Indian identity based on the fact that American Indian nations have the sovereign legal right to determine group membership and on what grounds:

"By all accepted standards of international jurisprudence and human decency, American Indian peoples whose territory lies within the borders of the United States hold compelling legal and moral rights to be treated as fully sovereign nations. It is axiomatic that any such national entity is inherently entitled to exercise the prerogative of determining for itself the criteria by which its citizenry, or "membership," is to be recognized by other sovereign nations" [Jaimes 1992:123]

While many American Indian nations are currently breaking away from conceptions of identity which are related to blood quantum, one can still see that such beliefs are alive and well today in many parts of Indian country. This is evident in the conflict often present between full-bloods and mixed-bloods within tribal nations. There are many accounts of intratribal conflict concerning membership eligibility and determination of who is more or less 'Indian' based on blood quantum (Jaimes 1992:136). Oftentimes, individuals who are of multiracial background are caught in a precarious position since some in American Indian communities claim that such individuals are not Indian enough:

"...if one is not allowed even to determine for one's self, or within one's peer group, the answer to the all-important question 'Who am I?,' what possible personal power can one feel s/he possesses? The negative impact, both physically and psychologically, of this process upon succeeding generations of Native Americans in the United States is simply incalculable." [Jaimes 1992:136]

Throughout the interviews conducted there is evidence that speaking of people in fragments is a devastating and demoralizing aspect of such conceptions of identity. Thus, there are American Indian nations currently attempting to change views of blood quantum and identity through avenues other than legal. One interviewee, who runs a tribal language
program, stated that his Indian nation is attempting to rid the language of such terminology. He went on to say that such classification simply creates a "pecking order" between Indian peoples and is thus unproductive and hurtful to those of mixed ancestry and to Indian nations as a whole. (IBK interview July 16, 2002)

Another interesting aspect of federal law regarding American Indians is the fact that an Indian can become legally white, but a white can usually not legally become Indian (Cohen 1941:3). American Indians are able to become white by residing outside of an Indian reservation and adopting "habits of civilization" (Cohen 1941:3). Thus, returning to the discussion in the introduction about whiteness containing connotations of purity and normalcy, one is able to see ideologies, which suggest anything other than white as a regression, are present in the policies of the American government. In other words, American Indians are allowed to legally progress towards "normalcy" and "purity" while whites are not legally allowed to legally regress to a "substandard" form.

In sum, American Indian nations generally either accept or reject the ideology of blood quantum in relation to Indian identity and membership. Currently, more and more Indian nations are wielding their political powers to either renounce blood quantum laws or are returning to or adopting lower blood quantum requirements (Jaimes 1992:136). Many Indians and American Indian nations reject the notion of using blood or genetics to determine membership because it is often seen as a federal attempt to "define Indians out of existence" (CIM interview August 10, 2002). Instead, many Indians and Indian nations claim that tribal membership should be primarily determined by cultural affiliation and community recognition.
Externalization & Authenticity of American Indian Nations

The externalization of American Indian identity relates to perceived notions of their authenticity. In an interview, Dr. Jerry Stubben stated that American Indians never used to talk about Indian culture when he was growing up (1950s and 60s), instead “it was just there” (Dr. Jerry Stubben, interview, August 29, 2002). However, he stated that during times of extreme external social and governmental pressure, identity was more externalized in order to deal with certain situations. He also stated that currently, for many American Indians, their identity is becoming more internalized again (Dr. Jerry Stubben, interview, August 29, 2002). Thus, American Indian nations have gone through stages of internalization and externalization of their identity depending upon political, social, and economic situations.

By incorporating the aspect of invention with that of externalization, one can see that at certain times Indians are accused of inventing their identity, when they are externalizing their identity and going through processes of change that all cultures go through. Many people, including governmental figures, believe that many minority group identities are inventions utilized in order to gain/retain political status. (Clifford 1988; DeVos 1995; Hanson 1989) Similarly, many people believe that many American Indian groups are too far removed from their original state to still be recognized politically as such, and American Indians are thus relegated to exist only in the past (Clifford 1988; Weaver 2001).

If these notions were officially adopted by the United States federal government, American Indian nations could again face the possibility of termination. This is due to the fact that American Indian nations must display certain characteristics in order to be recognized as political entities by the federal government (Canby 1998:3-7). Thus, if it is
decided that an American Indian nation does not meet the standards of the United States government characteristics of what constitutes an Indian nation, they can be terminated or not recognized.

Also, some Indians have been accused by non-Indians of reinforcing the beliefs of Indian identity as invented by speaking of themselves in both essentialized and constructionist terms (Clifford 1988). However, through the interviews conducted, the use of essentialized and constructionist terms is largely context-based. For example, when speaking of the ability to practice certain religious ceremonies, some American Indian individuals claim that outsiders are not able to do so because of different ancestry or cultural affiliation. On the other hand, many American Indian groups concurrently use Barthian notions as a model to explain that change is possible due to the fact that ethnicity is a formed phenomenon and thus it is not the “cultural stuff” that matters, but that a boundary has been maintained (Clifford 1988). The two types of discourse are related to separate issues and are not interchangeable.

The Mashpee Case

One example of identity externalization can be seen in Clifford’s representation of the Mashpee case (Clifford 1988:277-346). This particular case focused on whether or not the Mashpee Indians of Cape Cod, Massachusetts constituted an American Indian nation. Throughout the case, members from the Mashpee community were forced to publicly discuss their identity in externalized ways in an attempt to establish tribal status. The jury was made up of four women and eight men, no minorities. The defense’s lawyers often asked Mashpee individuals to portray evidence of their Indian identity in the courtroom. In
short, Mashpee individuals were asked to prove their Indianness to an outside group who
would then determine whether they were Indian or not.

Further complicating such issues were certain conceptions of race. Mashpee Indian
members are individuals having various degrees of American Indian ancestry. Mashpees
had intermarried often with non-Indians and were at times termed as “colored” rather than
as Indian. Also up for judgement were other concepts of “Indianness,” such as food,
clothing, medical practices, regalia, and the like. Somehow the jury was supposed to
determine whether the Mashpee were Indian or not based not only on historical and legal
accounts, but also how much “Indianness” remained in their community.

Such a task is obviously very difficult to accomplish. First, one must ask how can
“Indianness” be determined? Is it actually through things like clothing, jewelry, and other
material goods? Or is it through a more abstract understanding of how Indians think, feel,
and believe? Or is it based on none of these things? While the defense stated that the
Mashpee were too assimilated to constitute a distinct Indian nation, the plaintiffs asserted
that the Mashpee Indians did not assimilate into White culture. Instead, as Clifford puts it,

“There have been better and worse times in the United States to be publicly
Indian. The late nineteenth and early twentieth centuries were among the
worst. Government policy strongly favored tribal termination and the
dispersal of collective lands. It was not until the late 1920s that the failure of
allotment schemes was recognized and a ‘New Indian Policy’ instituted at
the BIA that favored tribal reorganization. If there is little evidence in the
historical record of ‘tribal’ life in Mashpee between 1869 and 1920, it is no
surprise. Many groups all over the nation that would emerge later as tribes
kept a low profile during these years. Mashpee seemed to be simply a
sleepy town run by Indians...There was no political need or any wider
context for them to display their Indianness in spectacular ways. Everyone
knew who they were.” [Clifford 1988:309]
In short, in the Mashpee case, determination of American Indian identity and authenticity was relegated and left up to the mainstream population to decide. By the defendants labeling Mashpee cultural change as invention, those in power positions exerted their form of power-knowledge, while at the same time subjugating American Indian conceptions of Self (Foucault 1980).

**CONCLUSION**

Indian identity holds considerable significance when assessing the future legal relationship between the United States federal government and American Indian nations. While the position of American Indian nations may appear to be stable, one only need to look at the history of the relationship between American Indian nations and the United States government to realize that the pendulum of federal sentiment can swing swiftly. Based on my research concerning blood-quantum and sovereignty, it appears as though Indian identity is one of the most basic issues for American Indian nations to focus on in order to maintain their sovereignty.
CHAPTER 5: CONCLUSION

American Indian law is a large and fluid body of law. Federal law regarding American Indians changes over time through treaties, Supreme Court decisions, and congressional acts. A majority of these modifications result from certain law and policy makers, in the various branches of the federal government, having differing interpretations of the legal and political status of American Indian nations.

International Politics

Previous to World War II, the United States government had rarely changed its policies regarding international politics, however, since that time, its position on the matter has changed drastically (Snow & Brown 1997). The federal government’s relations with American Indian nations have not taken the same course.

Prior to and immediately after the establishment of the current United States government system, American Indian nations were considered sovereign. This position is acknowledged through the creation of nation-to-nation treaties between the United States and American Indian nations, “By treating with the tribes as foreign nations and by leaving them to regulate their own internal affairs, the colonial and later the federal government recognized the sovereign status of the tribes” (Canby 1998:68).

However, there are also those who contest this sovereignty based on other precedents, which have declared relations with American Indian nations domestic affairs, “Europeans clearly claimed dominion over all the territories of the new world, and those claims seemed to limit in some degree the sovereignty of the tribes living there. The legal status of the tribes as nations was therefore clouded by uncertainties and it was left to the Supreme Court to attempt to resolve them.” [Canby 1998:68]
This view has contributed to the political theory and practice behind relations between these nations, as can be seen in Chief Justice Marshall’s ruling in the case of Johnson v. McIntosh:

"[T]he rights of the original inhabitants were in no instance, entirely disregarded; but were, necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil... but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil, at their own will, to whosoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it." [Johnson v. McIntosh 21 U.S. (8 Wheat.) at 574 quoted in Canby 1998:69]

According to these conflicting views of American Indian sovereignty, and the precedents behind them, portions of American policies pertaining to American Indian nations can then be considered both international and domestic. Yet, most American law and policy makers realize that American Indian nations are subject to specific rights and constraints, which fall outside of the realm of the majority population (Canby 1998; Cohen 1941). This can be seen in the fact that the body of American Indian federal law still exists and serves as a basis for the present relationship.

Due to this paradoxical quasi-international status of American Indian nations, it is important to understand some of the legal bases of international politics. While some organizations, such as the United Nations, were created to deal with the enforcement of international law, generally, it is impossible to do so,

"The same sovereignty that permits a government to govern within its own territory prevents it from imposing its rules on other governments, since they possess sovereignty over their own territory as well. The result is the absence of authority in the relations between states. International politics is thus formally a state of anarchy..."[Brown & Snow 1997:4]
To some extent, if it is perceived that the policies directed towards American Indian nations are both international and domestic, this state of anarchy is also true of certain United States federal policy. For example, American Indian nations have historically had little say in regards to their fate since the inception of the United States government (Canby 1998; Cohen 1941). However, previous policies of unilateral decision-making have slowly been changing and in the past thirty to forty years, have changed dramatically with the newfound self-determination policies (Canby 1998; Getches et al 1993; Robbins 1992). The full consequences of such policies has yet to be seen.

**Consequences of Precedents**

One of the principal transfigurations in American Indian political status was the change from sovereign nations to that of “domestic dependent nations,” as termed by Chief Justice John Marshall, in *Cherokee Nation v. Georgia* (1831). Also, while Justice Marshall based his definition of American Indian sovereignty on the fact that these nations were geographically within the United States, Justice Smith Thompson, (who dissented in the same case) proposed a more sophisticated view and looked beyond geography to define American Indian political status:

> “It is their political condition that constitutes their foreign character, and in that sense must the term foreign be understood as used in the Constitution. It can have no relation to local, geographical, or territorial position. It cannot mean a country beyond sea.” [quoted in Wilkins 1997:22]

However, because Marshall’s view prevailed in this situation, the United States government then began to consider its dealings with American Indian nations as a domestic affair.
Based on this new definition of American Indian political status, the Supreme Court was later able to uphold Congress’s *Major Crimes Act*, which was also based in this ideology:

“These Indian tribes are the wards of the nation. They are communities dependent on the United States, - dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the executive, and by congress, and by this court, whenever the question arises.” *United States v. Kagama*, 118 U.S. 375, 384-85 (1886).

Although the Court’s assessment of the case was somewhat perfunctory, the main problem with this ruling for many American Indian nations who are today attempting to assert their sovereignty, is that such decisions then enter the domain of precedents. By this occurring, the paternalistic attitudes prevalent at the time are able to be perpetuated into the present (Wilkins 1997).

Other policies were also set into motion through Marshall’s ruling in *Cherokee Nation v. Georgia*. According to Canby, two major disabilities originated from Marshall’s decision: “...tribes could not freely alienate their land and they could not treat with foreign powers.” (Canby 1998:71) These remained the only two disabilities for 150 years. However, with the decision made in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), the Supreme Court then added another. This third disability terminates any criminal jurisdiction held by Native Americans over non-Indians. This opinion was upheld on the basis that this jurisdiction would be contrary to the domestic dependent status of Native nations, as described by Marshall (quoted in Canby 1998:73). This decision then

**Conclusion**

The acceptance of the notion of blood quantum by various American Indian nations can be explained by synthesizing the previous theoretical discussion. Colonization of the mind occurs through a construction of power-knowledge (Foucault 1980) instituted through declaratives (Searle 1976) in law and policy, and then disseminated through the state-run institutions. (Bourdieu 1998) Specific to American Indian experience, this would include specific ideologies (power-knowledge) of blood quantum initiated through declaratives in law and policy, such as the *General Allotment Act*. The ideology of blood quantum was then spread through the application of the *General Allotment Act* in tribal roll practices. It was then further reified through state run institutions such as boarding schools and the court systems. In short, by submitting American Indians to such power-knowledge structures, Bourdieu’s doxic submission to the state is produced.

Of course, it must be noted that while the federal government does apply Western cognitive structures upon American Indian people, this does not then mean that these structures cannot be broken or rebelled against. However, while American Indians are able to resist such conceptions, such opposition is complicated by the fact that they are resisting against a majority society, a society that gives credence to the formal written word. Thus, the conceptions held by the majority society about American Indian political identity are extremely difficult to alter or deconstruct due to the form of power-knowledge created through the written word. (Goody & Watt 1990)
Through an analysis of the legal relationship between American Indian nations and the United States federal government, the processes involved in law and identity are made more clear. With specific regard to blood quantum and membership criteria, it can be seen that the determination of American Indian identity holds considerable significance when assessing the future legal relationship between American Indian nations and the United States federal government. By exerting their own notion of identity, American Indian nations become involved in asserting their sovereignty by creating and legitimizing its own form of power-knowledge. By not doing so, American Indian nations are likely to continue to face opposition of their sovereign status from outside groups. Or as Sandy White Hawk explained,

“All I know is that the places that I’ve been most recently, the old people are talking about that...as nations we haven’t walked in our sovereignty, as much as we could. We haven’t exercised [it], we ask too much permission from the government. We word our grants certain ways and do all these things because we bought into the belief that it has to be done a certain way for the government. What happens then is we end up asking permission in a sense from the government...like I was just in Lame Deer, Montana and there’s been a group of grassroots people that have been meeting on a regular basis. And that’s what they talk about, and trying to encourage the people that are in positions now of working, these are all elders...so they’re...in the offices that’s what they’re talking about...because they’ve already lived in that era of trying to do both...And they said in doing that, they truly believe that we’ve lost more than we’ve gained.” [Sandy White Hawk interview, January 14, 2003]
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