

CARD-CARRYING INDIAN: THE SOCIAL  
CONSTRUCTION OF AN AMERICAN  
INDIAN LEGAL IDENTITY

By

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*CARD-CARRYING INDIAN: THE SOCIAL*  
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## CHAPTER I

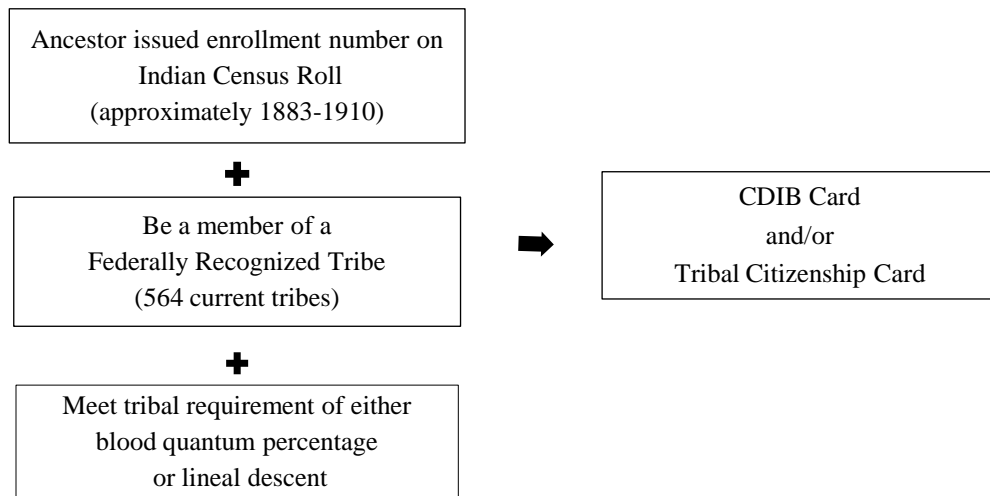
### INTRODUCTION

I am an American Indian female and a citizen of the Muscogee Creek Nation. As an enrolled member of a federally recognized tribe, I have an *American Indian Legal Identity* that grants me specific rights, benefits, and protections that are not universally available to all Native people. In other words, *being* Native American does not mean automatically benefiting from a legal standing. Some Native people may not have the ability to prove their status as *Indians* because of the complexity and exclusivity of the criteria to do so. Many people believe if a person is *really* an Indian, she or he will be enrolled in a tribe and have a card that proves this. After researching the unique legal status of citizens of federally recognized tribes, I discovered the vast complexity regarding how and why American Indians are required to prove their *racial* heritage, and ultimately, why many Natives cannot.

This study examines the emergence and application of “American Indian Legal Identity.” Acquiring what I conceptualize and construct as an American Indian Legal Identity is considered one of the most complicated, inconsistent paradoxes of federal law (Garrouette 2003; Snipp 2007; Spruhan 2006; Thornton 1997). Both literature and the latest U.S. Census confirm that thousands of Native Americans navigate between a lack of the political benefits of a *proven* American Identity and the everyday experience of

being Indian. The literature also indicates that possessing or not possessing an American Indian Legal Identity results in clear gains and costs—economically, politically, culturally, emotionally, and spiritually.

Defining the concept of an American Indian Legal Identity is difficult due its level of complexity, but here is an attempt to simplify it to its most basic (Figure 1). An American Indian Legal Identity requires the certification of either a specified amount of ancestral Indian blood (also known as blood quantum) or the proof of direct lineage (also known as lineal descent) from an ancestor who was issued a “roll number” by the federal government between 1883 and 1910. Furthermore, in order to be acknowledged *legally* as a Native American, the ancestor must have been a member or must be eligible to be a member of one of the *current* 564 federally recognized tribes. This evidence must then be authenticated and corroborated by the United States (U.S.) government in the form of a Certificate of Degree of Indian Blood (CDIB) card or a Tribal Citizenship card.



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

A federally recognized tribe is distinguished as a political community that can interact with the U.S. Congress as defined by the U.S. Constitution and the U.S. Supreme Court. Federally recognized tribes are those American Indian/Alaska Native tribal nations that are formally recognized by the U.S. federal government as a tribe, and have a formally established government-to-government relationship with the United States (U.S. Department of Interior 2002). Natives who possess an American Indian Legal Identity are not legally required to enroll in their tribe; however, because many tribes contract with the Department of the Interior to provide CDIB cards, individuals will often enroll with the tribe, as well. A tribe may be recognized within the state in which it is based, but only *federally* recognized tribes may interact with the U.S. government. State-recognized-only tribes cannot offer federal benefits, rights, and protections.

### **Statement of Problem**

The present study represents an initial attempt to investigate the consequences associated with different forms of identity representation—ethnic, racial, and *legal*. One of the most divisive questions facing American Indians today is how to legitimately claim or determine an American Indian identity. With contested meanings of *being* Native, an unrelenting debate continues about the use of CDIB cards, tribal enrollment, cultural involvement, and blood quantum as indicators of “Indianness” (Cornell 1988; Garrouette 2001; Hamill 2003; Nagel 1997; Shanley 1997; Sturm 2002).

Even the concept of *Indianness* is contested among scholars. Customarily, it is seen in the context of Indian Identity (Peroff 1997). Indianness is a symbolic construction and “exists at the level of meaningful relations between parts of a living community” (Peroff 1997:488). Traditionally, Indianness was characterized as the *cultural*

*competency* of the person who self-identifies as an American Indian. Cultural competency includes how well s/he knows the tribe's language, traditions, shared histories, and as a member, has experienced tribal culture in ceremony and/or festival. Some Natives with an established legal identity argue that requiring proof of authenticity protects the Native culture and resources from further appropriation (Cornell 1988; Garrouette 2001; Hamill 2003; Nagel 1997; Shanley 1997). They maintain that with an increasing number of people self-identifying as American Indians, there is valid concern about *ethnic fraud* and *cultural appropriation* (Cornell 1988; Garrouette 2003; Hamill 2003; Nagel 1997).

On the other hand, American Indians from both camps—those *with* and those *without* federally defined authenticity—argue that the concept of a legal identity is foreign to the very nature of being Native (Cornell 1988; Garrouette 2001; Hamill 2003; Nagel 1997; Shanley 1997). Of course, the historical trauma suffered by American Indians cannot be denied, but they contend that the claim of authentic Indianness is yet another issue by which Natives can be divided and conquered (Cornell 1988; Garrouette 2001; Hamill 2003; Nagel 1997; Shanley 1997; Snipp 1992; Spruhan 2006). Scholars also confront the authority of legal identity and liken it to a colonized ascription of Indian identity (Snipp 1992).

In sum, the central goal of this project is to develop an understanding of the complexity of the construction and application of an American Indian Legal Identity by adding richness and rigor through the voices of American Indians concerning this phenomenon. This requires an examination of the historical significance of the social construction of an American Indian Legal Identity, an analysis of the current implications

within Native populations about who qualifies to be an “authentic” Indian, and the narratives of Natives in Oklahoma concerning its meaningfulness in their daily lives.

### **Research Questions**

In this study, I address the following questions: *How do Natives frame the classification of an American Indian Legal Identity within their own lived experience? How do Natives interpret the impact on their lives of the subsequent adoption of an American Indian Legal Identity as the measure of authenticity by both tribes and individual Natives?* To address these questions, I explore local perspectives of Native Americans in two separate groups—1) from Indians who belong to tribes that are federally recognized and possess a legal identity and 2) from Indians who do not belong to tribes that are federally recognized, and therefore, do not benefit from a legal identity.

Passionate debate persists over the most useful term to describe the indigenous residents of the United States. When discussing American Indians, it is important to note that a pan-Indian (e.g., American Indian, Native American, Native, Native American Indian, First American) identity is purely a social construct (a concept that is explored in-depth within this work) that refers to individuals from diverse tribal backgrounds (Nagel 1995). Some writers have criticized labels such as *Indian*, *American Indian*, and *Native American* as “counterfeit” identities imposed by European American colonizers as tools of racist subjugation (e.g., Yellow Bird, 2004). Mindful of these critiques, for the purpose of this paper, I use the terms “American Indian,” “Native American,” “Native American Indian,” “Native” and “Indian” interchangeably. People who inhabit these identities vary in their preferences for different identity labels.

To understand the structure of the legal identity of American Indians and the interpretation of the consequences of this phenomenon, I began the study with three objectives. The first objective seeks to understand the sociohistorical process of the emergence of an American Indian “Legal” Identity. A review of the literature suggests that the construction of the legal identity for the American Indian is relatively new, originating in the assimilationist period of Federal Indian Policy from 1871-1928 and reaching institutionalization with the Indian Reorganization Act (IRA) of 1934. I explore the frames used for the development and subsequent adoption of this classification for being Native by the federal government, tribal governments, and the Native community within a substantive literature review.

The second objective is to analyze the application of an American Indian Legal Identity and its impact upon the local Oklahoma Native communities, in general. Possessing a proven American Indian Legal Identity in opposition to other concepts of Native identity is both salient and significant within the political framework of federal legislation. As mentioned before, Native Americans that are recognized *legally* have rights, benefits, and protections that Indians without legal status do not possess (Cornell 1988; Garrouette 2001, 2003; Hamill 2003; Nagel 1997; Snipp 1992). Federal legislation governs religious freedoms, housing, health care, education, art, gaming, child welfare, and fishing and hunting rights, and a great deal more (e.g., see the United States Committee on Indian Affairs for a substantive overview). The literature suggests there are also comparable social costs, or losses, as it were. A Lumbee Indian articulated the need to be recognized legally when she stated that “I feel as if I'm not a real Indian until I've got that BIA stamp of approval... You're told all your life that you're Indian, but

sometimes you want to be that kind of Indian that everybody else accepts as Indian” (as quoted in Bordewich 1996:63).

The third objective is to explore how American Indians define “Indianness” within and beyond legal structures. According to the U.S. Census Bureau (2003), over 4.4 million people self-identified as having American Indian ancestry; however, the U.S. Department of Interior (2003) reports that only 1.9 million people were actually enrolled as members of federally recognized tribes. Consequently, an additional 2.5 million people identified as American Indian, but were not citizens of a federally recognized tribe. This demonstrates the increasing number of people self-identifying as Native without the requirement of a federally authenticated *legal* identity.

Scholars point out that more than demographics, such as increased birth rate, decreased death rate, improved health or immigration, account for such a growth in population (Passel 1976, 1986, 1997; Snipp 1989; Thornton 1997). The two most common reasons acknowledged for this increase are changing patterns of racial self-identification and improved procedural collection of census data (Garrouette 2003; Nagel 1997; Omi 2001; Passel 1976; Passel and Berman 1986; Snipp 1989). Scholars point out that more than demographics, such as increased birth rate, decreased death rate, improved health or immigration, account for such a growth in population (Passel 1976, 1986, 1997; Snipp 1989; Thornton 1997). Since 1960, people have been allowed to choose their racial identification, rather than have it assigned by a census taker.

Claiming Indianness, however, is decidedly more complex than checking a box on a census form—it involves cultural, political, racial, and ethnic criteria that serve to confuse our ability to define and identify who qualifies to be an Indian (Cornell 1988;

Garrouette 2001, 2003; Hamill 2003; Nagel 1997; Snipp 1992; Wilkins 2009). Winant notes that “racialized identity-formation and cultural representation” exists as a dilemma and contradiction “for racial experiences and social organizations” (2006:987). The impact of legal identity within Native Americans’ daily lives is addressed through understanding the meanings assigned to symbols of Indianness—ethnically, racially, culturally. Various scholars argue that blood, parentage, and ancestry *symbolize* the Native identity or, in other words, the character of Indianness, especially when Natives have lost ties to their tribal communities (Krouse 1998; Fogelson 1998; Mihesuah 1998). For example, urban Indians may use blood and descent to legitimize their access to cultural knowledge in order to participate in the urban pan-Indian community. Deloria (1988) objects to use of “Indianness” altogether—arguing it is a white term used to objectify the Native. *For the purpose of this research*, Indianness is a term to indicate the beliefs of the Native people concerning the authenticity of being Native, whether through blood or cultural ties.

The achievement of these three objectives addresses my general research questions. A substantive literature review presents the theoretical perspectives of the social construction of social identity, ethnic and racial identities, and how they relate to the racialization of American Indians; moreover, it provides a relevant review of the federal discourse and the legislation that has created a legalized, racialized identity for the Indigenous people in the United States.

## **Methodology**

The purpose of this research project is twofold—first, define and develop an understanding of the construction and application of an American Indian legal identity,



and second, add richness and rigor through the voices of American Indians concerning this phenomenon. My research design utilizes an interactive approach (Maxwell 2005). An interactive qualitative study incorporates “the activities of collecting and analyzing data, developing and modifying theory, elaborating or refocusing the research questions, and identifying and addressing validity threats are usually all going on more or less simultaneously, each influencing all of the others” (Maxwell 2005:2). This research design enables me to study the “lived experiences of persons” through developing descriptions and interpretations of the essence of these experiences (Creswell 2007:58).

The social constructivist paradigm best aligns with my goal to reflect the intricacy of underlying meanings, concepts, and patterns of relationships in easy to understand portrayals of the phenomenon of an American Indian Legal Identity (Babbie 2007; Rubin and Rubin 2005). The function of the constructivist researcher is to examine and discern multiple claims, meanings, and implications made about the phenomenon, while withholding judgment about the soundness of such (Gergen 2008). Furthermore, the use of a qualitative approach with varied data collection techniques (Shriver, Cable and Kennedy 2008), consisting of semi-structured, in-depth interviews and participant observation, allowed me to tap into the real-life context of possessing or lacking an American Indian Legal Identity.

### **Significance of the Research**

Garrouette (2003) demonstrates that tribes have adopted a legal status as the means for identifying who a “real” Indian is, even though a legal identity for the American Indian was clearly created by the dominant white society. Two-thirds of the federally recognized tribes require *a blood quantum* (a degree or percentage of Indian blood) and

the other one-third require *lineal descent* (proof of blood ancestry) for membership (Garrouette 2003; Thornton 1997). Thus, it appears that tribal governments and, perhaps, the Native communities, have adopted a *racialized* legal identity. By racialized, I mean the idea that race is something fixed, absolute, and biologically driven.

Omi and Winant (1994) dispute that race is an essentialist, biological fact; rather, it is a sociohistorical phenomenon that changes and evolves through the push and pull of political and economic interests. And while the sociological literature recognizes that race is a social construct *and* racial categories consisting of biologically distinct groups of people have been discredited (American Sociological Association 2002; Brownell 2001; Cerulo 1997; Garrouette 2001, 2003; Grande 2004; Hamill 2006; Lawrence 2004; Meyer 2004; Miller 2006; Morning 2007; Nagel 1995; Omi 2001; Omi and Winant 1994; Peroff 1999; Peroff and Wildcat 2002; Rockquemore et al. 2009; Snipp 1988, 1989, 2003, 2007; Spruhan 2006; Sturm 2002; Winant 2006), race is still applied to the proof of Native ancestry.

*Race* still exists as a concrete expression of identity for American Indians through the idea that an inherited measure of blood percentage quantifies the amount of personal Indianness one possesses *and* that quantity is gained through our ancestral lineage. The concept of blood quantum refers to an assumed degree of ancestral heritage that is measured by degrees or fractions of blood inheritance as established by the United States federal government (Table 2). Therefore, claiming an American Indian Legal Identity, in effect, *requires* a claim of race as a biological trait through both the “possession” of Indian blood and the ability to prove that blood lineage through direct descendency from an ancestor that was listed on one of the Indian census rolls taken from 1883 to 1910.

Furthermore, current scholarship reveals an ongoing conflict within the Native community about how one *qualifies* to be an Indian (Alexie 1996; Cerulo 1997; Cornell and Hartmann 1998; Garrouette 2001, 2003; Nagel 1997; Snipp 1992). I argue that this conflict can be traced to two phenomena: (1) the social construction of an Indian race through Federal Indian Policy, and (2) the subsequent adoption and institutionalization of a legal identity by American Indians, both individually and collectively (Alexie 1996; Cerulo 1997; Cornell and Hartmann 1998; Garrouette 2001, 2003; Nagel 1997; Snipp 1992). I address these sociohistorical events in detail in later chapters.

Consequently, as the second decade in the 21<sup>st</sup> century draws closer, consensus still does not exist within Native communities in defining who is an authentic Indian or identifying the acceptable means by which to claim an American Indian identity. There appears to be a *disconnect* between possessing a legal identity and being Native. Dialogue concerning the legitimacy and complexity of an American Indian Legal Identity, the ambiguity and fluidity of who is allowed to claim it, the impact of the adoption and application of it, and the detachment between Native identity and an American Indian Legal Identity within the Indigenous population is pertinent to the scholarship of today.

### **Organization of the Thesis**

This thesis follows the following format: first, a substantive review of the literature regarding the conceptual framework of the social construction paradigm and its application to the uniqueness of the ethnic, racial, and legal aspects of being American Indian and an overview of the social production of the American Indian Legal Identity through the frames of Federal Indian Policy and tribal reification; second, a description of

the research paradigm, methods, data and data analysis; third, a presentation of the findings from the data; and finally, a conclusion and discussion about the results of the study.

## **CHAPTER II**

### **LITERATURE REVIEW**

In this chapter, I utilize a substantive literature review to examine the relevant research and public documentation relating to the broad focus of the social construction of American Indian Legal Identity, and particular issues, themes, current understandings, views and beliefs regarding its application. To better understand the relationship between the social processes of creating, assigning, maintaining, and shifting identity, I examine the social constructionist paradigm through an overview of the social construction of identity and how “knowledge is sustained by social processes” (Burr 2003:4).

In the first section of this chapter, I review the literature regarding the conceptual framework of this research, which includes an overview of the theory of social construction, and its facilitation of the formation of social identities: ethnic, racial, and legal. I also critically assess the constructivist stance on identity. I also offer a critique about the disconnection between the application of theory and the praxis of American Indian identity, especially regarding the inconsistency—the conflict—of Native identity within a legal structure. Because there remains an emphasis on racial identity even among Native people today (Campbell and Troyer 2007; Garrouette 2003; Hamill 2003; Mihesuah 1998), this complex environment provokes valid confusion for the study of American Indian identity, in general. Therefore, there is need for further study regarding

the delineation between ethnicity and race and these commonly accepted classifications are examined and critiqued.

The second section of the chapter provides an overview of the social production of the American Indian Legal Identity through the historical context by which it was constructed. I examine how racial themes within federal legislative language accompany social relations of subordination of the Native American and the superordination of the dominant white culture. I also examine the social construction of the American Indian tribe. Extensive legislation has contributed to the idea of legal status, but in this section, I emphasize specific legislation that socially constructed the two major phenomena of American Indian Legal Identity: (1) federal recognition of the tribe and (2) tribal recognition of the individual Indian. Therefore, this chapter focuses on the theoretical and substantive issues of the social construction and complexity of American Indian Legal Identity.

### **Social Constructionism**

Contemporary research on identity has largely focused on a social constructivist perspective where the intersection of social context, culture, and self-understanding inform the individual's choice or option of ethnic or racial identity (e.g., Aguirre and Turner 2009; Alba 1990; Brubaker and Cooper 2000; Cerulo 1997; Cornell and Hartmann 1998; Garrouette 2001, Howard 2000; Howarth 2002; Malhi et al. 2009; Morning 2007; Nagel 1995; Okamura 1981; Oyserman et al. 2003, 2009; Rockquemore et al. 2009; Stets 2000; Waters 1990; Wilkins 2006; Yancey et al. 1976). The social constructionist approach is not easily defined, but scholars agree that there are particular

assumptions to this area of knowledge (Burr 2003; Gergen 1985; Phillips and Jørgensen 2002).

To begin, scholars contend that the common sense or “taken for granted” knowledge of the world should be critically questioned (Burr 2003; Gergen 1985; Phillips and Jørgensen 2002). Reality is not an objective truth, but rather the *product* of the way people categorize the world within their cognitive schemas that store organized knowledge about social characteristics, predilections, and behavior patterns. Different elements relate to one another—the elements order, link, arrange, and then rearrange a multiplicity of meaning and sensory stimuli within a particular *schema* (Foucault 1972/2002). Secondly, because the categories and conceptual frameworks used to express meaning are ones that exist within society during a person’s lifetime, there is a “historical and cultural specificity” to the lives of people (Burr 2003:3). In other words, one’s knowledge of the world is the “product of historically situated interchanges among people” (Gergen 1985:267). Lastly, knowledge is constructed and deconstructed through social interaction; consequently, what is true or not true is fluid within the social constructionism paradigm. The way we understand the world is dynamic and dialectic because it is contingent upon social action. Our worldviews, knowledge, and *identities* change through institutional, interpersonal, and personal actions (Berger and Luckmann 1966; Burr 2003; Gergen 1985; Phillips and Jørgensen 2002).

### *Social Identity*

Complex relationships exist between the social processes of creating, assigning, maintaining, and shifting identities; moreover, personal cognitive schemas broaden into group schemas, resulting in stereotypes of “organized information about social positions

and stratification statuses...such as race” (Howard 2000:368). Understanding the social construction of reality facilitates the idea of *identity* as a social construct—a social fact that is a socially produced, “humanly constructed, defined, and meaningful object” (Weigert, Teitge, and Teitge 1986:31). Thus, identities are malleable through time and space, being negotiated, recreated, and reinforced through institutional, interpersonal, and personal contexts.

Conversely, some scholars view identity “as how a person is known or wishes to be known” (Hamill 2003:269). Accordingly, social identity theory maintains that as people become aware (through social comparison) of their similarities and differences, they self-categorize—they know to which group they belong and they also know who is considered outside of that group (Hogg and Abrams 1988; Tajfel and Turner 1986). Both personal identity and group identity schemas allow individuals to summarize categories of people and quickly assess others as friend, foe, or neutral party, which then serves to explain, validate, or justify their social interactions and behaviors (Howard 2000; Tajfel 1981).

However, individual agency does not solely determine identity. For example, in the 15<sup>th</sup> and 16<sup>th</sup> centuries, Europeans used common concepts like “heathen” and “savage” to establish the social identity that became known as *Indian* (Berkhofer 1979). The general term was then used to identify all the different peoples that lived on the North American continent. Furthermore, being “Indian” indicated a role that was deficient of character and morals. A frame within the European social structure was created in which any person in the New World that was not European was named *Indian*, even though there were varied, complex cultures present. The generalized and



stereotyped Indian's behavior was then interpreted as uncivilized, inferior, and basically, the antithesis of European culture. As a result, the negative counterimage of the Indian was used to name Europeans as moral, superior, and intellectual (Berkhofer 1978).

Hence, identity is often attributed by social structures and constraints.

*Ethnic versus Racial Identity: Naming or Claiming?*

Ethnic and racial identities are socially constructed within processes I term as *naming* and *claiming*. Racial categories tend to happen as a social practice of attributing subject positions to *named* categories, whereas ethnic identities are often the *claim* of belonging to a group. Racial categories are externally defined and ethnic groups are internally defined (Jenkins 2003). Of course, it is not this simple. Racial formation theory as developed by Omi and Winant (2009:69) contends, “[t]here is a continuous temptation to think of race as an essence, as something fixed, concrete, and objective. And there is also an opposite temptation: to imagine race as a mere illusion, a purely ideological construct which some ideal nonracist social order would eliminate.” Subsequently, as Thomas (1966:301) notes, if people “define situations as real, they are real in their consequences.”

Barth's (1969) foundational hypothesis is that ethnic identity is produced and preserved through relational processes of inclusion and exclusion, at the personal level rather than the structural level; rather, groups may share interconnectedness, but are not bounded by static boundaries. Barth (1969:9; emphasis in original) writes “[...] categorical ethnic distinctions do not depend on an absence of mobility, contact and information, but do entail social processes of exclusion and incorporation whereby discrete categories are maintained *despite* changing participation and membership in the

course of individual life histories.” Hence, people may identify or be identified as members of an ethnic group, but identity can change or vary (Barth 1969). Unlike the relational premise of Barth’s ethnic identity, Brubaker (2004) contends that the salience of racial group designation is not about the communal nature of a category; in fact, racial groups may have few social experiences in common. Rather, people in power *name* the people that are not in power and then categorize them into groups, and assign particular roles and subject positions to those named.

Consensus, to some degree, does exist among scholars concerning racial and ethnic identity. Most agree that both concepts are social constructs (Farley 1995; Fitzgerald 2007; Leibler 2004; Omi and Winant 1994; Phinney and Ong 2007; Waters 1990). Further, it is accepted that the dimensions of race and ethnicity serve as “social bases of identity” (Howard 2000:374). Another commonality suggests that ethnic and racial identities similarly “involve a sense of belonging to a group and the process of learning about one’s group” and an association of collective behaviors, values and attitudes (Phinney and Ong 2007:274).

Scholars also differentiate race and ethnicity. Alba states (1990:37), “Ethnicity is inherently a matter of *ancestry*, of beliefs about one’s forebears” (emphasis in original); however, he argues that ethnic identity and ancestry (race) do not necessarily share equal scope or extent, which is demonstrated in the divide between ethnic and racial identity. Other scholars also contend that ethnic identity is distinct and separate from racial identity (Fitzgerald 2007; Leibler 2004, van den Berghe 1967). Cornell and Hartmann (1998:61) assert that “[r]ace typically involves more or less readily identifiable physical differences, and ethnicity often has corresponded with cultural differences—patterns of

language or accent, modes of dress, behaviors—that make ethnic boundaries easy to establish and observe.” They also contend that “race and ethnicity are not mutually exclusive categories” but ethnicity is typically minimized or ignored when racial designation is present (Cornell and Hartmann 1998:25).

Racial designation as a constructivist concept can also be defined as a “process of classification, position, and practice” (Soss and Bruch 2009). Positioning or classifying groups of people as racial categories can function to restrict particular groups from benefiting from societal institutions, impeding the ability to gain resources and compete for jobs, entrance into esteemed universities, and prestigious positions. According to the concept of social closure, the ultimate goal is to limit competition for scarce resources (Cornell and Hartmann 1998). Cornell and Hartmann (1998) stress that racial identities serve as common bases for social closure because of easily identified differences that serve as boundaries for restricting access to resources, and ultimately, limiting competition for the same. By requiring specific characteristics, whether demonstrated through action or physical features, others are excluded; therefore, competition is limited and social closure occurs.

Blanton (1997) also explains that the ideology of race has been used to justify the relationships of superiority and exploitation within society. Omi and Winant (1994) add that this type of racial ideology develops through competing political goals that are historically specific. The racial designation of *Indians* carries both historical and economic boundaries for Natives, having served to separate and strip them of their cultures and resources. Bonilla-Silva (1997) agrees, arguing that ethnicity and race produce different social positions and serve separate societal functions. Ethnicity

provides for a cultural basis, while race is “imposed externally to justify the collective exploitation of a people and are maintained to preserve status differences” (Bonilla-Silva 1997:469).

According to Omi and Winant (1994), racial designation is the outcome of racialization—the process by which racial meanings are assigned to social relationships, practices, or groups. In summary, race is a social construct without any biological (and often cultural) basis (Bonilla-Silva 1997; Cornell and Hartmann 1998; Lee 1993; Morning 2007; Omi 2001; Shanley 1997; Winant 2006). As groups modify their norms and values over time, especially under particular social pressures, racial designation can change; therefore, sociologists contend that race is a historical, not a biological phenomenon (Omi and Winant 1994; Shanley 1997). In other words, those that were categorized as Indians in the 1800s might not qualify as Indians today. By grouping society into races, certain phenomena occur: 1) racial identities are created, and 2) people are exploited by a racial logic of inferiority (Omi and Winant 1994).

### **American Indian Identity: Theory versus Praxis**

While the literature tends to synthesize ethnic and racial identities for those defined as marginalized or disenfranchised peoples, there is conflicting scholarship about whether this is appropriate for Native Americans (Sheffield 1997). To appreciate the tension between the self-ascription (claiming) or attribution (naming) of an American Indian identity, it is necessary to examine both ethnicity and race in the light of the discursive positioning of Native peoples. Praxis is the practical application of the performance—the *being*—of legal identity, as opposed to the theoretical application of claiming or possessing Indianness.

The complexity of claiming an American Indian identity requires understanding the context of the application, assignment, and assertion of an American Indian identity (Sheffield 1997). Table 1 helps identify the divergent perspective of *being* Native versus *possessing* Indianness. A subjective context refers to the ethnic and traditional forms 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. An objective context refers to the material objects, such as blood, genetics, ancestral lineage, and scientific facts that constitute a racial identity.

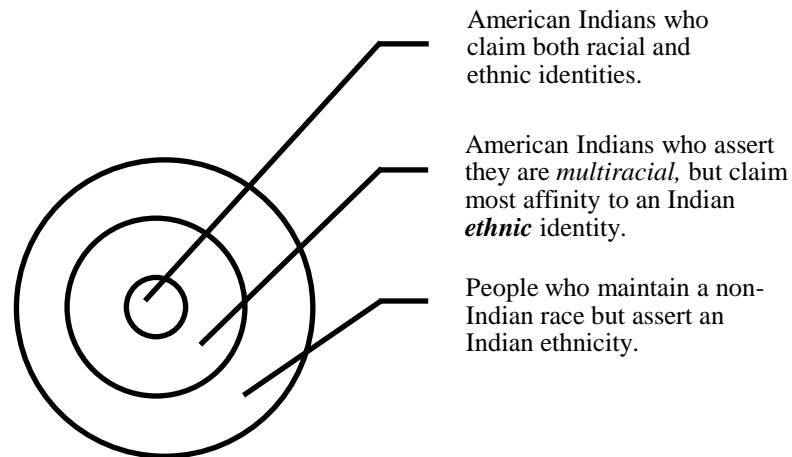
**Table 1.** Comparison of Subjective and Objective Attributes as Applied to American Indians

<b>Subjective</b>	<b>Objective</b>
<i><b>Ethnic / Traditional Identification</b></i>	<i><b>Racially / Legally Identified</b></i>
<ul style="list-style-type: none"> <li>– Cultural               <ul style="list-style-type: none"> <li>▪ Historical</li> <li>▪ Relational</li> <li>▪ Commitment</li> </ul> </li> <li>– Social Connection               <ul style="list-style-type: none"> <li>▪ Community</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– Biological               <ul style="list-style-type: none"> <li>▪ Blood Quantum</li> <li>▪ Lineal Descent</li> <li>▪ Phenotype</li> </ul> </li> <li>– Political Affiliation               <ul style="list-style-type: none"> <li>▪ Tribal</li> </ul> </li> </ul>

Leibler (2004:311) uses different theoretical applications attempt “to account for the fact that racial and ethnic identities vary depending on the structural and cultural conditions individuals face.” She (2004) uses three forms of identity—symbolic, situational, and pan-ethnic—to describe American Indian identity. Symbolic ethnicity is defined as an identity that has little effect on the details of daily life, existing symbolically on a surface level (Gans 1979; Leibler 2004). Situational ethnic identity suggests that ethnic identity fluctuates to meet the needs of different social interactions (Leibler 2004; Yancey, Ericksen, and Leon 1976). A pan-Indian identity is defined as

someone who *racially* identifies as American Indian (Cornell 1988; Leibler 2004; Nagel 1995).

For example, American Indians might be defined by their position within a circle. The core group of individuals relates both their race and ethnicity as American Indian—their identity is both designated by others and self-ascribed. The semi-peripheral group is multi-ethnic or multi-racial persons who claim the most affinity to an American Indian identity—their identity may or may not be designated racially as an Indian, but they self-ascribe an Indian ethnicity. Finally, the periphery is made up of persons who are not designated racially as Indian, yet assert Indian ethnicity (concept adapted from Snipp 1988). Figure 2 describes this graduation.



**Figure 2.** A Graduation of American Indian Race and Identity (concept adapted from Snipp 1988; permission to adapt and print granted 03/26/2009; addition of dimension and diagram is original to author).

Even without the added dimension of the legal application of a *racialized* identity (Omi and Winant 1994), the Native American experience of identity presents an especially unique challenge due to conflicting literature about the differentiation of race

from ethnicity and the effects on the Native community. Nagel (1997:21) argues that Indians are caught between the “dialectic internal identification and external ascription” of ethnic identity. She maintains that, eventually, Natives either identify in the *hypo-descent* category (biological descent from another American Indian) or through self-identification (choice of ethnic category) (Nagel 1995). Other critics argue that an ethnic identity cannot “adequately capture the experience” of the racialized identity of the Native American (Fitzgerald 2007:8; Omi and Winant 1994:16). Nagel (1997:9) maintains that because there is a “commonality and validity” and a “unified treatment” of the category of American Indian, it can be defined as a legitimate, political, and historical *ethnic group* even though a *racial* component exists.

This claim is especially frustrating for Native people who are trying to gain identities within the federal and tribal government’s legal frameworks—which adopt a biological definition of racial identity, and thus, favor biological over cultural or ethnic ties (Garrouette 2001). The racial designation of Indians has not adapted to an ethnic one in terms of proving a legally identified status. In other words, to achieve a legal identity within the current political structure, Natives must prove a *blood tie* to an ancestor (and sometimes a specific amount of blood heritage as described in the next section) as determined by federal legislation and contemporary tribal policies. They cannot attain legal identities through ethnic standing in their communities.

#### *Historical Context of Indian as Race*

A brief historical review is necessary to understand the racialization of American Indians. Melissa Meyer explains (2004:800) that racial categories gained “Darwinian/Spencerian meanings through...the dispossession of indigenous peoples, the

institution of slavery, and the denial of equal rights to those perceived as being non-European, non-American, non-white, or non-Indian would change all of that.” Europeans had contact with the Indigenous peoples they termed “Indians” as early as the 1400s.

The term “Indian” has been problematic, to say the least. The U.S. government still expressed real confusion about who was an Indian over 400 years later. The Commissioner of Indian Affairs, T.J. Morgan admits this in his 1892 Annual Report titled *What Is An Indian?* Morgan is quoted, “One would have supposed that this question would have been considered a hundred years ago and been adjudicated long before this...however, it has remained in abeyance, and the Government has gone on legislating and administering law without carefully discriminating as to those over whom it had a right to exercise such control” (Quinn 1990:352). Nagel (1996) contends that Europeans *named* the Indigenous people “Indians” to distinguish those that were to be conquered and civilized—a label used in unremitting oppression of Indigenous people by both European and American hegemony.

Of course, *Indians* did not exist before the first contact with Europeans (Berhofer 1979; Driver 1961; Nagel 1995). People were here, of course, but the first inhabitants of North America were heterogeneous population groups, living in hundreds of bands, clans, and other alliances that were fluid and dynamic. By imposing a collective identity of *Indian*, European colonialists created a category separate from themselves. The category of Indian then became a concept of racial identity, which distorted the autonomy of independent indigenous tribes and redefined them as a homogenized, uniform, oversimplified group. Through this process of racialization, Native Americans are forced into a rigid biological category, undermining cultural identity. Lawrence (2003:4-5)



points out that “to speak of Native identity” reifies “a natural category of existence” that does not exist; rather, the label “Indian” has been used to appropriate “the right to define Indigenous citizenship, reducing the members of hundreds of extremely different nations, ethnicities, and language groups to a common raced identity as ‘Indian.’”

Without a concept of race, the Indigenous peoples of North America held a subjective view of who *belonged*—with no exclusionary hard boundaries (Castile 1996; Fogelson 1998; Wilkins 2009). They identified each other by organic “criteria, including the social, cultural, linguistic, territorial, sociopsychological, and ceremonial ... which varied from tribal nation to tribal nation” rather than ancestral lineage (Wilkins 2009:78). They possessed different and complex cultural traits, languages, family hierarchies, political structures, and rituals and beliefs (Cornell and Hartmann 1998; Garrouette 2003; Nagel 1995; Snipp 1989; Wilkins 2009). Indigenous people formed groups consisting of ancestral kinship, but they also expressed distinction through adoption outside of the group. Many Indigenous people groups “had systems of naturalization that could confer group membership on non-kin” (Castile 1996:743; Fogelson 1998).

The cohesion and survival of Indian groups was maintained through commitment to the good of the group, not biological ties (Wilkins 2009). Even after the arrival of the Europeans, a person could be raised as an adoptee of a tribe by speaking the language or going through rites of passage, while not possessing a biological or genealogical claim (Castile 1996; Fogelson 1998; Wilkins 2009). Common values and needs (as determined by the Native group members) outweighed the objective considerations of familial ties or blood lineage (Castile 1996; Fogelson 1998; Wilkins 2009).

In stark contrast, by employing an essentialist perspective that views a racial identity as the result of biology or genetics, we have socially constructed, objectified, and internalized a *racialized* Indian identity as authentic. An essentialist perspective is the belief that “human nature is predetermined by genetic, biological, or physiological mechanisms and thus not subject to change” (Ore 2009:7).

#### *Racialization of Indians through Blood Quantum*

At present, the biological factor of blood quanta is often used as the standard to identify the *authentic* Indian. Within this frame, to *qualify* as a *real* Indian, Natives must possess a “provable” degree of blood that is documented through an ancestor’s degree of blood on the original Indian census rolls. Whether federally or tribally sponsored, nearly all American Indian programs directly or indirectly depend on blood quanta eligibility. Blood quantum is a difficult concept because it refers to the calculation of the degree of racial inheritance for a given individual (Table 2). It serves as proof of *how much* Indian blood a person has through ancestral connection. These fractions continue infinitum, and whereas a slight blood quantum was once used as an inclusive measure to marginalize African Americans, it is now used to be exclusionary for the American Indian.

Spruhan (2006:3) traces the legal precedence of blood ancestry to the 13<sup>th</sup> and 14<sup>th</sup> centuries, stating, “Like blood quantum, the concept of whole and half blood divides different bloods to define legal status, distinguishing persons with the same parents from those with only one parent in common.” Spruhan (2006:4) notes, “The use of fractional amounts of blood to describe ancestry long predates the question of mixed-race ancestry. An ancient rule of English common law distinguishes between ‘whole blood’ and ‘half blood’ relatives for purposes of inheritance.”

**Table 2.** Chart to Establish Degree of Indian Blood for Individual

Parents	0*	1/16	1/8	3/16	1/4	5/16	3/8	7/16	1/2	9/16	5/8	11/16	3/4	13/16	7/8	15/16	4/4
1/16	1/32	1/16	3/32	1/8	5/32	3/16	7/32	1/4	9/32	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32
1/8	1/16	3/32	1/8	5/32	3/16	7/32	1/4	9/32	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16
3/16	3/32	1/8	5/32	3/16	7/32	1/4	9/32	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32
1/4	1/8	5/32	3/16	7/32	1/4	9/32	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8
5/16	5/32	3/16	7/32	1/4	9/32	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32
3/8	3/16	7/32	1/4	9/32	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16
7/16	7/32	1/4	9/32	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32
1/2	1/4	9/32	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32	3/4
9/16	9/32	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32	3/4	25/32
5/8	5/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32	3/4	25/32	13/16
11/16	11/32	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32	3/4	25/32	13/16	27/32
3/4	3/8	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32	3/4	25/32	13/16	27/32	7/8
13/16	13/32	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32	3/4	25/32	13/16	27/32	7/8	29/32
7/8	7/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32	3/4	25/32	13/16	27/32	7/8	29/32	15/16
15/16	15/32	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32	3/4	25/32	13/16	27/32	7/8	29/32	15/16	31/32
4/4	1/2	17/32	9/16	19/32	5/8	21/32	11/16	23/32	3/4	25/32	13/16	27/32	7/8	29/32	15/16	31/32	4/4
1/32	1/64	3/64	5/64	7/64	9/64	11/64	13/64	15/64	17/64	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64
3/32	3/64	5/64	7/64	9/64	11/64	13/64	15/64	17/64	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64
5/32	5/64	7/64	9/64	11/64	13/64	15/64	17/64	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64
7/32	7/64	9/64	11/64	13/64	15/64	17/64	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64
9/32	9/64	11/64	13/64	15/64	17/64	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64
11/32	11/64	13/64	15/64	17/64	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64
13/32	13/64	15/64	17/64	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64
15/32	15/64	17/64	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64	47/64
17/32	17/64	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64	47/64	49/64
19/32	19/64	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64	47/64	49/64	51/64
21/32	21/64	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64	47/64	49/64	51/64	53/64
23/32	23/64	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64	47/64	49/64	51/64	53/64	55/64
25/32	25/64	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64	47/64	49/64	51/64	53/64	55/64	57/64
27/32	27/64	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64	47/64	49/64	51/64	53/64	55/64	57/64	59/64
29/32	29/64	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64	47/64	49/64	51/64	53/64	55/64	57/64	59/64	61/64
31/32	31/64	33/64	35/64	37/64	39/64	41/64	43/64	45/64	47/64	49/64	51/64	53/64	55/64	57/64	59/64	61/64	63/64

**Source:** Department of the Interior, Bureau of Indian Affairs, Phoenix area office. 1980. *Tribal Enrollment*. Washington: Government Printing Office.

**Note:** To determine the degree of blood, find the degree of one parent in far left column and degree of blood of other parent in top row; read across and down. \*Zero degree of Indian blood indicates a non-Indian parent.

On the North American continent, blood quantum (or blood ancestry) has its roots in the discourse of colonialism. The concept of “degree of blood” or the threshold of a fractional amount of blood was documented as early as 1705 in Virginia in a case that disallowed persons to testify in court or hold public office if they had ancestors to the fourth generation that were “Negro” or Indian (Virginia Slave Act IX of 1705, Chapter IV, p.250-52, Statutes at Large). Blood quantum rapidly extended to remove voting rights and interracial marriage throughout the states (Forbes 1988), and has been used for over 300 years to propagate a race-based notion of identity—one that justifies the “singleness of purpose in...the unrelenting demand for [N]ative land and resources” (Nagel 1996:3).

It has only been since the early 20<sup>th</sup> century that blood quantum became salient in *defining* Indian identity and tribal membership (Meyer 2004; Spruhan 2006). Blood quantum is a slippery slope. If Natives marry non-Natives, any potential children born will have reduced blood quanta. This may sound innocuous; however, it could jeopardize the children’s federal and tribal status as an Indian. Even marriage or procreation between Natives of different tribes can potentially negate any legal identity.

Also, the amount of blood quanta required for membership of each tribe may be combined with other requirements, like residency or parental heritage. A child born of two Native parents could literally be considered ethnically or culturally Indian, but not be a member of any tribe. For example, the Santa Clara Pueblo requires patrilineal heritage, but the Seneca tribe requires matrilineal descent (Garrouette 2003). 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 federally recognized tribe—*even if the parents are full-blood members of their tribes.*

And while race is a social construct with historical undertones of violence and oppression (Forbes 1988; Meyer 2004; Nagel 1995; Snipp 1992; Spruhan 2006), some scholars still believe that blood quantum or ancestral descent is essential to Indian identity, advocating for blood quantum or biological ancestry and maintaining that culture is determined by it. I argue this position further embeds *racial* identity and the internalization of a racialized identity.

Mihesuah (1998) contends that blood and ancestry are crucial to the development of an American Indian identity. She insists that blood, parentage, and ancestry all *symbolize* the Native identity. Fogelson (1998) echoes the sentiment that blood is a symbolic of *Indianness*, and although constructed through colonialism, is fundamental to Indian identity. Krouse (1999) maintains that blood and descent are used for identity formation among urban Indians, especially when they have lost ties to their tribal communities. She argues that urban-based Indians use the concept of blood quantum and descent to legitimize their access to cultural knowledge in order to participate in the urban pan-Indian community. Snipp (1988:31) disagrees, stating, “It is misleading to suggest that a handful of biological characteristics can meaningfully define the bounds of the American Indian.”

### **Critique**

Constructivist theories propose that race and ethnicity is fluid. And while ethnic groups may be fluid, I argue that racial groups tend to have less plasticity in their boundaries because of the rigidity of physical appearances, like skin tone, hair texture, and eye color. Race has great social meaning for society, at large. Stereotypes, stigma, and beliefs are assigned racially; yet, scholars still tend to discuss the concepts as

intermingling. Some believe that it is preferable to discuss the racial and ethnic identity as one model “rather than attempting to separate the two concepts artificially” (Oyserman and Oliver 2009:128). I contend that, as previously demonstrated, these concepts are not separated “artificially” for the American Indian. To reduce race to ethnicity is to deny the sociopolitical formation of a racial identity and the subsequent distinctiveness of racial oppression (Buechler 2008). Race must be seen as an independently constructed social reality with independent sociological implications.

Cerulo (1997:387) defines the social constructionist approach to identity as one that “rejects any category that sets forward essential or core features as the unique property of a collective’s members ... [thus] every collective becomes a social artifact—an entity molded, refabricated, and molded in accord with reigning cultural scripts and centers of power.” Citing seminal works in race and ethnic studies, Cerulo takes issue with the framework of social constructionism, after examining its application in racial classification, racial identity, situational ethnicity, symbolic ethnicity, and ethnic identity shifts (e.g., Alba 1990; Balibar and Wallerstein 1991; Davis 1991; Nagel 1995; Waters 1990). Cerulo (1997) feels it is too simplistic—arguing that the constructivist paradigm simply catalogues the process of identity construction. Other scholars claim social constructionism ignores the role of power and community in identity formation and shifts (Cerulo 1997; Calhoun 1995).

Bonilla-Silva (1997) also critiques Omi and Winant’s racial formation theory. He argues that Omi and Winant’s theory focuses too closely on an idealistic view of race and culture ideology. Instead, Bonilla-Silva (1997:467) promotes a framework of *racialized social systems*, which provides not only a structural view of race but also a “theoretical

apparatus necessary to describe how this structure operates.” Bonilla-Silva (1997) clarifies the concept of structure as the network arrangement among people concerning the allocation of socially meaningful characteristics. Within Bonilla-Silva’s framework (1997), societies use racialized social systems that reward socially constructed race differentials—economic, political, social, and psychological—at all societal levels. Consequently, a hierarchical system results and racial contestation is expressed at both the individual and collective level.

Other scholarship suggests conceptualizing the racial experience as three constructs—“*racial identity* (an individual’s self-understanding), *racial identification* (how others understand and categorize an individual), and *racial category* (what racial identities are available and chosen in a specific context)” (Rockquemore, Brunnsma, and Delgado 2009:27). They contend that viewing the racial experience as more than one-dimensional can bring clarity to the complexity of the process of racial identity development by focusing on the level of interaction and context of identity. Through this lens, the ongoing processes that maintain racial identity as a means for superiority or subordination can be identified and questioned, resulting in a deeper understanding of the sociological impact of a racial identity.

Identity construction, maintenance, ascription, and attribution are indicative of the social and cultural discourse of our society. While the literature has brought forth a great amount of study toward ethnic identity, additional development of the study of the construction, application, and maintenance of racial identity is needed. Assigning *race* has functioned to impart meanings of underlying power and prejudice. A designation of

non-white has yielded social meanings of inferiority historically (Bonilla-Silva 2003; Cornell and Hartmann 1998).

### **Creation through Historical Frames and Legislative Themes**

This section provides an overview of the social construction of the American Indian Legal Identity through a historical context and legislative frames by which it was constructed. Over the last 500+ years, a negative discourse has been created to describe and subjugate Indigenous peoples in the United States. By exposing the assumption of the ideology of Euro-American, androcentric hegemony philosophy that privileges some while subjugating others, the exclusionary practices that have shaped the construct itself are examined.

In particular, I focus on the official criteria required for legal identity and the role of Federal Indian Policy in the determining the ability to claim an American Indian Legal Identity. I also examine the social construction of the American Indian tribe. Extensive legislation has contributed to the idea of legal status, but in this section, I emphasize specific legislation that socially constructed the two major phenomena of American Indian Legal Identity: (1) federal recognition of the tribe and (2) tribal recognition of the individual Indian.

Burr (2003:23) contends that a macro social constructionist approach “acknowledges the power of language derived from or related to material or social structures.” In fact, racial themes within legislation accompany the social reality of the subordination of the Native American and the superordination of the dominant, white culture. Fundamentally, identity for Indigenous peoples is more than a choice or ascription because of the legal, sociopolitical dynamic that accompanies it. American



Indians not only occupy an ethnic and racial identity, they acquire a *legal identity* through the verification of Indian blood (also known as a blood quantum), which is documented by the U.S. government. Native Americans with CDIB cards have legal rights as designated by federal law.

Bourdieu (1991:42) describes law as “an act of social magic which works.” In truth, federal and state legislation and tribal policy have all played a part in the construction of today’s understanding of Native American identity and American Indian Legal Identity. Spruhan (2006:2) argues, “Classification as an Indian or non-Indian or a member Indian or non-member Indian is central to jurisdictional questions in Indian law, as both Congress and the Supreme Court demarcate federal, tribal and state authority on Indian lands based on an individual’s status. Further, such classification determines eligibility for a host of tribal rights and federal benefits.”

Legal edict is so authoritative and dominating that Bourdieu (1991:42) compares law to God because it (law) has the same power to *speak things into being*.

Legal discourse is a creative speech which brings into existence that which it utters...In other words, it is the divine word, the word of divine right, which...creates what it states, in contrast to all derived, observational statements, which simply record a pre-existent given. One should never forget that language...derives...power to produce existence by producing the collectively recognized, and thus realized, representation of existence...

God’s ability to speak things into existence is drawn from Romans 4:17 (New King James Version): “...God, who gives life to the dead and calls those things which do not exist as though they did.”

Therefore, classifications and representations are used “to impose the legitimate definition of the divisions of the social world and, thereby, to *make and unmake groups*” (Bourdieu 1991:221-222). Within this vein, contemporary literature commonly

acknowledges that race is socially constructed and altered by social institutions and historical influence (Omi and Winant 1994). Accordingly, the racial classification of the Native American has emerged out of the collective phenomena of sociohistorical forces, especially legislative acts (e.g., the European *discovery* of America, the U.S. Constitution, and *Federal Indian Policy*). Omi and Winant (1994:55) posit that we must understand race as a dynamic process that is “constantly being transformed by political struggle...[And] racial categories are created, inhabited, transformed, and destroyed.”

But even in light of this theoretical promise, Native Americans have yet to escape the artifact of racial categorization because they face a particular dilemma. Garrouette (2001:224) recognizes the uniqueness of the racialization of American Indians within the theory of racial formation “from other twenty-first-century racial groups in the extent to which their racial formation is governed by *law*....” In other words, American Indian identity is defined, determined, and regulated by both federal and tribal law—legislative powers that *name* Indian identity as authentic, or not.

### *Federal Indian Policy*

The construction of a “legal” identity for the American Indian is relatively young, originating in the assimilationist period of Federal Indian Policy from 1871-1928 and reaching institutionalization with the Indian Reorganization Act (IRA) of 1934. With the expansion of the federal government, the *function* of the legal status of American Indians serves to determine *who is to be excluded* from the scope of federal legislation through ethnological data or race-based definitions. An overview of the Federal Indian Policy and its historical eras illustrates the frames used for the justification for racializing and subordinating Native American groups (Table 3).

**Table 3. Federal Indian Law and Subsequent Themes of Subjugation**

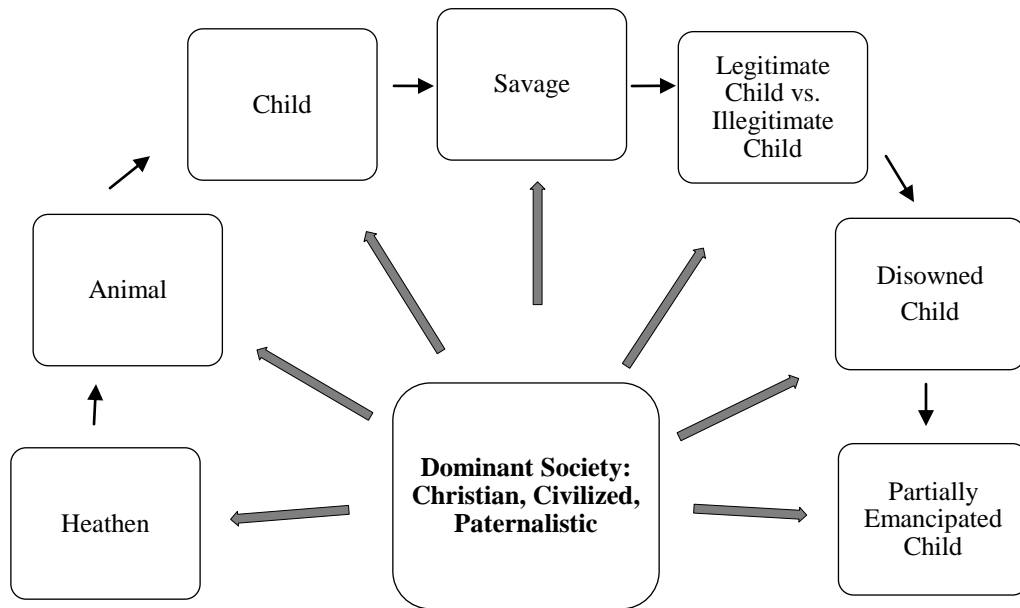
<i>Historical Eras</i>	<i>Policy</i>
<b>Colonial Period: 1492-1774</b> <u>Theme:</u> Christian versus Heathen	Treat Indian tribes as sovereign governments. Duty to spread Christianity and civilization to Indians.
<b>Confederation Period: 1774-1789</b> <u>Theme:</u> Human versus Animal	Keep Indians neutral in the War against England. Deal with tribes diplomatically and sent treaty negotiators and gifts to win tribes' support.
<b>Trade and Intercourse Era: 1789-1825</b> <u>Theme:</u> Parent versus Child	Institute colonial tradition of a political relationship of sovereign-to-sovereign government and treaties. Placed sole power of Indian affairs with Congress.
<b>Removal Era: 1825-1850s</b> <u>Theme:</u> Parent versus Child	Remove and relocate Eastern and Pacific Northwest tribes to Indian Territory. Utilize treaty revisions—tribes cede contested lands, move further west—promise new lands are forever and government will protect them.
<b>Reservation Era: 1850-1887</b> <u>Theme:</u> Civilized versus Savage	Removal to Indian Territory is impractical. Separate Indians from society to remote reservations to protect, confine, and civilize Indians.
<b>Allotment and Assimilation Era: 1887-1934</b> <u>Theme:</u> Civilized versus Savage	Impose American and European forms of land ownership and farming lifestyle on Indians by dividing tribally owned lands to individual Indians. Outlaw tribal government, religion, and language.
<b>Indian Reorganization Era: 1934-1940s</b> <u>Theme:</u> Parent versus Child ( <i>Legitimate Child versus Illegitimate Child</i> )	Impose American forms of government /judicial systems on tribal governments. Inhibit any traditional tribal governments and cultures.
<b>Termination Era: 1940s-1961</b> <u>Theme:</u> Disownment of Child	Complete reversal of federal policy—terminate federal/tribal relationship, terminate treaty rights, assimilate and integrate Indians. Call for repeal of IRA. Terminate legal relationship between 109 tribes and the U.S.
<b>Self-Determination Era: 1961-Present</b> <u>Theme:</u> Parent versus Child	Refusal to terminate any more tribes' legal standing with the federal government. Invest in tribal programs / infrastructure through Great Society's poverty programs. Allow tribes to contract for distribution of federal services within their political boundaries.

In Article I of the United States (U.S.) Constitution, the Indigenous peoples of North America were singularly racially *classified* as *Indian* Tribes. In fact, courts have ruled that race is an essential element of *Indianness* (Deloria 1981; Nagel 1995; 1997; O'Brien 1991; Snipp 1989). At the institutional level, American Indians are the only race specifically addressed in the U.S. Constitution, and they “continue to have a separate legal status from that of other Americans” (Snipp 1992:352). There are segments of the federal government solely designated to address legal reparations and rights of the Indians (e.g., Indian Health Service, Indian Affairs, Bureau of Indian Education) (Leibler 2004; Snipp 1989, 1992).

Variations in Federal Indian Policy have been inconsistent and often contradictory as clearly established in the construction of an American Indian Legal Identity. 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 and most use a one-quarter blood quanta criterion (Garrouette 2001; O'Brien 1991). Russell (2008:2) contends that the deconstruction of the discourses of treaties exposes their dynamic and paternalistic nature, asserting that treaties “legalized the usurpation of lands and resources...[because] the US government wielded almost complete power during negotiations, which forced the Indians' hands.” Of course, many Natives struggled against the authority presumed by the U.S government. As early as 1785, Corn Tassel (as quoted in Nabokov 1991:122-23), a Cherokee Elder, questioned the legitimacy of the U.S. usage of treaties, stating, “Suppose in considering the nature of your claim...under what kind of authority, by what law, or on what pretense [does the U.S. government make] this exorbitant demand of nearly all the lands we hold?”

Prior to the 1820s, the U.S. had entered into 380 treaties with Indian *tribes*, and thus, had validated the tribes as *sovereign nations*, recognizing them as legitimate entities capable of entering into treaties with government-to-government status (U.S. Senate 1999). The U.S. negotiated with Indian tribal governments through official government-to-government treaties and recognized the tribe's control over their citizens, territories and as the rightful owners of valuable resources.

Miller (2008:6) clarifies the federal government's motives in dealing with the Indians so *equitably* during this period—before 1820—was “an attempt to keep them neutral in the War against England and even to recruit tribes to fight for the new American government.” There was, however, conflict occurring between the colonists and Indians, and the government had to be seriously concerned with keeping the peace. Because of the weakened state of their armed forces and a lack of money that would be required to fight thousands of Native warriors, the federal government desired to avoid warfare and keep the American colonists' fear and hatred toward Natives at bay (Miller 2008). In spite of any appearance of goodwill, Miller (2008) argues that, in actuality, the attitude towards Indians was exemplified by General George Washington's “Savage as the Wolf” argument to Congress in 1783. Washington reasoned that it was unnecessary to waste tax money and citizens' lives fighting against tribes because the advancement of society would drive the Indian away, as it had the animals. Through the natural progression of the expanding frontier, cutting down the forests, and establishing farms and towns, just as the animals disappear and die through the advancement of white civilization, so would go the “Savage as the Wolf” (Miller 2008:6-7).



**Figure 3.** An illustration of historical themes within federal legislation of the dominant society versus the Native American.

In his first annual message to congress in December 1829, President Andrew Jackson declared that the policy of the federal government had been to “introduce among them [Indians] the arts of civilization ... [and] though lavish in its expenditures upon the subject, Government has constantly defeated its own policy, and the Indians in general ... have retained their savage habits” (Prucha 1990:47). The idea of “civilizing” the Native was long used in the desire to Christianize the Indigenous people, beginning with the use of early Roman Catholic canon law, and continued by Puritan colonizers from the late 16<sup>th</sup> century on. Williams (1990) describes European strategies to facilitate the legitimacy and authority of the “savage” frame. With the establishment of the Office of Indian Affairs in 1824 (renamed the Bureau of Indian Affairs in 1849), the federal government began to work to “civilize” the Native. At this time, the agency functioned only to force the assimilation of the Native Americans into the Euro-American, androcentric culture—

to encourage the adoption of cultural characteristics like Christianity, work ethic, and paternalistic head of household upon the Native Americans.

From 1832 to 1870, federal policy invoked the relocation of many tribes from their native lands, confining them to reservations or other lands through treaties. After 1871, the U.S. government completely stopped making treaties with tribes to further force assimilation of individual Indians into white society—another clear attempt to destroy Indian cultural, political, and economic structures (Deloria 1969; Thornton 1987). Then from 1878-1940, American Indian children were forced to attend federally operated boarding schools (Brave Heart and DeBruyn 1998). Through the coercion of beatings, cessation of rations and supplies, and incarceration of their parents, the children were removed from their families and raised without the benefit of culturally normative role models (Brave Heart and DeBruyn 1998; Noriega 1992; Unger 1977). Scholars argue that “the destructive and shaming messages inherent in the boarding school system ... were that American Indian families are not capable of raising their own children and that American Indians are culturally and racially inferior” (Brave Heart and DeBruyn 1998).

*Establishing Legitimate Indians.* In order to weaken tribal influence over Indian individuals, Congress passed the General Allotment Act or “Dawes Act” of 1887, which in effect, removed communal land from the tribes and portioned it out to individual Indians. This was accomplished through a system of tribal enrollment, identifying which eligible Indian adult members were to receive allotted land (Anderson and Lueck 1992; Cohen 1942; LaVelle 1999; Prucha 1984).

The U.S. began taking a federal census of all citizens in ten-year increments in 1790. The Census Records for 1790-1850 did not include a category for American

Indians because they were not citizens. For Native Americans to be listed from 1790-1850, they would have been living in a white or black settlement. And in those cases, the Natives would have been listed as white or black—with black being the most obvious choice for the census taker (Snipp 1988). In 1860, American Indians were included if they paid taxes. In 1870, non-tax paying Indians were added, but it was not until 1890 that anyone living on a reservation was added to the U.S. Census. Unfortunately, the 1890 U.S. Census was destroyed by fire. The 1900 U.S. Census is the first to include Indians both on and off the reservation.

Notably, the General Allotment Act of 1887 accomplished the task of excluding thousands of Indians from their tribes. Indians were subjected to legitimization of their belonging within the tribe, sometimes resulting in tribal factions—individuals that received both an allotment of land and a legal status by certification of “Indianness” and others that rejected the allotment policy (Debo 1941, 1984; Garroutte 2003; Green 1982; Haring 1990; Hamill 2003). Tribal councils decided who was eligible for enrollment, but did so under the direct supervision of federal superintendents (Harmon 2001). Indians could be (and were) excluded from enrollment regardless of their standing within the tribe.

The “Dawes Commission” was actually organized in 1893 to accept tribal applications from members of the tribes who resided in Indian Territory (U.S. Department of Interior 2010). The Dawes Roll is a tribal membership roll created by Congress for each of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole tribes. Enrollment began in 1883 and closed in 1907 with over 101,000 names (over 250,000 applied), but in 1914 Congress added 312 more members (Cohen 1988; Prucha 1986).



The Guion Miller Roll was completed in 1910, listing those who were Eastern Cherokee during the Treaties of 1835-36 and 1845 or their descendants (Cohen 1988; Prucha 1986). Allotment continued until Natives gained U.S. citizenship with the passage of the Indian Citizenship Act of 1924 (Strickland 1986).

Allotment policy had devastating effects upon tribes (LaVelle 1999; Royster 1995). Strickland (1986:722) suggests allotment policy is “an example of legal cultural genocide.” Allotment ultimately cost the Natives more than two-thirds of their land, since the “surplus” land on reservations could be sold and opened up for non-Indian settlement. Limiting the allotted land from 40 to 160 acres per *qualified* person ensured that there were not enough Indians to meet the requirements in order to retain the original land base of the tribe, thus every tribe had a “surplus” of land. The Indian land base was legally reduced from 138 million acres to 48 million acres in less than 50 years (Collier 1934).

*Establishing Legitimate Tribes.* Europeans constructed the term “tribe” to indicate groups of Indians that shared similarities, such as geographical location or language; however, the original Native cultures were not static or homogeneous. They regularly traveled for harvesting, hunting, fishing, and ceremonial tradition. And Natives frequently migrated outside of their group of origin through intermarriage or clan custom, gaining memberships with other groups of different languages, cultures, and religions, often as a means of adaption and survival due to the ravages of depopulation (Calloway 2007).

The stage for the concept of federal recognition for tribal entities had been set in 1894 in the language of the comprehensive *Report on Indians Taxed and Indians Not Taxed in the United States* report, which documented the state of Indian Affairs regarding

the issue of the legal status of Indians. But it was the 1934 Indian Reorganization Act (IRA) that firmly established the concepts of *federal acknowledgment* as the defining criterion in recognizing the authenticity of a tribe and *blood quantum* as the standard for tribal membership.

From the ratification of the IRA forward, only Indian tribes which are *recognized* are considered eligible to receive services: “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” (Quinn 1990:356). With this Act, “the dichotomy or bifurcation” of American Indian tribes into federally *recognized* and non-recognized categories was clear and the term “recognition” had at last assumed a “jurisdictional” or legal meaning (Quinn 1990:354).

The concept of recognition of tribal groups as legitimate tribes became especially poignant in the 1950s and 1960s. In the name of assimilation, and with the leverage of federal recognition in hand, the U.S. began to pursue a strategy of *termination* of tribes in the 1950s. The policies of termination meant that Indians and tribes would be “freed” from the supervision of the federal government and no longer exist as tribal communities on reservations (Digital History 2008). Indians were to become full U.S. citizens without tribal citizenship, and assume the responsibilities of federal and state taxes and laws.

From 1953 to 1962, a total of 109 tribes and a minimum of 11,000 Indians were terminated from their legal status as “recognized” (U.S. Senate 1999; Wilkins 2006). Thousands of Natives that previously had held a legal status were no longer considered legitimate Indians. And with the end of federal recognition of *being* Indian, all the federal aid and support services were terminated, as well. The policy of termination had

disastrous effects on the Native community (Wilkins 2006), and was overturned in 1975 and replaced with the policy of self-determination.

The policy of self-determination—for the purpose of federal law—authorizes tribal governments to administer federal programs and services for their members, as well as construct membership criteria for their tribes (U.S. Senate 1990; Wilkins 2006). The subtext here is important for American Indian Legal Identity. Wilkins (2007:42) explains:

The power to define—what is a tribe, who is an Indian, what constitutes Indian Country, which group gets recognized... On one hand supporting the right of indigenous polities to exercise self-determination, the United States on the other hand still insists that it has the power and the right to trump important tribal governmental decisions regarding identity and has shown through its history that it will so act if it deems it necessary to further its own economic, political, and cultural interests.

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.

*Federal Recognition of the Tribe.* Today, American Indian tribes are defined by the Federal Acknowledgement Process. To be legitimated as a tribe by the federal government is no easy feat. Most of the 564 federally recognized tribes today were recognized historically through legal events, such as congressional legislation, federal administrative actions, or federal court decisions. The Assistant Secretary of the U.S. Department of Interior-Indian Affairs (1994) states there are “three ways in which an Indian group may be federally recognized: 1) By Act of Congress; 2) By the administrative procedures under 25 C.F.R. Part 83; or 3) By decision of a United States court.”

Accordingly, in 1978, with revision in 1994, the U.S. Department of Interior established regulations for the federal acknowledgement process. Any group intent on

federal recognition must meet seven strict criteria as set forth in Part 83 of Title 25 of the Code of Federal Regulations, *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*. Whether the group meets these *federally established* criteria is decided by the Office of Federal Acknowledgment *within* the Office of the Assistant Secretary—Indian Affairs of the Department of the Interior (DOI). Some would argue that there is a conflict of interest, while others complain that the process sets up unachievable standards (Garrouette 2003).

The seven criteria stipulated (as cited by the U.S. House Committee on Government Reform in 2004) are:

1. Sources outside the group identify the group as Indians;
2. The group has continuously existed as a community since its first contact with non-Indian people;
3. The group can demonstrate a continual authority system in which there are leaders and followers;
4. The group has formed a written constitution or government documents to be used if the group receives recognition;
5. Tribal members can show direct genealogical descent from a group that existed before contact with non-Indians;
6. The majority of group members are not members of an existing federally-recognized group; and
7. The group's federal recognition has not already been terminated by Congress.

These criteria are heavily disputed and contested as a means to distinguish tribal authenticity (Miller 2004). For example, having a historical relationship with previous European countries or the U.S. through documented treaties does not necessarily qualify tribal entities for recognition. Scholars contend numerous tribes have been declared as assimilated, and therefore, are no longer distinct entities that meet the criteria (Garrouette 2002; Miller 2004). Subsequently the real paradox of American Indian identity *as a legal status* is that even though tribes set the criteria for tribal membership, the federal

government acknowledges if a tribe is valid and deserving of federal recognition.

Lawrence explains, “Those Indian nations not federally recognized are frequently seen as ‘extinct’ within the dominant culture” (2003:18).

This is salient for the Native individual because in order to establish a legal identity, Indians must be distinguished at two levels: *first*, at the individual level through citizenship within a specific Indian group, and *second*, at the collective level within an Indian group that constitutes an Indian tribe. In other words, the Indian group must have the attributes required to be recognized or acknowledged by the federal government as a *tribe* for its citizens to be recognized legally as American Indians.

Overall, the bureaucratic process by which a tribe is federally recognized is “time-consuming, expensive, and politically charged, as well as demeaning...” (Hauptman 1995). Miller (2006) concurs, stating that unrecognized groups or *tribes* complain that process is costly (at least \$200,000 to petition and follow through) and time-consuming (with an average of ten years from start to finish). From 1978 to 1999, the BIA’s Federal Acknowledgment Process had “recognized” only 15 tribes and denied recognition to 19 groups out of 231 groups seeking recognition (Miller 2006; Wilkins 2009). In 2000, the BIA relinquished its administrative power to acknowledge tribes to the newly created Office of Federal Acknowledgment within the Office of the Assistant Secretary of the U.S. Department of Interior (Wilkins 2009).

To sum, in order to be a *legal* Indian, the Native must be a member of a *legal* tribe, one that the federal government *recognizes* as legitimate. Some American Indian scholars believe this is an impossible situation, expressing contempt for the U.S. government’s history of ignorance and the political implications of the legalization of the

American Indian (Deloria 1969, 1981). The federal government “has never really understood what it means to be Indian and even less about what it means to be tribal” (Sandy Marie Angl s Grande 2000:474).

### **Tribal Reification**

Cornell (1988:183) posits that the actual problem for Natives lies in the fact that when they act within the American legal or political system, “they facilitate [the] action” of the dominant society against them within the system. American Indians are required to participate in the very structure that dealt genocide to them in the forms of war, relocation, disease, starvation, and the destruction of tribal culture. Acquiring an American Indian legal status is framed in racial terms, not ethnicity. Two-thirds of federally recognized tribes require *a blood quantum* (a degree or percentage of Indian blood) and the other one-third require *lineal descent* (proof of blood ancestry from a family member listed on the original Indian census rolls or as a direct descendant of another tribal member) for membership (Garrouette 2003; Thornton 1997).

Blood quantum or biological definitions of identity are entangled with an essentialist view of *race*, promoting the idea that somehow there are objective, genetically based differences between groups of people (Garrouette 2003; Omi and Winant 1994). Research shows that a majority of tribes have adopted legal status as the means for identifying who may legitimately claim to be Indian, even though legal identity for the American Indian was clearly created by the dominant society (Cornell 1988; Garrouette 2001, 2003; Hamill 2003; Nagel 1997; Snipp 1992; Wilkins 2009). By adopting the blood quantum/lineal descent definition of Indianness, tribes are advocating the concept of race—presupposing that Indians possess a fundamental, biological, and

*measurable* identity. Forbes (1988; 1993) asserts that an identity based upon Indian race was formed and applied within the context of violence and power and the desire for Indian resources. And this remains today as an exclusionary strategy for systematically reducing the political and economic power of Indians (Hamill 2003; Strickland 1998; Tsosie 2005).

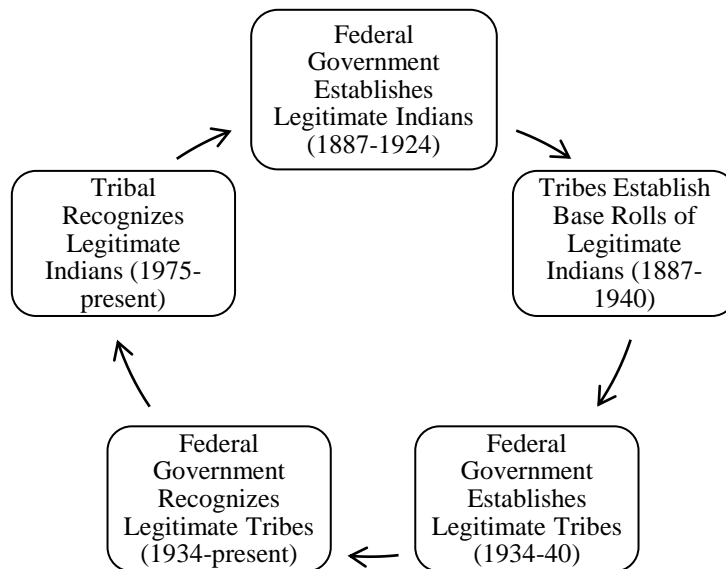
### *Tribal Recognition of the Individual*

Tribes have the legal right to establish membership criteria. This tribal right was determined in *Waldron v. United States*, 143 F. 413 (1905) and later clarified in *Martinez v. Santa Clara Pueblo*, 540 F.2d 1039 (1976). Federally recognized tribes have the right to create their own legal definition of identity for the purpose of citizenship within the tribe (Quinn 1990). Once a tribe is recognized, the Office of Indian Affairs and the tribal government determine who is eligible for membership, creating a base roll. As previously stated, federally recognized tribes require the social construct of racial identity to gain membership using either the blood quantum method or a lineal (direct descent) relationship with other tribal members, or both. If an individual meets the criteria for tribal membership, s/he will be issued a tribal membership card and/or a Certificate of Degree of Indian Blood (CDIB) card. This card is issued by the DOI through the federally recognized tribe.

Obtaining a tribal membership can be quite difficult. Whereas federal legislation makes it complicated, expensive, and time-consuming for tribes to become recognized, ironically, the individuals negotiating a legal identity through tribal variations and distinctions may find it just as precarious. The tribe's ability to determine citizenship allows them to restrict the allocation of many important resources (Garrouette 2003). And

each tribe may vary in its requirements. Some tribes are willing to increase the number of enrolled tribal members, but others have been exclusive, expressing concern about further segmented assimilation of Indians. Means by which an individual can be restricted from the tribe include but are not limited to blood quantum, recognition of parental descent, cultural participation, and residential status.

For example, the Cherokee Nation has removed the blood quantum requirement for membership, only requiring proof of lineal descent from an ancestor who was enrolled on the Dawes Roll during 1899-1906. The Confederated Salish and Kootenai Nation tightened their membership requirements in 1960 and established that only those born with a one-quarter or more blood quantum could be tribal members (Trosper 1976). Tribal citizens voted to uphold this requirement on January 18, 2003, by a ratio of 4:1 (Selden 2003).



**Figure 4.** Illustrating the cyclical pattern of establishment and recognition by the federal government of legitimate American Indians and Indian Tribes and the Tribal recognition of legitimate Indians.



## **Contestation through Self-Identification**

American Indians without legal identities do not cease to self-identify. According to the U.S. Census Bureau (2003), over 4.4 million people self-identified as having American Indian ancestry; however, the U.S. Department of Interior (2003) reports that only 1.9 million people were actually enrolled as members of federally recognized tribes. This discrepancy of 2.5 million people identifying as American Indians, but not participating in tribal membership demonstrates the increasing number of people self-identifying as Native when the requirement of authentication is unattached (Passel 1976, 1986, 1997; Snipp 1989; Thornton 1997). As demonstrated by the census data, the population of self-identified Indians is increasing rapidly.

Why would someone identify as an Indian without a legal status? Scholars give numerous reasons, but I would argue that Federal Indian Policy is the best answer. There are 564 recognized tribes (Bureau of Indian Affairs 2010) and as many as 250 unrecognized tribes within the U.S (Miller 2006). This indicates a large population of people left without the validation of being “real” Indians—individuals that identify biologically, culturally and personally as Indians but have no legal identity because the tribe is unrecognized by the federal government. Tens of thousands of people were historically excluded through the assimilation, allotment, and termination eras of Federal Indian Policy (Deloria 1988; Garrouette 2003). Many were Natives that were born into or lived with their communities surrounded by cultural and personal affirmations of their identities. Further, the Indian Adoption project of the 1950s and 1960s placed hundreds of Indian children with white parents (Alexie 1996). Such individuals might classify *racially* as American Indian, but have no legal status.

Because many American Indians never applied for or were prohibited from the Dawes or other Indian census enrollment, there are descendants of these Natives who are not legally identified as American Indian. They may turn to self-identification without the benefit of a legal status. Self-identified Indians often point out that even though a Native may have legal status which requires a biological American Indian identity, this does not necessarily imply a cultural or even personal one (Garrouette 2003; Nagel 1997). They argue that Indianness is measured in terms of culture and commitment to the group (Nagel 1997). People who have no have biological claims to Indianness, but still identify culturally and personally because of a close association with a tribe—such as growing up on a reservation or being taken in by an Indian family—also turn to self-proclamation.

Self-identification is a sensitive subject among Natives, and perhaps the most contentious paradox faced by American Indians. Because the federal government requires a legal position, which ultimately comes through a biological or racial classification, self-identified Natives are often looked at with suspicion and skepticism by Indians with a legal status. But why would American Indians not want all Natives to have the same rights, benefits, and protections?

The literature illustrates a lack of knowledge about the construction of the American Indian Legal Identity could be a determinant factor in distrustful attitudes. Natives with legal status might believe that if someone is really an Indian, they should be able to get a CDIB card (Garrouette 2003). They may not realize the implications of the historical eras of the federal allotment and termination policies. Additionally, there are claims of ethnic fraud where “new” Indians discover their ancestry in an opportunistic fashion for the economic incentives set aside for Indians and of cultural encroachment

with the trend toward open cultural and sacred ritual participation with non-Indians serve to further divide the people who have already been divided (Grande 2000; 2004).

### **Summary**

This chapter addressed the theoretical issues of the social construction and complexity of an American Indian identity. I presented an overview of the social construction paradigm and racial formation theory. I also offered critiques of the constructivist stance on identity and the seeming detachment between the academic perspective and the practice of American Indian identity, especially as it pertains to the disregard of Native identity within a legal structure.

Finally, the sociohistorical context of legislative themes of American Indian Legal Identity was examined. I provided an overview of the social construction of the American Indian Legal Identity through a historical context and the legal frames by which it was constructed. In particular, the official criteria required for legal identity and the role of Federal Indian Policy in the determining the ability to claim an American Indian Legal Identity were explored. I also emphasized specific legislation that socially constructed the two major phenomena of American Indian Legal Identity: (1) federal recognition of the tribe and (2) tribal recognition of the individual Indian. Furthermore, the implications of contesting the use of legal identity through self-identification were considered.

The next chapter lays out the methodology used for researching how American Indians frame Legal Identity, how they interpret the impact of this social construct, and how Native communities, in general, defines Indianness.

## CHAPTER III

### METHODOLOGY

This chapter recounts the methodology used in this thesis. I utilize a qualitative methodology and a social constructivist research paradigm. I conduct semi-structured interviews with thirty participants located in Oklahoma, fifteen of whom possess an American Indian Legal Identity, and fifteen who do not. This research examines attitudes toward the legalized, racialized classification of American Indian identity, the lived experiences of having a legal or non-legal American Indian identity, and the conflict discovered about legal identity within the Indian community. In other words, this research examines the *meaning* of American Indian Legal Identity, as understood by the Native American participants in this study.

To explore these issues in the data, this study was guided by the following research questions:

- *How do American Indians—both legal status and non-legal status Natives—frame legal identity within their own lived experiences?*
- *How do Natives interpret the impact on their lives of the subsequent adoption of a legal identity by both tribes and individual Natives?*

**Table 4.** Descriptive Statistics of Participants

	Legal Identity		Non-Legal Identity	
	<i>N</i>	%	<i>N</i>	%
<i>Gender</i>				
Female	8	53.3%	9	60
Male	7	46.7%	6	40
<i>Average Age</i>		45.07		56.13
	<i>N</i>	%	<i>N</i>	%
21-29	3	20%	1	7%
30-39	4	27%	2	13%
40-49	1	7%	4	27%
50-59	3	20%	1	7%
60-69	2	13%	3	20%
70-79	2	13%	1	7%
80+	0	0%	3	20%
<i>Average Income</i>		\$24,853		\$26,713
	<i>N</i>	%	<i>N</i>	%
\$10K-\$19K	1	7%	5	33%
\$20K-\$29K	2	13%	4	27%
\$30K-\$39K	5	33%	1	7%
\$40K-\$49K	1	7%	3	20%
\$50K+	0	0%	1	7%
<i>Average Education</i>		Bachelor's		Some College
	<i>N</i>	%	<i>N</i>	%
Less than HS	1	7%	2	13%
HS Degree	1	7%	4	27%
Some College	2	13%	3	20%
Bachelor	7	47%	4	27%
Graduate	4	27%	2	13%

## Qualitative Research

Qualitative inquiry offers unique contributions to the body of knowledge concerning social phenomena. Creswell (2009:4) defines qualitative research as “a means for exploring and understanding the meaning individuals or groups ascribe to a social or human problem.” Qualitative methods emphasize personal experience, subjectivity, observations about natural behavior, and historical context (Schutt 2009). Further, the qualitative inquiry is meant to be reflexive, simultaneous, and interpretive (Maxwell 2005). It can be particularly appropriate for working with marginalized groups, giving

value and voice to their lived experiences (Marshall and Rossman 2006). The next section reviews the qualitative approach that guides this project with a summary of the constructionist paradigm and its ontological, epistemological, and methodological assumptions.

### **Research Paradigm**

Maxwell (2005) contends that it is critical to know within which paradigm the research is situated in order to acknowledge the underlying assumptions that guide the project. Accordingly, Denzin and Lincoln (2000:19) assert that all research is by nature interpretive and “guided by a set of beliefs and feelings about the world and how it should be understood and studied” Creswell describes the major elements of the constructivist worldview as understanding multiple participant meanings, social and historical construction, and theory generation. Creswell (2009) prefers the term “worldview” to paradigm because it encompasses more than philosophical assumptions. Rather, Creswell (2009:6) argues that a worldview addresses “a general orientation about the world and the nature of research that a researcher holds” as shaped by the beliefs and experiences of the researcher, and influences within the context of the research. (I continue to use the term paradigm, while understanding the overlap of both terms.) Consequently, the constructivist inquiry fits the philosophy, strategies, and intention of the interpretive research paradigm; it helps us understand a phenomenon as it is understood by those who are experiencing it.

Gergen (2008:15) further explains that the social constructionist approach “is principally concerned with explicating the processes by which people come to describe, explain, or otherwise account for the world (including themselves) in which they live.”

Social construction frames and articulates how we understand the terms of our world within historical and cultural specificity (Gergen 2008). The concepts of truth and reality are fundamentally dependent on the social processes that constitute the position of the person and the “meaning-making activities” in her or his life “because it is the meaning-making/sense-making/attributional activities that shape action (or inaction)” (Guba and Lincoln 2005:197).

Within any research paradigm are basic beliefs based on specific ontological, epistemological, and methodological assumptions (Creswell 2007, 2009; Denzin and Lincoln 2005; Guba and Lincoln 2004; Lincoln and Guba 2008; Neuman 2000). Ontology refers to the fundamental beliefs of the research paradigm about the nature of reality. The constructionist paradigm reflects an ontological relativism—that is, it presumes that social reality is subjective, multiple, and socially constructed (Denzin and Lincoln 2000; Gergen 2008; Schwandt 2000). It assumes there are “local and specific co-constructed realities” (Guba and Lincoln 2004:24; 2005:195). Constructivism rejects the objectivist idea of an existence of a singular reality that can be discovered through research (Schwandt 2000). Rather, knowledge is constructed in the context of dialectical interaction—*reality* is constructed through in social interactions between individuals and society. Within the constructivist paradigm, singular or multiple realities are no more or less legitimate than others but may be more or less knowledgeable or comprehensive—which means our constructions of reality can be altered and/or change (Guba and Lincoln 2004). Thus, these personal constructs of reality must be legitimized and honored by researchers (Charmaz 2006).

Epistemology refers to the relationship and position of the researcher to the research; thus, within the constructivist paradigm, epistemological subjectivity is assumed—that is, through collaboration and interaction between the researcher and participants, understanding and meaning is constructed (Denzin and Lincoln 2000; Gergen 2008; Schwandt 2000). Guba and Lincoln (2005:195) describe it as “transactional epistemology” with “co-created findings.” The constructivist paradigm builds on the assumptions of critical theory that knowledge is mediated and influenced by the values of both the investigator and the participants. Constructivism broadens its position by positing that not only is knowledge value laden within the actual research experience, but knowledge is, in effect, created through the subjective and transactional relationship of the researcher and the researched (Guba and Lincoln 2004:26-28).

Finally, the methodological focus of the constructivist paradigm is naturalistic—methods used to obtain knowledge occur in the natural world (Denzin and Lincoln 2000). The methodology of the constructionist paradigm is both hermeneutical (interpretive) and dialectical (mutually formative process) (Guba and Lincoln 2005). Therefore, social constructs are interpreted and compared and contrasted “through the interaction *between and among* investigator and respondents” (Guba and Lincoln 2004:27; emphasis in original). Ultimately, the goal is to deconstruct and reconstruct to a “consensus construction that is more informed and sophisticated...” (Guba and Lincoln 2004:27).

To provide a comprehensive approach, a mapping process regarding three aspects was utilized: 1) an initial literature review that revealed assumptions and expectations, 2) a review of the cultural commonsense knowledge, and 3) a self-review of my preconceptions and experiences (Kvale 1996). The literature review identified “existing



descriptive, theoretical, and analytic categories...and key conceptual domains” with which I built my interview guide (Miller and Crabtree 2004:189). I discovered that most articles had broadly categorized domains of “real Indians,” “Indian as race,” “the politics of Indian benefits,” “Indian ethnicity,” and “blood quantum.” Other sources included tribal, census, legislative documents, and other historical artifacts. These records allowed for a sociohistorical perspective of the development of the American Indian Legal Identity. The cultural review consisted of speaking with people informally about language preferences and reading about recent issues regarding Natives in newspapers, online opinion articles, and tribal websites. This helped generate sociolinguistic preferences and a confidence that the participants were familiar with the terminology of the research topic. I address my self-review in Appendix I.

## **Method**

The primary data collection method was semi-structured interviews. This interview style has an open framework that allows for focused yet conversational communication that proves useful for collecting information about experiences, meanings, opinions, and interpretations. The interviews were conducted face-to-face, except when it would prove inconvenient for the interviewee. Seven of the interviews were conducted by phone. Phone interviews are not the ideal method, but the interviewee’s preference was always followed. I obtained verbal consent from each respondent (Appendix C; Appendix F). An information sheet describing the project was presented or mailed to each respondent (Appendix D; Appendix G).

Because the interviews were administered to American Indians only, the issue of terminology was important. Ethnicity is defined as an identity one gives oneself (Waters

1990), but race is still widely used among Natives today, and quite understandably, *sensitivity* was necessary. Most Native Americans used the term *Indian* more frequently than any other term. Legal and non-legal status was established by asking their tribe affiliation and if they are an enrolled member of their tribe. Since this project focuses on the meanings and representations of the Native experience toward the construction and application of the American Indian Legal Identity, it was necessary to provide a definition of American Indian Legal Identity to the participants. For the purposes of this research, a person has a legal identity if she or he is enrolled in a federally recognized tribe.

I created an interview guide with open-ended questions designed to elicit narrative responses and prompt respondents (Babbie 2007; Miller and Crabtree 2004; Rubin and Rubin 2005). The interview guide (Appendix E; Appendix H) consisted of three main parts—general information, general Native American issues, and legal identity issues. Main questions are meant to “open a space for discovering what others (and yourself) think and feel about some aspect of the research topic” (Miller and Crabtree 2004:192). The questions were open-ended to avoid influencing participants’ responses, but were directed to what the participants have experienced in terms of a legal identity and their feelings, beliefs and convictions about American Indian Legal Identity (Creswell 2007). I used prompts to build rapport and keep the conversations flowing, once established (Rubin and Rubin 2005). Mini-questions and probes were also necessary to elicit the details, depth, and nuances of the interviews, but also maintain direction of the interview (Rubin and Rubin 2005).

Participants were recruited between June 2009 and April 2010, initially through flyers and advertisements in Native newspapers, and then by word of mouth (Appendix A and B). Purposeful and snowball sampling were utilized for recruiting participants for the semi-structured in-depth, individual interviews. Purposive sampling was necessary because the participants needed to identify *ethnically* or *racially* as Native Americans in order to relate their information-rich experiences pertaining to American Indian Legal Identity. A purposive sample of a maximum of thirty American Indian individuals was selected as the most useful and representative for the purpose of the research (Babbie 2007; Schwandt 1997). Snowball sampling is a method of expanding the sample by asking one informant or participant to recommend others for interviewing (Babbie 2007; Neuman 2000). Natives who claimed a legal identification sometimes knew family or friends who did not claim a legal identity. Snowballing helped me find Natives that might otherwise not have had the opportunity to speak about such an important issue to their lives.

The sample consists of thirty American Indian participants that have an established legal identity and others who claim an American Indian identity through biological, cultural, or personal statuses, but not legal statuses (Table 4). Pseudonyms were assigned to each of the respondents to provide anonymity. Only adults 18 years of age and older who are able to communicate in English were included. My participant group consisted of thirteen men and seventeen women, ranging from ages 21 to 85 years. Eight of the women and seven of the men are legally identified, and nine of the women and six of the men are not. The small number of participants in this study enabled greater depth in the interviews and enabled my ability to manage the quantity of data that was

generated. On the other hand, this small of a sample size is also limiting. Occupations of these individuals are not disclosed in order to protect their anonymity, not were tribal affiliations. However, thirteen distinct tribes were represented within the sample, but if multi-tribal identification is counted, twenty-two tribal affiliations were mentioned.

Participants were informed that the study was voluntary and confidential, and that they could discontinue participation at any time. Basic demographic information was requested at the end of the interview, including gender, age, education, and income. There is an educational bias within this local Oklahoma sample (58% hold a college degree), but this cannot be helped due to the nature of the sampling processes. Each participant was interviewed once with the interviews lasting from forty-five minutes to one hour. Interviews were audio-taped with the verbal permission of the respondents, and written notes taken.

Each interview was transcribed verbatim for analysis. Transcription is “the complicated process of translating from oral discourse to written language” (Miller and Crabtree 2004:200). The style of transcription differs with the researcher and type of research (Kvale 1996; Miller and Crabtree 2004; Rubin and Rubin 2005). Within my research, I transcribed the interviews as precisely as possible, including any gestures, pauses, or other information that might influence the interpretation (Rubin and Rubin 2005). I also offered the transcript to the interviewee for verification. Ten of the interviewees chose not to look over the transcribed data, but the remaining twenty reported the data to be accurate to the best of their memories, except for the occasional word. When a word was changed, the new word was placed in parentheses next to the original word. None of the changed quotes were used.

**Table 5.** Descriptive Information for Interview Participants

<i>Pseudonym</i>	<i>Legal Identity?</i>	<i>Age</i>	<i>Gender</i>	<i>Education</i>
Janet	Yes	21	F	Some College
John	Yes	22	M	Bachelors
Joy	Yes	26	F	Graduate
Clark	Yes	26	M	Bachelors
Eva	Yes	30	F	Graduate
Lillie	Yes	30	F	Some College
Lisa	Yes	33	F	Bachelor
Bob	Yes	33	M	Bachelor
Teresa	No	34	F	Bachelor
Will	Yes	34	M	Bachelor
Melissa	No	41	F	Some College
Kim	No	44	F	Some College
Jennifer	No	45	F	Bachelor
Harriet	No	46	F	Bachelor
Grace	No	49	F	Some College
Violet	Yes	50	F	Bachelor
Gary	Yes	50	M	Bachelor
Mark	Yes	56	M	Graduate
Kent	No	58	M	High School
Ed	No	60	M	No HS Degree
Richard	No	62	M	High School
Ward	No	65	M	No HS Degree
Philip	No	65	M	Bachelor
Gertrude	No	69	F	High School
Tammy	Yes	70	F	Graduate
Mary	Yes	74	F	High School
Billy	No	76	M	No HS Degree
Sitchee	No	80	F	Graduate
Lee	Yes	84	M	Graduate
Sally	No	85	F	High School

## Data Analysis

I focus on three forms of analysis for understanding how we socially construct realities that create and justify our worlds: grounded theory, situational analysis, and frame presentation. Through the comprehensive use of these analyses, I then synthesized an in-depth, exhaustive description of the experiences about living with or without a legal

identity as a Native American. Maxwell (2005:96) emphasizes that qualitative analysis consists of more than coding categories (even though this is usually the main categorizing strategy), but beyond the interview transcripts “writing memos, developing coding categories, and analyzing narrative structure and contextual relationships are *all* important ... [to] *facilitate* [analytic] thinking...” I utilize interviews, memos written regarding the ongoing analysis, and self-reflexivity within the analysis.

Some narrative quotes are used to provide the essence of the themes identified. The construct of an American Indian Legal Identity was defined for each respondent (Appendix B and C). The first research question of this project inquired how legal identity is framed within the lived experiences of Native Americans. Built within the interview were questions that spoke directly to issues that are associated with possessing or not possessing a legal identity (i.e., tribal enrollment, blood quantum, lineal blood ties to enrolled ancestors, and the role of federal government). The responses illustrate how participants cognitively process an artificial identity that, although imposed, is now desired. The responses also elucidate the impact of this identity by describing personal meanings and emotions assigned to these symbolic instruments of Indianness namely, tribal enrollment and CDIB cards. Additionally, a definition of American Indian identity was explored from both perspectives—those that are legally identified as American Indian and those that are not, which I present as a framework of Indianness in the findings chapter.

### *Grounded Theory*

Within the grounded theory method, data collection, analysis, and theory participate in a reciprocal relationship (Creswell 2009). Maxwell (2005) distinguishes

between specific categories: 1) organizational—descriptive topics that may be established before the interviews, 2) substantive—descriptive emic units of the participants’ concepts and beliefs, and 3) theoretical—general or abstract etic framework derived from prior theory or from inductively developed theory. Emic research refers to concepts and categories developed from the participants’ own words (Maxwell 2005).

Etic research refers to concepts and categories developed from the researcher’s “prior analytic dimensions” (Maxwell 2005:98).

First, I read each transcript several times to get an overall feeling of recognition in order to identify patterns, causal flows, and intentions (Creswell 2007; Rubin and Rubin 2005). Each transcript was analyzed with a line-by-line coding for key words and phrases within the transcripts. This is known as *open coding*—identifying, naming, categorizing phenomena found in the text. I read each line, sentence, and paragraph, questioning the subtext of the statements, looking for what was being referenced. This involves labeling things, actions, relationships, and properties of those categories.

I then used *selective coding* by choosing a core category of American Indian identity, relating the other categories that had emerged to this category. My first coding frame sorted all cases into two legal identity categories—legally identified and not legally identified—which was established at the beginning of the interviews. Interviewees were asked, “Is your tribe federally recognized? Do you have a CDIB card, a tribal membership card, or both?” These questions were consistently asked to guard against assumptions on my part about tribal affiliation.

The second subdivision was based on the three categories: introductory information, general Native American issues, and legal identity issues. Concepts (ideas),

events (occurrences), and topical markers (laws, prominent people, and artifacts) surfaced and then clustered into core themes (clusters of meaning) (Rubin and Rubin 2005). Once core themes were recognized, more in-depth categorical and theoretical coding was applied (Babbie 2007; Creswell 2007). I used the sociological constructs found within my literature review as first order categories for my themes—ethnic identity, racial identity, and legal identity.

### *Situational Analysis*

I also use situational analysis to supplement basic grounded theory analytic approaches (Clarke 2005). Data coding must first occur as in basic grounded theory procedures, then situational mapping can begin. Clarke (2005:95) argues that situational maps build on basic social processes, by providing conceptual infrastructure that explicitly situates the phenomenon of interest in its broader situation(s). Situational maps can articulate basic elements or complex collectivities, and their positions and sites of activity (Clarke 2005).

I first created an abstract map that laid out the “most important” human and nonhuman elements that I had identified within my coding. Of course, this is counterintuitive within a constructionist paradigm; however, I did narrow my focus to a few dozen elements. Clarke (2005:95) states, “A messy map such as this is a perfectly reasonable way of working analytically, especially at the early stages of a project. In fact, for many of us, too much order provokes premature closure, a particular hazard with grounded theory.” Out of the messy, abstract map, I then created an ordered situational map by asking questions like: *Who and what things matter in the broad situation of legal identity? What discourses, ideas, and concepts shape how we think about—how we talk*



*about—how we frame—the nature of Indianness? What is the nature of a legal identity? What institutional and social forces and values are taken for granted and by whom? What is the subtext?* Clarke (2005:100) maintains that these types of questions both “produce the map and are produced by it,” in a reciprocal and interactive manner.

As I examined the situational map, I looked for particular discourses within cultural constructions, political bureaucracies, and social institutions. I examined the politics of identity, and I looked for assumptions of the context of the phenomenon of a legal identity. I looked at discourse through the metaphors we use to frame our lives. I examined how the categories that people used already existed within our culture. I tried not to take anything for granted.

#### *Framing Analysis*

I used a framing perspective to offer insight into how a specific idea—like Indianness or Legal Identity—becomes a collective belief. Framing functions to cognitively separate and enclose circumstances, actions, or objects. Frames are the boundaries that delineate the various “realms of our experiences” (Zerubavel 1991:17; Goffman 1974; 1981). Goffman (1974:21) posits that a frame “refers to an interpretive schemata that simplifies and condenses the world out there by allowing us to encode objects, situations, events, experiences and sequences of action.” At the most basic level, frames structure the social reality we notice and the acts or objects we decide to ignore. In other words, we place mental boundaries around specific identities, social clustering of experiences, and/or relationships.

Through the context of social construction, “frames” become embedded in societal or communal behavior and logic. Goffman (1974) presented “frames” as basic

cognitive systems that function as guides in how we recognize and distinguish the representation of reality. Frames are not usually consciously produced, but unconsciously adopted within our experiential development (Zerubavel 1991). Goffman (1974:21) developed framing as a means to illustrate how we “locate, perceive, identify, and label” phenomena that occur in our everyday lives. Frames effectively present socially constructed ideas about what exists, what happens, and what matters (Goffman 1974).

Within this research, I utilized a framing analysis approach that is compatible with social construction assumptions to examine the competing definitions of Indianness. I use pattern-organizing frames, composed of central classifying themes and a series of interrelated sub-themes to examine the rhetorical themes and symbolic images that rationalize and institutionalize the relative advantages and disadvantages of an American Indian Legal Identity. Both research questions of framing and interpretation are addressed within this analysis. Consequently, I first elaborate upon the symbolic and rhetorical frames as social constructions of the everyday lived experiences of the respondents and then identify the major competing frames.

### **Validity**

In order to enhance the overall validity of my study, I present realistic and rich results of the data (Creswell 2009). I provide many, detailed perspectives about the themes. I also present negative, discrepant information that runs counter to themes because real life is not a uniform mechanism, and the contradictory evidence makes the account more realistic and valid. My approach is rigorous through my provision of detailed methods of data collection, data analysis, and report writing. I conduct multiple levels of data analysis from narrow codes to broader interrelated themes to abstract

dimensions. Accuracy of the research was ensured through respondent checking of the interviews and triangulating sources of data (Clarke 2005; Creswell 2009; Maxwell 2005). To further ensure accuracy, this project involved a prolonged time in the field—over one full year—which helped develop an in-depth understanding about the phenomenon (Maxwell 2005). To add further validity and rigor, my research was debriefed by a peer—a person who reviewed and asked questions so that the interpretation of the data was clear and resonated for others. I also utilized an external auditor who was not familiar with the project and who provided an objective assessment and valuable feedback.

Finally, to address the critique of postmodern analyses of the replication of hegemonic representations of human experience, I employ situational mapping to examine the situation (or phenomenon) of living with or without an American Indian Legal Identity as a whole—consisting of not only differences and complexities, but interesting patterns and commonalities. I further utilize peer review to minimize the risk of mapping biases or projections.

### *Assumptions*

The following assumptions are present in this study and important to the research. A person has a legal identity if s/he is enrolled in a federally recognized tribe or has a CDIB card. Natives who claim citizenship within a federally recognized tribe are assumed to have told the truth. Respondents were not required to show any identification that proved it. However, understanding the stigma for some Indians who do not have legal status and their desire to say they do in order to forego the discomfort, some Natives may have claimed a legal identity through a tribe that is not federally recognized.

Because the interviews will be administered to only American Indians, the issue of terminology is important. Ethnicity is defined as an identity one gives oneself (Waters 1990), but race is still widely used among Natives today, and so, quite understandably, *sensitivity* to labels were necessary. I used the label(s) of each participant's preference (e.g., by clan, pueblo, tribe, or pan-ethnic labels—such as American Indian, Native American, First American, Native, etc.).

The researcher's status as an American Indian and familiarity with the American Indian community and culture will allow the researcher to connect with participants culturally. This will allow participants to feel comfortable and freely disclose with the researcher.

American Indians claim many different identities—ethnic, racial, cultural, personal, biological, traditional, political and legal—and for the purposes of this research these are distinguished through a tribal or pan-Indian frame (Alexie 1996; Cerulo 1997; Cornell and Hartmann 1998; Garrouette 2001, 2003; Nagel 1997; Snipp 1992). Hence, multitribal social, political, and cultural activity represents American Indian identity on the collective level. For the brevity of this project, we address the historical construction of the *pan-Indian* individual and the *pan-Indian* legal identity within a federal legislative and tribal context.

## **Summary**

This chapter outlined and justified the research paradigm, data gathering, and data analysis methods used within this project. I also discussed the ways in which the validity of this research has been addressed. The next chapter offers the findings from the interviews.

## CHAPTER IV

### FINDINGS

This chapter addresses the gap in the literature regarding the disconnect between being Native and possessing an American Indian Legal Identity. Using qualitative research, I explore the perspectives of Native Americans, with and without a legal identity. I examine how they make sense of having or not having a legal identity and what this phenomenon means to their lives. This issue requires understanding the subtext of maintaining ethnic or racial identity in light of American Indian Legal Identity. I also explore the frames used for the development and adoption of this particular classification of being Native by the federal government, tribal governments, and the Native community. I observe the impact of the application of American Indian Legal Identity within Native communities and what this means beyond the allocation of “benefits.”

Finally, I construct a local, non-national definition of “Indianness” from the data provided by the sample population of American Indians representing thirteen singular and twenty-two multi-tribal affiliations. The literature contends that claiming *Indianness* involves a complex matrix of cultural, political, racial, and ethnic criteria. Within the answers to these questions and queries, I analyzed, linked, and interpreted the conceptual categories that explain the frames and interpretations this sample of American Indians use to structure their realities.

## **Framing a Legal Identity**

When asked why Native Americans must be enrolled in a tribe or carry cards, participants' responses included five overarching themes: 1) identification for services and benefits, 2) a function to maintain tribal sovereignty, 3) a mechanism for federal government control, 4) proof of Indianness, and 5) cultural belonging. These themes are not mutually exclusive, as some participants mention one or all these as reasons for tribal enrollment or carrying a card. There is congruence and variation within the answers of both legally identified (LI) and non-legally identified (NLI) persons.

*Identification for Services and Benefits: "...oh god, you wouldn't believe how much education and healthcare that the tribes have..."*

The discussion of *benefits* was present throughout every interview. A dialogue of services to be provided—healthcare, housing, and education—was mentioned to justify the necessity of identification. Those respondents who believed that tribal enrollment was a good thing framed identification cards as a control mechanism to ensure the services go only to those who qualify. In order to receive tribal services, one must present identification, and Clark (LI) sees this as a positive thing, "I really think that Indian cards serve a good purpose for identification and you're trying to receive healthcare and education. It's like institutionalized things it can help you with." Kim (NLI) agrees, "I don't know if this is completely accurate, but it is to allow Indians to take advantage of a right. Like when the land got taken away, the government paid the Indians back, so if you are true Indian, then we did this back to you to help you with your family."

And while both groups—LIs and NLIs—agree that cards act as identification for tribal benefits, most of the LI Indians readily conveyed that they personally utilize very few of these services, with the exception of healthcare services. Furthermore, these LI

Natives believe that people, in general, misunderstand what assistance is offered and how often people receive it. Joy (LI) says one misconception is that “we’re all getting money from the casinos or handouts from the government.”

Grace (LI) expresses her frustration about people thinking Native Americans receive abundant services:

They think our schools are paid for. I paid for my nursing [degree] through student loans. People were like, so you got an IHS [Indian Health Services] scholarship, and I was like, no, I didn’t. They assume we get our schooling paid for. People in [this town] when I moved here like twenty years ago, they assumed I get a check every month. If I work I do [laughs sarcastically], but if I don’t [work] I don’t get a check. And they think you don’t pay taxes.

Lillie (LI) concurs with Grace:

I get sick of working with friends or people and they say, ‘Well, you’re okay, you get your school paid for.’ Uh, no, I don’t. [Then they say] ‘But you get your healthcare free.’ Yeah, well come sit in the clinic all day. See how you like it. It’s a shoddy system. Also, people think we don’t pay taxes. Hey, nobody gave me that memo.

The majority of the LI group of Natives agree that there is a common perception among people who are not Native American that American Indians receive copious benefits. The findings in this project reveal that this opinion exists within the NLI group as well, especially within the context of education and healthcare. Jennifer speaks about graduating from high school and having to “rely on my GPA and financial aid.” Sally says that maybe with a CDIB card her son could have “gotten a loan, a small loan at a very reduced rate.” Lee, while assuring me that he has not been affected negatively by a lack of legal identity, admits that “if I had been [legally] of Indian descent, Indian blood, I could have gotten a lot of monetary help, but I did not let it, it didn’t bother me because

I was able to get football scholarships, and athletic scholarships, so it didn't, but in that way, it did affect some others of Indian blood [who weren't enrolled]."

Jennifer speaks loudly and forthrightly, demonstrating anger about not receiving the benefits that a card could have given her, "It's kept me from opportunities to go to college. I've had to borrow and work my way through school. I can't use Indian healthcare." Richard expresses resentment that without a legal identity he has not received "any Indian benefits" that federally recognized tribes get:

I went out and educated myself. Of course, I had to pay for my education, just like anybody else. Except the Natives, the enrolled members of federal tribes get all that paid for ... Well, anyway, we don't get any of these things. That's discrimination in itself.

Overall, Natives, both LI and NLI, feel that tribal enrollment and/or CDIB cards act as identification, but the realities of what that identification means to each group is very different. For the legally identified Native, it represents both identification and a stereotype that they must constantly endure. Non-legally identified Natives see the identification in terms of greater hardships because of the loss of services and benefits.

*Maintenance of Tribal Sovereignty: "A Necessary Evil" and "A Double-Edged Sword"*

The need for tribal enrollment and CDIB cards and even blood quantum are framed as necessary within the maintenance of sovereignty. Wilkins (2007:51) 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." 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. Overall, most people expressed some dissatisfaction for the system,



understanding its artificiality, but were willing to accept the costs in order to maintain the tribal continuation. For example, Lillie (LI) articulates a bittersweet but somewhat despondent understanding of the need for a tribal connection:

Wow. I don't know. Do we? Without. I don't know. Gosh, I don't even know where to start with that. To dish out sovereignty, everything we are born with, everything we have a right to. Without that it's gone. There would be nothing... If we didn't have tribes, we would still exist and we would still know we're special and know we're Natives, you know. But I think tribes are, I don't even want to say symbolic or representative, but they are what is left. They are *what little bit* we have is left. They sit on what is left of where these peoples ended up, the land. And our sovereignty is executed through them.

John (LI) passionately states what underlies so much of each conversation—a fear of disappearing altogether:

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*.

Even though Melissa does not have a legal status, she understands the complexity of proving identity, "That's a very good question. I have often pondered that. It's kind of a [paradox]. 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. It's kind of a double-edged sword."

Gary, a legally identified Native and someone who works for his tribe, 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:

They shouldn't have to, but it's something now that they've issued that tag that you're carrying now. And I'm proud to carry it [CDIB], 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. Sovereign means that you handle your own problems. A lot of tribes can't take care of their problems. Sovereignty doesn't mean you don't have responsibilities. I think it means you have even more responsibility.

Eva (LI) corroborates prior sentiments, framing the need for tribal enrollment as a way to maintain tribal sovereignty and a way to 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.

Statements about tribal sovereignty and the cognitive dissonance experienced suggest that Natives frame it as the best that they can do with what they have been given, even though they understand that it maintains the hegemonic status quo. By adhering to the current process, they realize they are participating within a societal model that is not of their own making but acknowledge a lack of a realistic alternative.

*Mechanism for Federal Control: "They are the puppeteer in every situation."*

Wilkins (2007:52) argues that while tribal nations are distinct political entities, they "find that their collective rights, lands, and even inherent sovereignty lack substantive protection from the very government... which is charged to protect them."

This *feeling* of mistrust/distrust of the government reverberates throughout the interviews. Two-thirds of the LI Natives and all of the NLI Natives felt that being required to carry a card is a paternalistic system of the federal government. In effect, there is mistrust for the government about American Indian Legal Identity or *any* practice adopted toward American Indians.

Understandably, non-legally identified Natives have intense emotions and opinions when discussing tribal enrollment, and include it as just one of a number of concepts as mechanisms of federal control over tribal nations. When asked about tribal enrollment, Lisa (NLI) states it frankly:

They don't [have to enroll]. That's an artificial government thing that they've come up with that the tribes have collectively decided to concur with. I don't mean to sound like a conspiracy theorist but this was part of a large federal design. They did it on purpose. Their plan was eventually there wouldn't be any more American Indians. We would become totally assimilated and identify as white... That's all artificial and modern.

Jennifer (NLI) also attributed it to government design, stating, "So the government can keep track of them." The idea the federal government used tribal enrollment as a way to "keep track of people" was also persistent with legally identified Natives—especially in relation to economic matters. Teresa (LI) states, "I imagine it's because we have to keep track of what degree it is. Like my tribe, I have to be on that roll and they get money from the BIA, so they play a financial role."

There is also evidence of the belief that the federal government uses the system of tribal and CDIB cards as a means to excise *Indian* existence. Gary (LI) describes the effect of federal government involvement in tribal enrollment if a Native is descended from more than one tribe:

I think they're making it a little more watered down by not giving the individual Indian the opportunity to say what they are. You can be full blood [from two tribes], but you can only register in one tribe. That would only make you half. So, I think they're taking that away and I don't like that.

Grace (LI and works for a tribe) explains why people have to choose between tribal affiliations:

It's basically for services and money distribution from the government. *I don't think it's fair that we have to choose* because I don't think a Caucasian person has to choose between being a German heritage or an Italian heritage, if they're both. So I think it's an issue of money or federal funds. Just like health services, or law enforcement, it goes by the area and the population. For that reason, I'm saying that federal funds are demarcated by the number of people and need. That's why you have to choose between tribes or they'd be counting you twice.

Eva (LI) confirms the idea of the intrusiveness of the federal government and its use of benefit allotment as a justification:

I think that there's always been an intrusiveness on Native peoples...and as time progressed and there was that assimilation or acculturation to the dominant society that there's always been that influence on "this is who you should be—this is how you should determine it" so that you can get some of the benefits that were afforded to you though treaties or through agreements that were made by the federal government.

Sitchee (an NLI Elder) expresses real contempt for the federal government declaring, "The federal government decides the fate of us all. They damned us. They killed us. My family has lost our rights to be what we are." These statements are merely a few of the many expressions of distrust for the U.S. government and the resentment of its intrusion in "Indian business." All participants—legally identified or not—react negatively to the role of the federal government in regards to tribal membership.

*Proof of Indianness: "It's kind of racist, right?"*

The participants expressed emotional conflict about tribal and CDIB cards, understanding on the most basic level that these were artifacts, first created and then widely accepted as societal representations of Indianness and that they have overwhelming implications as racialized objects. Harriet (NLI) states, "I mean who else has to prove that they are a certain amount of something? It's weird." Phillip (LI) tries to be dismissive, but says sarcastically, "It's just [a] 'I can prove I'm Indian' card. Full-blood. 4/4s. Pure-blood."

Will (LI and well respected within his tribe) regrets the double standard of the Native community when someone claims to be an Indian without proof:

I don't think nobody should look down upon them, because, to me, to be Indian is in your heart, it don't mean the color of your skin or how long you can grow your hair. If you take pride in who you are and you want to support your heritage and try to bring education to everybody else about your heritage, I think that makes who you are. And to me, I've always told everybody that I've met when they ask me about my heritage, I said you know what, 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*, let's see your card.' Now I think that is *so racist of the government* to put a limit on how much blood they say that we are.

Angry and hurt, Melissa (NLI) relates how she feels when people question her heritage:

It's been hard because I never really cared about the benefits. I'll get offers to apply for things, but then it'll say 'card required.' Well, can't do that and that might be a frustration. But mostly, it's because I have asked so many times by other Native Americans, 'Well, can you prove who you are? Well then, how can I believe who you are? You can just be fibbin. Tell me your history, tell me your story.' One girl even said, 'You have no proof.' That bothered me. It was insulting for me. It would be insulting for anyone to tell someone else, 'You aren't who you are.'

Kent (NLI) is contemptuous in his reply to questions of his ancestry. He says, “I don’t know, but I am so sick of that I don’t know what to say. Because every time you say something, somebody says, ‘you gotta a card?’ and I say, ‘do you?’ You know, you gotta have a card to prove [emphasizes] and I say, ‘I don’t gotta prove nothin’ to you. If you don’t wanna believe I’m Native American, then don’t.’ I know I am and I’m the only one that I got to prove anything to.” Ward (NLI) conveys disappointment in those who participate in the system, “I think the cards and everything, it’s real weird... [Legally Identified Natives] are adhering to the card rather than to *any level of humanity*. [stares hard and then takes a deep breath] But that’s their choice.”

Joy (LI) acknowledges that it “seems racist having to show a card showing I am this much Indian.” But she also feels secure and valid with her tribal card—being able to show that she *is* Indian:

But I mean if ... If I didn’t have that card, if I showed up at a pow wow, and I still get asked this occasionally... I’d be asked, ‘what the hell are you doing here?’ I get some weird looks at powwows [because of my looks]. I feel like people don’t think I make sense. [The tribal card is] a way for the headcount, if you will. It’s well, okay, I’ve got the documentation, so yeah, I belong, [sarcastic tone] but I figured I did anyway. I’ve had to pull out the blue card a few times to prove to people. An International student from Kenya was like ‘No way, you can’t be Indian.’ So, I pull my card out, and he said, ‘You have to carry this? Isn’t this racism?’ [laughs]

Tribal and CDIB cards represent legal identity—they maintain the American Indian race through the assignment of discursive blood quanta and lineal descent subtexts. The 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 federal tribal enrollment, the American Indian

Legal Identity is justified and reinforced by the objectified representation and symbol of a (federally recognized) tribal or CDIB card.

*Cultural Belonging: “You have to have a love and affection for your people, for your land, and for those traditions.”*

Many participants express that tribal membership results in cultural belonging. Green (1995:7) posits that “a culture provides a shared framework of expectations...” It provides for ways that individuals can relate to one another and the world through shared meanings assigned to external modes of behavior and internal beliefs. Culture “unifies and integrates...individuals, gives them a sense of belonging, and a sense of their own uniqueness as a people” (Green 1995:7). Clark (LI) substantiates this when he expresses why he is happy to be Native, explaining, “Primarily the uniqueness, I would say. I would say, not everybody can be a [tribal name], not everybody can be an Indian.” When asked the same question, Lillie (LI) concurs, “I’m different in a good way. Different in a way that is special.”

Billy (NLI) thinks that membership is “so the tribe can be whole.” Bob’s (NLI) view of being tribal represents the challenge of retaining fundamental features of the Native culture and communal relations:

The tribe is a way in which we survive, a community, strength in numbers, um, and it was more important 400 or 500 years ago for survival. Today, it’s a way of identity, it’s a kinship. We’re all related somehow. It’s how we interact and continue to survive and honor those cultures and traditions. And I think it’s important that we keep our good standing as a member of the tribe so that we survive. If we don’t do that, we become like those around us, and if that happens, we might as well blend in and finally assimilate. Being a good member of the tribe means that you participate in the tribal events, that you honor their traditions and the culture that has been handed down and taught to you. And you ought to honor them all the time, not just when you are around tribal officials or members, but all the time. It’s a commitment—a lifestyle. And um, the tribe will survive and carry on.

Concepts of collective reciprocity and relatedness between members are common among the remarks by participants. Eva (LI) explains what being in a tribe means to her, “It’s about the relationships—you always have a place, wherever you’re at. You have a connection to somebody.” Teresa (LI) contends that cultural ties are the most important thing in her life “because that’s what ties you to what’s important—the culture and the family...I think that’s how I was raised. My Indian name is Wishing Woman. It was my grandmother’s name. We had naming ceremonies. It was when I was little, so that’s what preserves our community.”

Tribal identity also remains especially important because American Indians have faced unrelenting deculturation through assignment of distorted cultural identity via negative, idealized images (Green 1995; Yellow Bird 2004). Kent (NLI) addresses how Native American culture has been distorted through the media:

Lot of people don’t see us as we are. Hollywood has damned us all. Speaking a certain kind of language, walking a certain way, dressing a certain way. You know, we got to have long black hair, and big bridged noses, and carry a tomahawk and a knife and wantin’ to scalp every white man and rape every white woman. You know, that’s what they got to portray. And there’s no truth in none of that. They all associate gambling with Indian. You can’t say Indian without sayin’ casino. It’s not a compound word. These are two separate words. Indians don’t just want to build casinos. They want to preserve their land. *Everything I do is for my people.* [Very emotional]

Some scholars maintain that Natives constantly battle negative conceptions of their culture in entertainment, the media, and sports teams’ mascots that are often combined with words that serve to create inferiority (e.g., redskins, savages, squaw, etc.) (Aguirre, Jr. and Turner 2009; Green 1995; Yellow Bird 2004). Hauptman (1995:xi) contends that “misconceptions that American have about Native Americans” are constructed in “stereotyping and racial bias” and seriously affect American Indians.



Jennifer (NLI and culturally active) addresses the stereotypes that are still prevalent in today's society:

The first thing that comes to mind is the savage warrior—specifically, school mascots. What's strange is that in Oklahoma we have more Indian mascots than anywhere—we're the last stronghold of Indian mascots. My problem is that we don't look like that. We didn't wear headdresses, loin clothes, and carry spears. It bothers me because it's the perception that we're warriors and we're tough...The other one is the drunk Indian, especially in the movies. Even with Native filmmakers, there's this tragic drunk Indian image...There's just not very many good images of us in films, movies, and media and it bothers me.

According to these participants and the literature (e.g., see Garrouette 2001, 2003; Sturm 2004), Native communities are quite protective. Cultural revitalization movements are occurring at every level—national, regional, and tribal—in an attempt to return to traditional ways, but actually reuniting with one's tribe or culture appears to be difficult. When asked how Native Americans who lack a cultural heritage might reconnect, many legally identified participants express it may be impossible. Lillie (LI) relates because of personally witnessing the difficulty others have experienced:

...It's a tough one. I struggle with that you know. I believe that there are barriers. I've seen them. It's frustrating too. But I see people who go away who didn't grow up around their tribe and they go back and want to know all about their tribal history. Read all the books. Ask all the Elders. And I see people make fun of them. You know, oh look at that white person. Oh, they want to be Indian now. What do they want? They want benefits. I see people the way they act.

But like several other participants, Lillie also expresses disdain for Natives who “rediscover” their Indianness:

My husband and I talk about our tribal [a leader], like that. 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 gourd 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.*

Even Ward, who is not enrolled in his federally recognized tribe, questions people who decide to “come home” to their people:

Most of them reconnect to the community because they want medical and dental care and they want college for their kids. I don't think they're reconnecting for any cultural reasons at all. I think they see it as significant prospects of connecting with the tribe, and I know people around here who denied that they were Indian in high school, but later when they became lawyers and stuff they saw the propensity of connecting with the tribe, and I think most people that connect with the tribe, don't do it out of some sort of great love for the tribe...

It is understandable. Indians have suffered through the exploitation of their lands, genocide of their people, and experienced their communal living undermined by individualism. Joy (LI) explains that Indians express genuine and legitimate concerns about ethnic fraud and cultural appropriation:

...Communities see an outside person coming in and get their guard up and become very defensive very protective. Some people might feel threatened by avenues of change that is scary or unwanted...Native communities can feel that new people can be subversive, bringing in change that can be used to be detrimental to their way of life, how they do things. 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...

Participants expressed that *being* Indian is a sense of belonging *and* responsibility to their communities. Lillie (LI) describes this not as an obligation but as a trust given to her by her parents for the future of her people:

It's a sense of self, of identity. My husband and I were talking about this. We grew up poor and we're Indian. We're everything our parents told us to be. Grow up, go to school, get a job, go back and work for your tribe, do something better for your tribes and your people. I have a goal, I have a plan. I want to go back and change...I don't want to [just] contribute—I want to change Native lives. I want to make it better. Not just [for] my kids because I know they're gonna be okay.

Overall, participants communicated that cultural belonging is very important to their lives, emotionally, mentally, and spiritually. Traditional elements usually associated with culture, like dress, religion, and language were not spoken about as commonly as the spirituality, protectiveness, belonging, and responsibility of Natives. The charge to “give back,” “look out for your descendents,” and “honor your ancestors” was replete throughout the interviews.

### **The Complexity of *being* Indian: Local Interpretation of Competing Frames**

The second research question sought to understand how Natives interpret the requirement of an American Indian Legal Identity and its impact on their lives. Shifting identities of American Indians are addressed throughout a multitude of scholarship (Cornell 1988; Fitzgerald 2007; Garrouette 2001, 2003; Leibler 2004, Nagel 1995, 1997; Passel 1976, 1986, 1997; Snipp 1988, 1989, 1992; Thornton 1997). Lawrence (2003:4) provides a nice summary:

...Identity is understood as being neither neutral and passive, nor fixed...In some respects, identity has been seen as something that a person *does*; in other respects, identity is seen as defining what a person *is*...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.

In analyzing the transcripts of the local, non-national sample of Native Americans in this study, several frames emerged about what it means to *be* Indian that both correspond and conflict with the current literature about the duality and multiplicity of identity. While I began this research to understand how Native Americans frame a legal identity and to assess the impact it has upon their lives, I found that particular categories

overlap within the paradigm of American Indian identity. Therefore, in this section I examine the emergent themes in light of sociological constructs—racial, ethnic, and legal identity.

### **Racial Identity as a Social Construct**

Not many participants possessed *only* a racial identity, but there was a great deal of discussion about it. Omi and Winant use the concept of a racial project to “connect what race means in...particular discursive practice[s] and the ways in which both social structures and everyday experiences are racially *organized*, based upon that meaning” (1994:56). Racial identity may be defined as categorization within a group that is socially identified by physical appearance (Farley 1995; Fitzgerald 2007; Leibler 2004; van den Berghe 1967).

Racial categories are often imposed by outsiders (Cornell and Hartmann 1998; Farley 1995; Leibler 2004; Omi and Winant 1994; Snipp 1989), and are constructed within “*the context of a decision by society to consider those physical characteristics relevant*” (Farley 1995:5; emphasis in original). Winant defines race as “a concept *that signifies and symbolizes socio-political conflicts and interests in reference to different types of human bodies*” (2004:155; emphasis in original). Race, in other words, requires an assumption of biological attributes or phenotype to identify who belongs to a group.

*Phenotype and Psychological Identification: “My girls look just like me and they are always getting picked out of a crowd ‘oh, she’s a cute little Indian girl’ but when we have our son people are like ‘does he belong with you?’”*

According to the participants of this study, racial identity requires a certain amount of being “identifiable.” I ascertained whether a person was identifiable by the answers given by the person to the questions concerning stereotypes and as having

experienced some type of racism or discrimination because of their physical appearance. I did not decide if a person was considered identifiable. The amount of identifiability was based on the degree of psychological identification with a racial appearance and the claim of discrimination. Some of the interviews exposed a clear delineation between being Indian and being “identifiable” as one.

Therefore, participants were asked directly if we can tell if someone is Native American by looking at them. The answers were contradictory and ambiguous at times. Over half of the sample of Natives, both those with a legal identity and those without, believe that one can tell if a person is Indian by their physical appearance. Joy (LI and not clearly recognizable) thinks so, stating, “There are certain features that people would stereotypically identify as Indian.” Common phenotypical features that were identified by participants as explanatory of “looking Indian” include skin tone and color, facial structure (nose, cheekbones, and eye shape) and body shape.

Will (LI and identifiable) explains even further, “Yeah, I think you can tell. Of course, the tone of their skin, for one. You can kind of, if you look close, you can tell the difference between somebody who might be Native, than somebody who might be, say, Latino, because your facial structures are somewhat different.” Tammy, (LI, identifiable, and works for a tribe) agrees, ‘It’s like you can look at ‘em and tell they’re Indian, without them having to pull out a CDIB card, yeah.”

Grace (LI, clearly identifiable) discusses how she can tell whether someone is Native and the tribal or regional association of the person, but non-Natives cannot:

I can [tell if people are Native by looking at them]. Because I’ve grown up around Native Americans. I grew up in Arizona. I can tell the different tribes apart. I don’t think any of them look the same. It seems like that’s hard for other cultures to see that. They think we all look alike. The Plains Indians look a lot different

than the southeastern tribes ... They have high cheekbones, got straight hair, and I know out in Arizona, the way they talk. Their accents out in Arizona is different from Mexicans. You wouldn't confuse them if you heard them talk.

Mary (LI, also clearly identifiable, an Elder) confirms this sentiment, "We have a lot of features like a Mexican and they [white people] get us mixed up sometimes. But I can tell the difference between Indians and Mexicans." Sally (NLI) gives specific examples, "If they have the certain characteristics of a Native American. A broad nose, kind of full lips, and the darker complexion, the olive skin. Like me, I don't burn in the sun, I just turn darker." Jennifer (NLI) concurs,

Sure. Some people are clearly. There are some of us who believe we can tell what tribe someone is by how wide their face is or how hairy or not hairy they are." [Laughs loudly] There are some Indian people who are very smooth skinned and some of us are very hairy. Most of the Cherokee people I know are taller, while Comanche and some Kiowa people are more squatty and stout... There are some ways you can tell.

Clark (LI and not identifiable) reveals how someone in with whom he had no interaction was easily identifiable, "There was a man sleeping on a bench and he had very, very Indian features, just the broad face... High cheeks, kind of a broad nose. Umm. Shorter chin. Dark complexion. A rounded face, per say." But when asked if Indians are discernible by sight, he expresses frustration with the concept of physical distinction:

Not always. I've met people who are pale as can be and I've met people who are black who are Indian. And it's really, well you can't exactly judge on it by the look of somebody. It's not fair to the person. They may look that way, but their parents or grandparents look just as character or stereotypically Indian as anybody else with their high cheeks, broad nose and everything else. And it's not fair you know to say, you know, you're not Indian. There's no reason to create an Indian-ness [by looks].

Harriet (NLI and lacks an identifiable distinction) expresses the ambiguity of being identifiable, "No, not really, but maybe. Yeah, I think so—our high cheekbones,

even with white skin, we have some distinct features, like our eyes, and our body types... we are less hairy, and we gain weight around the middle.” Violet (LI and identifiable) is uncertain, but ultimately expresses pride in the distinction, “Yeah, I think so. We have flat feet and no butt. But then you can’t tell either because there a lot of different kinds of Indians. One thing is our high cheekbones. We are beautiful, though. There are some pretty Indians.”

*Blood Talk: “I grew up with full blood people who emphasized to me that I was part of those people.”*

Most people who said that Native Americans are not identifiable by phenotypical appearances give explanations that physical appearance might not be as prevalent because of “interbreeding” or a lowering of blood quantum. Ed, a Native Elder with a strong phenotypical appearance and a legal identity explains, “But there’s a lot of Indians that look white [and] that goes on the degree of blood [they have].” Gertrude, who does not have a legal identity, also attributes a lower blood quantum to a lack of phenotypical markers, “No, I don’t think so. For some people you can tell by high cheek bones, but there are also blond haired, blue eyed people. However, the more Indian blood you have, the more you’re gonna show it, I assume.”

Joy builds on her answer from earlier, “But no, [you can’t tell because] intermarriage happens. Great-grandmother One and great-grandmother Two had a thing for a white guy.” Joy also shares that the teasing she experiences for not “looking Indian” is not hurtful to her, claiming that phrases like “whindian” because she is “pretty friggin’ pale” make her smile. John, a person who by all appearances did not look like a Native,

but had a CDIB card discussed how physical appearance is less applicable in today's world:

I have a [tribe] membership card, but I don't think it's a blood card. I'm very little—about 1/256<sup>th</sup>. Just from my case, you don't know if they're white [but] they have a card. Or someone could have connections to the tribe, but not look Native American at all. If you got a great, great, great ancestor, then you can identify yourself as that [Native American]. I don't think looking at someone and seeing them as Native American is as strong tie as if you were dark skinned and saw yourself as black, Asian, middle-eastern...Just because, I think Native Americans have been in this population and to a large extent have been so ingrained in this culture [white culture]. The attempt to assimilate Native Americans has been so extensive. People who don't look Native American can still identify with being Native from a family tree. I think people can see themselves as Native American and can [still] check white on the census box.

Lisa (NLI with a strong cultural tie) expresses her anger about how some people think there's a certain "Indian look" and states bluntly:

No, because we've been interbreeding with white people for 300 years. In two generations, you can get someone that doesn't look Indian at all. In 300 years, you can get a lot of people who don't [look Indian]. I grew up with full blood people who emphasized to me that I was part of those people. It wasn't until I moved to Tahlequah and tried to do volunteer work with the Nation that I ran into trouble. I had ribbon dresses when I was tiny. I had baby moccasins. There was nothing ambiguous about it when I was growing up.

Sturm (2002:113-114) asserts that it is common for Native people to respond differently to people who "look" like the tribe they espouse to be a part of—even to the extent of assigning "varying degrees of social importance," and that social recognition is tied to phenotypical distinction.

*Naming, Stigma, and Shame: "...no-good Indians..."*

Socially attributed identities not only affect our self-conceptions, but how others interpret our behaviors, assign meaning to our physical features, and act in relation to us



(Howard 1995; Vryan 2007). Consequently, classification in a group that has been racialized also refers to a *psychological* identification of biological descent with the knowledge of physical distinction from others (Fitzgerald 2007; Leibler 2004, Snipp 1988). Grande (2004:92) shares that possessing a phenotypical American Indian appearance requires her to “inherit and incite all the prejudices, stereotypes, and racist assumptions that such a persona elicits.”

Mary (LI) discusses how she was first mis-categorized and found out that she was Native, “Well, when we were growing up, kids were mean. We were called that ugly word, [whispers] ‘nigger.’ My daddy said y’all are not that. Y’all are Chickasaws.” Ed, a Native Elder with a legal identity, explains how he came to know that he was an Indian:

My grandmother only spoke Chickasaw, and at a early age I could only understand and speak Chickasaw. But she enrolled me in the public school and I have a vivid recall of the school... Then after awhile then I was taken by the Indian agency from the public school. They came to class and took me and put me in a car and then that’s when they took me directly to the Indian school in Seneca. At the time, I was trying to figure about why I was more or less abducted. I would use the word abducted because I was forcibly taken from my class. I wasn’t taken to my grandmother’s. I was just taken right there. It took me a long time to understand that this school was just for Indians. And that I was an Indian that was supposed to be in this school and ... away from the other white kids from the school I was just taken from.

As a child and teenager, Eva (LI) remembers experiencing prejudice for “looking Indian” numerous times:

[My dad grew up on a reservation in [the Northwest]. And we would visit every summer... When I was little I remember that there was a lot of racism around there. So there would be a lot of, you know, white kids who I think would just model the behavior that their parents taught them. I remember being pushed in the pool before, called names... derogatory concerning being Native. Just people asking questions... do you live in teepees or asking some questions. But I also remember a close friend of mine and a mutual, I guess her friend, once, and I don’t think it was because I was Native, but because I was darker skinned.

Because when you're darker, obviously on your elbows and your knees you have darker skin and she's like, 'Why are you so dirty? Why don't you clean yourself?' Or whatever, and I was like, 'Whoa, this is the way I was made and this is me or whatever.' But also, I remember being accused of shoplifting a couple of times and lying.

Howarth (2002:158) argues that the literature has not adequately accounted for how identities are imposed on individuals by other people:

However one makes sense of one's sexed body or the colour of one's skin, our identities have to incorporate, negotiate and/or contest representations of gender and skin colour. The gaze of the other makes these identities unavoidable.

According to Grande (2004:92-93), treating race as "a stable and homogeneous construct" is at best, essentialist, and at worst, racist. Nonetheless, the dominating theme of "looking Indian" has been upheld in current societal interactions. Within this research, the social definition of being Indian still entails a constructed image of dark-skin, stereotypical features, the blood tie (biological basis), and attributed negative behavior. Gary (LI, clearly identifiable, and works for his tribe) discusses the common stereotypes he hears about Indians on a regular basis:

[We all own] casinos, obviously. We're gamblers, drinkers, slackers. You know I see that, but I see that in white, black [people]. You know it's not prevalent just to us. I'm sure we have our share, but we have our share of people that are educated and are productive and community-driven and [care about] politics and the whole bit. But we'll still get that. We'll still get that cigar stand Indian on cement, you know. That's just what it is, but it's something you've gotta work through.

It involves the shame and stigma of a subordinate particular subject position within the hegemony of whiteness as the normative standard—and identifiable Indians, especially, are on the outside.

## **Ethnic Identity as a Social Construct**

Ethnic identity has been identified as one of the most important components of social identity because shared characteristics of an ethnic group—history, language, traditions, norms—can sometimes be so encompassing that they override the other coinciding identity constructs (Taylor, Bougie, and Caouette 2003). Generally, ethnic identity refers to classification within a group based on social and cultural factors (Farley 1995:6; Leibler 2004; van den Berghe 1967). Social scientists typically consider ethnic identity as a subgroup of social identity theory because one’s social identity is comprised of simultaneous and coinciding components (e.g., gender, sexual, racial, ethnic, religious, cultural, class, and national identities) (Malhi, Boon and Rogers 2009; Phinney 1990; Tajfel and Turner 1986).

*Community and Culture: “And I don’t think it’s ever about us as individuals. It’s about our communities. It’s about our families. And it’s about giving to everybody.”*

It is widely acknowledged that Natives were a communal people that regarded the good of the community’s interests over the singular individual’s interests before the impact of European colonialism (Fogelson 1998; Thornton 1998). Eva (LI) explains that *being* Indian still conveys feelings of community, security, and confidence. There are unspoken cultural ties and understanding. She states:

...there’s always a relationship you have to somebody, whether, you know, if they’re in your tribe, you know that they’re connected to you somehow. And even as Native people, if you’re in an area where there are a lot of non-Natives and you find somebody who is Native, you automatically feel a connection to them because you know they know where you came from. They may not know your tribal language or your history or whatever, but they have a respect. And I think that’s another thing, is respecting each other, regardless of what the status is in society. You have a mutual respect for one another. And another is reciprocity. You know if you give something, you expect to give that back,

whether it's to that same person or it's to the society or community as a whole. If you're given a gift, then you give that back to other people. Um, and I think that's really important...and uh another thing is like redistribution. Making sure that everybody is taken care of – whether it's your elders or children or youth or adults [nervous laugh]—you know, just looking out for everybody and making sure that what we're doing is going to help benefit everybody and not just ourselves.

Notably, unlike prior literature that posits the importance of language within the cultural element of ethnic identity (e.g., see Sturm 2002; Garrouette 2003; Nagel 1995), participants in this study implied that knowledge of one's tribal language is not key to claiming an Indian (ethnic) identity. When asked what it means if a person does not know the language of their people, most participants were knowledgeable of the assimilation campaigns and a couple had experienced boarding schools, firsthand. Billy (NLI and identifiable) discussed the risk of speaking his tribal language, "Nobody speaks it no more. We weren't supposed to. [Why?] You'd get sent off to boardin' school if they heard ya talkin' Indian." Ed (LI and identifiable) recounts vividly his time at Seneca Boarding School:

I was getting into fights all the time [at public school] and I couldn't understand why. It was because I couldn't speak English and communicate with the other kids. Then after awhile I was taken by the Indian Agency from the public school. My hair was cut and I was with a whole lot of other kids my age that couldn't speak English...The first thing [kids at the Indian School] had to learn was to speak English. We had to lose our habit of...we couldn't...if you got caught speaking Indian you got your head thumped with butter knives or you got spanked with a paddle...

Lillie (LI) expresses an understanding of the loss of language and does not think that it can be recovered:

I don't think it's that person's fault. I don't think it's my fault. I just consider us just getting lost down the way...Unless you are part of the community, you won't know who to ask. What are they going to do—look in books? How credible is that

language going to be? Are those people going to know the dialects? I don't think we're ever going to learn our traditional languages.

Overall, participants expressed satisfaction with a particular standard of inclusiveness demonstrated throughout every societal level. Violet (LI) explains the strength of her people and her family's connectivity:

We are some strong people. I don't think there are stronger people. We really shouldn't be here talking right now. [nods head] Plus, we are so family oriented. Mama went and took us wherever, to see our family, and there was never a word about having to feed us or anything. Not a word about it. We didn't know the difference between immediate and extended. Family was just family. Any of my uncles could discipline me just like my daddy. We all just lived together. Our cousins were like our brothers and sisters.

Most LI participants were active within their communities. While NLI participants were not as active, they spoke of community as an indicator of Indianness. Hamill (2006:166) maintains that Oklahoma Indians "make extra efforts to participate in Indian communities..." Consequently, the point made by participants is that in order to *be* Indian, a person must *live* Indian—one must have a belief in community and pass on the idea of sharing with and caring for others.

*Claiming: "It's what's in your heart and how you act."*

Gans' concept of symbolic ethnic identity also argues that people use the "sociopsychological elements that accompany role behavior ... finding ways of feeling and expressing that identity in suitable ways" (1979:8). Accordingly, Lisa (NLI) finds solace in membership within a ceremonial community that does not require authentication of one's ancestry:

It's interesting. Stomp grounds are not anything at all like the Nations. They differentiate between Indians and political Indians. To them if you are [tribal name] and you want to spend the time learning about our traditions and trying to pass them on to the next generations, then that's what matters. *They really don't*

*give a damn if you have a card or not.* So, I've been able to work with them and learn a lot of ancient traditions from them.

Jennifer (NLI) informs that the Elders teach "You're Indian by what is in your heart." Sitchee (NLI and an Elder) agrees, "Blood Quantum is ridiculous. Are you Indian? Are you Indian *in your heart*?" Will (LI) agrees with Sitchee about the defining quality of *being* Indian:

Typically, if you look at somebody, the blonde hair and blue eyes, but somewhere along the way they had an Indian ancestor and they want to research about that and they're proud of their ancestry, their ancestors and stuff, I don't think nobody should look down upon them, because, to me, *to be Indian is in your heart*. It don't mean the color of your skin or how long you can grow your hair. If you take pride in who you are and you want to support your heritage and try to bring education to everybody else about your heritage, I think that makes who you are.

Tajfel (1981:255) defines social identity as "that part of an individual's self-concept which derives from his knowledge of his membership in a social group (or groups) together with the value and emotional significance attached to that membership." Claiming to be Native for participants involves emotional ties to their tribes, ceremonial grounds, or even just the Native community-at-large.

*Spiritual Talk: "Indians live their religion every single day."*

Malhi et al. (2009) contend that ethnic identity becomes the vessel through which the personal identity of the ethnic individual is expressed. Almost half of the participants spoke of the spirituality of Natives as a defining aspect of Indian identity. Slightly more non-legally identified participants spoke of it, but both groups expressed strong opinions about the spiritual *nature* of Indians. Clark (LI) points out how spirituality is tied to Native identity, "It's always interesting that when we discuss Native American backgrounds and histories there's a large spirituality goes along with it."

Bob (NLI) does not adhere to pan-ethnic identity, but agrees there are commonalities within Native communities with spirituality being one:

Each tribe is a sovereign nation. And there can be some stark differences—like there are some stark differences between England and France, and between Denmark and Switzerland. But there are some common things that bind us—our spirituality and our love for the Creator. That is one central thing. Indians are very devout spiritual people. And we have a connectedness with one another and the surroundings.

Kent (NLI) justifies his belief that only Native Americans should be able to participate in Indigenous ceremonies, “Because a spirituality of an Indian is different than any other race. Indians are the most spiritual.” Janet (NLI) agrees and offers a comparison:

Whew, that’s a good one. I think in tradition, yes, because it was very. .. Each tribe did their own thing and it was very important to each tribe that you did that with them. I don’t think you would have seen a lot of people sitting out and not participating with what’s going on within their own tribe because of the pride again. And it’s an important factor for them. Today, I think you might see a lot more that are not Native try to participate, just because that wall’s been let down a little bit maybe. But to me, I think that it would be important that you are Native to participate. Just to keep the traditions alive. Cause I think a lot of time that it’s religious. I think that if you’ve been a Baptist your whole life, for you to walk into a Catholic church, for you to sit there and participate in rituals and not actually understand what they mean or what’s going on. I don’t think that you’re right in your doings.

Eva (LI) expounds on the salience, sacredness, and permanence of ceremonial participation:

...It’s not based on your blood quantum. It’s based on your spiritual connection and your cultural connection to that. I think that you know that anybody could be Kiowa, anybody could be Cherokee, anybody could be whatever tribe, but if they don’t have a cultural connection then even maybe they should be questioned about whether or not they truly belong to it. Because if you don’t have a true understanding or an openness to really be a part of it, it’s not a one-time

thing...it's not just, I'm gonna do it once a year or once every ten years. It's who I am, this makes me [tribal name]...This makes me a part of me.

Membership within an ethnic group, as well as the value and emotional significance attached to that membership, contributes towards the person's identity, attitudes, and self-concept (Malhi et al. 2009; Phinney 1990). Consequently, American Indian ethnic identity is a flexible social construct that only needs to be claimed, not proven—one that brings community, culture, and a heightened spirituality. However, shared values, norms and thought patterns are taken seriously by tribal members when determining whether an individual is an authentic Indian (Garrouette 2003; Nagel 1997; Thornton 1997).

### **Legal Identity as a Social Construct**

Even though this construct is convoluted, possessing it is dichotomized. There are only two categories within an American Indian Legal Identity—a person either has one or not. Indicators of legal identity include membership within a federally recognized tribe—legitimated with either a tribal citizenship card and/or a CDIB card. Additionally, because blood quantum may be designated by a tribal restriction of a specific blood quantum (e.g.,  $\frac{1}{8}$ ,  $\frac{1}{4}$ ,  $\frac{1}{2}$ ) for citizenship, blood quantum is included.

*Cards: "Exactly, the card. If you don't have one, you are shit out of luck."*

Tribal and CDIB cards have assigned meanings that have been internalized into the people's subjective reality, and while many LI people question the actual purpose of the card, they actively work to reduce their cognitive dissonance by assigning meanings of pride and protection. Because of the intense socialization of what constitutes legitimacy, tribal communities have internalized and continue to reify that Indians must



be distinguished legally. Teresa, who possesses all three identities—ethnic, racial and legal—still needed to marry an Indian with a legal identity to conform to her family’s expectations:

Grew up going to powwows....Our culture was really big, at least for my grandmother that I marry Indian, so my husband had to work hard and get his Cherokee documented. Everybody’s happy that he got a card. [So does that mean that she didn’t think he was Indian until he got a card?] Exactly. I was the oldest grandchild for a long time and there was a lot of pressure. I couldn’t handle it hardly. Of course, our grandmother was the center of everything. And so it was very important to her, but not to me. I was surrounded by a lot of non-Natives. So, it was difficult. People thought it was cool that I was Indian. But it was always a struggle to find a balance between the two worlds

Ed (LI) takes a lot of pride in his CDIB card, recounting how he felt the day he received it:

I was 14 years old. And uh, that was when you got CDI card then you were *full blown Indian*. That was like getting your social security card, your driver’s license, it was your identity. When you got that CDI card, you told people you were Indian and you could show them that you were Indian... if they didn’t believe you. There was a certain amount of proud associated it with it. It was documented.

Furthermore, even while facing a situation of shame because of incarceration, Ed explains how his CDIB card validated his identity and reaffirmed his sense of pride:

Like when I went to prison out in California, they interviewed you whenever they were booking you into prison. And they said so you’re white and I said no I’m American Indian. They said, ‘We’re gonna have to put white right now, you’re gonna have to produce the paperwork for everything.’ So, I went in and I said look in my wallet and there’s my CDI card. It’s a federal card. And he got that out and said, ‘well by god you are an Indian, you do have your paper work with you.’ I said, ‘I can use this card anywhere in the United States of America. I can go to another state and if I need help, I can take this to the Bureau of Indian Affairs or the local tribe and ask for help and I can get it whether they’re my tribe or not.’ So, getting that CDI card when I was young made me really, really proud. I was

proud to be an Indian anyway, but I was really, really proud because I had documentation of it.

In contrast, Hitt (2005) quotes C. Matthew Snipp as saying that the relationship between Native Americans and the BIA that issues the CDIB card is “not too different than the relationship that exists for championship collies and the American Kennel Club.” Bob (NLI) questions the intent for the existence of CDIB cards and people who believe they are valid for Native culture, “It’s not that card. It’s the dollars associated with that card. And that’s tragic because that means those Indians have adopted another culture’s ways. That’s not Indian.” Russell (2003:401) explains how he used his card with its roll number to “notify white people of my tribal identity and, when combined with my birthplace, tell Indian people (should there be any) that I was not an ‘instant Indian’ seeking special favors.”

*Blood Quantum: “I think it’s a bad thing, although I wish that I was a full blood. Because I feel like if I were, I would have more of a right to be Indian.”*

When asked if blood quantum was a good thing, the plethora of responses from the participants demonstrates the controversial nature of the topic. LI and NLI persons both take issue with blood quanta as an indicator of Indianness, but they also see it as a needed gauge or protective measure to keep their tribes from being taken over by white folks. Ed (LI) thinks blood quantum is good but needs to be stricter, stating, “Personally, I think the blood quantum is a lot lower than it should be.” Lillie (LI) feels ambivalent about whether blood quantum is good or not:

Yes and no. I am happy to say “Yes, I am half [tribal name].” But my kids are a quarter and their kids are gonna be—I’m not good at math—whatever is half of a quarter. And when you start get to those low doses, that’s when it starts being a big deal. My husband is totally offended that they lowered the blood quantum in his tribe to an eighth. He doesn’t want people that don’t have anything to do with,

not just the traditions, but that community. Because that's where he grew up. That's his home. That's his people. He doesn't want somebody from [another town in another state] who got adopted out, coming out and running his community. So, he's really offended by it. Also, the Cherokees are a good example. You start having more white people, more non-Natives that could trace it somewhere, and they can trace it, believe me. But when you start saying 1/100<sup>th</sup> or 1/16<sup>th</sup>, that don't make you an Indian.

Teresa (LI) says,

Yes [blood quantum is good]. Well, for my son...but it's easy for me because I'm full blood. I know how much I am, but for my son, it's like a part of me is trying to figure out. I tease my husband, 'Oh you were just enough to push him over the half-way mark.' [9/16ths?] 'Yeah exactly, thanks babe, that sliver did it, babe.' But you know, it's important because we're all intermingled, we aren't all full-blooded [tribal name] anymore. We've got different degrees of blood. And for my son, it's gonna be important to know, and it's gonna be important to me for him to know much he is and what he is.

Even without a legal identity, Jennifer (NLI) explains that even though she knows she's Indian, being a full-blooded Indian would authenticate her. She says, "[I know] that sounds crazy, but that's how I feel. I would have more right to claiming Indian identity, not being Indian. *I am Indian.*" And she rationalizes why blood quantum is acceptable to the Native person, declaring:

I think it's because we've lost so much of who we started out to be, so we're scrambling. If I don't know how to tie my shoes and I watch someone else tie their shoes and 'oh, that's how you do it,' then I'm gonna tie my shoes that way. I think it's the same thing. If the US government and tribal governments are gonna identify people by blood quantum, how else am I supposed to do it? I think that's what's happening. I think it's by default. It's the easiest way to go about it.

While blood quantum is increasingly accepted within the Native community, there does appear to be an understanding that by using it as a standard for inclusion, the number of 'recognized' American Indians is reduced. As the number of recognized

Native Americans declines, so does the fiscal and legal responsibility of the federal government (Russell 1999).

### **The Authentic “Real” Indian**

Being considered authentic or *really* Indian within the Native communities is salient for the Native Americans *in this study*. And authenticity occurs in the intersection of ethnic, racial, and legal identity (Figure 5). In an attempt not to simplify the complexity of American Indian subjectivity by objectifying the Native American or tribal experience, this is solely a theoretical framework developed *within* this project about American Indian Legal Identity. In that spirit, I assign particular aspects mentioned often by participants and/or literature to each category and sub-categories. Racial Identity (RI) included the concepts of naming by phenotype, psychological identification, blood talk, and social distinction through shaming or stigma. Ethnic Identity (EI) included concepts of claiming without proof, cultural and community interaction, and spiritual talk. Legal Identity (LI) included proof through federally recognized tribal membership, CDIB cards, and the concept of blood quantum.

The subcategories arise from the overlap of the main categories and illustrate the strength or weakness of combined identities. In all actuality, Indigenous persons whom might be classified within any of the subcategory identities may be accepted more easily into the Native community than if they were identify in only one of the main categories— Ethnic, Racial, or Legal. The strength of a subcategory identity results from the salience of either category that intermingles.

An EI combined with an LI (and vice versa) includes claiming a Native ethnicity and/or interacting with the community through cultural events. I would assume that

Framework of an American Indian Identity: Social Constructs of Racial, Ethnic, and Legal Identity.

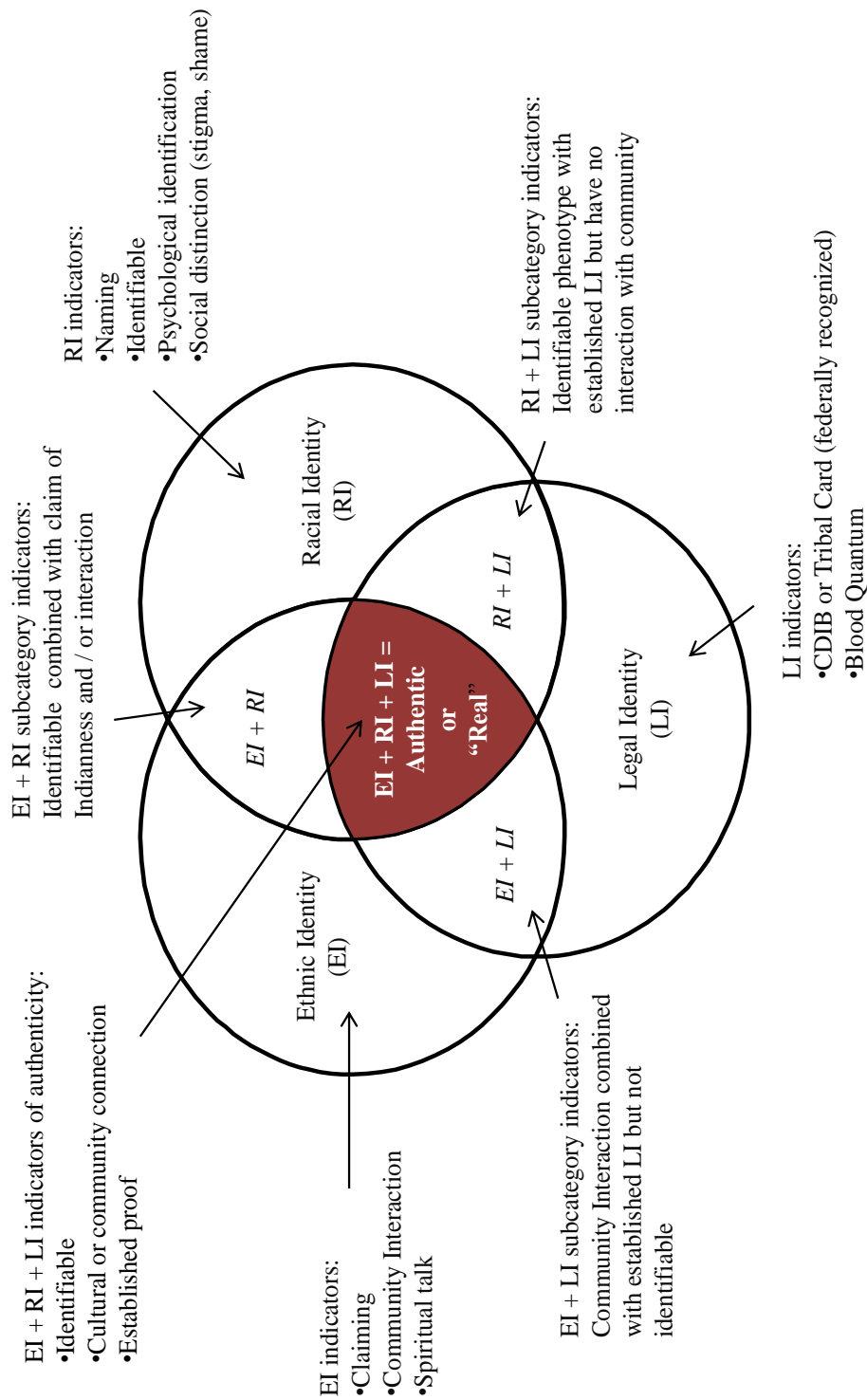


Figure 5. A diagram illustrating the complexity of Indianness.

EI + LI could be the strongest relationship of the subcategories, based on the participant interviews. If a person has a high level of interaction with the community, it is more important than being identifiable.

An RI combined with an LI (and vice versa) includes being identifiable and established proof of legal identity but no real interaction with the community. From this research, I would theorize that the higher the blood quantum, the stronger this subcategory identity becomes. I would also assume that being recognized as strongly identifiable also increases the strength of this identity, both externally and internally. Participants indicate that as interaction with the people decreases, so does standing within community; however, not participating does not invalidate Indianness.

But as illustrated, the most authentic identity is the hybrid of all three. And this is also much contested and quite stratified. Liken it to a “bull’s eye” where the target gets smaller and smaller and more difficult to hit. The construct of authentic Indianness becomes, by nature, more and more exclusive. A person who has both a CDIB card *and* a tribal card, *and* who has a high degree of interaction with the people by living in the community, attending cultural events and keeping traditional ways, and being politically active, *and* who is full-blooded (4/4s blood quantum) and pure-blooded (descends from only one tribe) and is highly identifiable by possessing the accepted phenotype of that particular tribal nation or community would be considered the most authentic. In the interest of reflexivity, I must admit that throughout this research I began to question the validity of my own identity as a Muscogee Creek woman from the Beaver Clan.

The final chapter discusses the importance of these findings, future policy implications, and theoretical inferences.

## CHAPTER V

### CONCLUSION

#### *Being Indian*

I'm Ind'n.  
Have always been.  
Will always be.

You say: "Show me your card...  
...*prove* to me the *truth* of you."

I say: Cards have *no* proof...  
...of spirit, of strength, of truth.

So, here is *your* proof...  
...my love for the people, for family, for *you*.

I'm Ind'n.  
Have always been.  
Will always be.

~Wannee, *Mvskoke Creek/Cherokee*, 04/15/2010

This chapter recaps the major findings of the thesis. There are no easy answers for reconciling the complicated environment of American Indian Legal Identity. The voices of Natives had not been documented concerning the meaningfulness of a legal identity within the 21<sup>st</sup> century. This study addressed the gap in the literature by assessing American Indian viewpoints toward the legal classification of American Indian identity and gain understanding of the experiences associated with, and attitudes toward, American Indian non-legal identity.

Dialogue concerning the legitimacy and complexity of an *American Indian Legal Identity* is pertinent to the scholarship of today. Whether examining the ambiguity and fluidity of who is allowed to claim it, the impact of the adoption and application of it, or the disconnect between being Native and possessing an American Indian Legal Identity, there exists a continuing confusion regarding this phenomenon. Consequently, this research explored the everyday consequences of American Indian Legal Identity in Indigenous people's everyday lives.

Frames are used to structure society—to provide cognitive representations for relations (interactions) between institutions and individuals and groups and for managing the individual subjective experience. They are used to authorize and legitimate social positions, construct power relations, and thereby establish positions of relative privilege and relative disadvantage. The purpose of this work was to examine how Natives frame the racialization of their identity and their understanding of the impact of American Indian Legal Identity as the measure of authenticity by both tribes and many individual Natives.

When discussing American Indians, it is important to note that a pan-Indian identification is purely *another* social construct that refers to individuals from diverse tribal backgrounds (Nagel 1995). The current American Indian population consists of hundreds of separate linguistic and cultural groups that are distinct based on clan lineage, tribe, reservation, language, and religion (Snipp 1992). Some literature asserts that only through a pan-Indian or supratribal identity was an “Indian” consciousness able to survive at all (Cornell 1988). Supratribal identity is the result of the forging of a new



general identity as a means of coping with limited resources and economic stresses on the social organization of the indigenous tribes (Jarvenpa 1988; Nagel 1997).

The main findings indicated that Native people have ambivalent, even conflicted, feelings about a legal identity but frame it as a “necessary evil” or “double-edged sword.” While experiencing cognitive dissonance about the requirement of tribal enrollment, the concept of blood quanta, and the federal government’s involvement, they employed dissonance reduction through rationalizing and justifying its necessity. The frame of sovereignty has profoundly impacted the socialization of Natives to accept that legal identity serves to protect and sustain Indian nations.

I also discovered within my project that a hierarchy or continuum of Indianness is indicated. On the one hand, it is difficult to reach the standard required by those who believe that Indianness is a discrete category with fixed expectations and traits. On the other hand, once questioned participants gave a great deal of thought to those who might fall outside the artificial boundaries imposed. My findings corroborated that many participants were unaware of the sociohistorical forces that left many American Indians without a legal identity. And common to the literature, my participants argue that Indianness is ultimately measured by one’s interaction with her or his community. And yet, participants argue that a blood tie must first be established before culture may be considered. This demonstrates, once again, how deeply embedded racial identity is for this sample population.

Race has functioned to impart meanings of underlying power and prejudice. A designation of whiteness translates into a position of power within society, whereas a designation of non-white has yielded social meanings of inferiority historically (Cornell

and Hartmann 1998). Racial designations carry historical and economic boundaries that have served to separate and strip Native Americans of their cultures and resources; yet, there remains an emphasis on race even among the American Indian people today (Campbell and Troyer 2007; Garrouette 2003; Hamill 2003; Mihesuah 1998). But more insidious than the assignment of race, perhaps, is the ability to persuade people to fractionalize their cultural identity, and then to further require a proof of belonging, of authenticity, and of privilege through a federally issued documentation card.

According to this research, the theme of blood quantum has been deeply established within the Native community. Everyone, even those who were not legally identified, knew their blood quantum and stated it without being asked. *The question was never asked*—there was no inquiry about a person’s blood quantum amount, whatsoever. This is the most telling because it illustrates the depth to which an essentialist racial identity has been internalized.

Neither the abstract conceptualizations of blood quantum nor a legal identity can speak to the difficulty of breaking one’s self into “parts.” Through the institutionalization of blood quantum and Indian cards, there are difficult consequences to racial categories and their relation to the real lives of people. For instance, when called a derogatory name for being *Indian*, do people with a blood quantum of one-eighth or one-half feel only one-eighth or one-half of the shame, hurt, or anger? When discriminated against, do these Native people only *feel it* or experience the discrimination one-eighth or one-half as much as people who have a higher blood quantum even though the ones with less blood quantum are easily identified as “other” or as *Indian*? Finally, do they only feel

fractional pride in their heritages? My findings would indicate that the answers are no, no, and no.

Natives that lack a legal identity endure veritable costs, especially concerning governmental policies in relation to economic resource distribution, social services, and other promised compensations (Garrouette 2003; Nagel 1997). More poignantly, non-legal Natives described immense emotional costs and social losses. Some feel unauthentic and unaccepted (Fitzgerald 2007; Garrouette 2003). This was certainly evident within this research. Furthermore, without a legal identity, the cultural aspect of Native life often results in the individual participating more as a spectator, rather than having the opportunity to be connected to the Indian community as a “full member” as described by numerous participants, especially those who lacked social markers of Indianness, like phenotype. Additionally, while Native persons who do not have a legal identity may be denied the protections and reparations promised, they do not necessarily escape the social stigma and shame felt because of common stereotypes and disparaging comments. Participants who are not identifiable still feel agitated and hurt—perhaps more so—because people speak so freely without knowing that NLI people ethnically identify as Native. Natives without a legal status struggle to navigate between racial and ethnic identities—with positive or negative economical, political, and personal consequences on the quality of their lives (Peroff 1997; Peroff and Wildcat 2002).

Garrouette (2003) asserts that all American Indians—legally identified or not—contend with the milieu and consequences of this complexity. My findings substantiate this claim. Moreover, the literature confers the divisiveness of authenticating Native identity. While this project found conflict, it appeared more with the disagreement about

the applicability of blood quantum between members of the LI group, rather than between LI persons and NLI persons. If anything, the LI group was dismissive of the NLI group. The NLI articulated resentment occasionally that the LI group took their status for granted, but clearly placed most of the responsibility for their situation with the federal government.

There are limitations to this study. Generalizability continues to be criticized within qualitative research because it is difficult to generalize the findings from a small sample to the entire population. While this study sample may be too small to generalize its findings overall, the knowledge gained is significant because of its transferability to similar populations for further research (Creswell 2007; Erlandson et al. 1993). The rich, thick description that is utilized allows the reader to determine whether or not the findings can be transferred based on shared characteristics (Creswell 2007; Erlandson et al. 1993).

The lack of representative sampling is also a limitation of the method, but purposive sampling is necessitated by the research. While this research cannot be generalized beyond this specific group of participants, the experiences related can contribute to furthering a sociological understanding of the experience of American Indian Legal Identity.

Additionally, my worldview is strongly shaped by my identity as an American Indian female and I report through the lens of an American Indian female. Throughout this project, in order to avoid researcher bias, I worked to *epoche* (bracket) my own personal experiences as an American Indian woman with a legal identity in order to interpret the data ethically and critically. Within qualitative research, *epoche*, or

bracketing, involves the understanding of the common experiences of a researcher and the subject of study, but any impact from the memories are put aside during data collection. The process is continuous and sequential throughout data collection, as opposed to a single act or episode of bracketing which might occur at or immediately prior to data interpretation.

As revealed in the methodology chapter, there is an assumption that my Native status will be of benefit. However, the insider model can be problematic in significant ways, and therefore, requires constant reflexivity about personal perspectives, unique situations, and an unassuming, respectful relationship with the community in which the research is occurring (Creswell 2007; Smith 2002). For example, I am an insider as an American Indian, but may be considered an outsider because of my legal identity if working with someone who lacks one. Additionally, the participants represent various and distinct tribes, and although I relate to the participants on a cultural level as an American Indian, I have my own unique tribal perspective. Tribal perspectives differ for many reasons (e.g., region, language, and/or reservation, rural, or urban status). Moreover, because I am Native, the participants sometimes assumed that I understood what they were saying or what they meant without comprehensive explanation. I closely watched for this behavior and asked them to explain their answers more fully for greater explication of their experiences.

In order for anyone to understand *why* Native American communities would accept a legal identity or would use verbiage like "blood quantum" or "pure blood," there must have been—first, the social construction of these terms, and second, the socialization of this terminology. Berger and Luckmann (1966) develop the social

construction of society's knowledge (be it valid or not) creates reality. Focusing on the processes by which phenomena happens, they illustrate a dialectical relationship paradigm of externalization, objectification, and internalization of social reality. Furthermore, Berger and Luckmann (1966:49; emphasis in original) emphasize that “[s]ocial order exists *only* as a product of human activity.”

As demonstrated within this study, the reality of *being* Indian has been socially constructed to maintain an ordered life for Native Americans and others, alike. Berger and Luckmann (1966) contend that it is human nature to desire order. Consequently, the social world is created by the subjective nature of humans and their need to assign meanings to the experiences of life. As these meanings are shared with others, the process of institutionalization occurs. Meanings become embedded into society as a whole. The social world becomes objectified through frames and these frames, in turn, create an objective reality. Through the sociohistorical forces of colonialism and Federal Indian Policy, the American Indian identity has been racialized, and now exists as if “real” or authentic. Indians are “real” if they possess a material object of blood ancestry that has been documented within a restricted period of time and narrow criteria.

Frames (ways of thinking and seeing our world) are often invisible because they tend to be commonsensical—seeming truthful and right. They legitimate the social order, reinforcing the social structures in place (e.g., hegemonic ideologies). Blood quantum and CDIB cards have assigned meanings that are embedded within the social conscience as “proof” of Indianness. Frames can also involve representations, images and names, which refer to a particular class of people. Participants spoke openly of stereotypes that still exist for Native Americans. According to this research, the negative image of the

Native American has not changed in the last fifty years. All the participants mentioned that they had been labeled, or had heard Natives being labeled, as drunk, dirty, or lazy. Foucault (1969; 1972/2002; 1978; 1980) submits that frames of discourse fall under different knowledge regimes who claim the objective truth. This holds great meaning to marginalized peoples because, ultimately, discursive formations construct people's decisions, practices, and relationships.

The knowledge and beliefs of a socially created reality become accepted as an efficient means of understanding everyday life (Berger and Luckmann 1966; Burr 2003; Foucault 1969; 1972/2002; 1978; 1980; Gergen 1985; Phillips and Jørgensen 2002; Wallace and Wolf 1999). The objectified world is internalized as human consciousness through socialization processes (e.g., language, media, law, Federal Indian Policy). Consequently, frames—cognitive representations—act to justify the current social order by reinforcing the objectified representations and symbols of established social structures (e.g., words like blood quantum, CDIB cards, real Indian, full blood, and pure blood). Once objective facts about society are internalized into people's subjective reality, they rarely question the origin of their beliefs, but instead work to accept, maintain, or reorder them. Thus, ultimately the relationship between society and the subjective self is dialectic and self-perpetuating. People experience a “shared reality that is objectively factual and subjectively meaningful” (Wallace and Wolf 1999:277).

Consequently, the Native Americans with a legal identity (and even those without one) within this study demonstrate an understanding and acceptance of the “racist” but “necessary evil” of a legal identity as a function of maintaining and protecting sovereignty—a sovereignty that is at best, questionable. A serious policy implication is

the issue of a fixed list of criteria to demonstrate membership within Native “Nations.” Through the racialization of Indian Nations, the issue of the federal government’s usurpation of actual sovereignty is largely ignored. This is especially compelling with the issue of citizenship. The United States has no such static standards of proving lineal blood ancestry to a specific census roll or list of people for citizenship. Yet, the Native American’s ancestor must have met strict historically specific guidelines within a very narrow timeline to gain citizen status within federally recognized tribes.

Finally, future research should include a survey to explore the theoretical framework discovered within the social construction of American Indian Legal Identity. Nagel argues that, ultimately, true American Indian identity is the intersection of social construction and social negotiation—where “who I say I am” meets “who they say I am” (1997:21). Unfortunately, in the legal sense, unless the Native has the documentation to prove it, she or he is not necessarily an Indian. Therefore, I might modify Nagel’s concept to reflect the definition of American Indian Legal Identity—where “*who* I say I am” meets “*what* they say I am.”



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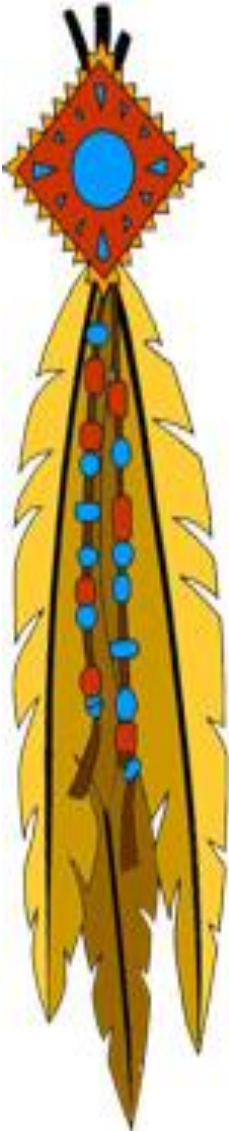
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## APPENDICES

## APPENDIX A

### FLYER USED IN PARTICIPANT RECRUITMENT



#### **Native American Research Study**

- Are you Native American?
- Are you over 18?

**If you answered yes** to these questions you may be eligible to participate in a research project. The Department of Sociology at Oklahoma State University is conducting a research project concerning Native Americans and Legal Identity.

The purpose of the research is to gather the opinions of Native Americans like you about how it feels to be a Native American and to be connected to your tribe, and what having or not having a CDIB card or tribal membership card means to you.

This research is expected to benefit the broader Native American community by giving a *Native* voice to the conversation about the construction of a legal identity. Participants will receive a token monetary compensation of \$10.00.

Participants will complete an interview that is audio recorded. The interview may take place in your home or other convenient location. The interview will last 1 hour.

For more information, please contact:

**Dee Robertson, 405-535-8379**



## APPENDIX B

### ADVERTISEMENT USED IN PARTICIPANT RECRUITMENT

#### **Research Participants Needed**

If you identify as a Native American and are over the age of 18, you may be eligible to participate in a research project. The Department of Sociology at Oklahoma State University is conducting a research project concerning Native Americans and Legal Identity. The purpose of the research is to gather the opinions of Native Americans like you about how it feels to be a Native American and to be connected to your tribe, and what having or not having a CDIB card or tribal membership card means to you.

Participants will complete an interview that is audio recorded either in person or by telephone. The interview may take place in your home or other convenient location. The interview will last 1 hour.

This research is expected to benefit the broader Native American community by giving a *Native* voice to the conversation about the construction of a legal identity. Participants will receive a token monetary compensation of \$10.00.

For more information or if you are interested in becoming a participant, please contact: **Dee Robertson at 405-535-8379**

## APPENDIX C

### SCRIPT TO OBTAIN VERBAL CONSENT FOR INDIVIDUALS

You have been asked to participate in research by Dee Robertson from the Department of Sociology at Oklahoma State University. The purpose of the research is to gather the opinions of Native Americans like you about how it feels to be a Native American and to be connected to your tribe, and what having or not having a CDIB card or tribal membership card means to you. As a participant in this research project, you will be asked to complete an interview that will last one hour. You will be asked to answer questions regarding your opinions and experiences with being Native American and a legal identity.

I define “Legal Identity” as the requirement of a degree of Indian blood (also known as a blood quantum), which is verified and documented by the U.S. government in the form of a Certificate of Degree of Indian Blood (CDIB) card and/or membership within a federally recognized tribe. This interview will be confidential. Your participation is voluntary and you are free to withdraw your participation at any time, and you are free not to answer any single question, or series of questions, if you choose.

The interview will be audio-taped and I will take written notes on your responses. I will keep the tapes and written notes in my possession, and I will keep them in a locked file cabinet. I am the only person who will have access to the audiotapes and written notes. Your name will not be connected to any of the information you provide during the interview. The tapes will be destroyed immediately after they have been transcribed and reviewed. I anticipate this to occur by June 2010. The notes, or transcriptions, will remain in a locked file cabinet until the conclusion of my research and then destroyed.

In reporting my data, I may use direct quotes from the interviews to illustrate points but they will not be attributed to any specific person. I will ensure that no information provided by respondents will be able to be linked to any particular individual.

Do you have any questions about the researcher or the research being conducted?

Do you consent to participate in this research project?

## APPENDIX D

### INFORMATION SHEET FOR INDIVIDUALS

Project Title: The Construction and Application of American Indian Legal Identity

Investigators:

Dee Robertson, MBA, Department of Sociology, Oklahoma State University.

Purpose:

This is a research project. You have been asked to participate because you are a Native American who is at least 18 years old. The purpose of this research is to gather your opinions about being Native American and a legal identity.

- “Legal Identity” is defined as the requirement of a degree of Indian blood (also known as a blood quantum), which is verified and documented by the U.S. government in the form of a Certificate of Degree of Indian Blood (CDIB) card and/or membership within a federally recognized tribe.

Procedures:

The interview will take approximately 1 hour. You will be asked to answer questions regarding your opinions and experiences about:

- how it feels to be Native American,
- how it feels to be connected to your tribe,
- what having or not having a CDIB card or tribal membership means to you,
- and how the requirement of a degree of Indian blood or having a relative on the tribal rolls (legal identity) affects Native Americans.

Risks of Participation:

There are no known risks associated with this project which are greater than those ordinarily encountered in daily life.

Benefits:

The benefit from participating in this research is that you will get to give your opinion about a very important topic to Native Americans.

Confidentiality:

The interview will be audio-taped and I will take written notes on your responses. I will keep the tapes and written notes in my possession in a locked file cabinet. I am the only person who will have access to the audiotapes and written notes. Your name will not be connected to any of

the information you provide during the interview. The tapes will be destroyed immediately after they have been transcribed and reviewed. I anticipate this to occur by June 2010. The notes, or transcriptions, will remain in a locked file cabinet until the conclusion of my research and then destroyed. In reporting my data, I may use direct quotes from the interviews to illustrate points but they will not be attributed to any specific person. I will ensure that no information provided by respondents will be able to be linked to any particular individual.

**Compensation:**

You will receive \$10.00 dollars for your participation immediately following the interview, if the interview is conducted in person. If conducted by telephone, the monetary compensation will be mailed to the address of your choice.

**Contacts:**

If you have questions about your rights as a research volunteer or want to discuss your participation in the study, please contact the following:

- Dee Robertson, 006 Classroom Building, Stillwater, OK 74074, 405-744-7115
- Dr. Jean Van Delinder, Department of Sociology, 006 Classroom Building, Oklahoma State University, Stillwater, OK 74074, 405-744-4613

You may also contact Dr. Shelia Kennison, IRB Chair, 219 Cordell North, Stillwater, OK 74078, 405-744-1676 or [irb@okstate.edu](mailto:irb@okstate.edu) with any questions about any rights as a research participant.

**Participant Rights:**

Your participation is voluntary, there is no penalty for refusal to participate, and you are free to withdraw your consent and participation in this project at any time, without penalty.

## APPENDIX E

### INTERVIEW GUIDE INDIVIDUALS

#### I. INTRODUCTORY INFORMATION

1. Tell me a little about yourself.
2. What is your tribal affiliation?
3. Is your tribe federally recognized?
4. Do you have a CDIB card? A tribal membership card? Both?
5. Can you tell me a little about your tribe? Its history?

#### II. GENERAL NATIVE AMERICAN IDENTITY ISSUES

1. How did you first know you were Native American?
2. What makes you proud to be Native American? (e.g., common characteristics of Native Americans).
3. What are some typical stereotypes that Native Americans face?
4. If a Native American doesn't speak the language of his or her tribe, what does that mean?
5. Can we tell if someone is Native American by looking at them?
6. Should someone be Native American to participate in rituals, ceremonies, or religious? Why or why not?
7. How do Native Americans without a cultural heritage reconnect to the Native American community?

#### III. LEGAL IDENTITY ISSUES

1. How come Native Americans have to be enrolled in a tribe or carry a card?
  2. Do you think that blood quantum is a good thing? Please explain.
  3. Do you think cultural ties or blood ties to the Native community are more important?
  4. What role has the federal government played in determining who is a Native American?
- [If legally identified]:*
5. Can you tell me about getting your (CDIB/tribal enrollment) card?
  6. What does having a (CDIB/tribal enrollment) card mean to you?
  7. What do you think about people who don't have a CDIB card but still say they are Indian?
  8. Do you know people that are clearly Native Americans that can't get their (CDIB/tribal enrollment) card? What do you think about that?
- [If not legally identified]:*
9. How does not having a (CDIB/tribal enrollment) card affect you?
  10. Can you tell me how it felt when you realized that you didn't have a legal identity?
  11. Do you have any relatives with CDIB cards? How did that happen, since you're related?

12. Have you ever felt discriminated against by another Native American because you don't have a (CDIB/tribal enrollment) card? Do you know someone who has been? Can you tell me about it?

#### IV. GENERAL BACKGROUND INFORMATION

1. Year of birth
2. Gender
3. Level of Education
4. Occupation / Source of Income
5. Income level

## APPENDIX F

### SCRIPT TO OBTAIN VERBAL CONSENT FOR TRIBAL / INDIAN AFFAIRS REPRESENTATIVES

You have been asked to participate in research by Dee Robertson from the Department of Sociology at Oklahoma State University. I am interested in your opinions as a Tribal / Indian Affairs Representative about how it feels to be a Native American and to be connected to your tribe, and what having a CDIB card or tribal membership card means to you. As a participant in this research project, you will be asked to complete an interview that will last one hour. You will be asked to answer questions regarding your opinions and experiences with being Native American and how legal identity affects Native Americans and Tribes.

I define “Legal Identity” as the requirement of a degree of Indian blood (also known as a blood quantum), which is verified and documented by the U.S. government in the form of a Certificate of Degree of Indian Blood (CDIB) card and/or membership within a federally recognized tribe.

This interview will be confidential. Your participation is voluntary and you are free to withdraw your participation at any time, and you are free not to answer any single question, or series of questions, if you choose.

The interview will be audio-taped and I will take written notes on your responses. I will keep the tapes and written notes in my possession, and I will keep them in a locked file cabinet. I am the only person who will have access to the audiotapes and written notes. Your name will not be connected to any of the information you provide during the interview. The tapes will be destroyed immediately after they have been transcribed and reviewed. I anticipate this to occur by June 2010. The notes, or transcriptions, will remain in a locked file cabinet until the conclusion of my research and then destroyed. In reporting my data, I may use direct quotes from the interviews to illustrate points but they will not be attributed to any specific person. I will ensure that no information provided by respondents will be able to be linked to any particular individual.

Do you have any questions about the researcher or the research being conducted?

Do you consent to participate in this research project?

## APPENDIX G

### INFORMATION SHEET FOR TRIBAL / INDIAN AFFAIRS REPRESENTATIVES

Project Title: The Construction and Application of American Indian Legal Identity

Investigators:

Dee Robertson, MBA, Department of Sociology, Oklahoma State University.

Purpose:

This is a research project. You have been asked to participate because you are a Native American who is at least 18 years old and you work for a tribal government or for Indian Affairs. The purpose of this research is to gather your opinions about being Native American and how legal identity affects Native Americans and Tribes.

- “Legal Identity” is defined as the requirement of a degree of Indian blood (also known as a blood quantum), which is verified and documented by the U.S. government in the form of a Certificate of Degree of Indian Blood (CDIB) card and/or membership within a federally recognized tribe.

Procedures:

The interview will take approximately 1 hour. You will be asked to answer questions regarding your opinions and experiences about:

- how it feels to be Native American,
- what it means to be connected to your tribe,
- what having a CDIB card or tribal membership means to you,
- and how the requirement of a degree of Indian blood or lineal descent (legal identity) affects Native Americans and Tribes.

Risks of Participation:

There are no known risks associated with this project which are greater than those ordinarily encountered in daily life.

Benefits:

The benefit from participating in this research is that you will get to give your opinion about a very important topic to Native Americans. Additionally, this research is expected to benefit the broader Native American community by giving a *Native* voice to the conversation about the construction of a legal identity.

Confidentiality:

The interview will be audio-taped and I will take written notes on your responses. I will keep the tapes and written notes in my possession in a locked file cabinet. I am the only person who will have access to the



audiotapes and written notes. Your name will not be connected to any of the information you provide during the interview. The tapes will be destroyed immediately after they have been transcribed and reviewed. I anticipate this to occur by June 2010. The notes, or transcriptions, will remain in a locked file cabinet until the conclusion of my research and then destroyed. In reporting my data, I may use direct quotes from the interviews to illustrate points but they will not be attributed to any specific person. I will ensure that no information provided by respondents will be able to be linked to any particular individual.

**Compensation:**

You will receive \$10.00 dollars for your participation immediately following the interview, if the interview is conducted in person. If conducted by telephone, the monetary compensation will be mailed to the address of your choice.

**Contacts:**

If you have questions about your rights as a research volunteer or want to discuss your participation in the study, please contact the following:

- Dee Robertson, 006 Classroom Building, Stillwater, OK 74074, 405-744-7115
- Dr. Jean Van Delinder, Department of Sociology, 006 Classroom Building, Oklahoma State University, Stillwater, OK 74074, 405-744-4613

You may also contact Dr. Shelia Kennison, IRB Chair, 219 Cordell North, Stillwater, OK 74078, 405-744-1676 or [irb@okstate.edu](mailto:irb@okstate.edu) with any questions about any rights as a research participant.

**Participant Rights:**

Your participation is voluntary, there is no penalty for refusal to participate, and you are free to withdraw your consent and participation in this project at any time, without penalty.

## APPENDIX H

### INTERVIEW GUIDE TRIBAL / INDIAN AFFAIRS REPRESENTATIVES

- I. INTRODUCTORY INFORMATION
  1. What agency do you work for?
  2. How long have you worked for the agency?
  3. Describe your work at the agency.
  4. Do you have a CDIB card? A tribal membership card? Both?
  
- II. GENERAL NATIVE AMERICAN IDENTITY ISSUES
  1. What are some common characteristics of Native Americans?
  2. What are some typical stereotypes that Native Americans face?
  3. If a Native American doesn't speak the language of his or her tribe, what does that mean?
  4. Should someone be Native American to participate in rituals, ceremonies, or religious? Why or why not?
  5. How do Native Americans without a cultural heritage reconnect to the Native American community?
  
- III. LEGAL IDENTITY ISSUES
  1. What does having a (CDIB/tribal enrollment) card mean to you?
  2. What is the best way to be a member of a tribe? Any suggestions for tribal governments about tribal membership?
  3. What is your opinion about having a designated blood quantum membership versus lineal descendent enrollments to tribal membership?
  4. Do you personally know people that are clearly Native Americans that can't get their (CDIB/tribal enrollment) card? What do you think about that?
  5. What role has the federal government played in determining who is a Native American?
  6. Do you think that blood quantum is a good thing? Please explain.
  7. Why do Native Americans have to be enrolled in a tribe or carry a card?
  8. What is your opinion of blood quantum versus lineal descent?
  
- IV. GENERAL BACKGROUND INFORMATION
  1. Year of birth
  2. Gender
  3. Level of Education
  4. Income level

## APPENDIX I

### SELF-REVIEW OF RESEARCHER

My personal lens has shaped the exploration of American Indian legal identity from question development through analysis. *Being* Indian and being labeled an Indian has certainly shaped who I am today, but my life also attests to the phenomenon of legal identity and its impact. My demonstration of cultural and tribal pride stands in juxtaposition with experiencing the social shame of being Native American. When questioned about my racial heritage, I express openly and confidently my affiliation with the Muscogee (Creek) Nation and what being a Muscogee woman means to me. I speak of my tribe's culture, ceremonies, and history with pride. I recall my childhood of attending stomp dances and Indian wakes when people died, singing in "Creek" with my great-aunts at family reunions, and being taught to always respect my elders. I relate my tribe's belief in the equality and honor of females, joking about how this belief is clearly demonstrated by me *and* my extended family of strong and opinionated women.

I recount being called denigrating names for being dark-skinned and big-nosed, the shame I felt as my family stood in line for hours to receive our Indian commodities, and being scared of getting sick because the nearest Indian clinic was almost an hour from home. I reveal that as an adult I still tolerate hurtful language and inequitable treatment because of being Indian, whether working as a well-educated executive in a prestigious organization or as a graduate student in an esteemed university. Most importantly, I readily share my opinions about the political, cultural, and economic actions of the Muscogee (Creek) Nation. I never question my connection with *my people, my tribe, my Nation*.

Through this reflexive exercise, I discovered that I had *assumed* most Natives had similar experiences and spoke and felt the same way about being Indian as me. This is not the case. Because my people are recognized as *legitimate* Indians, I realize now that I had taken for granted my citizenship within my federally recognized tribe. Not only does my American Indian Legal Identity cultivate me socially and nurture me emotionally, it benefits me economically and protects me legally. Hence, the most perplexing issue for me becomes why people with a legal identity, *like me*, accept a requirement of documented authenticity without question.

APPENDIX J  
IRB APPROVAL

Oklahoma State University Institutional Review Board

Date: Thursday, May 28, 2009  
IRB Application No AS0942  
Proposal Title: The Construction and Application of American Indian legal Identity

Reviewed and Expedited  
Processed as:

**Status Recommended by Reviewer(s): Approved Protocol Expires: 5/27/2010**

Principal  
Investigator(s):

Dwanna L. Robertson	Jean Van Delinder
006 Classroom Bldg.	035 CLB
Stillwater, OK 74078	Stillwater, OK 74078

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The IRB application referenced above has been approved. It is the judgment of the reviewers that the rights and welfare of individuals who may be asked to participate in this study will be respected, and that the research will be conducted in a manner consistent with the IRB requirements as outlined in section 45 CFR 46.

The final versions of any printed recruitment, consent and assent documents bearing the IRB approval stamp are attached to this letter. These are the versions that must be used during the study.

As Principal Investigator, it is your responsibility to do the following:

1. Conduct this study exactly as it has been approved. Any modifications to the research protocol must be submitted with the appropriate signatures for IRB approval.
2. Submit a request for continuation if the study extends beyond the approval period of one calendar year. This continuation must receive IRB review and approval before the research can continue.
3. Report any adverse events to the IRB Chair promptly. Adverse events are those which are unanticipated and impact the subjects during the course of this research; and
4. Notify the IRB office in writing when your research project is complete.

Please note that approved protocols are subject to monitoring by the IRB and that the IRB office has the authority to inspect research records associated with this protocol at any time. If you have questions about the IRB procedures or need any assistance from the Board, please contact Beth McTernan in 219 Cordell North (phone: 405-744-5700, [beth.mcternan@okstate.edu](mailto:beth.mcternan@okstate.edu)).

Sincerely,



Shelia Kennison, Chair  
Institutional Review Board

VITA

Dwanna Lynn Robertson

Candidate for the Degree of

Master of Science

Thesis: *Card-Carrying Indian: The Social Construction of American Indian Legal Identity.*

Major Field: Sociology

Biographical:

Education:

Completed the requirements for the Master of Science in Sociology at Oklahoma State University, Stillwater, Oklahoma in July, 2010.

Completed the requirements for the Master of Business Administration in Business and Technology at East Tennessee State University, Johnson City, Tennessee in December, 2003.

Completed the requirements for the Bachelor of Arts in Political Science at the University of Central Oklahoma, Edmond, Oklahoma in December 2001.

Name: Dwanna Lynn Robertson

Date of Degree: July, 2010

Institution: Oklahoma State University

Location: Stillwater, Oklahoma

Title of Study: CARD-CARRYING INDIAN: THE SOCIAL CONSTRUCTION OF  
AMERICAN INDIAN LEGAL IDENTITY.

Pages in Study: 141

Candidate for the Degree of Master of Science

Major Field: Sociology

Scope and Method of Study:

This research focuses on the concept of an *American Indian Legal Identity*. Its primary purpose is to develop an understanding of the complexity of the construction and application of an American Indian Legal Identity and to add richness and rigor through the authenticity of the voice of the American Indian concerning this phenomenon. To accomplish this requires an interdisciplinary framework that articulates legislative dynamics, historical context, racial hegemony, and frames through which these were (and are) interpreted. Furthermore, the use of a qualitative methods approach, consisting of semi-structured, in-depth interviews of thirty Oklahoma Native American participants, representing thirteen distinct tribal citizenships, and twenty-two multi-tribal affiliations, allowed for rich, detailed descriptions within the context of possessing or lacking an American Indian Legal Identity.

Findings and Conclusions:

Participants frame an American Indian Legal Identity as identification for services and benefits, a function of maintaining tribal sovereignty, a mechanism for federal government control, proof of Indianness, and a symbol of cultural belonging. Participants interpret the impact of American Indian Legal Identity through the competing frames of the social constructs of racial, ethnic, and legal identity. American Indians must meet particular criteria to qualify for authentic Indianness, which creates and reifies a hierarchy of Indianness.

ADVISER'S APPROVAL: Dr. Jean Van Delinder

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