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**Title**

A Necessary Evil: Framing an American Indian Legal Identity

**Permalink**

<https://escholarship.org/uc/item/022571cg>

**Journal**

American Indian Culture and Research Journal , 37(4)

**ISSN**

0161-6463

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**Publication Date**

2013-09-01

**DOI**

10.17953

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# A Necessary Evil: Framing an American Indian Legal Identity

Dwanna L. Robertson

*For Native people, individual identity is always being negotiated in relation to collective identity, and in the face of an external, colonizing society. Bodies of law defining and controlling Indianness have for years distorted and disrupted older Indigenous ways of identifying the self in relation not only to collective identity but also to the land.*

—Bonita Lawrence (Mi'kmaq)<sup>1</sup>

*Native American people is the only race in America that has to prove that they're Indian. If you're black and you say "I'm black" and nobody will question it. If you're white, you say, "I'm white" and nobody questions it, but if you're Indian, they want to see your CDIB card. "Well, you say you're Indian, [but] let's see your card."*

—Will, enrolled citizen and Elder of the Chickasaw Nation

Indian identity is complicated—especially for the Indians who inhabit it.<sup>2</sup> Depending upon the context of identification (external, community, or self, for example), Natives may possess all, some, or none of the social constructs—race, ethnicity, or legal standing—commonly used in their identity formation. This study examines the emergence of what I conceptualize as an American Indian legal identity (AILI). Initially found within the racialization of American Indians through federal policy, AILI does not act as an inclusionary approach.

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Rather, it functions to determine who is to be *excluded* from the scope of federal legislation, establishing race-based definitions that gain institutional legitimacy. Moreover, AILI usurps ethnic (cultural) belonging because tribal membership criteria reify these same federally-defined authenticity measures. Ultimately, however, AILI does not require an ethnic or racial identity. Created in race, driven by ethnicity, AILI has taken on a life of its own, separate from these other social constructs. As this article shows, vast complexity exists regarding the requirement of American Indians to prove racial heritage, and ultimately, why many Natives, who identify ethnically, cannot.<sup>3</sup>

Indigenous communities experience substantial conflict about who meets the criteria for being a “real” Indian.<sup>4</sup> Both academic literature and the latest United States census confirm that multitudes of Native Americans are navigating between their everyday experiences of being Indian and their lack of legal identity as tribal members of federally recognized tribes.<sup>5</sup> According to the United States Census Bureau (2010), more than 5.2 million people identify as American Indian, yet the United States Department of Interior (2010) reports that only 1.9 million people are enrolled members of federally recognized tribes. This indicates that an additional 3.3 million people who identify ethnically as American Indians are not citizens of federally recognized tribes. Claiming Indianness is decidedly more complex than checking a box on a census form; it involves political, racial, and cultural criteria that serve to confuse our ability to define and identify who qualifies to be an Indian. *Indianness* is a term to indicate the beliefs of the Native people concerning the authenticity of being Native, whether through blood or cultural ties or ethnically, racially, or legally.

Legal standing creates clear political and social distinctions for Natives. Possessing, or not possessing, an American Indian legal identity results in clear gains and costs. On economic and political levels, “legally recognized” Natives receive rights, services, and protections Indians without legal status do not enjoy. To qualify, Native people must first legally prove their Indian ancestry in a very specific way. At the community level, research shows Native people commonly believe “real Indians” are enrolled in tribes and carry federally issued cards as proof. Yet many do not have the ability to confirm their heritage because of the sociohistorical complexity and exclusivity of the criteria to do so. Acquiring such evidence is considered one of the most complicated, inconsistent paradoxes of federal law.<sup>6</sup> In fact, there is no actual single method to satisfy the federal definition of the American Indian. At least thirty-three separate definitions have been used in federal legislation.<sup>7</sup>

While a great deal of research documents the issue of political benefits for Natives, the goal of this project focuses on the processes and consequences of AILI.<sup>8</sup> Scholarship documents proof of Indianness is a source of contention within American Indian communities, both individually and collectively.<sup>9</sup> I

examine the emergence and application of AILI, analyze its current implications within Native populations, and provide narratives of Natives in Oklahoma concerning its meaningfulness in their daily lives. How do Natives make sense of having to prove their authenticity and what does this institutional measure of belonging mean to them? Using a qualitative approach, I analyze the impact of the federally defined authenticity of Indian identity through the voices of thirty Natives from Oklahoma who identify ethnically as indigenous, but only half of whom possess a legal identity.<sup>10</sup>

This paper is organized as follows: first, an overview of the uniqueness of the ethnic and racial aspects of Indianness; second, an overview of the conceptualization of American Indian legal identity; third, a description of the methods of the research; fourth, an explanation of how Indians, tribes, and tribal citizens become legitimate within federal Indian policy and through tribal reification; fifth, an overview of the prevalent frame participants used to justify the need for AILI; and finally, a conclusion and discussion about the results of the study.

## TRIBAL ETHNICITY VERSUS INDIAN RACE

Ethnicity and race act as personal and group schemas that organize our lives and motivate our actions. Both serve as bases of our social identity, involving a sense of belonging and an association of collective behaviors, values, and attitudes.<sup>11</sup> Ethnic and racial identities are not mutually exclusive, but there are differences. Eduardo Bonilla-Silva maintains that ethnicity and race produce different social positions and serve separate societal functions.<sup>12</sup> Fredrick Barth explains that ethnic identity is produced and preserved through relational processes of inclusion and exclusion at the personal level rather than the structural level.<sup>13</sup> *Ethnic* groups share common cultural distinctions such as language, religion, and modes of dress, but are not restricted by fixed boundaries. People may join or leave, but the group is maintained no matter the varying membership. We find this when examining the traditional cohesion and survival of Indian groups. Membership was maintained through commitment to the good of the group, not biological ties.<sup>14</sup>

In contrast, Rogers Brubaker contends that racial group designation is not relational or communal in nature.<sup>15</sup> In fact, racial groups may have few social experiences in common. Racial categories are often imposed by outsiders.<sup>16</sup> For instance, Europeans imposed a collective identity of *Indian*. The category of Indian became a concept of racial identity, one which distorts the autonomy of independent indigenous tribes and redefines them as a homogenized, uniform, oversimplified group. The complex environment of social identities provokes

justifiable confusion for the study of American Indian identity, in general. The commonly accepted classifications of ethnicity and race—often used interchangeably—hold particular salience for indigenous peoples.

To appreciate the tension between the ascription and attribution of American Indian identity, it is necessary to examine both ethnicity and race in the light of the discursive positioning of Native peoples. Table 1 presents my understanding of the divergent perspectives of *being Native* (column 1) versus *possessing Indianness* (columns 2 and 3). The first column in table 1 refers to a subjective context or the ethnic form of Indian identification—the person is identified as part of the Indian group through shared culture, such as customs, norms, values, and commitment to the group. The second column is a context that refers to material objects that constitute a racial identity, such as phenotype, genetics, and the experience of being designated as Indian. The third column refers to a legal identity whereby possessing Indianness indicates people who are connected to their tribal nations through CDIB or membership cards. By current federal and tribal standards, legally identified Indians possess “authenticity.” Natives may also fully occupy the subjective and both objective positions; in other words, ethnic, racial, and legal identities are not mutually exclusive.

TABLE 1. COMPARISON OF DIVERGENT CONTEXTS  
AS APPLIED TO AMERICAN INDIANS

(1) <i>Ethnic Identification</i> Self/Group Cultural Aspect	(2) <i>Racial Identification</i> Other Biological Traits	(3) <i>Legal Identification</i> Tribal/Federal Political Affiliation
<ul style="list-style-type: none"> <li>• Relational ties</li> <li>• Social connections</li> <li>• Historical belonging</li> <li>• Ceremonial events</li> <li>• Commitment</li> <li>• Tribal connections</li> </ul>	<ul style="list-style-type: none"> <li>• Phenotype</li> <li>• Genetics</li> <li>• Designation as Indian</li> <li>• Historical discrimination</li> </ul>	<ul style="list-style-type: none"> <li>• Recognized Tribal Citizenship</li> <li>• Lineal Descent</li> <li>• Blood Quantum</li> <li>• Parental Descent</li> <li>• Geographic residence</li> </ul>

My research finds tribal ethnic identities to be extremely dynamic. Most of the multitribal participants use tribal ethnicities interchangeably. Lillie, citizen of the Cheyenne tribe, exemplifies this phenomenon, stating:

I am fullblood Native [Ponca, Osage, Potawatomi, and Cheyenne] . . . The question of which tribe I identify is a funny one. I mean I always think that’s funny because we live near the Poncas. Poncas are 30 minutes away from us. I mean, I *am* Ponca. I never grew up around Cheyennes, but I totally identify as Cheyenne. I am Cheyenne. I consider myself Cheyenne. My mother raised me Cheyenne. My dad’s family were all Catholic and they all went to boarding schools, so all of their [Ponca] ways are totally lost. I don’t ever remember [my dad] talking about being

Ponca, Osage, or especially Potawatomi. Didn't know I was for a very long time. [But] we participate in the In-Lon-Schka dances, the Osage dances . . . I still feel Cheyenne. It's because of my mom. Because my mom grew up traditionally and taught me traditional. She taught me as much as she could about being a Cheyenne wife and mother.

The interchangeability of Lillie's tribal ethnicity demonstrates how cultural aspects and social connections reproduce multiple ethnic identities in this sample. Because of her father's heritage, Lillie lives and works among the Ponca people. She also participates in Osage ceremonial events, even though she readily admits her father's acculturation. Without any real knowledge of Pottawatomie culture, she still claims it. Finally, even though Lillie never lived around Cheyenne communities, her mother raised her traditionally as a Cheyenne; thus, she strongly identifies as Cheyenne. Consequently, Lillie identifies as multiracial, with her strongest affiliation being Cheyenne, but feels comfortable with any of her tribal ethnicities.

Racialization occurs when society assigns racial meaning to social relationships, practices, or groups, such as religion, ethnicity, or nationality. Stephen Cornell and Douglas Hartmann stress that racial identities serve as common bases for social closure because easily identified differences serve as boundaries for restricting access to resources, and ultimately, limit competition for the same.<sup>17</sup> Racial designation is the outcome of racialization. Over time, racial designations change, especially under particular social pressures; therefore, race is a sociohistorical, not biological, phenomenon.<sup>18</sup> However, racialization does assume biological attributes or phenotype to identify who belongs to a group.<sup>19</sup>

As Sally, a participant with no legal identity, explained: "I'm gonna be 84 years old in October. I am some Indian, most people identify me [as Indian] by just looking at me. My tribal affiliation is Cherokee, my grandmother was full Cherokee, and she was my mother's mother. My mother was enough to hold land, but she was white enough that she could pass, so she did not claim it because [society] discriminated so against [Indians] back in those days." Sally affirms that people often attribute race to her, and therefore, she has a racial identity as Indian. Although Sally has no communal relationship with Cherokees, she identifies ethnically through historical belonging. On the other hand, Sally's mother racially "passed" as white but did not abandon her ethnic identity of being Cherokee.

Many scholars tend to discuss race and ethnicity as one intermingling model "rather than attempting to separate the two concepts artificially."<sup>20</sup> Joane Nagel insists the category of American Indian can be defined as a legitimate, political, and historical ethnic group, even though a racial component exists; in other words, Nagel contends that being Native is more ethnic than racial.<sup>21</sup>

This claim is especially frustrating for Native people who are trying to gain identities within the federal and tribal government's legal frameworks, which require proof of racial (biological) ancestry, not cultural or ethnic ties.<sup>22</sup> Natives cannot attain legal identities through ethnic standing in their communities.

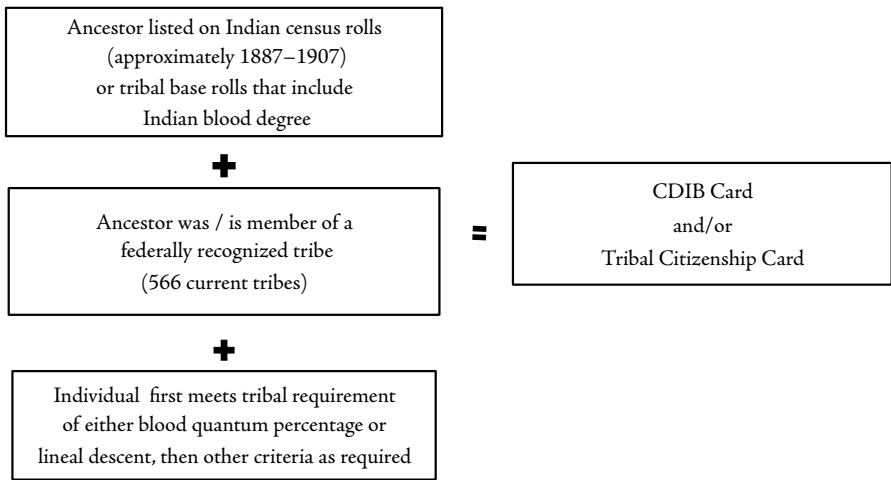
Having a racial Indian identity does not guarantee a legal identity, either. As illustrated in the previous example, Sally has both racial and ethnic identities, but does not possess a legal identity. Furthermore, Sally's mother did not claim to be Indian because of the prevalence of societal discrimination. Race and ethnicity, therefore, are not separated in an artificial fashion for American Indians. The racial designation of *Indian* carries both historical and economic boundaries for Natives, having served to separate and strip them of their cultures and resources. To reduce race to ethnicity is to deny the sociopolitical formation of a racial identity and the subsequent distinctiveness of racial oppression.

American Indians are commonly spoken of as a race, and in fact, are listed as a race on the United States census. On the other hand, their ethnic identity (culture) lies within their tribal affiliation, imagined or preferred. Citizens of federally recognized tribal nations inhabit a political identity certified by tribal and federal law that is quite distinct from those Natives who are not members of legally recognized tribes and are unique from other United States citizens. This political status is what I conceive of as an American Indian legal identity, a term I define in the next section.

## AMERICAN INDIAN LEGAL IDENTITY

Before going further, it seems useful to conceptualize AILI. Figure 1 is my attempt to simplify AILI to its most basic illustration. AILI first requires the proof of direct lineage (also known as lineal descent) and a linked certification of ancestral Indian blood (also known as blood quantum) from an ancestor who was issued a census enrollment number by the federal government between 1887 and 1907. This is commonly referred to as a roll number. Any interaction involving Native services within tribal, state, and federal institutions requires its use, much like the use of a driver's license number or social security card. Additionally, as we see in the middle box on the left-hand side, the tribe in which the person is a member must be federally recognized. A federally recognized tribe is distinguished as a political entity that can interact with the United States Congress with formally established government-to-government relationships, as defined by the United States Constitution and the United States Supreme Court.<sup>23</sup>

As shown in the bottom left box, the individual must then meet the citizenship requirements of his or her affiliated tribal government,<sup>24</sup> or be able



**FIGURE 1.** *A simplified construct of American Indian Legal Identity.*

to prove at least one-half Indian blood quantum through direct ancestry.<sup>25</sup> Finally, we see this evidence must then be authenticated and corroborated by the United States government in the form of a Certificate of Degree of Indian Blood (CDIB) card.

Scholars contend that the idea of authentic Indianness is yet another issue by which Native people can be divided and conquered.<sup>26</sup> On one hand, increasing numbers of people self-identifying as American Indians are raising reasonable concerns about ethnic fraud and cultural appropriation; requiring proof of authenticity protects Native cultures and resources from further loss and misuse. On the other hand, some self-identified Indians often point out that even though a Native may have legal status, this does not necessarily imply a cultural or even personal identity.<sup>27</sup> Finally, Natives with or without federally defined authenticity may argue that the concept of a legal identity is foreign to the very nature of being indigenous.<sup>28</sup>

With contested meanings of being Native, an unrelenting debate continues about the use of federally issued CDIB cards, tribal enrollment, cultural involvement, and blood quantum as indicators of Indianness.<sup>29</sup> How do Natives make sense of having to prove their authenticity and what does this institutional measure of belonging mean to them? The remainder of this paper analyzes how, filtered through the enduring processes of ethnicity and race, a separate legal identity has been officially codified by federal Indian policy to serve as a proxy for Indianness.



## METHODS

My personal lens has shaped the exploration of AILI from question development through analysis. Being Indian and being labeled an Indian certainly shapes who I am today. Indeed, my life history attests to the phenomenon of AILI and its impact, as well as the experiences of occupying racial and ethnic identities. I am a citizen of a federally recognized tribe, but I was also raised within the culture and traditions of my people. My demonstration of ethnic and tribal pride stands in juxtaposition with experiencing the social shame of being racialized as an Indian. I never question my connections with my people, my tribe, my nation.

Until this research, I assumed most Natives had similar experiences and spoke and felt the same way about being Indian as I do. Not so. Because my people are recognized as “legitimate” Indians, my citizenship within my federally recognized tribe cultivates me socially, nurtures me emotionally, benefits me economically, and protects me legally. Hence, the most perplexing issue becomes why people with a legal identity, like me, accept a requirement of documented authenticity without question. Therefore, I work from a critical standpoint that emphasizes emancipatory research, empathy, and reciprocity.

My research includes Native people on both sides of this contentious debate. This is the first study (to my knowledge) to examine the legitimacy of Indian identity with equal numbers of participants from both perspectives. I chose a qualitative methodology because it is particularly appropriate for working with marginalized groups, giving value and voice to their lived experiences in a historically contextualized way.<sup>30</sup> The sample consists of thirty Natives over the age of eighteen. Fifteen persons possess a legal identity through membership in a federally recognized tribe, and fifteen do not. They were recruited between June 2009 and April 2010, initially through flyers and advertisements in Native newspapers, and then by word of mouth.

Purposive sampling was necessary because the participants needed to identify *ethnically* as indigenous. Snowballing helped me find Natives who otherwise might not have had the opportunity to speak to this issue; that is, Natives possessing a legal identity sometimes knew family or friends without one. Legal and nonlegal status was established by asking their tribal affiliation, whether they were an enrolled member of their tribe, and whether their tribe was federally recognized. Pseudonyms were assigned to each respondent to provide anonymity.

I conducted semi-structured interviews that lasted between one and two hours, and followed up with individuals with any additional questions and clarifications. Twenty-three interviews were conducted face-to-face at the participants' homes, places of business, restaurants, and ceremonial events,

with seven conducted by phone to respect the participant's preference. The interview consisted of three main parts: general information, general Native American issues, and legal identity issues. I used open-ended questions to avoid influencing participants' responses, and occasional prompts to keep the conversations flowing, once established. Because the interviews were administered only to Native people, the issue of terminology was important. Although ethnicity is defined as an identity one gives oneself, the term *race* is still widely used among Natives, and sensitivity to this distinction was necessary.<sup>31</sup> I used labels preferred by each participant, whether the labels were particular clans, pueblos, or tribes, or pan-ethnic designations such as American Indian, Native American, First American, or Native.

All interviews were audiotaped, and additional written notes were taken after the interviews. I transcribed the interviews as precisely as possible, including any gestures, pauses, or other information that might influence the interpretation.<sup>32</sup> Thirteen men and seventeen women participated, ranging in age from twenty-one to eighty-five years; the average age was forty-seven. Eight of the women and seven of the men possessed legal identities, and nine of the women and six of the men did not. The average annual income was \$24,853. Thirteen distinct tribes were represented within the sample. Relative to the general Native population, there is an educational bias toward the highly educated (53 percent hold a college degree).

I employed two forms of analysis for understanding how we socially construct realities that inform and justify our worlds, grounded theory and critical discourse analysis. When using the grounded theory method, the processes of data collection, analysis, and theory participate in a reciprocal relationship.<sup>33</sup> In order to identify emerging themes and to formulate yet-to-be-answered questions raised in the data, I periodically reviewed all the collected data, including transcribed interviews, analytic memos, and self-reflexive journals. I first read each transcript several times to get an overall feeling of recognition in order to identify patterns, causal flows, and intentions.<sup>34</sup> I then analyzed each transcript with line-by-line open coding for key words and phrases.

I used critical discourse analysis to supplement the grounded theory findings. I examined contextual assumptions and discourses of the politics of identity, looking for particular discourses linked to cultural constructions, and political and social institutions that reproduce dominance and power, and the subsequent internalized oppression of AILI. I used pattern-organizing frames to examine any rhetorical themes and symbolic images that rationalize and institutionalize the relative advantages and disadvantages of an AILI. This offered critical insight into how specific ideas, such as Indianness or legal identity, become a collective belief. I then synthesized an in-depth, exhaustive

description of the experiences about living with or without a legal identity as a Native American. Narrative quotations are used to illustrate the essence of the themes identified.

I assumed a person has a legal identity if she or he is enrolled in a federally recognized tribe or has a CDIB card, and accepted Natives who claimed tribal citizenship, not asking for proof through identification. My status as an American Indian and familiarity with American Indian communities allowed me to connect with participants on an ethnic/cultural level. I am an insider as an American Indian, but may be considered an outsider when working with someone who lacks a legal identity. Additionally, the participants represented various and distinct tribes, and although I related to the participants as an American Indian, my own unique tribal perspective often differed for many reasons (such as region, language, and/or reservation, rural, or urban). Accuracy of the research was ensured through the respondents' checking of the interviews.<sup>35</sup> My research was debriefed by a peer who reviewed it and asked questions so that the interpretation of the data was clear and resonated for others. Overall, this data enabled me to study lived experiences of being indigenous and to analyze what it means to possess Indianness, or not.

## BEING INDIAN: THE COMPLEXITY OF COMPETING SOCIAL CONSTRUCTS

Discourses of blood quantum, CDIB cards, and cultural belonging intermingle throughout every interview I conducted regardless of the legal identity of respondents. American Indian identity becomes daunting in its sociohistorical and sociopolitical complexity. Claiming Indianness involves negotiating an intricate matrix of cultural, political, and racial criteria. AILI is both an individual and collective identity created, institutionalized, and imposed by structural forces. AILI is defined, determined, and regulated through the system of federal law and tribal policies. In other words, governmental powers establish Indian identity as authentic, or not. At its base, AILI is constructed in the language of race and reified in tribal ethnicity in such a way as to both produce and reproduce it.

Clearly, Euro-Americans created the system for legally identifying who may rightfully claim to be Indian, yet tribal nations and their citizens reproduce the racialization of Native people in their membership criteria. Recent research suggests that members of disadvantaged groups often support and legitimize systems that exclude or relegate them to an inferior position.<sup>36</sup> And the motivation to justify the status quo—even against one's own interests—manifests within cognitive frames or belief systems.

## BEING LEGITIMATE: INDIANS, TRIBES, AND TRIBAL CITIZENS

The sociohistorical and sociopolitical events that birthed and institutionalized AILI produced three major phenomena: (1) recognition of the individual Indian; (2) federal recognition of the tribe; and (3) tribal recognition of the individual Indian. Thus, in order to be a legal Indian, a Native must qualify to be a legal member of a tribe the federal government recognizes as legitimate.

Allotment policy is the birthplace of American Indian legal identity. While earlier eras of federal Indian legislation exist, it was the Allotment Era that first produced the highly contested issue of qualifying to be Indian.<sup>37</sup> In 1887, Congress enacted the General Allotment Act, or the “Dawes Act,” which authorized the president to survey Indian lands for severalty (separation). This legislation, in effect, removed communal land from the tribes and portioned it out to individuals. Accomplished through a system of enrollment with the Bureau of Indian Affairs, eligible tribal members were identified to receive parcels of land for farming and ranching. Because the act failed to define the meaning of “Indian,” determining the eligibility of individuals manifested in various ways. Qualifying mostly depended upon the perspectives of local Indian agents appointed by the president.

Enrollment eventually alienated thousands of American Indians from their respective tribes. Tribal factions also resulted when differences arose between those who chose to enroll and receive an allotment of land and legal status and those who rejected the allotment policy and refused to enroll due to distrust of the federal government or belief in the sacredness of communal living.<sup>38</sup> Alternatively, Indians could be (and were) excluded from enrollment regardless of their standing within the tribe. Tribal councils decided who was eligible for enrollment, but did so under the direct supervision of federal superintendents. Indians were subjected to legitimization of their belonging within the tribe. Literally hundreds of thousands of applications for allotments were denied.<sup>39</sup> All together, less than 40 percent of the applications for membership on Indian Census Rolls were approved.<sup>40</sup>

A specific case of exclusion occurred with the Choctaw who remained in Mississippi during the Dawes’ enrollment period. The Removal Treaty of 1830 gave the Choctaw people a choice between full assimilation by remaining in Mississippi and receiving an allotment of land together with full United States citizenship, or relocating to Indian Territory (Oklahoma). Many stayed in Mississippi, but the federal government reneged on their agreement to provide land allotments and citizenship. During enrollment, thousands of the Mississippi Choctaw were never enrolled.<sup>41</sup> Gary, a citizen of the Muscogee (Creek) Nation, offers an example of how members from the same family could have been deemed legal Indians or might have been excluded:

My wife is Mississippi Choctaw. She's part Choctaw and her blood [great] uncle's on the roll down there, but her grandmother was in Arkansas when they signed up, so they didn't sign. So, my wife doesn't have a card. She can't get one.

Gary's wife's grandmother and great-uncle were brother and sister, but the brother was enrolled and the sister was not.

In the US Census of 1890 the language in the comprehensive *Report on Indians Taxed and Indians Not Taxed in the United States* set the stage for the emerging concept of federal recognition for tribal entities.<sup>42</sup> Acknowledging that no census of Indians had been taken before 1846, the report suggests "some reservations [be] abandoned and tribes consolidated . . . this will save millions of dollars."<sup>43</sup> Serving as a precursor for later federal policy, this language assumes the full power of the federal government over tribes—to the point of combining tribes without consent.

The Indian Reorganization Act (IRA) of 1934 firmly established the concept of "legitimate" tribes. Federal acknowledgment or recognition became the defining criterion in recognizing the authenticity of a tribe. The IRA also establishes blood quantum as the standard for tribal membership. After ratification of the IRA, only Indian tribes that are recognized are eligible to receive protections and services, and tribes bifurcated into federally recognized and non-recognized categories and the term recognition assumed a jurisdictional (legal) meaning.<sup>44</sup>

Having a historical relationship with European colonizing nations or the United States evidenced by treaty documents does not necessarily qualify tribal entities for recognition. Tribes declared as "assimilated" no longer meet the criteria for being distinct entities.<sup>45</sup> Sitchee, a member of an unrecognized tribe, reacts emotionally when discussing federal recognition policy: "I'm angry that you can see that my family was on muster rolls that listed people who were forcibly moved. But I'm not considered an Indian. We had treaties. We had land. We were forced out just like you. You people take your cards for granted." Sitchee's resentment toward card-holding Indians like myself is obvious. She expresses real frustration, having seen historical documents that trace her family to the Apalachicola Band of Creeks, a tribe that in the 1800s entered into treaties and other agreements with the federal government, but is now presumed to be assimilated and, therefore, is not currently recognized.<sup>46</sup>

Ironically, individuals who must negotiate legal identity through tribal variations and distinctions may find tribal citizenship just as precarious as tribes find navigating federal recognition processes. The means by which tribes restrict individuals from citizenship include, but are not limited to, specific blood quanta, recognition of parental descent, and residential status. As a result, a child born of two Native parents could be considered ethnically or

racially Indian, but not be a legal member of any tribe. For example, the Santa Clara Pueblo requires patrilineal heritage, but the Seneca tribe requires matrilineal descent.<sup>47</sup> Therefore, if a Santa Clara Pueblo mother marries a Seneca father, then any child born will not have a legal identity as a member of either federally recognized tribe—even if the parents are full-blood members of their tribes. Tribes might also require their citizens to live within their political geographic boundaries to maintain membership. The Tulalip tribe requires member parents to live on their reservation at least twelve continuous months prior to their children's births for the children to be eligible for membership. Without proof of such residency, these children will not be members, and thus lack an AILI.

Federal recognition validates the tribe's right to self-determination (internal sovereignty).<sup>48</sup> Since 1975, the federal policy of self-determination acknowledges that federally recognized tribes possess inherent rights of self-government with authority to construct membership criteria and administer federal programs and services for their members.<sup>49</sup> Gary, a legally identified Native who works for the Muscogee (Creek) Nation, expresses conflicting emotions, assigning elements of institutionalized racism, pride, tribal loyalty, and responsibility to the same concept—tribal enrollment manifested in the form of an identification card:

[Tribal members] shouldn't have to [carry cards], but it's something now that they've issued that tag that you're carrying now. And I'm proud to carry it, but it's something that's evolved out of time and now it's our identification process that we had to go through. And to me, you can quote me later, well they ought to give a Mexican a card, they ought to give a white guy a card. Make them prove they're Mexican or white or whatever. Why do they have to single us out? Of course, it's about sovereignty. Tribes can define who gets to be a member, but the feds can yank recognition, if they don't like the way we do it. We're really not as sovereign as we think we are.

The requirement of tribal membership criteria demonstrates the federal government's insistence on an exclusive approach. Tribes cannot simply accept members into their tribe, but must establish qualifiers. The most important criterion is "an individual must have some Indian blood; consequently, a non-Indian adopted into an Indian tribe cannot be considered an Indian under federal law."<sup>50</sup> Indeed, federal agencies may ignore tribal membership lists, having exclusive power to determine tribal membership for disbursement of federal program funds. Congress has plenary power—full and complete authority—to limit, modify, or eliminate tribal rights; in other words, it may "assist or destroy an Indian tribe as it sees fit."<sup>51</sup> Therefore, the real paradox of American Indian identity as a legal status is that the federal government

acknowledges whether or not a tribe is valid and deserving of federal recognition, and can deny or revoke acknowledgment of the tribe and its members, even though tribes set the criteria for tribal membership.

Crucially, at the tribal level, racial ideology, not ethnicity, frames AILI. In their membership criteria, all the recognized tribes privilege blood over community. Out of the current 566 federally recognized tribes, two-thirds of the tribes require a specific blood quantum (such as one-fourth or one-half) and the other third require lineal descent.<sup>52</sup> Thus, cultural participation or ethnic belonging is subordinate to blood kinship. Some speculate a tribe's ability to determine citizenship allows it to restrict the allocation of resources—permitting existing members to get better shares.<sup>53</sup> Some tribes do work to increase the number of enrolled tribal members, but others have been exclusive, expressing concern about further assimilation.

Tribes requiring only lineal descent are especially criticized about their tribal membership criteria. For example, the Cherokee Nation has removed a specified blood quantum requirement for membership, requiring only proof of lineal descent from an ancestor who was enrolled on the Dawes Roll from 1899 to 1906. Out of thirty study participants, twenty-six (all of those with a legal identity and eleven of those without) expressed real concern about relaxing blood quantum criteria and requiring only lineal descent. As Ward, an individual with no legal identity, explains, "I think if you're going to have a tribe, I think [blood quantum] is an absolute necessity, because of what's happened in the Cherokee Nation. You've got literally people who are 1/4000th that are getting houses built. Getting medical care. Getting their kids sent to college." Ward believes blood quantum can ensure Indian authenticity, but he does not believe cultural or community commitment should be required.

On the other hand, the Confederated Salish and Kootenai Nation voted in 1960 that only those born with a blood quantum of one-quarter or more could be tribal members, and an overwhelming majority of their tribal citizens upheld this requirement again in 2003.<sup>54</sup> Half of the participants in this study make the point that requiring a specific blood quantum presents a unique problem: sooner or later, tribes will not have enough members who meet the blood quanta criterion. Jennifer, a Comanche without legal identity, points out that "When you determine that an Indian is an Indian because they have a certain blood quantum, then basically you're projecting that at a certain time years from now you are going to cease to exist. . .What's going to happen when we don't have anyone with blood quantum left? You know there's very few full bloods of any tribe left."

Clark, a member of the federally recognized Modoc tribe, sees blood quantum as a way for the federal government to ensure fewer tribal members to the point of eventual extinction: "Blood quantum is a bad thing. It's a



systematic extermination of an entire race because once you are bred to a certain degree according to the [Department of the Interior], I'm not sure if it's 32<sup>nd</sup> or 64<sup>th</sup>, you're no longer seen as a Native American. You're bred out or you're a white person . . . And I think that's terrible."

Both Jennifer and Clark recognize that the small number of people who are wholly of one tribal heritage is dwindling. If held to the racial standard of blood quantum, they, and thirteen other participants, express real fear of disappearing by becoming "white."

Racial categories defined as biologically distinct groups of people have been wholly discredited. Yet a particular concept of race is still applied for proof of Native ancestry—blood lineage. In either case, blood quantum or lineal descent, indigenous nations reproduce the federal government's racialized Indian identity as the authentic one. Tribes institutionalize Indianness within their membership policies—presupposing their people possess unique biological identity markers. In other words, to gain legitimate tribal ethnicity, Indians must first meet specific racial standards of ancestral lineage or blood quantum, which then results in an institutionalized legal identity.

In the following section, I explain how the discourse of tribal sovereignty acts to justify AILI. An overwhelming majority of all the participants, both legally and non-legally identified, used this frame. My findings reveal major commonalities *and* divergences between the groups' lived experiences and interpretations (frames) of the concept of legal identity. Within-group congruence and variation are present; therefore, the results are not mutually exclusive to one group or the other.

## A NECESSARY EVIL: IN THE NAME OF TRIBAL SOVEREIGNTY

The frame of sovereignty has profoundly influenced Native peoples to accept legal identity criteria for tribal citizenship. But for indigenous communities, tribal sovereignty does not hold the same meaning as in the legal language of federal Indian policy. For tribes, sovereignty encompasses culture and belonging. Wilkins defines tribal sovereignty as more than the ability to maintain independence and exercise power like states or governments; rather, it "has a unique cultural and spiritual dimension that differentiates it."<sup>55</sup> In other words, the interactions of tribes with their people speak of a responsibility for sustaining the community, especially after what the people have suffered.

When asked why Natives must be enrolled in tribes, *all* of the legally identified participants express that AILI acts as protection against further usurpation of tribal rights. For example, Lillie, a legally identified Cheyenne woman, articulates a bittersweet justification: "To dish out sovereignty,



everything we are born with, everything we have a right to. Without that it's gone. There would be nothing . . . But I think tribes . . . are what is left. They are *what little bit* we have left. They sit on what is left of where these peoples ended up, the land. And our sovereignty is executed through them."

Lillie states an argument common among the participants, the need to maintain sovereignty. Rather than acknowledge the inequality of AILI, Lillie avoids it and defaults to the sovereignty discourse. Throughout the study data are indications that tribal sovereignty acts as a discursive frame that justifies the current social order requiring qualification to be Indian; specifically, this discursive frame reinforces the objectified representations and symbols of established social structures (tribal enrollment and/or CDIB cards issued by tribes and federal agencies). Tribal enrollment is framed as necessary for the preservation of sovereignty. Eva, a legally identified Kiowa woman, expands the sovereignty discourse, framing the need for tribal enrollment as a way to maintain sovereignty and gain cultural knowledge and pride:

It also gives you that sense of, hopefully, a sense of self-determination and sovereignty. I think that as time progresses and you go on and you understand what that really means, even though it's kind of like *a double edged sword*. Sovereignty's good but sovereignty hasn't always been afforded to us the way we should have it as a Native people. I think that if a person is enrolled, they can really understand that this means we're a nation. We're a government within a government. We're actually our own people. We have our own government, our societies, our culture, our language. This gives me pride to carry this and show who I am.

Eva idealizes sovereignty as a proxy for cultural and ethnic attributes to avoid the internal conflict caused by the racialized framework of tribal membership. In fact, all the participants commonly cited reciprocity, respect, and strong relationships with other Native people as part of their tribes' cultures and their ethnic identity, often mentioning social ties and understanding between people of the same tribe and different tribes, even if unspoken. Consequently, being Indian conveys feelings of community, security, and confidence.

Possessing membership in a sovereign tribe represented cultural belonging for all the participants—even for those without tribal memberships; therefore, AILI translates as protecting both sovereignty and culture, simultaneously. For example, Melissa, a non-legally identified woman from the federally recognized Blackfeet tribe, makes sovereignty and culture interchangeable as she asserts that "We are battling still against our culture being taken away. We are trying to rebuild our language, rebuild our history. We don't ever want to be extinct. We want to preserve our culture. Our main goal is to not let anyone take it away." Melissa justifies the mechanism (AILI) that separates her from her

tribe. Idealizing culture (ethnic belonging) allows the participants to rationalize what separates and categorizes them—AILI.

Joy, a member of the federally recognized Cherokee Nation of Oklahoma, explains how Indians express genuine and legitimate concerns: “Communities see an outside person coming in and get their guard up and become very defensive very protective . . . There is a fair amount of weight on history, all things considered. In the past, you open a door to a stranger and you get burned.” Joy is speaking about the common knowledge that Indians have suffered the exploitation of their lands, the genocide of their people, and the undermining of their communal lifeways by individualism. They are suspicious and untrusting of people’s motives, whether legally identified or not. And whereas belonging to a tribe confers some right to belong, one must still work communally to earn full acceptance. Conversely, AILI allows people to benefit without actually participating in the culture. The majority of legally identified persons sympathized with Natives who could not prove their ancestry, but reacted harshly when discussing tribal members who did not participate in their communities, expressing disdain for Natives who rediscover their Indianness. Lillie, who has legal identity, gives this example:

During high school, this person didn’t have anything to do with Indians. Didn’t dance, didn’t hang out with them and then he went to [name of college], got his master’s, married an Indian woman, and came back and decided he wanted to be [tribal leader]. Now he’s got long braids. He’s a dancer. Had a big fancy dinner for his kids to go into the dancing circle. And we’re kind of offended by it. Oh, he’s suddenly Indian now.

Lillie delivers the last sentence with sarcasm. Even though Lillie enjoys a legal identity, her attitude mirrors that of many of the participants not legally identified. Out of fifteen study participants without a legal identity, eight people question the motives of people who decide to reconnect with their tribe and doubt the sincerity of the “new” Indians’ desire to preserve sovereignty or culture. Yet most participants without legal identity often participated in cultural activities more as spectators, rather than full members of the tribe.

Research indicates that marginalized groups experience conflict between the need to think well of themselves and their social groups and their simultaneous support of a system that disadvantages them.<sup>56</sup> John, a young man enrolled in the federally recognized Choctaw Nation, passionately defends AILI as a survival mechanism:

As silly as it sounds, I think it’s something that is a necessary evil. Whites came in and made Native Americans deal with this idea of being “legally identified.” Hey, you’re not white and we’re gonna make legal reasons to say you’re not white. So

when the Native Americans finally accepted and said “okay, we’re gonna make a legal identity besides not white.” They had to accept the evil of a legal identity to maintain autonomy from whites. I think they have to have a legal identity separate from white *just to exist anymore*.

Accordingly, legally identified participants did not place blame on tribes for their roles in the reification of legal identity. Rather, to negate the conflict between the inequality of the racialized system of AILI and the need to think well of the tribe, participants use sovereignty as a cognitive representation of cultural survival. Cultural survival acts as justification for the systematic racism of AILI. Accordingly, the majority of the participants stated that being Indian is a sense of belonging and responsibility to their communities.

Participants without legal standing also spoke with equal pride about their tribes, even without membership. This shows that system-justifying beliefs are adaptive. For example, Lisa, a member of an unrecognized tribe, also uses the sovereignty discourse to rationalize tribal enrollment, stating, “I don’t think anyone should *have* to do that. There’s no other race that has to do that. But at the same time, it gives [tribes] a sense of sovereignty as well.” Rather than speak of her lack of legal identity, she avoids the exclusivity of tribal enrollment through the rationalizing frame of sovereignty. Any anxiety she feels over her lack of legal status becomes subordinate to the need to support her tribe and maintain the status quo of tribal enrollment. Similarly, Billy, a member of the unrecognized Eastern Shawnee Tribe, rationalizes that enrollment is necessary “so the tribe can be whole.” Billy utilizes culture and belonging as a proxy for sovereignty. The frequency of the sovereignty discourse suggests that Natives justify AILI as protective, even though they understand that it maintains the hegemonic status quo. Framing AILI as inevitable reduces the anxiety caused by the acknowledgement of its inherent racism.

Tribal enrollment and CDIB cards represent legal identity—they maintain the American Indian race through the assignment of discursive blood quanta and lineal descent subtexts. Participants in this study recognized “Indian cards” as symbolic of the racialization process, but seem resigned to the structural utility of them. In other words, within the established social structure of tribal enrollment, AILI is justified and reinforced by the objectified representation and symbol of a federally recognized tribal or CDIB card. Overall, most people expressed dissatisfaction with the system, understanding its artificiality, but were willing to accept the costs in order to maintain tribal continuation. In other words, they justified it.

Eduardo Bonilla-Silva offers insight into the capacity to readily accept the racialization of American Indians in order to privilege cultural identity. Bonilla-Silva argues that Omi and Winant’s racial formation theory focuses

too closely on an idealistic view of race and culture ideology. Instead, Bonilla-Silva promotes a framework of racialized social systems.<sup>57</sup> Structure exists as the networks of relationships between actors and groups of actors who share “socially meaningful characteristics.”<sup>58</sup> Consequently, racialized social systems reward socially constructed differentials—economically, politically, socially, and psychologically—at all societal levels. A hierarchical system results, and racial acceptance and contestation are expressed at both the individual and collective level. Therefore, people with an AILI are rewarded with racial authenticity because the system must maintain the tribal collectivity.

## CONCLUSION

There are no easy answers for reconciling the complicated environment of American Indian Legal Identity. All American Indians—legally identified or not—contend with the milieu and consequences of this complexity. In this project, themes of justification and contestation interweave with poignant stories of cultural belonging and rejection. Participants shared ambivalent, even conflicted feelings about legal identity. Tribes generally escape criticism for their role in structuring AILI, but there are defiant challenges toward the federal government and its role in defining legitimate Indians and legitimate tribes. Resignation to the plight of non-legally identified Natives emerges from both groups of participants. In the face-to-face interviews, all participants exhibited visible discomfort when discussing the concept of blood quanta and the federal government’s involvement. Yet the data reveals most continue to rationalize legal identity and justify its necessity. Even Native individuals without legal standing justify the very system that excludes them.

This study contributes in substantial ways. First, the voices of Natives had not been documented concerning the meaningfulness of a legal identity in the twenty-first century. It involves only Native participants to address the apparent disconnect between “being Native” versus “possessing Indianness.” I created the concept of AILI to problematize the racialization and panethnic paradigm commonly used for Native people. AILI is a useful tool of analysis for competing social constructs of identity—especially political ones. Because the legitimacy and complexity of American Indian authenticity is pertinent to scholarship on the processes of race and ethnicity, I examined the emergence of AILI as an individual identity created by structural forces and its application through institutions of government—federal and tribal. Most importantly, I make evident that a person can have an AILI without having either racial identity or ethnic identity. It stands on its own as proof of Indianness even though it was created in the discourse of federal Indian policy.

My findings substantiate the claim of divisiveness in Native communities in regard to the practice of authenticating Native identity. However, unlike previous studies, this research found that the conflict appeared more often between members of the legally identified group about the applicability of blood quantum, rather than between legally identified persons and non-legally identified persons about who can claim Indianness. If anything, the legally identified group was sympathetic but often dismissive of the group that lacked legal identity. And while the group without legal status occasionally articulated resentment toward the legally identified group for taking their status for granted, both groups placed most of the responsibility for the situation upon the federal government.

With tribal reification of this federally defined authenticity, AILI produced a racialized collective Indian identity. Moreover, this phenomenon (AILI) has resulted in the internalized racialization of Native identity. Most of the participants were unaware of the sociohistorical forces that left American Indians without a legal identity. Racial designations function to impart meanings of underlying power and prejudice. Historically, being nonwhite yielded social meanings of inferiority. Consequently, being designated as an Indian and racialized through blood quantum has served to separate and strip Natives of their cultures and resources; yet a particular concept of race is deeply embedded in Native cultures and nations. Natives who lack a legal identity endure veritable costs, especially concerning governmental policies in relation to protective legislation, economic resource distribution, and other promised compensations. More poignantly, Natives without AILI described immense emotional costs and social losses. This was certainly evident within this research.

In order to understand why Native American communities would accept a legal identity or would use verbiage like “blood quantum” or “pure blood,” we must realize that there must have been a process of social construction of these terms, followed by the general socialization of this terminology by means of social discourse. Frames of discourse legitimate the social order, reinforcing the social structures in place (that is, hegemonic ideologies). As demonstrated by this study, the frame of being Indian maintains an ordered life both for Native Americans and others alike. Frames structure society, but are often invisible because they seem commonsensical—in other words, truthful and right.<sup>59</sup> The knowledge and beliefs of a socially created reality become accepted as an efficient means of understanding everyday life.

The objectified world is internalized as human consciousness through social discourses such as language, media, law, and federal Indian policy, whereby words like *blood quantum*, *CDIB cards*, *real Indian*, *full blood*, and *pure blood* reinforce the objectified representations and symbols of established social structures. The frame of sovereignty has profoundly impacted the socialization

of Natives to accept that legal identity serves to protect and sustain Indian nations despite its paradoxical criteria. By means of the legal racialization of Indian nations, the federal government's usurpation of tribal sovereignty is largely ignored.

The "real Indian" is now a social fact. Authenticity by legal identity is self-perpetuating. This has real implications. Neither the abstract conceptualizations of blood quantum nor a legal identity speaks to the difficulty of breaking one's self into parts. The juxtaposition of racialization, discrimination, and stigma against tribal belonging and cultural pride provides for greater dimensions of oppression. Blood quanta, phenotype, and legal standing remain particularly meaningful both within and outside the tribe—symbolically and politically. Indigenous folk consent to the oppressive nature of legal identity because it establishes their authenticity and right to belong, even though they recognize the inherent racism in the system.

Whereas legal identity faces heavy contestation through self-identification, as demonstrated by the ever-increasing census population numbers of American Indians, I find American Indian legal identity has been configured as the trump card for claims of indigeneity, and thereby reproduces conflict, confusion, and inequality throughout Indian country. Nagel argues, ultimately, true American Indian identity occurs at the intersection of social construction and social negotiation—where "who I say I am" meets "who they say I am."<sup>60</sup> My research modifies Nagel's concept to reflect the definition of American Indian legal identity—where "*who* I say I am" meets "*what* they say I am."

## NOTES

1. Bonita Lawrence, "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview," *Hypatia* 18, no. 2 (2003): 4.

2. Passionate debate persists in academia over the most useful term(s) to describe indigenous peoples of the United States. On one hand, the usage of "Indian" as an identifier reifies an inferior, racialized label. On the other hand, it is the most commonly used term among Native people, in general. I respect the opposing views, but having lived in Indian Country most of my life, I hear elders and other Native folks use the term Indian on a daily basis. For the purpose of this research, I use the term "American Indian" because of its usage at the US Census Bureau. I use the term "Indian" because it is the legal term used within federal Indian policy. As my personal preference, I use the terms "Native" and "indigenous" interchangeably.

3. Indigenous people claim many different identities—among them tribal nation, band, clan, and regional. Within this research, these are distinguished through pan-tribal or pan-Indian frames (Kiowa, Creek, American Indian, Native American, and Native, for example). Pan-identities are purely social constructs that refer to individuals from diverse backgrounds. Some indigenous scholars call these pan-identities "counterfeit" identities imposed by European and American colonizers as tools of racist subjugation.



4. Eva Marie Garroutte, *Real Indians: Identity and the Survival of Native America* (Berkeley: University of California Press, 2003).

5. For example, see Karen A. Cerulo, "Identity Construction: New Issues, New Directions," *Annual Review of Sociology* 23, no. 1 (1997): 385–409; Stephen E. Cornell and Douglas Hartmann, *Ethnicity and Race: Making Identities in a Changing World* (Thousand Oaks, CA: Pine Forge Press, 2007); Eva Marie Garroutte, "The Racial Formation of American Indians: Negotiating Legitimate Identities within Tribal and Federal Law," *American Indian Quarterly* 25, no. 2 (2001): 224–39; Garroutte, *Real Indians*; Joane Nagel, "American Indian Ethnic Renewal: Politics and the Resurgence of Identity," *American Sociological Review* 60, no. 6 (1995): 947–65; Joane Nagel, *American Indian Ethnic Renewal: Red Power and the Resurgence of Identity and Culture* (New York: Oxford University Press, 1997); C. Matthew Snipp, "Sociological Perspectives on American Indians," *Annual Review of Sociology* 18 (1992): 351–71.

6. Garroutte, *Real Indians*; C. Matthew Snipp, "An Overview of American Indian Populations," in *American Indian Nations: Yesterday, Today, and Tomorrow*, ed. George P. Horse Capture, Duane Champagne, and Chandler C. Jackson (Lanham, MD: Alta Mira Press, 2007); Paul Spruhan, "The Canadian Indian Free Passage Right: The Last Stronghold Of Explicit Race Restriction In United States Immigration Law," *North Dakota Law Review* 85, no. 2 (2009): 301–08; Paul Spruhan, "A Legal History of Blood Quantum in Federal Indian Law to 1935," *South Dakota Law Review* 51, no. 1 (2006): 1–50; Russell Thornton, "Tribal Membership Requirements and the Demography of 'Old and New' Native Americans," *Population Research and Policy Review* 16, nos. 1/2 (1997): 33.

7. Sharon O'Brien, "Tribes and Indians: With Whom Does the United States Maintain a Relationship?" *Notre Dame Law Review* 66, no. 5 (1991): 1461–502.

8. Even for Natives with legal identity, social services and economic resources are fairly limited due to the variability of annual federal budgeting. Indigenous people are one of the poorest racial ethnic groups, if not the poorest. The myth of copious "benefits" and large per capita payments from tribal gaming is disproved by socioeconomic statistics: 32 percent of working individuals live below poverty level; 32 percent have no health insurance; median household income is \$33,671; and 49 percent of the labor force experience unemployment. If available, health care, housing, and nutrition programs are often inaccessible due to the distance or remoteness of the distribution of such services. Only 246 of 566 tribes have gaming operations, and of those, only 73 offer per capita payments to tribal citizens. All tribal gaming allocations, including per capita payments, are overseen by the federal agency, the National Indian Gaming Commission; see Dwanna L. Robertson, "The Myth of Indian Casino Riches," *Indian Country Today Media Network*, June 23, 2012, <http://indiancountrytodaymedianetwork.com/opinion/the-myth-of-indian-casino-riches-119957>.

9. Indianness is a term to indicate the beliefs of the Native people concerning the authenticity of being Native, whether through blood or cultural ties or ethnically, racially, or legally. For comprehensive coverage of contention between communities, see Cerulo, "Identity Construction;" Cornell and Hartmann, *Ethnicity and Race*; Garroutte, *Real Indians*; Nagel, *American Indian Ethnic Renewal*; Snipp, "Sociological Perspectives;" David E. Wilkins, *Documents of Native American Political Development: 1500s to 1933* (Oxford: Oxford University Press, 2009).

10. The names of individuals have been changed or omitted in this article to protect their anonymity.

11. Jean S. Phinney and Anthony D. Ong, "Conceptualization and Measurement of Ethnic Identity: Current Status and Future Directions," *Journal of Counseling Psychology* 54, no. 3 (2007).

12. Eduardo Bonilla-Silva, "Rethinking Racism: Toward a Structural Interpretation," *American Sociological Review* 62, no. 3 (1997): 465–80.

13. Fredrik Barth, *Ethnic Groups and Boundaries: The Social Organization of Culture Difference*, Second Edition, (Prospect Heights, IL: Waveland Press, 1998).

14. David E. Wilkins, *Documents of Native American Political Development*.
15. Rogers Brubaker, *Ethnicity without Groups* (Cambridge, MA: Harvard University Press, 2004).
16. Carolyn A. Liebler, "American Indian Ethnic Identity: Tribal Nonresponse in the 1990 Census," *Social Science Quarterly* 85, no. 2 (2004): 310–23; Carolyn A. Liebler, "Review of *Lumbee Indians in the Jim Crow South: Race, Identity, and the Making of a Nation*," *Social Forces* 89, no. 3 (2011): 1078–80; Michael Omi and Howard Winant, *Racial Formation in the New Millennium* (London: Routledge, 2008) and *Racial Formation in the United States: From the 1960s to the 1990s* (New York: Routledge, 1994).
17. Cornell and Hartmann, *Ethnicity and Race*.
18. Omi and Winant, *Racial Formation in the United States*.
19. Howard Winant, "Race and Racism: Towards a Global Future," *Ethnic and Racial Studies* 29, no. 5 (2006): 986–1003.
20. Daphna Oyserman and Diane Oliver, "Ethnic and Racial Identity" in *Encyclopedia of the Life Course and Human Development, Adulthood, Volume 2*, edited by Deborah Carr (Detroit, MI: Macmillan, 2009), 128.
21. Nagel, *American Indian Ethnic Renewal*, 950.
22. Garroutte, "The Racial Formation of American Indians."
23. A tribe may be recognized within the state in which it is based, but only federally recognized tribes may interact with the US government. Tribes that are only recognized by a state cannot offer federal benefits, rights, and protections.
24. Contemporary federal recognition of tribes requires that tribal members must show direct genealogical descent from a group that existed before contact with non-Indians.
25. At least two federally recognized tribes problematize this issue: the Cherokee Nation of Oklahoma and the Blackfoot Nation of Montana. To be a citizen of the Cherokee Nation, an individual must have at least one ancestor who was listed on the Dawes Rolls. This is in line with my theoretical frame of ALLI. However, the story is much more complicated. In 1866, after the abolition of slavery, Freedmen (former slaves of the Cherokee citizens) were granted tribal citizenship with the Cherokee Nation of Oklahoma. In the early 1980s, the Cherokee Nation administration revised citizenship criteria to require lineal descent from an ancestor listed as "Cherokee by Blood" on the Dawes Rolls, effectively disenfranchising Freedmen citizens. For a more comprehensive account, read Clare Boronow, "Closing the Accountability Gap for Indian Tribes: Balancing the Right to Self-Determination with the Right to a Remedy," *Virginia Law Review* 98 (2012): 1373. Also see: *Nash v. Cherokee Nation Registrar*, No. CV–07–40, at 1–2 (Cherokee D. Ct. Jan. 14, 2011), rev'd *Cherokee Nation Registrar v. Nash*, No. SC–2011–02 (Cherokee D. Ct. Aug. 22, 2011).
- On the other hand, the Blackfeet Nation of Montana requires blood quantum of one-quarter for tribal enrollment rather than just lineal descent. However, the Blackfeet's original 1935 constitution required that tribal members only be at least one-sixteenth Blackfeet. In 1962, the constitution was amended to raise that requirement to one-quarter.
26. James F. Hamill, "Show Me Your CDIB: Blood Quantum and Indian Identity among Indian People of Oklahoma," *American Behavioral Scientist* 47, no. 3 (2003): 267–82; Kathryn W. Shanley, "The Indians America Loves to Love and Read: American Indian Identity and Cultural Appropriation," *American Indian Quarterly* 21, no. 4 (1997): 675–702; Snipp, "Sociological Perspectives"; Paul Spruhan, "The Canadian Indian Free Passage Right: The Last Stronghold Of Explicit Race Restriction In United States Immigration Law," *North Dakota Law Review* 85, no. 2 (2009): 321–28; Hilary N. Weaver, "Indigenosity: What is it, and Who Really Has It?," *American Indian Quarterly* 25, no. 2 (2001): 240–55.



27. Steve Russell, "In Search of the Meritocracy," *American Indian Quarterly* 27, no. 1–2 (2003): 400–11.

28. See note no. 27.

29. Jodi A. Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism*, (Minneapolis: University of Minnesota Press, 2011); Garroutte, "The Racial Formation of American Indians"; James F. Hamill, "Show Me Your CDIB"; Shanley, "The Indians America Loves"; Gail K. Sheffield, *The Arbitrary Indian: The Indian Arts and Crafts Act of 1990*, (Norman: University of Oklahoma Press, 1997); Circe Sturm, *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma* (Berkeley: University of California Press, 2002).

30. Catherine Marshall and Gretchen B. Rossman, *Designing Qualitative Research*, 4th ed. (Thousand Oaks, CA: Sage Publications, 2006).

31. Mary C. Waters, *Ethnic Options: Choosing Identities in America* (Berkeley: University of California Press, 1990).

32. Herbert J. Rubin and Irene Rubin, *Qualitative Interviewing: The Art of Hearing Data*, 2nd ed. (Thousand Oaks, CA: Sage Publications, 2005).

33. John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, 1st ed. (Los Angeles: Sage Publications, 2009).

34. Creswell, *Qualitative Inquiry and Research Design*; Rubin and Rubin, *Qualitative Interviewing*.

35. Creswell, *Research Design*; Joseph A. Maxwell, *Qualitative Research Design: An Interactive Approach* (London: Sage Publications Inc., 2005).

36. Aaron C. Kay, John T. Jost, Anesu N. Mandisodza, Steven J. Sherman, John V. Petrocelli, and Amy L. Johnson, "Panglossian Ideology in the Service of System Justification: How Complementary Stereotypes Help Us to Rationalize Inequality," *Advances in Experimental Social Psychology* 39 (2007): 305–58; Aaron C. Kay, Danielle Gaucher, Jennifer M. Peach, Kristin Laurin, Justin Friesen, Mark P. Zanna, Steven J. Spencer, "Inequality, Discrimination, and the Power of the Status Quo: Direct Evidence for a Motivation to See the Way Things Are as the Way They Should Be," *Journal of Personality and Social Psychology* 97, no. 3 (2009): 421–34.

37. Federal Indian policy changed often and abruptly. Generally accepted historical eras of federal Indian policy include: colonial; Confederate; trade and intercourse; removal; reservation; allotment; reorganization; termination; self-determination. For a complete overview, see Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny* (Lincoln, NE: University of Nebraska Press, 2008).

38. Angie Debo, *And Still the Waters Run* (Princeton: Princeton University Press, [1940] 1989); Garroutte, *Real Indians*; Hamill, "Show Me Your CDIB."

39. Felix S. Cohen and Rennard Strickland, *Felix S. Cohen's Handbook of Federal Indian Law* (Charlottesville, VA: Bobbs-Merrill, 1982); Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1986).

40. Prucha, *The Great Father*; Debo, *And Still the Waters Run*, 39. According to Prucha and Debo, fraud and forgery did exist. Thousands of people attempted to enroll in order to receive tribal land. Debo contends that between 1902 and 1904, a special tribunal for appeals within Indian Territory excluded all but 156 of 3,403 claimants and recovered land valued at \$16 million.

41. However, on April 20, 1945, the Mississippi Choctaw became a federally recognized tribe, the Mississippi Band of Choctaw Indians, under the 1934 Indian Reorganization Act; see Records of the Bureau of Indian Affairs, Central Classified Files, Choctaw: 068-9544A-1936: May 4, 1945, McMullen to CIA, National Archives and Records Administration (NARA), Washington, DC.

42. US Census Bureau, "Report on Indians Taxed and Not Taxed," 11th Census, 1890. (Washington, DC: Government Printing Office, 1894).

43. *Ibid.*, 73.

44. "The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and . . . all other persons of one-half or more Indian blood." Qtd. in William W. Quinn, "Federal Acknowledgement of American Indian Tribes: The Historical Development of a Legal Concept," *The American Journal of Legal History: Official Publication of the American Society for Legal History* 34, (1990): 356.

45. Mark Edwin Miller, *Forgotten Tribes: Unrecognized Indians and the Federal Acknowledgment Process* (Lincoln: University of Nebraska Press, 2006).

46. Miller, *Forgotten Tribes*; David E. Wilkins, *American Indian Politics and the American Political System* (Lanham, MD: Rowman & Littlefield, 2006). Both Miller and Wilkins make the point that federal legislation makes it complicated, expensive, and time-consuming for tribes to become recognized. Since 1978, any Indian group intent on federal recognition must meet strict criteria. Whether the federally established criteria have been met is decided within the Department of the Interior. Unrecognized groups condemn the bureaucratic process for federal recognition as costly (approximately \$200,000 to petition and follow through) and time-consuming (with an average of ten years from start to finish). Indeed, in twenty-one years (1978 to 1999), out of 231 groups seeking recognition, only fifteen tribes gained recognition, and nineteen were denied.

47. Garroutte, *Real Indians*, 15.

48. Wilkins, *American Indian Politics*. Recognition of tribal groups as legitimate became especially poignant in the 1950s and 1960s, as the US pursued a policy of termination. In the name of assimilation, with the leverage of federal recognition in hand, the US withdrew its federal acknowledgement of 109 tribes and over 13,000 Indians. Termination policy meant that the federal government no longer bore legal or financial responsibility for the prior legitimate tribal communities; therefore, tribal members lost their legal status (legal identity). All federal aid and support services were terminated, as well. In 1975, due to its disastrous economic and health effects, termination policy was replaced with the federal policy of self-determination. Many of the terminated tribes regained recognition, but could not recoup the loss of 1.3 million acres of Indian lands.

49. *Ibid.*

50. Stephen L. Pevar, *The Rights of Indians and Tribes* (Oxford: Oxford University Press, 2012), 19.

51. *Ibid.*, 59.

52. Thornton, "Tribal Membership Requirements," 110–11.

53. Garroutte, *Real Indians*.

54. Ron Selden, "Flathead Reservation Keeps Blood Quantum," *Indian Country Today*, January 29, 2003, available online at <http://www.highbeam.com/doc/1P1-79290812.html>.

55. Wilkins, *American Indian Politics*, 51.

56. Aaron C. Kay, John T. Jost, Anesu N. Mandisodza, Steven J. Sherman, John V. Petrocelli, Amy L. Johnson, "Panglossian Ideology in the Service of System Justification"; Aaron C. Kay, Danielle Gaucher, Jennifer M. Peach, Kristin Laurin, Justin Friesen, Mark P. Zanna, Steven J. Spencer, "Inequality, Discrimination, and the Power of the Status Quo: Direct Evidence for a Motivation to See the Way Things Are as the Way They Should Be."

57. Bonilla-Silva, "Rethinking Racism," Omi and Winant, *Racial Formation in the United States*.

58. Bonilla-Silva, "Rethinking Racism," 469.

59. Michel Foucault, *The Archaeology of Knowledge; and, the Discourse on Language* (New York: Pantheon Books, 1972).

60. Nagel, *American Indian Ethnic Renewal*, 21.

