

IDENTITY DELEGITIMIZATION AND ECO-ENTERPRISE: A COMPARATIVE  
STUDY OF THE PROCESS OF DISENROLLMENT IN  
NATIVE AMERICAN COMMUNITIES

by

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A dissertation completed in partial fulfillment of the requirements for the degree of  
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## **DEDICATION**

This is dedicated to my parents, Levester and Amanda McRae, without whom I could not have traveled this wonderful road. Thank you for instilling in me a courageous spirit, the endless possibilities of adventure, the love of nature, and the wonder of learning and discovery; it has certainly taken me down a less trodden life-path.

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## **ABSTRACT**

### **IDENTITY DELEGITIMIZATION AND ECO-ENTERPRISE: A COMPARATIVE STUDY OF THE PROCESS OF DISENROLLMENT IN NATIVE AMERICAN COMMUNITIES**

Janice R. McRae, Ph.D.

George Mason University, 2010

Director: Dr. Karina Korostelina

This dissertation describes the process of contemporary internal fragmentation resulting from tribal disenrollment (loss of citizenship) which has occurred in some Native American communities. Employing a comparative analysis approach, it explores three groups, the Cherokee, the Pechanga Band of Luiseño Indians and the Las Vegas Paiute, each having experienced recent economic gain through such enterprises as casino gaming. Through the analysis of narrative discourse, this research focuses on the disenrollment experience from the perspective of those who have been expelled. It provides a view of how this in-group conflict has resulted in social emotional distress as community decision-makers and leaders exercise their sovereign rights in determining who does and who does not belong. The study explores how such decisions act as constraints and, thereby, elicit efforts of resistance to the altering of salient identity markers – a process which is explored through the realm of modernization and economic

transition. This research is intended to provide a glimpse of the impact of historical occurrences on contemporary decision-making impacting Native societies, individual identity and belonging. Finally, it attempts to explore avenues for community healing and reconciliation and provides a look at broader implications for the understanding of discord within groups.

## **Chapter 1**

### **Introduction and Problem Statement**

*My father's family's roots are from Arkansas and Oklahoma – at our recent family reunion of 200+ relatives this past summer, the souvenir program included an account of my great-great grandmother who was a practitioner of homeopathic medicine; she was a herbologist – a healer; all the people in the community relied on her healing skills that she learned from her Native mother and she learned from her mother, and she from hers.*

To be is to exist in a state of sometimes competing, but always transformative dualities: the individual entity - singular and distinct - and the social, further defining and complementing the singularity of the person. For traditional peoples, this also means balancing the needs of modernity and contemporary realities with traditional cultural practices, rituals and norms.

In this study, I will focus on the struggles of inclusion and exclusion as exemplified in three Native American<sup>1</sup> communities, the Pechanga Band of Luiseño Indians located in Southern California, the Las Vegas Paiute in Nevada and the Cherokee Nation located in the state of Oklahoma. These groups were selected because each of their tribal authorities has recently expelled members - a phenomenon that takes place in many Indigenous American societies. It is important to note that expelling members from Native American groups is not a new phenomenon and is practiced as part of the

---

<sup>1</sup>For the purposes of this project, I will interchangeably use the following terms: Native American, Indigenous, Indian, Aboriginal and First Nation people.

sovereign rights of Indigenous American societies to determine their citizenry. The most recent banishments, however, have elicited conflict behavior and internal discord as manifest in high-profile contentious and sometimes bitter interactions between those who have been cast out of the community and tribal authorities. Disenrollment is a euphemistic term that refers to the banishment, outcasting, expelling or disenfranchising of tribal<sup>2</sup> members; it is akin to stripping one of his or her national citizenship; it is an expulsion that says, “one can never go home again”.

For the purposes of this research, it is important to note that the usage of the word “tribe” has often been questionable in the fields of anthropology, as well as in the field of law. The term has been utilized by the United States government and codified as a result of the Marshall Trilogy (U. S. Supreme Court rulings led by Chief Justice Marshall from 1831-1833), cases which recognized Indian sovereignty. “Because Indian nations lie within the acknowledged boundaries of the United States, Chief Justice Marshall delineated Indian tribes as **"domestic dependent nations."** It is under this definition that Indian tribes find themselves operating today.”<sup>3</sup>

It is of deep significance to note, as has been previously stated, that due to their unique relationship with the United States government, American Indian communities consider themselves and exercise, for the most part, the powers and rights of sovereign nations. Accordingly, the political decision making unit, often a tribal council has the

---

<sup>2</sup> For this study, the word, “tribe” will sometimes be used to describe Native American groups or communities since this term is also utilized in contemporary Native American scholarly literature and by Native Americans themselves when referring to Indigenous American nations.

<sup>3</sup> “Fundamental Principles of Indian Sovereignty” *American Indian Policy Center*. Accessed 04/10 from: <http://www.airpi.org/research/st98fund.html>.

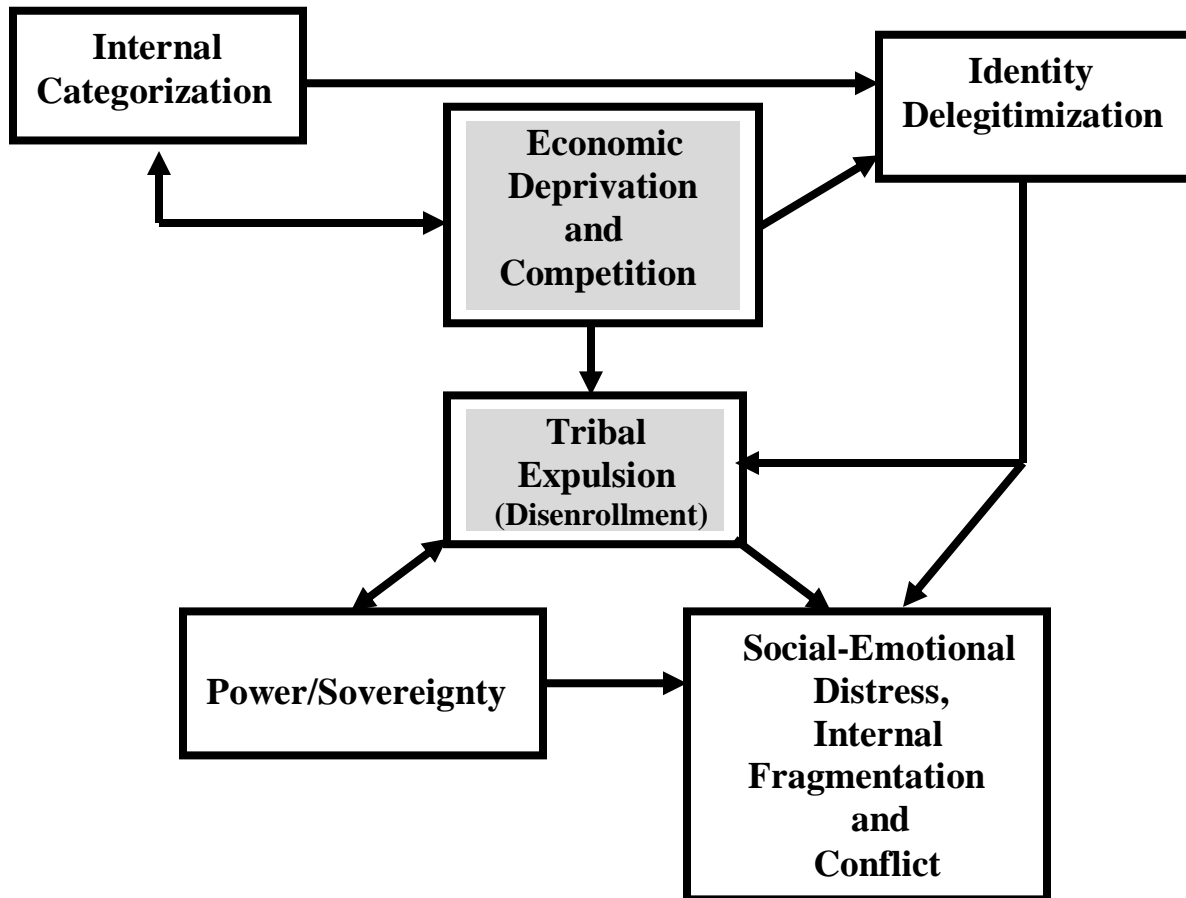
authority, through a review and change of membership rolls, to excommunicate members from the group. This action often arises from differences concerning identity legitimacy and authenticity. This process, resulting in intratribal tension, internal division and fragmentation, has the goal of forcible identity transformation imposed on certain group members by tribal authorities and/or in some instances as the result of rulings by the federal authority of the Bureau of Indian Affairs (BIA). Disenrollment becomes particularly pernicious as it relates to economic gain; some argue that the practice of exclusion and expulsion has become prevalent in some Native American communities that have enjoyed tremendous financial wealth through enterprises such as Las Vegas style casino style (Class III) gaming, successful smoke shops, resort areas, etc. But, it is the rise of Class III gaming allowed on reservations since the passage in 1988 of the Indian Gaming Regulatory Act (IGRA), that some argue, has transformed the nature of "Indian Country"<sup>4</sup> (See also Appendix B). For those Native communities able to acquire Class III gaming, however, this has had critically significant economic, social and cultural implications not only for the benefits to their groups, but also for internal cohesion as reflected in practices of exclusion. The emergence of such enterprises as casinos and smoke shops on Indian lands can also be framed as reflecting the impact of *ecotourism* (Johnson 2006) on traditional ways of living and accumulation of wealth. My primary research question, therefore, is how do economic and identity issues interact leading to internal self-categorization and ultimately disenrollment producing internal

---

<sup>4</sup> Harlan McKosato and Nichelle Norris. National Public Radio. (May 20, 2005) from *All Things Considered*. "Commentary: Casino Gaming has Brought More Than Money to Native Americans". Accessed from: <http://www.npr.org/templates/story/story.php?storyId=4660784>.

conflict in the three groups studied? This elicits multi-tiered analyses: processes in society, how they are perceived by people and the meanings that are ascribed to disenrollment. Other questions to be explored are how do those who are expelled react to this forced transformation and how do their reactions manifest as societal discord inside and outside the tribe? In other words, how do changes in personal and social identity occur within the disenrolled and how does this transformed sense of belonging result in conflict behavior and the realization that there exists a dual concern of both identity and economic issues? The functional hypothesis for this exploration, therefore, is that issues of identity legitimacy and economic gain are related - dynamics that may operate differently under certain circumstances. Absent irrefutable data, disenrollment, though presented as an effort to maintain social and cultural homogeneity may actually be an action to justify economic gain/discrimination. Accordingly, these processes are impacted by a variety of factors that underscore economic deprivation, social categorization and the accompanying socio-psychological features that characterize loss of citizenship. Thus, though identity delegitimization may appear to be the ultimate goal, it could just as well be considered an intervening dynamic since the ultimate goal of economic deprivation is removal from the tribe with issues of identity *framed* as a causative factor. Figure 1.1 illustrates a summary model of the working hypothesis for this study. A process of self categorization occurs within the group which leads to the questioning of a member's identity and legitimacy; this facilitates economic discrimination and competition which may result in tribal expulsion (disenrollment); this,

## MODEL OF HYPOTHESIS



**FIGURE 1.1** Model of Hypothesis – Explains the relationship among the key concepts to be explored in this study.

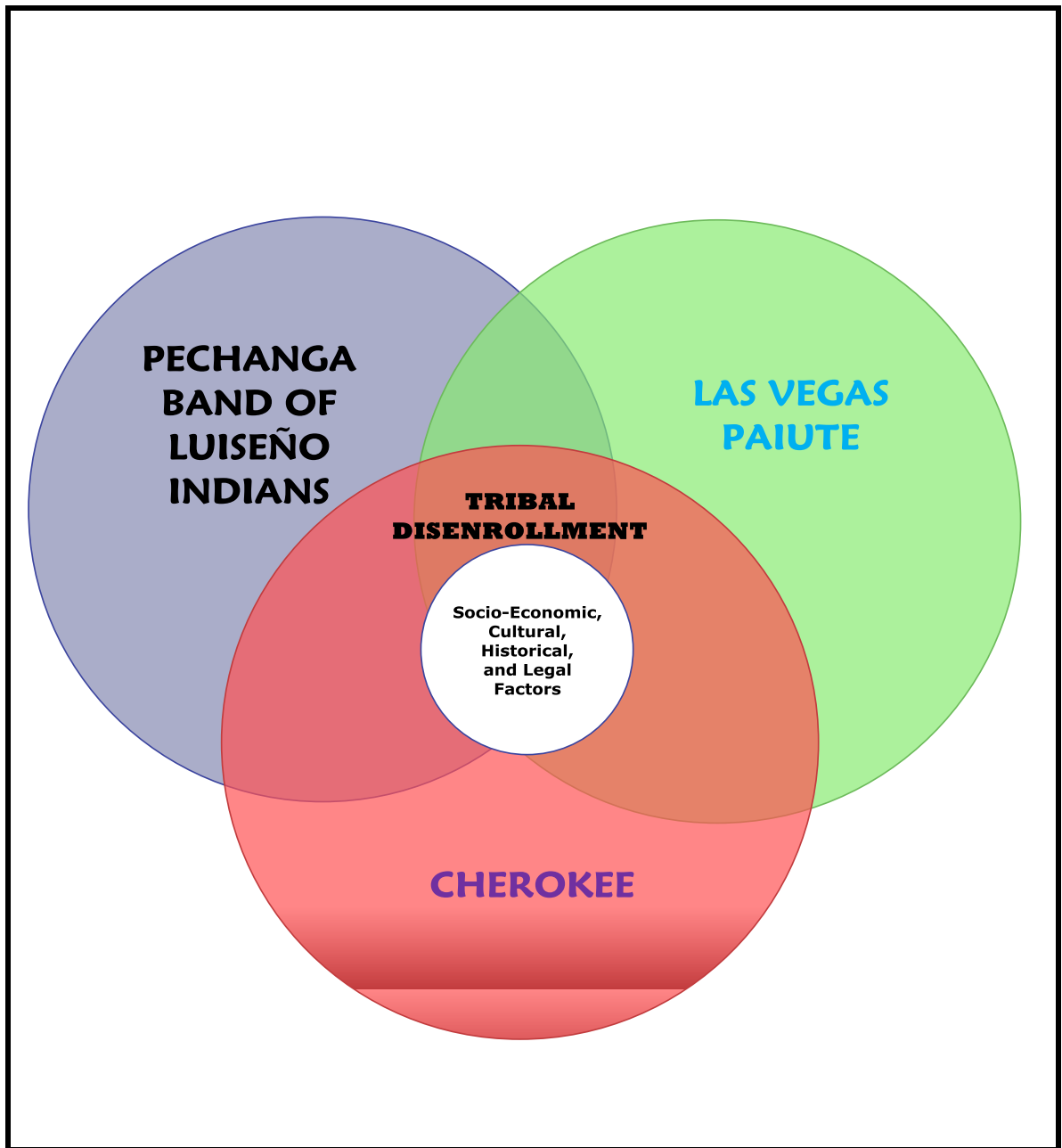


in turn causes social emotional distress, internal fragmentation and conflict. Since group decision makers are key to the outcome of this process, it can be surmised that exclusions may also be seen as an exercise of power and the sovereignty that grants such power. These issues and their relationships will be more clearly identified and discussed as the study progresses. There is a significant underlying meta-analytical framework that must be addressed as it is crucial to understanding the complexities and nuances of contemporary versus traditional Indigene experiences and ways of meaning making as it is presented in this study. One way in which this will be illustrated is through the use of graphics that depict either the circuitous, harmonious flow and integrative gestalt that often characterizes and is important in most Indigenous philosophy shown through circles (the importance of the circle, for example, is often found in spiritual and traditional practices, seen in many sacred dances, such as the Round Dance performed as a group social ceremony or dance of fertility (Hultkrantz 1978: 630), and ovular shapes when describing relationships and connected events, or through the intersecting lines and angles of polygons (a two-dimensional geometric figure formed of three or more straight sides) that will be used to reflect non-Indian cultural, social-political, and economic influences, or a combination thereof. The deep significance of these distinctions as they relate to the exploration and explanation of this study's data and analysis will, hopefully, become clear to the reader as this project unfolds. Thus, the polygons used in Figure 1.1 to describe the contemporary dilemma of tribal disenrollment represent the existence of non-Indian influences on Twenty-First century Indigenous communities.

The following illustration (Figure 1.2), demonstrates the initial linkages among the three groups in a manner more consistent with a generalized Native American frame and worldview of connectedness and circuitry. As a comparative model, Figure 1.2 represents an overview of the intersecting, multi-tiered factors that impact each of the three groups and will form the basis of comparison and exploration for this project; the focus will be on tribal disenrollment and the socio-economic, cultural, historical and legal factors that shape this dynamic of intragroup transition.

During the course of this study, the complexity of the cultural, historical, legal, socio-economic and socio-psychological battles that accompany issues of disenrollment will need to be explored, such as how does this process impact tribal authorities who make the decision as to who is disenrolled, for what reasons and why? Another factor to be explored is does an "identity inversion" occur in which the Native member, pre-disenrollment, experiences the prominence of social/collective identity, but post-disenrollment, the prominence of individual identity? How does this impact an individual or group who belongs to a society that has practiced traditions where the individual is less prominent and is then forced to relinquish his/her cultural and social ties? Since disenrollment usually involves the expulsion of an individual or a family unit from the tribe, it takes on an added significance - that of conflict between an individual and the group.

## COMPARATIVE OVERVIEW OF TRIBAL DISENROLLMENT



**FIGURE 1.2:** Comparative Overview of Tribal Disenrollment - A general comparative overview of the intersecting commonalities among the Pechanga, the Paiute and the Cherokee Indians.

Accordingly, this project will also seek to explore how the conflict dynamic of *individual against group* differs from that which occurs in intragroup, intergroup or interpersonal discord. There has been substantial research focusing on group against group (intergroup conflict), less focus on the conflict arising within (intragroup); there has been even less research on the dynamic that reflects the individual against group conflict phenomenon. Thus, this study will seek to explore the inclusion/exclusion dynamic within the frame of power differentials that characterize the group's actions and those of the ousted members.

In what way does a process of entitativity occur in which the expelled individual begins to see the community or community authorities as a cohesive entity upon which hostile actions are then engaged and displayed? Is the anger and hostility of the disenrolled, therefore, diffused and not directed at a single individual? Do the disenrolled perceive this as a group identity and why? How do the disenrolled, for example, demonstrate the need to regain entry (validate and re-assert identity) to the tribe and will they do so through the acquisition or demonstration of power by any means?

For this project, it will be important to address issues of conflict origins, behavior and resolution within the confines of Indigenous ways of knowing. As it has been argued (Walker 2004, 527), "Western models of conflict resolution have been criticized as culturally inappropriate for Indigenous peoples due to differences in the worldview underlying the techniques". The author goes on to discuss the differences between Western and Indigenous views of conflict, the Indigenous perspective being one of transformation and healing - restoring harmony, whereas Western methods tend to focus

on agreement reaching rather than mending relationships (Ibid.). Other differences such as the Western worldview of unilarity, analysis, human over nature, human over human versus the Indigenous focus on holistic concepts, shared power in human relations and humans living in conjunction with nature, are broad sweeps identified by Walker that may have some generalizability to most Native peoples. This study is undertaken, therefore, with the spirit of this dichotomy in mind and will seek to be cognizant of such differences whenever possible.

This project also includes a historical overview of those factors contributing to the use of disenrollment and the criteria for disenrollment as practiced in the identified Native communities, specifically, the Las Vegas Paiute, the Pechanga Band of Luiseño Indians, and the discord between the Cherokee and the Cherokee Freedmen who are currently engaged in social and legal battles with disenrolled members. This study will identify current and historical factors that impact the process of what some consider to be shunning from the larger community. For the Cherokee Freedmen Descendants (descendants of slaves adopted into the Cherokee Nation), issues of racism have emerged. This and other relevant historical and contemporary factors, including the role of oppression from the dominant culture and how this has impacted Native societies to the degree to which they are willing to ignore or discard traditional cultural practices of inclusion, will be addressed in this work. Sawchuck (2001) refers to how the modern nation-state “often creates or defines aboriginal identities for its own use”. He goes on to say that such “may have little to do with peoples’ understanding or perceptions of themselves”.

In this project, the identified issues will also be critically reviewed within the tangential framework of micro, meso and macro levels of discord: the tribe and the individual tribal member, the tribe and the local community, the tribe and the state/federal governments. Analyzing power differentials at each level and their impact on identity saliency and transformation has substantial significance for this work. I hope, also, to demonstrate that this complex dynamic of expulsion results in competing discourses - one utilized by the tribal authority and the other by the affected "disenrollee". This process of societal rejection will be explored as a form of *ritualized aggression* and *internal structural violence* and will be accomplished through the narrative analysis of those most deeply affected by the process of disenrollment. These competing discourses will also be investigated through the frame of power differentials – the use of power of sovereign Indian nations, the perception of the abuse of these powers and the resulting internal conflict and dissention such elicits.

Focusing primarily on the process of fragmentation and self-categorization, this project will unfold as a comparative multi-case study with narrative analysis. The data for this research are gathered from sources such as: historical records and documents; primary resources such as personal interviews, personal papers and letters; review of print, audio or video interviews; legal documents; newspaper articles; oral stories, online data mining, histories and/or field interviews. Individual narratives that arise from the experience of being outcast are explored and interpreted for embedded meanings to ascertain patterns of symbolic or metaphorical concepts that reflect identity transformation.

In summary, this research addresses the internal discord arising from the impact of economic initiatives such as casino gaming and smoke shops (ecotourism) on the social, cultural, traditional and relational interactions of those Native communities most affected by these enterprises.

### **Research Implications**

The implications of this research illustrate the pervasive impact of change as it elicits a dramatic internal transformation to an extent unheard of in modern times for Native American peoples; this impacts internal discourse within the group and alters the discourse of non-Indians interacting with those tribes managing substantial economic wealth. The significance of this project is in exploring the tripartite, often competing nature of modernization as reflected in the occurrence of ecotourism exemplified by smoke shops, resorts and Las Vegas style gaming in Indian Country: 1) Class III gaming provides economic wealth unheard of in the Native American society, providing power and political access; 2) It also profoundly impacts internal cohesion, culture and traditions that have resulted in rising incidences of tribal disenrollment and claims of loss of constitutional and civil rights (Taliman 2002) (Newman 2005) (McKosato) (McArmond); 3) Many non-Indians view this newly acquired wealth with suspicion, feel threatened by it, wish to limit access or to amass a "piece of the pie" (state and local governments).

Wetzel (2006) provides an overview of the impact of gaming on intratribal

contention and includes issues related to implications for tribal sovereignty as tribes revisit membership standards. He raises and addresses four questions that are relevant to this study: 1) Is there a place on the reservation for casino gambling? 2) How should the social and economic impact be managed in these communities? 3) Who is, and is not, a member of the community and entitled to its benefits? 4) Who is traditional and what does that mean? The author goes on to state that despite the attention to gaming and its ramifications, there has been very little research that addresses intratribal debates about gaming. He raises the issue of how critical it is to explore "...the future trajectory of tribal sovereignty [and] how internal disputes about gaming drive some tribes to revisit their existing membership rolls" (Wetzel 2006). Though Wetzel engages the concept of intratribal discord, he does so from a broad perspective encompassing the actions or various "occupations" of groups within the community and only briefly focuses on the specific acts of disenfranchisement or disenrollment. Accordingly, the goal of this study is to expand the literature base on intratribal tensions and discord by addressing who is eligible to share in the benefits accrued through gaming and to explore issues related to the determination and identification of these individuals.

As the economic power of some Indian communities continues to proliferate throughout the twenty-first century, it is not unlikely that some Native Americans could one day be considered among the wealthiest and most powerful minorities in this country. One can argue, however, that this ascension may be impacted by the implications of modernization (or development) in the form of such enterprises as gaming, or other business ventures such as the smoke shops of the Las Vegas Paiute (Knack 2001, 292).



This economic boom may alter traditions, cultural practices, identity, relational interactions and (economic) security and may give rise to the likelihood of conflict - conflict and tensions that are internal to the collective as well as those that arise external to it.

Fenlon (2006, 383) discusses that, "Reframing analytical discussion from conflicts of traditional lifestyles to conflicts of potential corruption within the internal colonial administrations of some tribal councils better defines one source of tensions associated with Indian gaming." He goes on to state that it is not so much the issue of gambling itself that becomes problematic, but the practices of social change and economic institutions which are directly reflected, for example, in the decisions of tribal authorities to alter membership rolls.

The ability to exercise such power has implications for impacting policy on local, state and federal levels. According to Cromer writing for the *Ukiah Daily Journal* (Oct. 29, 2005) and reporting on a protest demonstration about disenrollment: "With representatives from nearly a dozen different tribes or reservations throughout California, demonstrators held signs stating, "Civil Rights Justice For All" and "Disenrollment is a Hate Crime" as drivers...honked in support..." He goes on to quote a disenrolled member of the Pechanga, "This is about how our civil rights are being violated by tribal officials and tribal government. There is nowhere we can go to have our civil rights protected or upheld... The public doesn't realize that this is happening..." (2005). Cromer goes on to report that the protest participants were, "Toting signs proclaiming there is "Third World Treatment in Indian Country, people of all races and ages walked

along... as a group of Native Americans shared stories of civil rights violations" (Ibid.).

This perspective is relevant to the current study as it fosters an understanding of the continuing narrative describing disenrollment's impact on those who continue to experience it.

The effects of substantial revenue, some allege, have elicited much disunity within certain Native communities and has spurred the use of expulsion from the community; others state that disenrollment has always existed within Indian groups - that this is not new. The critical significance of the general acceptance of this process within Indigenous communities elicits questions of the historical origins of this practice and how such "fits" within Twenty-First Century ethnic, social and economic realities.

Exclusionary methods such as disenrollment have implications for the stability of First Nation peoples, their culture and traditions, the cohesion and transformation of their societies, and the manner in which processes of intragroup discord and conflict manifest; this also has implications for the continued stability of the relationship between Native Americans and those of the dominant culture as situations eliciting intergroup conflict occur. As the impact of modernizing enterprises on Native communities is explored, it will be important to note the historical and traditional aspects of gaming and disenrollment and their relevance to Indian societies today. To facilitate understanding of current cultural practices, this study will also include a section devoted to historical relevance.

The next chapter contains reviews of literature relevant to this study. The first part focuses on those writings addressing Native American historical, social and

economic transformational concerns; the second part of the Literature Review focuses on the writings that construct the theoretical framework for this project.

## **Chapter 2**

### **Literature Review**

This review is organized into several areas that are relevant to the current study. It begins with analysis of historical factors, including the sovereign status of Indian nations, indigenous culture and traditions, then progresses to the discussion on the issues of Indian authenticity and identity. Scholarship focusing on modernization factors as they impact Native communities is discussed, including issues surrounding contemporary indigenous self identification in the midst of societal change. Such is germane to this study because it raises the question, “Who defines me?” Is identity a function of what the individual determines it to be, or is it constructed by an external social force regardless of the individual's preference? Also reviewed are works that focus on Indian gaming and other eco-enterprises, as well as writings that discuss Indian sacred knowledge and the social conflict that arises in certain communities where tribal disenrollment has yielded substantial internal discord. Part II reviews literature that forms the basis for the theoretical construct underlying this research.

## **Part I –Historical, Cultural, Contemporary Economic and Identity Legitimacy Issues**

In order to provide a historical context for contemporary issues, I will first discuss the cultural and historical practices of the Las Vegas Paiute, then the Pechanga and finally, the Cherokee. I begin this exploration by outlining social structures and traditions that will help form the basis for understanding Paiute society and methods of meaning making as explored in the writings of several notable authors. This includes reviewing the culture, historical practices and social interactions of Paiute society found in Kelly's (1971) work on *Southern Paiute Ethnography* which is beneficial to this exploration. The absence of a single tribal political organization, for example, in which the entire population came together reflected the historical reality of the Paiute people who gathered and lived in bands (Knack 1984, 15). The various groups of the Great Basin area were flexible peoples who moved in response to the availability of "transitory rich resources" and engaged in resource sharing with other bands in times of need (Ibid. 16). This resulted in a fluidity which characterized Paiute life within the various bands until the arrival of white settlers who initially engaged in peaceful cooperation with the Paiute, but when silver was discovered in 1859, the numbers of white settlers and tensions increased. Tensions escalated into violent conflict and continued throughout the second half of the nineteenth century (Ibid. 84); it was also during this time that Paiute land became a part of the reservationization of the American west. One significant aspect of Paiute society was their response "...to the BIA [Bureau of Indian Affairs] efforts to institutionalize reservation membership decisions to a series of biological equations and

legal proceedings, the Paiutes managed to operationalize quite a different set of membership criteria. People continued to move across space and change community affiliations” (Knack 2001, 194). As will be addressed later, this cultural tendency may have particular implications for this study.

In addressing historical factors related to the Pechanga Band of Luiseño Indians, Contreras (2006) states that “...the political disenfranchisement of the Pechanga Band began with the arrival of the Spanish, the first Europeans to colonize the band’s traditional homelands...” She goes on to state that the success of the tribe could be partly derived from their ability to maintain traditional political and cultural structures despite Spanish conversion attempts. Entire villages were brought into the missions and encouraged to practice economic self-sufficiency in order to support the Spanish military and to provide labor for private landowners. Because of the widely dispersed nature of the Luiseño villages, however, the Spanish were unable to effectively colonize them; the Luiseño were thus able to maintain some of their traditional homelands. Eventually, the Luiseño lands were proposed for reservations where farming was the predominant form of economic development until the band engaged in other economic endeavors. In her discussion of gaming and tribal government, Contreras provides a synopsis of the historical progression of Pechanga economic life. Though her writing is important to this study, she neglects to identify any internal discord that has arisen within the Pechanga as they have ascended the economic ladder of success.

One cannot undertake a study such as this without reference to the legislation of the late nineteenth century that has impacted Indian identity and self-governance. Holt

states that “From the days of Thomas Jefferson, the “Indian question” had been one of determining the quickest and least expensive method of educating and assimilating the Indians into the mainstream culture: to turn them into taxpayers rather than dependent wards.... The major contradiction underlying the creation and application of various federal Indian policies was the drive for possession of Indian lands and resources” (1992, 47). Some argue that this resulted from paternalistic views that a forcible change in land allotment would help Indians to acquire the middle class values that they lacked and would ease their transition into the larger society (Ibid., 48). Efforts such as this are “exhibited in the Dawes Severalty Act of 1887 which was designed to make Indians independent by breaking up the tribe; this actually had the opposite effect on the Paiute in that it created an owned core of land and facilitated “preserving the separate identity of the Indians” (Ibid. 49).

It has also been argued that the federal government "persistently and deliberately utilized" racialized terminology to identify Indian groups, such as "full blood/mixed blood" – and that this contributes to disunity and undermines cultural integrity within Native societies (Stiffarm and Lane 1992, 41). This policy has historical ramifications that underlie the rationale for the continued usage of blood quantum as a determination of Native identity. Policies such as these are relevant to this study because they demonstrate the negative impact of historical events that favored racialized identification to determine benefit, such as the 1887 General Allotment Act or the 1830 Treaty with the Sauk and the Fox. These practices fostered societal cleavages in which mixed bloods were often given special treatment by the government and allotted larger parcels of land "often in better

areas and with immediate full control over their property" (Stiffarm and Lane 1992, 41). Processes such as these facilitated fragmentation within Native communities resulting in deculturalization and reflected the struggle for survival and advantage that were often framed in the ability to adapt and/or to abandon traditional ways (Stiffarm and Lane 1992, 42).

Issues of race and sovereignty were also discussed by Ray (2007) who looks at the Cherokee Nations' disputed relationship with descendants of former slaves who had been granted Cherokee citizenship (Freedmen) and their ultimate disenrollment and expulsion from the tribe. Ray's position is that the Cherokee Nation needs to forego the focus on political solutions that can be attributed to influences of the dominant culture and focus instead on the tribes' cultural resources such as using traditional ways of kinship making and establishing a dialogue with the ousted group. He also explores the impact of outside social and political factors that contribute to the contemporary relationship between what some consider as two distinct groups or what could be described, at a minimum, as internal discord within the Cherokee Nation. Ray's article is significant to this study because it looks specifically at the process of disenrollment in a historical and cultural context, he is also critical of the use of biological determinants that have been instrumental in ascribing political and social identity. The author also attempts to provide culturally relevant suggestions for improving relations between the Cherokees and the Freedmen.

Another writing that focuses on the particular dilemma of identity, race and politics is by Circe Sturm (1998) who also discusses the plight of the Cherokee Freedmen



as being “one of the most marginalized groups in Native North America... their story has never received the attention it deserves, in part because many people would prefer that it remain buried” (Ibid. 231). The author goes on to describe the bias against those Cherokees with African ancestry amidst challenges to their Cherokee legitimacy/identity and offers a historical analysis of the origins of that bias and the political role of the U.S. and Cherokee governments in maintaining such. This article is relevant to the current study because it provides an explanation for the contemporary status of the Cherokee Freedmen and addresses the continuing issues of disenfranchisement.

Wetzel (2006, 289) states that, “Understanding the impact of intratribal contention on Indian gaming requires an acknowledgement of the consequences of Self-Determination. Far from affirming the rights of Native nations, the policy is... a tactical shift, transforming the mechanism of state dominance of tribes from relocation and trust elimination to a more insidious, less overt economy of power”. Aspects of the historical impact on modernizing Native societies are instrumental for this study because they identify the contextual factors impacting the way in which some Indian groups adapt to modernizing enterprises and underscores the community being willing to adopt fragmenting practices such as the disenrollment of individuals and families from the holistic unit.

The process and impact of Indian economic development and eco-enterprise ranging from the authenticity of Indian artistry to smoke shops and gaming activities were discussed by Joanne Barker and other authors. In discussing such within the context of a legal framework and the role of federal regulation encompassing

identification policies, tribal economic activities, culture, and tribal sovereignty Barker's article sheds light on the complexities of economic and social endeavors in Native American societies (Barker, 2003). One of the most significant and relevant issues discussed in her article as it relates to this study is the proposition that resolution of tribal membership/enrollment difficulties can be achieved by focusing on oral histories, "... indigenous (oral) histories provide a much stronger frame of reference for strategizing the concretization of Native rights to sovereignty and self-determination." She goes on to describe the Hawaiian cultural definition of identity as one that is fluid and tied to genealogies that connect people to one another and the relationship with the land (Ibid. 69).

The on-going (sometimes contentious) struggle of self identification that continues to plague Indian nations has been explored by many scholars. Some assert that the difficulties arising in a particular group as to who is an Indian are a result of scarcity of resources going to "an ever-increasing pool of collective and individual recipients" that impacts the authenticity debate of who is and who is not Native. The manner in which an Indian acquires ethnicity - through self report or through the "acknowledgment of others" also seems to focus on resources as a motivating factor (Nagel 1996, 239). An example of the saliency and deep significance of identity determination is exhibited in the action of then Principal Chief Wilma Mankiller of the Cherokee Nation of Oklahoma who wrote a letter of protest to the Governor of Georgia, against the recognition of two groups who claimed Cherokee heritage (Nagel 1996, 237). The works of such scholars as Joane Nagel are important to this project because they present an explanation for why

Native communities focus on the specificity of identity as criteria for belonging to the group and explore the debate of the biological determination of Indianness, such as blood quantum and whether such will continue to dominate Indian identity. Nagel, however, fails to specifically address the exclusionary outcome of the process of Native identification - that is, the divisive practice of tribal disenrollment. It is hoped that this study will add to the on-going debate of Indian identity and will help define what happens to the individual of Indigenous ancestry when the community attempts to determine who does and who does not belong.

The varied rules and regulations employed by Indian groups in determining legal citizenry have been substantially explored in the literature and are, therefore, relevant to this study. The origins of specific identity determinants have been discussed in terms of blood quantum as the transmission of cultural characteristics and the “civilizing” attributes initiated by Euro-Americans. Garrouette (2001, 225) in her article, “The Racial Formation of Indian Identity”, discusses, “Such modern definitions of identity based on blood quantum closely reflect nineteenth- and early-twentieth-century theories of race introduced into indigenous cultures by Euro-Americans. These theories understood blood as quite literally the vehicle for the transmission of cultural characteristics: “‘Half-breeds’, by this logic could be expected to behave in ‘half-civilized’, i.e. partially assimilated ways while retaining one half of their traditional culture, accounting for their marginal status in both societies.” It has been argued that full bloods were considered authentic Indians whereas others were (and are) viewed as “Indians in diminishing degrees” (Ibid.).

In many Native American tribes a variety of criteria, including several specific characteristics and standards for inclusion, are put in place to ascertain whether or not an individual can become a member. It has been stated that a “significant number of tribes- almost one-third of those populating the lower forty-eight states- have rejected blood quantum requirements for determining tribal citizenship” (Garrouette 2001, 225). Other criteria such as residency, lineal (direct) descendant of another tribal member, or community involvement may also be considered. According to Garrouette, identity legitimacy as defined in tribal or federal law can offer legal protection, but due to certain practices can also produce “...great peculiarities of exclusion spawned by legal definitions of identity” (Garrouette 2001, 233). It is these “peculiarities of exclusion” and the resulting intra-tribal contention that are of importance for this project. By elaborating and clarifying issues of identity, historical practices and contemporary legitimacy, Garrouette provides an invaluable contribution to this study by helping to shape an understanding of the impact of historical actions that have and continue to color the political as well as social, economic and cultural decision-making outcomes of tribal leaders.

It can be said that external factors (such as governmental practices and perceptions of the dominant culture) have had the effect of shaping individual and collective identities of Aboriginal peoples. In acceptance and rejection of the law relating to Native American identity, one sees the constraining and enabling structural effects of the dominant culture. In this project, the process of the construction of identity will also be explored. Macklem’s work discussing the legal relations of hierarchy that

have the effect of constructing Aboriginal identity is instrumental to this study as it looks at how identity is configured and by whom (1993, 12).

For some Native groups, tradition, identity and the practice of gaming have historical and deep social significance. Several authors have explored the connection between contemporary and traditional Native gaming activities, such as Fenlon (2006, 384) who observed the social functions of gambling in Native societies, including wealth redistribution, healing, decision making and philosophy. The ancient, ritualized and sacred cultural context of gaming within Native nations has been explored by Pasquaretta (2003, 123) who cites Vizenor in explaining that current gaming practices stray from traditional gaming that focused on sharing the wealth and countering materialism. He posits that the scarcity of resources, traditionally and historically, have been a motivating factor for various Indian groups to engage in gaming activities (Ibid). Pasquaretta also explored the impact of gaming on conflict within Native groups (again referring to scarcity of resources as causative of conflict); he discusses, for example, that violence over gaming has occurred, citing that two men of the Mohawk community were killed stemming from a controversy over gaming (Pasquaretta 2003, 127). He indicates that gaming has exacerbated conflict internal and external to Indian groups (Ibid. 126). This adds to the supposition that exclusionary processes such as disenrollment, particularly where economic factors are involved, may result in deep divisions and violent conflict within the community.

Pasquaretta's work is also relevant and significant to this study for another reason - he discusses the importance of ritual play and symbolism that reflect the use of

gambling metaphors in Native narratives. It is a cultural, contextual norm that has relevance to this project because of the modes of inquiry that will be used to research the phenomenon of disenrollment<sup>5</sup>.

On another note and to contribute to the understanding of the societal structure, it is important to recognize how the sovereign status of Indigenous groups in this country (somewhere between a state and an interest group), and the status of individual Indians contributes to policies that may result in conflict on various levels. The issue of sovereignty is instrumental to understanding the actions of the tribal governmental leaders of those groups who are the subject of this study. In Eric Reitman's comprehensive (2006) *Virginia Law Review* article, "An Argument for the Partial Abrogation of Federally Recognized Indian Tribes' Sovereign Power", he explores factors crucial to this analysis by focusing on tribal citizenship power; he engages in a comparative view of sovereignty as practiced by the U.S. government and sovereignty as practiced by some Indian nations that have engaged in disenrollment, banishment or expatriation of their citizens. (Disenrollment and tribal sovereignty will be more fully explored in a subsequent chapter.) According to Reitman, there should be a mechanism that prevents Indian nations from what could be argued as arbitrarily banishing its members, stripping them of their citizenship – without viable recourse. The author states that disenrollment is often allowed under the constitutions of each Indigenous

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<sup>5</sup> In the "Modes of Inquiry/Methodology" section of this proposal, the significance of symbolism and metaphors will be discussed as an aspect of Native narratology.

community, but these constitutions often lack any recourse for when rights are violated, which can lead to abuses of citizenship power (Ibid. 801).

As discussed by Mason, writing on the impact of Indian gaming on tribal sovereignty and other aspects of the American political landscape, this movement is occurring at a time of increased tribal-state conflict (Mason 2000, 5). In his important work on Indian gaming, Mason explores the historical and political impact of Indian policy and how it is, at times, in conflict with U.S. policy, one society rooted in communalism, the other in individual liberties; thus Indian gaming has created an economic conflict that revolves around simply - who controls the revenues and receives financial benefits and political conflicts revolving around states rights, federalism and Indian sovereignty (Mason 2000, 45). The author fails, however, to explore the process of tribal disenrollment as a contemporary consequence of gaming. This glaring omission establishes the need for the identification and analysis of the social-psychological factors that underlie this process, how this can result in conflict behavior within the tribe and how such impacts Indian non-Indian relations.

This current study is important, therefore, as an exploration of the impact of modernization in the guise of casino gambling or other economic enterprises, such as smoke shops, as they pervade some Native American communities and elicit intragroup discord as well as intergroup conflict. It is worthwhile, in exploring this issue, to recognize the relevance of the global Indigenous movement as similar processes may apply to other Indigenous peoples in various parts of the world who may be impacted, for example, by such transforming occurrences as land reform and/or other entitlements.

Smith (2004), in her work on Indians as "New Capitalists", explores this phenomenon by looking at the social and political significance of Indian gaming on the American landscape. She identifies various attitudes held by non-Indians (some stereotypical) and the tendency to continue to marginalize Native Americans and to question their competency to run multi-billion dollar business ventures in the gaming industry. Though Smith presents an informative case study of the Chumash tribe and their efforts to obtain Class III gaming and addresses the conflict between the tribe and the local community, she does not explore the negative repercussions of gaming on the internal processes of various tribes that result in intragroup conflict, particularly when disenrollment occurs.

The economic impact of *ecotourism* on Indigenous traditions as an example of sustainable development which became popular in the 1980s as a means of improving the lives of Indigenous people through various business industries and enabling them to engage in such improvements as buying back ancestral lands or focusing on community development, are discussed by Johnson, (2006), in *Is the Sacred for Sale?* For the sake of this study it is also important to note that some scholars espouse a cautionary tale of development that occurs at the expense of Indigenous culture and traditions which, it could be argued, is occurring in the Pechanga and Paiute societies. Johnson's work also provides a model for maintaining *sacred knowledge* while also respecting cultural norms, relationship building and honoring sacred principles for reconnection. Given the pattern of disenrollment occurring in the communities that are the subject of this study, the concept of honoring sacred knowledge may be instrumental in identifying workable resolutions and methods for healing cleavages.



Some authors have proposed a rationale for why some Native groups take on gaming. Goldberg and Champagne (2002, 57) indicate, for example, that “The primary motivation for California Indians to take up gaming was the long standing and enduring poverty of their communities.” The authors go on to explain that if residents had to leave the area for employment, with little prospect of economic development, there was a negative impact on the ability to maintain native communities and cultures (Ibid. 45). But most importantly, for the sake of this research, the authors provide a glimpse into the complexities of sovereignty as reflected in intense political maneuverings and legislative power struggles that California tribes had to undertake with regards to gaming; some argued whether or not tribes could function both as sovereign entities and simultaneously act as state citizens. The persistent and intense uphill gaming campaigns became battles over the maintenance of tribal power in the midst of opposition from organized private, state and federal legislation; this ultimately resulted, however, in coalition building, cooperation and ultimately new tribal political power (Ibid. 59). This is relevant to the current study because it provides a glimpse into power building and decision-making, but most significantly, it reflects a trend toward mobilization within and across Native American communities which has implications for the legal and social battles surrounding disenrollment.

Beyond the obvious social, political and economic aspects of the process of disenrollment, it is quite apparent that this process of disenfranchisement has resulted in serious emotional pain, suffering, and personal as well as social conflict for those who have been outcast and also, most likely, for those who still remain within the folds of the

community. This is illustrated in the numerous articles comprising a contemporary narrative about disenrollment and disenfranchisement that are currently found in the press and media, such as the oral recording by Harlan McKosato, of the Sauk and Fox Nation, who shared his opinion about the plight of those who have experienced tribal disenrollment on National Public Radio in May, 2005. He said that such goes against core Indian values of sharing and looking out for one another and that the wealth generated by casinos is pitting Native Americans against each other (McKosato, 2005). John Gomez Jr., a member of the Pechanga Band of Luiseño Indians, a tribe who has acquired substantial wealth generated from casino revenue, was disenrolled in a bitter dispute with the tribal council. He describes the subsequent deep division and symbolism that arose from this intragroup conflict, characterizing the mailings that were sent to members denouncing the ousted Pechanga, "On their mailings, they put this image of a toad, which is symbolic of death in the Luiseño religion... It's like putting a swastika on something. It is very hateful." (O'Malley, 2005). Or as stated in the article about Debra Faria, an exiled member of the Las Vegas Paiute, a people who have gathered wealth through the revenue gained from numerous smoke shops.

Ms. Faria's life was substantially altered by disenrollment from the Las Vegas Paiute; Faria said, "They basically took my Indian blood away from me. I'll fight for my heritage as long as it takes" (Knapp, 2005). Narratives such as these are core to this study as they reveal an internal struggle to reconcile twenty-first century reality with traditional customs and practices of healing and societal harmony. The role of personal narratives will be outlined more fully in the "Modes of Inquiry" section.

There has been substantial research on various aspects of Native American life from a historical to a contemporary perspective, including cultural and anthropological studies. From a review of relevant literature, however, one area in which this research appears to be lacking is the omission of substantive study on tribal disenrollment and how this impacts conflict behavior particularly; it is important that this project addresses these concerns in order to augment what has been written and to further explore the dynamics of intra-indigenous conflict which could have implications for Indigenous people in other parts of the world. Along the same lines, given this type of discord and this type of human interaction, an exploration of the conflict between the group and the individual, (a process I will refer to as *introgrouper* conflict) - through the implementation of a nuanced study will contribute to the literature by delving into this relatively unexplored tier of conflict dynamic.

In examining this issue, the current project may also include a process for the possible resolution or reduction of tensions elicited by the aforementioned conflict in a manner that addresses the social-psychological needs of those who have been ousted and those remaining within the community. Accordingly, this research will seek to explore, explain and establish a method not only for understanding the conflict engendered by the process of disenrollment, but may also include a method for contributing, in a manner positive and sensitive to native tradition, to the solution of the resulting tribal discord.

## **Part II - Conceptual Framework -Theoretical Foundation for this Study**

There are several questions that arise as the process of this research unfolds – questions such as, what is social identity? What are the mechanisms of developing intragroup distinctions? What are the consequences of exclusion from the group? Theories of social psychology will be utilized to answer these questions and will generally provide the framework within which to explore the topics identified for this study. These include social identity theory, social categorization theory, studies on processes of social fit or misfit (inclusion and exclusion), depersonalization, relational and positioning theories. For studying the impact of exclusion, concepts such as chosen traumas, power differentials and structuration of social units may prove helpful. The following will summarize some key theories and/or concepts that may be germane to this study.

One of the most significant theoretical constructs to be utilized in this study reflects a Native American philosophical perspective and worldview; it focuses on an all encompassing, integrated and holistic view of group identity known as “peoplehood” which has substantial implications and relevancy to the study of Indigenous identity and sovereignty. Peoplehood, as a social model, involves taking into account four aspects of meaning making: language, place/territory, sacred history and religion or ceremonial cycle (Holm, Pearson and Chavis, 2003, 11-17). Accordingly, as this study unfolds, notions of peoplehood will be used to help explain concerns related to identity, sovereignty, decision-making and the complexities of internal conflict that reflect

Twenty-First Century realities in the social systems of the three Native communities that are the subject of this research.

In the study of human interactions within social systems, the sense of belonging or alienation is a powerful determinant of inclusion, exclusion and the degree of "being". "Belongingness" can be considered a facet of social identity (Isaacs) which consists of a combined individual and social identity, the former often subsumed by the latter. The parameters and criteria for inclusion within any given social system can be reflected in the designation of the social identity as it frames those constituting the ingroup and those constituting the outgroup. Much has been written and explored about individuals and their tendency to categorize themselves and others and the sometimes violent conflict that often occurs as a result. Categorization as a social construct (Coser, 1945) highlights differences and beliefs that originate as a way to support the individual's culture and beliefs (Volkan, 1997) and can result in conflicts that arise between certain groups, due to religious, ethnic, status, or other differences.

Categorization, as explored by Tajfel (1981) and Tajfel and Turner (1986), is a process of simplification as individuals seek to establish coherence in the midst of complex social stimuli which shapes intergroup and intragroup attitudes. This is relevant to the current research as a foundation upon which to explore social attitudes *within* the community. Though Tajfel (1981) does explore the *intragroup* dimension of comparisons with others within one's group, he seems to do so only as it relates to *intergroup* comparisons suggesting that intragroup cleavages are simply individuals engaging in establishing new categorization. The relevant question that arises, therefore,

is do ingroup cleavages and processes mirror those that characterize intergroup dynamics or do they exhibit processes that differ and are germane only to the internal interactions within the group? This research will, hopefully, demonstrate that internal categorization takes place in a manner similar to that which Tajfel describes relating to intergroup comparisons, but will also look to find if there are any pertinent social mechanisms that are only found in ingroup conflict situations. Horowitz (2000, 145) also refers to Tajfel's research on the social cleavages of groups that arise from categorization, saying that what counts in groups is not so much similarity, but membership itself. An interesting point that Horowitz explores is the connection between ethnic group and kinship (Ibid. 57). He illustrates the familial aspects of cooperation and conflict that reflect inter and intrafamilial relations in ethnic groups. It is apparent that Indigenous groups operate within the confines of kinship boundaries; this may give justification for the deep pain experienced by those who are ousted from the tribe. It is akin to being ousted from one's family. Thus, the question arises as to what happens when the "family" or ethnic group of primary identification no longer operates as such?

Tajfel and Turner (1986) state that not only does social categorization "systematize the social world", it provides a "system of orientation for *self-reference*" which defines the individual's place – it is from this that an individual's self image evolves (Ibid. 16). The authors, however, when addressing social identity that is unsatisfactory, state that when such occurs, individuals will either attempt to leave the group or find something positive about it. What is lacking in Tajfel and Turner's perspective is addressing the intragroup discord that may arise out of an unsatisfactory

social identification, particularly when such decisions originate with others exercising power within said group – as when, for example, in the case of disenrollment, the individual is cast out and has little if any choice as to group membership. The current study will attempt to address this process as causative of internal discord.

Focusing on the negative impact of comparisons and categorization, Gurr (1970) has studied conflict as it relates to the perceived differences in the acquisition of wealth or lack thereof (relative deprivation). He states that people who have lost ground relative to what they had and feel resentment about these losses experience decremental deprivation and that those affected members will seek redress with “passion, self-righteousness, and solidarity with their kindred” (Gurr 2000, 69). Since this project will explore how the disenrolled attempt to redress their altered positions, Gurr’s exploration of ethnopolitical conflict provides a rationale for political mobilization and action and is, therefore, pertinent to the study at hand. The question is, however, how does Gurr’s proposition about ethnopolitical action in intergroup discord differ, if at all, from those found in intragroup processes? This research may demonstrate that the internal cleavages caused by disenrollment may create an “us” versus “them” relationship *within* the group that mirrors intergroup differences and subsequent discord. This also illustrates that in the study of social systems, there has been extensive research into the nature of conflict as it is reflected in the frequently stormy relationship between and/or among various communities. These theorists, however, have explored to a lesser degree, how these constructs function, if at all, *within* groups - which lends further credence to the importance of the study at hand.

An interesting, yet complex aspect of the categorization process in which relational ties are dynamically altered depending upon the actions of those who are in control of resources and work to exclude those who are not, can be found in Tilly's work, *Durable Inequality* (1998). He explores this further in *Identities Boundaries & Social Ties* (2005, 100) and focuses on the *relational* aspects of inequality that are based on "asymmetrical social relations" and implied power differentials that occur through "socially negotiated boundaries" in which one side accumulates advantages over the other through the control of resources. As related to the current project, this concept is reflected in the relational differences between those who are ousted and the ruling councils within Native American communities who have control of tribal revenue and make the decisions as to who is disenrolled; clearly one faction has substantial power over the other.

Michel Foucault's (1977) *Discipline & Punishment* offers a relevant perspective from which to continue the analysis of the impact of asymmetrical power as it results in increasing individuation and higher (negative) visibility. He discusses the "economy of visibility" – that disciplinary actions/power may result in "compulsory visibility" for those who are the subject or have been targeted or separated from the whole. In terms of the disenrolled, their banishment from the group, in a sense removes the protective cloak of the community, and singles them out as "non-believers". Also, Foucault's concept of "carceral constraint" or what may be considered "blind compliance" as depicted in the willingness of tribal members to accept without question the totality of their leaders' decisions is an area that may hold relevance to this discussion.



Along similar lines of thought, Anthony Giddens' (1984) structuration theory and his view of the constraining and enabling aspects of power within a social environment has particular relevance to this study. As the sovereign nature of Native communities reflects an important social-political reality, the manner in which decisions are made and implemented reflects the boundaries, as well as the dualities of that power and the process by which it enables the ultimate decision of banishment to be put into action. Giddens indicates that the duality of power (enabling and constraining) and "... sanctions, no matter how oppressive and comprehensive they may be, demand some kind of acquiescence from those subject to them – which is the reason for the more or less universal purview of the dialectic of control" (Ibid. 175). In other words, there can be no disenrollment unless the members, including those expelled, comply. Giddens goes on to say that, "One person's constraint is another's enabling. (Ibid. 176)." This concept will be more fully explored as the actions of the Native community leaders and those who have been outcast are analyzed.

As has already been mentioned, in looking at Indigenous society, it is important to do so within a framework that reflects the relational aspects of the culture. As tribal cultures are collectivist in nature, it may be prudent to analyze such in terms of relational-culture theory (Portman and Garrett, 2005). As quoted by Portman and Garrett in describing Native American women leadership, this theory contrasts Western principles of self, autonomy and independence with that of communalism, relatedness and the significance of belonging and connection. Some see this relational culture as a vital human need for growth and development (Ibid.). Accordingly, it may be instrumental for

this project to explore issues of disenrollment through a relational theoretical framework - how such engenders conflict, but yet may also be instrumental in its resolution. Harre and van Langenhove's *Positioning Theory* presents a process for the analysis of social relationships, discourse, symbolic language and action that occur between individuals and will be instrumental for this research as a framework to explore "...the analysis of fine-grained symbolically mediated interactions between people, both for their own individual standpoints and as representatives or even exemplars for groups." (Harre and van Langenhove 1999, 1) This source of analysis lends itself, formidably, to the study of the disenrolled and how they have been "re-positioned" or ousted from the group; this project will explore relationships through the discursive narratives of those making the decision to expel members as well as those impacted by the expulsion.

Since this study aims to explore the process of delegitimization of identity, it may be relevant to discuss the processes and functions of delegitimation in intractable intergroup conflict as reflected in Bar-Tal's work (2004) where he discusses and describes five types of delegitimization, one of which is **outcasting** where adversaries to the group are seen as "violators of social norms". The other four types of delegitimization include **dehumanization** in which the group is considered to be non-human or savages, **trait characterization** which "attributes traits that are considered extremely negative", **political labels** – placing into negatively perceived political groups that are rejected by the delegitimizers, and **group comparison** in which the delegitimizers bestow a negative name on the target group, such as Neanderthals, etc. Attributing this to only intergroup conflict, Bar-Tal neglects to explore how this process

occurs intra-communally; one could argue that this could have substantial relevance for intragroup hostilities as well.

It is apparent, that much less has been explored about the dynamics of expulsion and identity delegitimization that also may occur *within* any given group or community and the internecine conflict that may result. In trying to understand this dynamic, it may be helpful to view the narratives of Natives as chosen traumas that reflect the pain of their forcible separation from the group. Indeed, this study will attempt to broaden the field by addressing this and other relevant concerns associated with the dynamics of exclusion when such exclusion involves those who had once been "one's own kin", whether they be compadres, brothers or sisters, of like values, sensibilities, perspectives, customs, traditions, etc.

In order to legitimize outcasting actions and to help facilitate acceptance of such within the community, it is frequently necessary to portray those cast out as a particularly, pernicious "threat" to the sanctity of the group. Rothbart and Korostelina (2007) explore identity and threat narrative which is of particular value to this study as it discusses how the perception of threat from the "Other" can create a blind compliance with those in power and result in a "collective devaluation" of the outgroup (Ibid. 29). Though the focus of this study is on ingroup conflict, the authors' writings on threat and identity salience helps to explain how the decision of tribal leaders to expel is often accompanied by attempts to delegitimize and inauthenticate the identity of the disenrolled as a threat to the purity and sanctity of the Indigenous group. It is as if an outgroup is created within the ingroup. This study will, hopefully, add substantively to the discussion

on the impact of such competing discourses as the impact of group norms and values through the exploration of the collective axiology found in the group narratives of what is right and what is wrong (Ibid., 7).

To further address the fact that social identity and social categorization theories are often utilized to explore intergroup dynamics and much less frequently used to explain intragroup processes, I refer to Michael A. Hogg (2004, 209), who states: "...social identity theory which focuses on social categories, the categorization process and intergroup behavior, ... has paid less explicit attention to processes within groups." Hogg goes on to devote some of his writings to intragroup processes and discusses how "Social categorization affects intragroup behavior via self-categorization and prototype based on depersonalization. It also causes conformity to group standards and normative behaviors among members, as well as mutual regard and cohesion." When, however, a member is perceived to be deviant, marginal, peripheral or who weakly matches the defining prototypes of the group, these individuals, particularly in cohesive groups can become unpopular and marginalized, threatening the integrity of the group (Ibid 214). This concept of prototype based depersonalization is salient to this study because it offers some explanation and underlying rationale for defining who is and who is not a group member, which must occur in order to synthesize and conclude who does not belong and thus facilitate their expulsion. The on-going question, however, is - is this the most salient explanation for the practice of disenrollment?

Another aspect of social identity theory that may be relevant to this study relates to the perception of group members as *imposters*, violators of group norms and the

consequent reactions from members of the ingroup (Jetten, et. al.). In their study, it was reiterated that when the distinctiveness of the group is high, one who is considered an imposter is treated more harshly by members of the ingroup than by those in the outgroup (Ibid.). This finding is relevant to this study because it raises the issue of degree of acceptance as perceived through degree of adherence to group norms. It could explain how and why the process of disenrollment exists and persists, particularly if one considers that many indigenous people function within groups of high salience and distinctiveness.

A question arises: imposterism in groups in which membership is voluntary is one thing, but what if the group is not one that is perceived to be a matter of choice, but a matter of "being"? In other words, it may be argued that the primordial nature of some ties to tribes is not voluntary, but a matter of biological marker. Does the process of imposterism change if group membership is voluntary or involuntary, primordial or social choice? The authors fail to address this question in their research; it is an area that could be explored, however, in this study.

The detrimental psychological effects of ostracism and the pain experienced by those who have been expelled has been noted by social psychologists. Whether it be externally imposed or internally molded and shaped, belonging and acceptance/ostracism and expulsion underlie the struggle for individual and social identity. As such, Williams and Laddo's model of the process and psychological consequences of ostracism may be germane to this study (Williams and Laddo 2005). They postulates that for humans the process of ostracism is so devastating that it engenders pain physically, emotionally and

socially and "threatens belonging more clearly and more strongly than other unpleasant social responses" (Williams, 2005, 5). The authors state that, "William James...referred to the terror of being ignored and excluded as being 'cut dead'. Indeed, we think that being ostracized is a glimpse into what life would be like if the target was non-existent. To complete the comparison to argument, ostracism provides a very palpable metaphor for death, while argument does not" (Ibid. 7). This article is significant to this study because it identifies the depth of powerlessness associated with feeling outcast; belongingness is closely tied to identity and as indicated by Burton, identity, along with security and recognition are Basis Human Needs, the abrogation of which can lead to abnormal and/or anti-social behavior.

Burton relates the deprivation of these needs to a lack of control over one's environment which can lead to perceptions of deprivation and injustice and subsequent aggressive social behavior (Burton 1990, 97). As the disenrolled tribal members experience an abrogation of identity and recognition, it is apparent that such could elicit aggressive behavior as a reflection of their frustration. As this study proceeds, it remains to be seen how these frustrations will manifest in those ejected from the tribal unit. Burton also discusses conflict *provention* (1990) as a means of creating environments conducive to collaboration by the removal of causal means of conflict situations. This may be relevant to certain conflict situations where the causal mechanism lacks complexity, however, it may be quite difficult to remove the causal condition(s) of conflict in certain situations of high complexity and where numerous independent and intervening variables are prevalent.

In a similar vein, Erickson (1959, 118) posits that identity is the framework of psychosocial well-being - that it is a sense of “being at home in one’s body” and feeling the assuredness that comes from the recognition of meaningful others; he also says that we are most aware and conscious of our identity when we are in a state of crisis. This observation underscores the phenomenon of forcible identity transformation that is at the heart of this study.

One question that arises is: in internecine, intragroup conflict is the process of enemy imaging turned inward? Volkan (1988) has explored how groups actually need and use enemies (enemy images) in order to maintain internal stability through external stabilization of their sense of identity. Another theoretical construct that may prove useful in attempting to understand the impact of excommunication from the group is that of Volkan’s chosen traumas in which the occurrence of an event, because of its traumatic and unforgettable nature, may elicit conflict behavior.

Is there also, then, an internal nexus of delegitimization of identity that could be considered a manifestation of structural violence? In other words, could social emotional factors such as depression, alienation and anomie that may exist among those ostracized from the ingroup be considered a form of internal structural violence? Given Galtung’s Typology of Violence, (1996, 197) one may indeed argue that disenrollment could be perceived as a form of structural violence as it segments identity needs and marginalizes freedom needs through expulsion.

In summary, there are several theoretical constructs that may have relevance to this project. As the data are assembled and analyzed, it is hoped that it will become

apparent which of the aforementioned theories may be most appropriately applicable to validating the research hypothesis. Some concepts and ideas that may be relevant to this study include the Native American worldview of peoplehood, social identity construction and deconstruction; chosen traumas as they relate to identity construction; threats or attempts to delegitimize social identity and the psycho-social reactions to those threats. Other concepts that may prove helpful include categorization and its impact on the delegitimization of identity and group cohesion. Applying the lens of economic deprivation as structural violence may also be relevant to this study. Questions that are yet to be answered include how does outcasting transform or empower the disenrolled? Do the expelled view their identity as being altered just because the group states that it is so? What kinds of interventions, if any, are necessary to address this internal discord? Such will be addressed in subsequent sections of this dissertation.

This study, thus far, has presented a general overview, introduction of the topic and discussed literature relevant to the project. In the next section, by delving into the socio-cultural traditions and backgrounds of the Las Vegas Paiute, the Pechanga Band of Luiseño Indians and the Cherokee Freedmen, a historical perspective that adds critical context to this research will be presented.



### **Chapter 3**

#### **Historical Context**

There are several reasons why I chose to include this fairly extensive chapter (divided into two parts – the first addressing general histories of each group and the second including an overview of certain U.S. policies) in a comparative study of contemporary internal fragmentation and conflict behavior. I began each section in Part I with a brief presentation of each Nation's creation stories because these myths, for many Indigenous people, are the basis for their identity and reflect the tradition of oral storytelling as a rich and distinguished metaphorical journey into their pasts; the narrative of how they began reflects their cultural traditions, their worldviews - encompassing who they were, who they are now and who they will be in the future. So, by focusing on a tiny element of that vast and ancient manner of making meaning and including the creation stories of the Paiute, the Pechanga and the Cherokee, to that time- immemorial narrative tradition - I would like to pay homage.

Another reason why this chapter is included is that any serious scholar of the social sciences knows that actions of groups rarely occur in a vacuum - without some precipitating event, catalyst or some past event(s) that constrains or enables present behavior or helps explain current attitudes and decisions. I believe, therefore, that it

would be irresponsible and short-sighted to rely on constructed theories alone to explain this or (any) phenomenon of social discord. As this study focuses on three Indigenous American groups, their histories, within the last few hundred years, cannot be accurately portrayed without exploring their interactions with those outsiders who invaded their land - the Europeans. For the Cherokee, their complex interactions with Europeans also impacted their even more complex interactions with people of African descent. It is through this exploration that we may understand contemporary actions, attitudes and decisions of Native authorities and the internal discord that plagues some Indigenous American communities. One could say that the seeds of dissension are sown through the histories of how we relate and are connected. With that in mind, the aspects most relevant to this project have to first do with the relational dynamic of the Indians' initial contact with the Other (Europeans), the eventual disconnect from the Other, and how such relational upheaval impacts and 'flavors' contemporary social interactions and realities of each American Indian group.

The historical overviews are also included as a means of culturally distinguishing each of the Native communities; as this study unfolds, it may illustrate how these twenty-first century communities are, without question, followers and products of their near and far histories. One can surmise that in any given state of disharmony or dissention, there are patterns of interacting throughout the relational history, that is, there is always a history that existed before the contact or discovery of the Other; there is a history that existed that encompasses the novelty of discovery of the Other - the joy, the excitement, the sharing of ideas; then there is a history that existed that explains the dynamics of any

ensuing confrontation - the pain, suffering, and finally the alienation and conflict of the dissolution. In other words, to present a thorough perspective of how people are disconnected today, it is imperative to know how, to whom and why they were connected yesterday.

One important and significant note: it is quite presumptuous to believe that one can accurately and succinctly reduce thousands of years of history into a few pages in a document such as this. My attempt is to provide only a brief overview – to provide a “flavor or taste” so as to be able to better understand how history can impact the actions and beliefs of each of these American Indian Nations today.

## **Part I - Historical Context: Creation Stories and Other Relevant Background Information on the Pechanga Band of Luiseño Indians, the Las Vegas Paiute, and the Cherokee Indians**

This section will explore versions of each group’s creation stories as reflective of sacred meaning-making; this is followed by a synopsis of historical highlights that characterize each community’s interactions with each other and with outsiders.

### **Paiute Creation Story**

Some have argued that the Paiute do not have a distinct creation story (Kelly and Fowler 1986: 385), but refer to such descriptions provided by an individual Paiute that the world was round like a basketball turned by Coyote (trickster and seducer of women) and floating in the air held by a cord that if broken all would fall off. Other variations

anthropomorphize Coyote and other animals even Wood, Salt and Water; the main characters appear to be Coyote and his elder brother, Wolf. Coyote was said to have stolen fire to help humans, he and his brother Wolf introduced agriculture. Coyote was also responsible for birth and menstrual customs; he showed the people how to do many crafts – pottery, make buckskin dresses and the bowstring. (Ibid.) Holt also describes the Paiute creation story as reflected in the belief of twin creator gods symbolized by the two brothers, Wolf and Coyote – the two, at times, were at odds with each other – one attempting to create order in the world and the other sometimes reversing it (Holt 1992: 15).

One variation of the Paiute creation story talks about Wolf, the most powerful, as the “people’s father” having been the maker of heaven and earth and his brother, Coyote, the trickster, as the second most powerful. “He was told by Wolf to assist in making the earth, but he could not do so. It was Coyote who introduced death on earth, and since prayer was called “Coyote-talk” he apparently had taught people how to pray.” (Hultkranz 1978: 638)

The author goes on to say that most origin of people myths from this region, “...describe how people were born as the result of a sexual union between Coyote and two women, or between Wolf or Coyote and their wives. Coyote’s approach to the women is first prevented by their having teeth in their vagina... The end of this tale tells how Coyote is sent away with a bag that he opens out of curiosity, whereupon the ancestors of all Indian tribes (whom he had conceived with the women) jump out and people the world.” (Hultkranz 1978: 638)

## Historical Highlights of the Southern Paiute

The Paiute people of Las Vegas, Nevada are a part of the Southern Paiute (one of 16 sub-groups). Their Southern Paiute name is *nipakanticimi*, meaning ‘people of Charleston Peak’, (Kelly and Fowler 1986: 395) belonging to the Southern Numic branch of the Uto-Aztecan linguistic family, a group that occupied a large portion of southwestern United States extending from southern Utah and southern Nevada into California and Northern Arizona (Ibid.: 368).<sup>6</sup> Knack (2001) says that when the Paiute met Euro-Americans, they said they had always been there – for unknown years. It has been noted that historically the Southern Paiute did not have a “tribal” organization, but existed in smaller territorial units or “economic clusters” or “bands” that operated as self sufficient economic groups (Kelly and Fowler 1986: 368). Holt citing Fowler indicated that the Paiute lived in “acephalous groups of from three to ten households” and that the names that the bands ultimately took came from foods or other resources. (Holt 1992: 7). Knack (2001) discusses how the Southern Paiute lived in small autonomous communities as they “traveled on foot with all their possessions on their back”. The Southern Paiute, a desert people, adapted to and thrived in harsh climates in which water was scarce and the rugged land not conducive to wide spread farming. Their territory ranged from the high Colorado Plateaus west and southwest, through canyon country through Basin and Range, into the Mojave Desert (Kelly and Fowler, 1986). Ronald Holt (1992) describes

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<sup>6</sup> See Kelly, Isabel T. and Catherine S. Fowler. “Southern Paiute” in the *Handbook of North American Indians, Volume II: Great Basin* for a thorough review of early anthropological research on the Southern Paiute.

the ancient Paiute territory as one that encompassed southern Nevada, southern California, southern Utah and northern Arizona. The territories of various Paiute groups were usually bounded by ridgelines, mountains or sinkholes (Ibid. 5). He describes their shelters as “traditionally utilized windbreakers, brush shelters and more substantial winter dwellings made of juniper or aspen posts with wild ryegrass as filler, held in place by bark and/or willow boughs (Holt 1992: 5). The Paiute were historically a foraging people with some dependence on horticulture; basketry, their chief industry, was instrumental in helping to transport plants and harvested seeds as the Paiute utilized the flora and fauna that were available during the various seasons (Ibid.; Kelly and Fowler 1986: 375). They practiced “permeable boundaries” in terms of land use and food resources – not believing in private or collective ownership of land, shared food resources and with anyone in need (Knack 2001: 15). The sharing of excess bounty was a form of “social insurance”. The Southern Paiute traveled by foot following an annual cycle (Kelly and Fowler 1986: 377).

In terms of cultural displays, as with many Native American societies, oral tradition characterized the culture of the Paiute community. This included myths, songs, tales, etc. and the belief that all things were alive, including inanimates. The Las Vegas Paiute traveled and maintained amicable contact with several neighboring groups, in some instances the Las Vegas people adopted and adapted much of the Mohave culture, such as vocabulary, floodplain farming, earth-covered housing, ferrying pots, ceramic forms and hair dye (Kelly and Fowler 1986: 370). As inhabitants of the southern Great Basin, they had a sometimes conflictual relationship with the neighboring tribes such as

the Utes, Chemehuevis and the Mohaves; they were more friendly toward the Western Shoshone people (von Till Warren, 2003: 87).

Intertribal relationships were exacerbated by the influx of Europeans beginning with the Spanish in the 18<sup>th</sup> century whose presence began to create a demand for slave labor. To fill this demand, Ute Indians frequently raided, captured and enslaved the Paiutes. Initial reluctance of European travelers by the Southern Paiutes could be attributed to these brutal encounters with hostile tribes and also was a factor in the refusal of the Paiutes to later join the Utes on the Uintah Reservation in Utah (von Till Warren, 2003:88). It is estimated that as much as fifty percent of the Paiute society succumbed to slavery (Knack, 2001:36).

In the mid 1800s, Mormons arrived onto the land occupied by the Paiute and with their presence came a dramatic change for the Paiute people. The Mormons saw as their mission an imperative to “civilize” the Indians and to take claim to the Great Basin and other land claims. “The strong, direct, negative influence on their numbers experienced by the Southern Paiute in response to the very powerful assaults perpetuated in the 19<sup>th</sup> century by Ute and Navajo Indians and by Spanish and New Mexico traders, pales in comparison to the impact of the arrival of the Mormon settlers from Utah in 1855 (Ibid.). With the arrival of the Mormons, the Paiute lost access to valuable water rights as well as “communal” rights to the land. Ultimately a dependent and paternalistic relationship arose between the two groups as Mormons took control of the area and the Paiutes were forced to become “a source of cheap labor for the settlers” (Ibid. 27) Holt goes on to discuss how for a century and a half, there had been suffering, displacement, disease,

Mormon missionaries and a relationship with the U.S. government that has been one of “dependency and paternalism” (Ibid.), which he also refers to as “internal colonialism”. This was particularly evident in the relationship of the Paiute with the Mormons in which Holt describes their ability to control the Paiutes by controlling their access to production and taking their foraging lands. (Holt 1992: 27) By 1873, von Till Warren writes that, “...less than 20 years after the arrival of the Latter Day Saints in Las Vegas Valley, many Southern Paiutes native inhabitants had been banished to the Moapa Reservation on the Muddy River (2003:91).

As this study progresses, the impact of power asymmetry or power differentials between the disenrolled and the tribal decision-makers, will be explored. In terms of relevant history, an example of use and abuse of power as it relates to one of the groups in this project is the relationship of the Mormons and the Paiute. Holt characterizes the Mormon incursion into Paiute lands as one of occupancy and colonialism. He states that, “The Southern Paiutes’ culture and the physical environment to which they were adapted were furiously assaulted by the white interlopers. Every aspect of their subsistence systems and social organization were affected by traders, immigrants, and government officials. By understanding the magnitude of this white impact one can also better grasp those facets of Paiute culture that have acted to protect their way of life from total assimilation” (Holt 1992: 19).

On the other hand, Knack (2001: 5) provides a more complex and complicated view of the Paiutes and their relationships with non-Indians. She states that nineteenth century Paiutes, though fairly uniform, were impacted by the varied groups of Europeans



who moved into the area, each enclave of settlers leaving a distinct imprint impacting the specific Paiute community with whom they came into contact. Depending upon whether the invaders were cattle barons, miners or Mormon, determined the manner of interaction and the subsequent manner in which the Paiute responded to them and in so doing, restructured their own culture. For those Paiute, for example, who lived in the Southern Nevada area (and who are the subject of this research), the influx of non-Indians was characterized not so much by Mormons, but by a "...chaotic, individualistic, secular, and unstable population of miners; overwhelming single and male, ... [who] intended to leave the moment they became rich"; Knack goes on to say that each invading group established its own pattern for interacting with the native Paiute (Ibid.).

The Paiute adapted to these incursions into their society by moving the line for "intercultural boundaries" and cultural restructuring which reflected their social, political and economic adjustment in their relationships with Euro-Americans. According to Knack,

"The ethnohistory of Southern Paiute relations with other peoples was not filled with desperate battles, sweeping cavalry charges, or dramatic winter marches... Theirs was a subtle interaction that was grounded in the mundane events of everyday life... Some of the mechanisms that created and sustained Paiutes' cultural distinctiveness over the years and mediated their interethnic relationships were housed within their own society, others lay within that of Euro-Americans, and yet others were created along the social interface itself" (2001:9).

It is important to stress that the Southern Paiute's relations with immigrants was quite unlike many native American tribes, there was no "interracial warfare" since this society lacked a strong central political nexus from which to organize a fighting force,

nor did they have the economic means to sustain such warfare; they were thus “compelled to meet non-Indian immigrants peacefully” (Knack 2001: 2). Knack also discusses that the Paiute adjustment to Euro-Americans had to take place very quickly, which helped to determine their non-violent manner of response and ease of adaptability. Given the manner in which the Paiute responded to the outsiders requires, according to the author, a more nuanced view of their complex interactions with immigrants – a view that goes beyond the typical duality of the white versus Indian conflict-model, but such reveals a conflict that is at times more insidious as it reflects a complex social reality - “Southern Paiute ethnohistory exemplifies a variant form of conflict, not death in a few dramatic battles but the daily incursion of imperial mechanisms that range from political limitation and economic constraint to casual condemnation of cultural values and evasion of personal contact. Such mechanisms are invisible to history, and yet these are the subtle stuff of Southern Paiutes’ conflict with non-Indians as well as the tools of their self-defense” (Ibid. 3).

Accordingly, Knack describes the Paiute experience with reservationism as being atypical in that the Paiute could not be considered “reservation Indians”. Their experience with reservations began in the twentieth century and the small enclaves could not (due to geographic limitations such as severe water shortages, lack of mineral, timber or productive land resources) and were not designed to economically sustain their livelihoods, but were instead a means of establishing Paiute homesites “while they procured a living elsewhere” (2001:3). This differs from the experiences of other Indian peoples and challenges the view that “...all Indian reservations were a monolithic

phenomenon, uniform in purpose, nature and function” (Ibid.). The Southern Paiute were dispersed throughout the area and when European settlers arrived, they remained in the area and did not “...withdraw from the non-Indian presence to some culturally homogenous reservation refuge” (Knack, 2001:4). Paiutes became town dwellers and though they maintained the distinctiveness of Paiute culture, the realities of social heterogeneity resulted in a complex, intermixing of Paiutes and non-Indians.

It is important to note that because they were not dispersed nor confined to a singular reservation, the Paiute were not subject to the same strict governmental controls and domination experienced by other Indian tribes and “... their legal status remained ambiguous until well into the 20<sup>th</sup> century” (Ibid.). Knack states that “Perhaps more than is true of other native groups, the twentieth-century history of Southern Paiutes is a tangle of the legal conceptualization of “tribe”, federal “ward”, “trust obligation,” and even “Indian.” Those shifting definitions constrained and restricted the options politically available to Paiutes as individuals and as an ethnic group at any particular point in time” (2001:5).

The federal government’s permanent presence in Paiute society began around 1890 with the purchase of the Shivwits Reservation (Ibid.136), the Moapa and Las Vegas Reservation soon followed, with a total of nine Paiute reservations being established, but this was also near the time when U.S. policy towards reservationism was waning and the policy of allotment was being considered (Knack, 2001: 136). These very small reservation enclaves were unable to sustain farming or subsistence living and soon

became only home based sites (Ibid. 154) which allowed many of the Paiute to continue their wage and labor based interactions with non-Indian communities.

As the twentieth century opened, there was not a universal call to put the Paiute on reservations as this was seen as disruptive of the white's work force, thus farmers argued against an action that would deprive them of Indian labor (Ibid. 132). At this point in time, the U.S. government was also trying to downplay the use of reservations. It was around this time that the policy began to shift toward allotment.

Holt states that the allotment policies (in which Indians were provided individual areas of land to ward against communalism) such as the Indian Homestead Act orchestrated by the U.S. government prior to the passage of the Dawes Act of 1887, had an opposite effect of what was intended when applied to the Paiute (Holt 1992:49). Because these allotments which were established next to the reservations, created a contiguous plot of land, forcing whites to provide water rights, rather than disassembling the community, this action created a method whereby the Paiutes could "...preserve the separate identity of the Indians" (Ibid.). The impact of U.S. government policies on Native American communities will be more fully explored in the next chapter.

#### Luiseño Indians Creation Story

*"In the beginning all was empty space. Ke-vish-a-tak-vish was the only being. This period was called Om-ai-ya-mai signifying emptiness, nobody there. Then came the time called Ha-ruh-ruy, upheaval, things coming into shape. Then a time called Chu-tu-ta, the falling of things downward; and after this, Yu-vai-to-vai, things working in darkness without the light of sun or moon. Then came the period Tul-mul Pu-shun, signifying that deep down in the heart or core of earth things were working together.*

*Then came Why-yai Pee-vai, a gray glimmering like the whiteness of hoar frost; and then, Mit-ai Kwai-rai, the dimness of twilight. Then came a period of cessation, Na-ka Ho-wai-yai, meaning things at a standstill.*

*Then Ke-vish-a-ta-vish made a man, Tuk-mit, the Sky; and a woman, To-mai-yo-vit, the Earth. There was no light, but in the darkness these two became conscious of each other.*

*"Who are you?" asked the man.*

*"I am To-mai-yo-vit. And you?"*

*"I am Tuk-mit."*

*"Then you are my brother."*

*"You are my sister."*

*By her brother the Sky the Earth conceived and became the Mother of all things. Her first-born children were, in the order of their birth, See-vat and Pa-ve-ut, Ush-la and Pik-la, Na-na-chel and Patch-ha-yel, Topal and Tam-yush. Then came forth all other things, people, animals, trees, rocks and rivers, but not as we see them now. All things then were people.*

*But at first they were heavy and helpless and could not move about, and they were in darkness, for there was no light. But when the Sun was born he gave a tremendous light which struck the people into unconsciousness, or caused them to roll upon the ground in agony; so that the Earth-Mother, seeing this, caught him up and hid him away for a season; so then there was darkness again.*

*After the Sun was born there came forth another being called Chung-itch-nish, a being of power, whose voice sounded as soon as he was born, while all the others rolled helplessly upon the ground, unable to utter a word. The others were so terrified by his appearance that the Earth-Mother hid him away, and ever since he has remained invisible.*

*The rattlesnake was born at this time, a monster without arms or legs. When all her children were born, the Earth-Mother left the place and went to Ech'-a-mo Noy-a-mo. The people rolled, for like newborn babies they could not walk. They began to crawl on hands and knees, and they talked this way: Chak-o-la-le, Wa-wa, Ta-ta. This was all they could say. For food they ate clay. From there they moved to Kak-we-mai Po-la-la, the to Po-es-kak Po-la-lak.*

*They were growing large now and began to recognize each other. Then the Earth-Mother made the sea so that her children could bathe in it, and so that the breeze from the sea might fill their lungs, for until this time they had not breathed. Then they moved farther to a place called Na-che-vo Po-me-sa-vo, a sort of canon which was too small for their abiding-place; so they returned to a place called Tem-ech'-va Tem-eck'-o, and this place people now call Temecula, for the Mexicans changed the Indian name to that.*

*Here they settled while everything was still in darkness. All this time they had been travelling about without any light. The Earth-Mother had kept the sun hidden away, but now that the people were grown large enough and could know each other she took the Sun out of his hiding-place, and immediately there was light. They could all see each*

*other; and while the Sun was standing there among them they discussed the matter and decided that he must go east and west and give light all over the world; so all of them raised their arms to the sky three times, and three times cired out Cha-cha-cha ... and he rose from among them and went up to his place in the sky.*

*After this they remained at Temecula, but the world was not big enough for them, and they talked about it and concluded that it must be made larger. So this was done, and they lived there as before” (DuBois 1906, 52-54).*

### Historical Highlights of the Pechanga Band of Luiseño Indians

The Pechanga Band of Luiseño Indians, one of six bands of the Luiseño or *Payomkawichum* people, have occupied the land in the Temecula Valley in Southern California, according to *Tiller’s Guide to Indian Country*, for thousands of years (ten thousand years as stated on the tribal website<sup>7</sup>) (Tiller 2005, 450). The Temecula Valley has been characterized as a place where “Life on earth began... Exva Temeeku, the place of the union of Sky – father, and Earth – Mother (Tuukumit’pl Tamaayowit). The Indians (Temeekuyan) lived at Temeekunga – the place of the sun<sup>8</sup>”. In 1798, the Mission San Luis Rey de Francia was founded to serve the ranchos who had moved into the Valley and established their properties within the boundaries of the Native communities. Thus the Native peoples who lived in this area became known as San Luiseños, then Luiseño. The Indigenous people were eventually forced into servitude for the mission (Tiller 2005: 451). According to tribal history, along with the Spanish Missionaries of the Roman Catholic Church who founded the Mission of San Luis Rey de

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<sup>7</sup> <http://www.pechanga-nsn.gov/page?pageId=57>

<sup>8</sup> Ibid.

Francia, also came the moment that began the dramatic alteration of Pechanga lives – from imprisonment to servitude to slavery.<sup>9</sup>

Following the designation of California as a state, a group of Temecula Valley Ranchers petitioned the District Court of California for a “Decree of Ejection” of Indians living in the Temecula Valley; this was granted in 1873 and in 1875, a posse led by the local sheriff of San Diego County, began three days of forcible eviction. The tribe was forcibly moved from their traditional lands and literally taken to the “hills” – those south of the Temecula River <sup>10</sup>(Tiller 2005: 451). According to a tribal elder recounting how the eviction ended: “They just dumped them here” - pointing to a low hill... Just dumped them!” <sup>11</sup> The history on the tribe’s website states: “Being strong of spirit, most of our dispossessed ancestors moved upstream to a small, secluded valley; they built new homes and re-established their lives in this valley. A spring located 2 miles upstream in a canyon provided them with water; the spring we have always called Pechaa’a (from pechaq=to drip). This spring is the namesake for Pechaa’anga or Pechaanga, which means “at Pechaa’a, at the place where water drips”.<sup>12</sup>

Goldberg and Champagne discuss how according to the 1884 Helen Hunt Jackson novel, *Ramona*, in which a Native woman of possible Luiseño origins marries and settles on her husband’s ancestral lands of Temecula, thereafter American settlers invade the land and the woman and her family are forced off the land; Ramona’s husband is killed and

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<sup>9</sup> Ibid.

<sup>10</sup> <http://www.pechanga-nsn.gov/page?pageId=57>

<sup>11</sup> <http://www.pechanga-nsn.gov/page?pageId=57>

<sup>12</sup> Ibid.

they are forced to flee to the hills. The authors state that, “The Ramona story symbolizes the marginalization and mistreatment of California Indians during the second half of the nineteenth century” (Goldberg and Champagne 2002: 43).

A few years after the Pechanga eviction from historical lands, on June 27, 1882, U.S. President Chester A. Arthur, granted an Executive Order that established the Pechanga Indian Reservation and in 1891, 1,233 acres were allotted, in 10 and 20 acre plots, to each head of household. This was followed by a series of subsequent Trust Patents providing more acreage to the Pechanga, including the 1988 Southern California Indian Land Transfer Act which provided an additional 303 acres, increasing the size of the Pechanga reservation which today stands at 5,500 acres.<sup>13</sup>

#### Cherokee Creation Story

*“The earth is a great island floating in a sea of water, and suspended at each of the four cardinal points by a cord hanging down from the sky vault, which is of solid rock. When the world grows old and worn out, the people will die and the cords will break and let the earth sink down into the ocean and all will be water again. The Indians are afraid of this.*

*When all was water, the animals were above in Galun’lati, beyond the arch; but it was very crowded, and they were wanting more room. They wondered what was below the water, and the last Dayunisi, “Beaver’s Grandchild,” the little water beetle, offered to go and see if it could learn. It darted in every direction over the surface of the water, but could find no firm place to rest. Then it dived to the bottom and came up with some soft mud, which began to grow and spread on every side until it became the island which we call earth. It was afterward fastened to the sky with four cords, but no one remembers who did this.*

*At first the earth was flat and very soft and wet. The animals were anxious to get down, and sent out different birds to see if it was yet dry, but they found no place to alight and came back again to Galun’lati. At last it seemed to be time, and they sent out the*

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<sup>13</sup><http://www.pechanga-nsn.gov/page?pagelId=6>



*Buzzard and told him to go and make ready for them. This was the Great Buzzard, the father of all the buzzards we see now. He flew over all the earth, low down near the ground, and it was still soft. When he reached Cherokee country, he was very tired, and his wings began to flap and strike the ground, and wherever they struck the earth there was a valley, and where they turned up again there was a mountain. When the animals above saw this, they were afraid that the whole world would be mountains, so they called him back, but the Cherokee country remains full of mountains to this day.*

*When the earth was dry and the animals came down, it was still dark, so they got the sun and set it in a track to go every day across the island from east to west, just overhead. It was too hot this way and Tsikagili, the Red Crawfish, had his shell scorched a bright red, so that his meat was spoiled; and the Cherokee do not eat it. The conjurors put the sun another hand-breadth higher in the air, but it was still too hot. They raised it another time, and another, until it was right and they left it so. This is why the conjurors call the highest place Gulkwa'gine Di'galun'lattiyun', "the seventh height," because it is seven hand-breadths above the earth. Every day the sun goes along under this arch, and returns at night on the upper side to the starting place.*

*There is another world under this, and it is like ours in everything-animals, plants, and people-save that the seasons are the trails by which we reach this underworld, and the springs at their heads are the doorways by which we enter it, but to do this one must fast and go to water and have one of the underground people for a guide. We know that the seasons in the underworld are different from ours, because the water in the springs is always warmer in winter and cooler in summer than the outer air.*

*When the animals and plants were first made- we do not know by whom- they were told to watch and keep awake for seven nights, just as young men now fast and keep awake when they pray to their medicine. They tried to do this, and nearly all were awake through the first night, but the next night several dropped off to sleep, and the third night others were asleep, and then others, until, on the seventh night, of all the animals only the owl, the panther, and one or two more were still awake. To these were given the power to see and to go about in the dark, and to make prey of the birds and animals which must sleep at night. Of the trees only the cedar, the pine, the spruce, and holly, and the laurel were awake to the end, and to them it was given to be always green and to be greatest for medicine, but to the others it was said: "Because you have not endured to the end you shall lose your hair every winter."*

*Men came after the animals and plants. At first there were only a brother and sister until he struck her with a fish and told her to multiply and so it was. In seven days a child was born to her, and thereafter every seven days another, and they increased very fast until there was danger that the world could not keep them. Then it was made that a woman should have only one child a year, and it has been so ever since.<sup>14</sup>" (Mooney 1900; Parker 2006: 33-36)*

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<sup>14</sup> For an interpretive analysis of the symbolic meaning of this story, please see Parker (2006) 36-47.

## Historical Highlights of the Cherokee and the Cherokee Freedmen

The notion of assimilation has substantial implications for how and why the U.S government developed certain policies toward the Indigenous population. An interesting concept raised by May refers to the question of cultural hegemony – not only how dominant and powerful groups exercise power over those subordinate to them, but the mechanism by which the subjugated “willingly embrace dominant values” (May 1996, 6). To a certain degree, this was evident in all three communities that are the subject of this study, but most predominately so for the Cherokee people as exhibited in their relationships with Europeans and Africans – two groups with whom they had dominant/subordinate relationships (Whites) and subordinate/dominant relationships (Africans).

In order to understand the intricate contemporary relationship between the Cherokee and the Cherokee Freedmen (slaves adopted into the Cherokee Nation and their descendants), it is necessary to address the complex socio-political history of the Cherokee as it relates to peoples of African descent. According to early anthropologist James Moody writing in 1888, “The Cherokee are undoubtedly the most important tribe in the United States, as well as one of the most interesting...while in regard to wealth, intelligence, and general adaptability to civilization, they are far ahead of any other of our tribes” (Mooney 1888, 97). Because of the sheer size of the Cherokee society, their substantial dealings with Euro-Americans and the plethora of writings on the Cherokee people, for the purposes of this exploration, the following history will be substantially

lengthier than those of the Pechanga and Paiute, but such does not diminish, in any way, the contributions of each group to this study.

The Cherokee, the second largest tribe in the United States, occupied 126,000 square miles of Southeastern United States for a thousand years prior to European settlers, which was, as will be explored later, substantially reduced through a succession of treaties as Euro-Americans began to populate the region (Tiller 2005: 808). When Europeans and Africans first appeared to them, the Cherokee lived in a vast region including a substantial area of southern Appalachia; their community and economy was semi-sedentary, characterized by hunting, fishing and agricultural endeavors; they adopted many European influences, arts and practices, tools and weapons and were, from the first contact with non-Indians, identified as one of the most influential and powerful Indigenous groups (Halliburton 1977, 4-5).

Some historians believe that the initial interactions of Cherokees and Africans from the early sixteenth and seventeenth centuries had been one of alliance. Perdue writes that the Cherokee encountered Africans as early as 1526 when some slave rebels “fled to the Indians”; later following these initial encounters, Indians and Africans experienced “extensive contact” as Indian enslavement occurred around the same time as African slaves were purchased (Perdue 1979, 36). Tyra Miles also adds to this, “The earliest form of Cherokee and African relations were identification and interdependence. As British settlers planted their first colonies in Virginia and South Carolina, they enslaved Indians as well as Africans to increase their labor pool and to weaken those neighboring Indian groups that they viewed as political and military adversaries.” (Miles

2005, 28) The author goes on to discuss how this proximity resulted in intermarriage and a sharing and fusion of cultural ways from a blending of African folktales with Native stories, African medicinal practices intermingled with Native use of indigenous plants, African handicrafts and patterns were woven into Indigenous crafts, "...and corn, the staple of the southeastern Indian diet, became a signature ingredient of what we now call 'soul food'. African people and Indian people, including many Cherokees, shared the same lot for nearly a century. The bonds they developed persisted throughout the early 1700s, a period when black slaves escaped to Indian communities in significant numbers..." (Miles 2005, 29). It has also been argued that because of the similarity of their relationship to the environment and physical world, Africans and Native Americans shared a spiritual/environmental worldview that was accentuated by commonalities of every day living routines and in shared spiritual beliefs such as animal symbolism (Perdue 1979, 42). Other commonalities included a similar view of social community: "Both native Americans and Africans believed in the finitude of resources and realized that one person's gain was another's loss. The welfare of the community contrasted sharply with the trend in Western culture toward glorification of personal wealth, free enterprise individualism, and the destruction of a corporate ethic" (Ibid., 43).

As more Europeans settled in the region and began to impact Indian culture, however, this early (one could argue – forced) alliance between Cherokees and Africans gave way to a more contradictory and conflicted relationship that began to mirror the asymmetrical relationship of Euro-Americans with people of African descent. As early as 1673, according to Halliburton, Cherokees used firearms to capture Black slaves in

order to sell them – urged on by the English who rewarded them for the capture of any Black slaves taken from the French, in turn the French also rewarded the Cherokee for Black slaves taken from the English (Halliburton 1977, 6); such had the effect of early institutionalization of Black slavery within the Cherokee society. But even as they engaged in hunting and enslavement of Africans, the Cherokee would also shelter and hide runaway African slaves – exhibiting a dissonant behavior that was quite vexing to Europeans.

As their lands were increasingly lost to White settlers, the Cherokee moved southward where many of them adopted southern-type plantations and began to forego hunting for a more agrarian existence, with many well-known Cherokees becoming slaveholders (Halliburton 1977, 13). Halliburton argues that a 1791 treaty (The Treaty of Holston) with the United States government during the administration of President George Washington, indirectly encouraged slavery as it focused on “civilizing” the Indians by encouraging increased agricultural versus hunting endeavors, thus implying the need for Black labor in order for the Cherokee to accomplish this transition to husbandry (Ibid., 14).

The Cherokee history is a complex one in which most of the community adopted and embraced non-Indian ways, succumbing to and willingly accepting the “civilizing” policies of the U.S. government. According to Denson (2006: 10), one of the goals of European Americans was to absorb and assimilate Indians into Euro-American society – this quest of “civilizing” became the official governmental policy throughout the nineteenth century, a parallel goal was to also acquire Native land and the removal of

Indians from it. Of the three groups that are the subject of this writing, the historical experiences of the Cherokee people particularly reflect this social, political and economic dynamic.

It is important to note that as reflective of other colonized people, Denson suggests that the Cherokees' willingness to engage non-Indians was a matter of community self defense, protection and resistance. He states, "As a matter of political survival, tribal leaders continually observed and listened to Americans. They scrutinized their powerful neighbors' politics and culture for arguments in favor of Indian nationhood. They not only opposed American initiatives but attempted to make policy, to imagine a more acceptable version of American Indian affairs. Resistance, in this case, involved an ongoing process of interpretation of the people and forces opposed." (Denson 2004: 6) By adopting the ways of mainstream culture and assimilating, it was hoped that Cherokee survival would be insured and that there would be fairer treatment gained from the United States Government. This drive to obtain fairer treatment was manifest in the political maneuverings utilized by Cherokee political leaders that took the form of "memorials and documents", formal messages, or petitions and appeals written to Members of the United States Congress to try to convince the American political elite of the importance of maintaining Indian sovereignty, Indian land, Indian respect as a nation and their identity as a people. These writings, protests and opposition lasted well over a century, yet still culminated in the removal of the Cherokee from their homeland which, in many ways, has become the quintessential history of Native America. As the expansionist tendencies of Euro-Americans proceeded and became increasingly

inevitable, they elicited a comprehensive and systematic response from the most prominent Indigenous leaders from groups such as the Cherokee.

In the 1870s, however, despite the valiant efforts of organized resistance and protest spearheaded by Cherokee leaders, there was increasing opposition to their arguments in the U.S. Congress. It was decided during that time that the Cherokee would need to be removed to identified areas further west. Halliburton states that, “As early as the 1790s small bands of Cherokee began moving westward into Arkansas and Texas to escape the encroachment of white men”; as their numbers substantially increased, this led to the development of what is known as the Western Cherokee (Halliburton 1977, 39-40).

In terms of political structure, the nationhood of the Cherokee predated the arrival of Europeans to whom they successfully appeared as an autonomous, fully functioning vast organization which the Cherokees argued would be in the best interests of both parties to maintain; a Cherokee writing about the early contact described it as a “long and intimate connexion” with the Americans (Denson 2004, 16). By the early nineteenth century, this connection also resulted in a reconstituted form of government within the Cherokee Nation in which they, in 1827, “adopted a constitution patterned after that of the United States... becoming the first Indian tribe to adopt a written constitution” (Halliburton 1977, 50).

This early relationship and the Cherokees’ willingness to embrace non-Indian ways by learning the language, culture, the legal and political system of the Euro-Americans, as well as social interaction and intermarriage, led to an ease of political advocacy which they adopted. It is for this reason that the Cherokees are often referred to as one of the

“Five Civilized Tribes”. (The other four “civilized” tribes include the Choctaws, the Muskogees or Creeks, the Seminoles, and the Chickasaws.) This civilizing process was also significant to the Cherokee people and as particularly relevant to this study, because by adopting the ways and attitudes of Euro-Americans (specifically Southern Whites - the south being the region in which much of Cherokee territory was located), they eventually also adopted similar racial attitudes toward peoples of African descent.

For the purposes of this research, the relevant aspect of Cherokee and Cherokee Freedmen history relates to the complexity of that history as reflected in contemporary identity constraints and legitimacies as noted by historian Circe Sturm who states that, “Several centuries of social, political and economic relations with Euro-Americans engendered Cherokee color prejudice, the legacy of which means, among other things, that Cherokee identity politics has never been simply a question of blood or culture. Cherokee freedmen and other multiracial individuals who choose to identify as both Indian and Black challenge the prevailing racial ideologies, which ask us to “choose one” racial or ethnic identity, often at the expense of the other (Sturm 1998, 21).”

The author, S. Alan Ray, discussing Cherokee attitudes toward African slaves, states that, “The Cherokees were reputed to and lauded for having intermarried most with whites, harbored prejudices against African Americans, and assimilated to the point of cultural annihilation.” (May 1996: 5) On the other hand, May goes on to say that the Cherokee and other civilized tribes did not harbor the same exclusionary attitudes toward African Americans as did White Southerners of European descent. Though the Cherokee practiced slavery, because there was also intermarriage with African Americans and



“sharing of the table” practices, they did not see them as “pariahs” or “strangers” (Ibid., 5-6). May goes on to say that, “Slavery” existed among the pre-contact Cherokees [and Creeks], but in mitigated form. A war captive or stranger might be “enslaved” as a worker for a period of time (not exceeding the person’s lifetime, i.e. not inheritable by the person’s children)... Slavery was not “racial”, however, and he or she might be allowed to leave at some point. A third option was to adopt the stranger or war captive into the family as a member with all rights and privileges of a tribal member henceforth.” (May 1996, 39). Pertaining to African American slaves, Sturm suggests that even though the Cherokee did not embrace significant organized violence such as lynching as was practiced by White Southerners and it may be argued that Black slaves did not fear for their lives in the same manner as those being held by Whites, it is a fact, however, that the Cherokees held more slaves than any other tribe in Indian country; some historians believe that their form of slavery was little different than that practiced by Whites (Sturm 1998, 232). Author Tiya Miles states that as British settlers continued to take possession of Cherokee territories, the Cherokee may have first viewed Blacks as “co-intruders”, but as they became aware of their inferior status, a position increasingly tied to their race or blackness, they may have begun to attribute to them low status which eventually led to self-segregation from Black people even as they developed alliances and dependencies (Miles 2005, 30). It is important, therefore, to underscore the complexity of the relationship between the Cherokee and Blacks – at points they were allied, intermarried, then clashed and battled, were master and servant as both groups tried to negotiate within the throes of European colonialism.

In the 1830's, because of increasing demand for their land by White settlers, the Cherokee were pushed to the western areas of the United States – the state of Georgia confiscated their lands and declared all Cherokee laws null and void, this spurred the Cherokees' trek westward to what is today northeastern Oklahoma – six million acres were provided to them according to The Treaty of New Echota (Halliburton 1977, 61). The journey westward was known by the Cherokee as *Nuna-da-ut-sun'y* or "The Trail Where They Cried", commonly referred to as "The Trail of Tears" for the hardships suffered during this forced en mass emigration (Halliburton 1977, 61). The author also states that most slave-holding Cherokee also brought their slaves with them on the journey westward. Internal strife occurred as the new arrivals, "Eastern Indians", experienced animosity from those who had made the trek west earlier and were known as the "Old Settlers", but the tribe was united under a new constitution in 1839.

On July 19, 1886, Ray in his article, "A Race or a Nation? Cherokee National Identity and the Status of Freedmen's Descendants", states that, "The former slaves of Cherokees were legally defined as tribal citizens when the Cherokee Nation signed a Reconstruction treaty with the United States (Ray 2006, 404). He cites from Kappler, 2 *Indian Affairs: Laws and Treaties* 944 (1975-76) the terms of the treaty.

"[A]ll freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants shall have the rights of native Cherokees." (Ibid.)

Following this treaty, the Cherokee amended their Constitution in 1886 to reflect the above agreement.

Adding to the complexity of this issue, Sturm states that “By the middle of nineteenth century, Black slavery was one of many issues dividing Cherokee citizens along the lines of race and class. Just as in Euro-American society, class divisions among Cherokee tended to fall along racial lines, but not according to separate racial groupings (“White” vs. “Black”) as much as degree of racial mixture (“fuller-blood” vs. “lesser-blood”) (Sturm 1998 232). The author goes on to cite Theda Perdue stating that the internal divisions within the Cherokee nation in mid nineteenth century also included disparate economic, value system and world view differences – dividing those who were slaveholders from non-slaveholders – in fact mirroring the larger Euro-American society and the impending differences between the U.S. North and the South; this was ultimately manifest in most Cherokee siding with the Confederacy (the South) in the U.S. Civil War (Sturm 1998, 232), creating a further division into Union and Confederate Cherokees (Ibid., 233).

The acting principal chief of the Union Cherokees, Thomas Pegg, followed, “...the precedent of President Lincoln’s Emancipation Proclamation of January 1, 1863, calling “an extraordinary session of the Cherokee National Council... On February 19, 1863, the body passed an act... emancipation all slaves within the limits of the Cherokee Nation” (Ibid.). According to Halliburton, “The Cherokee Nation was the only slaveholding region to abolish slavery voluntarily during the Civil War (Halliburton 1977, 132).

It is argued, however, that even though slavery ceased to exist as a legal institution in the Cherokee Nation, political and social inequality remained. The

factionalism that plagued the Cherokees resulted in differing views as to how the Freedmen or freed slaves should be handled – the northern Cherokee preferred having the Freedmen adopted into the tribe and given land, the Confederate Cherokee felt the United States government should remove the Freedmen and bear the cost of that burden. In response, the United States government claimed because the Cherokees had aligned themselves with the Confederacy that all treaties between them were null and void; new peace treaties would need to be negotiated (Ibid. 133). In opposition to Cherokee wishes, the United States insisted that they be responsible for former slaves: “... federal officials went even further: They offered a plan for the adoption of the Cherokee freemen into the tribe, granting them citizenship, land, and annuities in the same amount as Indian tribal members” (Sturm 1998, 233; Halliburton 1977, 133-134).

This plan, however met with much resistance within the Cherokee leadership who vehemently opposed Freedmen inclusion as Cherokee citizens. According to Ray, “Rather than settle the issue of the Freedmen’s legal status, however, the Treaty of 1866 and constitutional amendments of 1866 ‘set in motion what proved to be a tortuous effort to determine precisely who qualified for the tribal rolls’” (Ray 2006, 405). The noted anthropologist, Circe Sturm, also states that, “Despite the promises of this treaty [of 1866], the freedmen were never fully accepted as citizens of the Cherokee Nation” (Sturm 1998, 233). Following this initial resistance, the U.S. Congress passed legislation in 1888 that mandated the Cherokee share their assets with the Freedmen and in order to insure compliance with this law, it was required that all eligible Freedmen be listed on a roll or enrolled by a federal agent (Ray 2006, 406). The U.S. Congress send Federal

Agent, John W. Wallace, to establish a roll of the Freedmen so that they may receive part of the federal moneys sent to the tribe; the roll listed 3,524 Freedmen by 1889 (Sturm 1998, 234). This rights of Freedmen were further defined in the General Allotment Act of 1887 – (which will be explored more fully later) known as the Dawes Act.

The Cherokees today consist of three “federally-recognized Cherokee governments”, one is referred to as the Cherokee Nation, the other, the Eastern Band of Cherokee Indians (descendants of those who did not move westward), the third are the “cultural traditionalists”, the United Keetoowah Band of Cherokee Indians (in southeastern Oklahoma and Arkansas) (Ray 2006, 399).

In reviewing the historical attitudes of the Pechanga Band of Luiseño Indians, the Las Vegas Paiute and the Cherokee Nation, it could be argued that though each group had its own distinctive history, their commonalities are reflected in the richness of their creation stories, the drive to hold on to cultural traditions, their ties to the land and the complex perceptions of how much and/or how little to interact with non-Indians. These commonalities are further exacerbated by the imposition of various U.S. government policies that substantially impacted these and other American Indian communities which will be explored in the next part of this chapter. It could be argued that the totality of these experiences elicited a cohesiveness in each group that helped to sustain them through the onset of modernization as their encounters with non-Indians increased and the assault on their way of life became an all too harsh reality.

## **Part II - Historical Context: An Overview of Relevant American Governmental Policies and Their Impact on Native American Communities**

Part II of this chapter is instrumental to the current study because it provides an additional, yet salient context that demonstrates the far-reaching actions of the U.S. government and the historical implications of such actions on contemporary tribal members and decision-makers. It also may help to elucidate the latent impact of external influences on those Native American groups that are the subject of this study. As the general histories of the Paiute, the Pechanga and the Cherokee have been presented, because of their broadly sweeping relevance to the state of modern Native American societies, a brief overview of a few relevant policies of the United States government from Colonial days until the early twentieth century will now be addressed. It is important to note that since an accurate and extensive depiction of such policies would require volumes, this study will address only those policies most relevant to contemporary conflicts related to issues of identity, economic survival and group cohesion or lack thereof. Undoubtedly, the following discussion on those relevant and salient governmental policies will overlap with the histories as have already been presented; this suggests that it is quite difficult to isolate one from the other – I would argue that attempting to do so is like trying to separate the clouds from the rain...

The impact of certain Colonial and/or U.S. government policies on Native culture, practices and contemporary tribal decision making will be more thoroughly explored in subsequent chapters, but it is instrumental to again discuss, as was referenced in Part I of this Chapter, why the focus on far history when the subject of this project is on three

contemporary American Indians communities. As has been previously stated, it is through history that one may ascertain an explicative basis for current conflict behavior, attitudes, world views and decision-making strategies. Accordingly, for the purposes of this research, some of the most deleterious U.S. governmental policies impacting the three subject groups will be explored as well as policies that may directly impact only one or two of the three communities. Understanding these policies will, hopefully, provide some insight into the contemporary decisions and actions of today's tribal leaders and members

#### Policies of Early Encounters

Initially, upon early encounter with Native Americans, the Europeans (some say out of fear), in general, regarded the Indigenous societies as sovereign entities and afforded them status similar to, but not equal to that of European monarchies. The early policies, therefore, for the most part were intended to engage the Indigenous communities in an exchange of ideas, information, goods and trade. It is accurate, however, to state that as the numbers and needs of European colonists increased, these early exchanges eventually deteriorated to an inequitable relationship of power asymmetry. As has already been briefly mentioned in Chapter 2, and as described by Holt, the relationship between the American Indian and governmental authorities has, for the most part been one of dependency, colonialism and paternalism (1992: xiv), the author goes on to quote Van den Berge stating that "...paternalistic altruism is a form of parasitism in disguise" and "... is usually legitimated by utilizing the asymmetrical power model of the parent-

child relationship and mimicking the genuine concern of the parent, thereby hiding the conflictual basis of the ruler-subject relationship” (Holt 1992: xiv).

As the nature of the relationship between Europeans and Indians underwent transition, so did the underlying and resulting frame within which such a transformation took place; this resulted in the implementation of government policies - the scaffolding and blueprint - that defined the future dominant/subordinate relationship between the two peoples. If one accepts this premise, then the history of Native Americans in view of their historical relationship with the U.S. government and policies such as those designed to help or to “civilize” the Indian, can be seen as a mechanism that at its core is designed to keep power within the hands of the dominant culture while keeping the Indigenous population in an oppressed, infantile state. Like a parent- child relationship, it is inevitable, that there will be substantial conflict as one tries to enforce or constrain and the other tries to avoid or resist.

Most scholars studying the path of Indigenous Americans from the time of the arrival of the first Europeans to the present discuss a complex interaction between the two cultures that at times has been stormy, paternalistic, divisive, oppressive, marginalizing and manipulative. Though, as has been illustrated, each Native American society had its own historical relationship with the newly arrived Europeans and/or the U.S. government, there are enough similarities of experience that some general references may be found relevant to most Indigenous American communities. Thus, it is important to note that some early policies were tailored for certain Native American groups; as an example, the following will explore early European policies that targeted mainly the Indians of the



Southeastern United States, such as the Cherokee, and that laid the seeds of social fragmentation between individuals of African origin and the Cherokee that continue to have repercussions to this day.

Encroaching Europeans accompanied by African slaves set the tone for policies that impacted both Indians and Africans – two groups of differing Indigenous origin – eventually pacifying one, while constraining the other. “Since the concept of race did not exist among Indians and since the Cherokees nearly always encountered Africans in the company of Europeans, one supposes that at first the Cherokee equated the two and failed to distinguish sharply between the races” (Perdue 1979, 36). After their initial meeting, the enslavement of both groups produced “extensive contact between the two peoples” (Ibid.). As the trade in Indian slaves began to decline – some attribute this to the fact that Africans were considered to be a better investment and were more deeply “bound” being so far from home, Indians, on the other hand could escape given the close proximity to their kinsmen. For this reason, pacification policies of colonial governments favored the demise of Indian enslavement as the colonists were fearful of the reaction of other Native Indian communities upon seeing their brethren enslaved; accordingly, laws were eventually passed that forbade the Indian slave trade (Perdue 1979, 37).

One highly racialized policy impacting the relationship between Indians of the Southeastern United States and African slaves occurred in 1730 institutionalizing the Cherokee role in the slave trade; it was the *Treaty of Dover*, “...enacted in England between King George II and a makeshift “delegation” of seven Cherokees who had no official power within the Cherokee Nation. The treaty stipulated... “That in the case any

Negro slave runs away from his English master into the woods, the Indians of the Cherokee shall see what they can to apprehend him, and bring him back to the plantation from whence he fled, or to the governor's house; and for every Negro which the Indians shall thus retake, they shall have a musket, and a sentinel's unit of clothes. Whereupon we give you a full box of vermillion, with 10,000 flints, and six dozen hatchets" (Miles 2005, 31). The author also states that it became commonplace for Europeans to put slave catching clauses into their treaties with Indians of the Southeast (Ibid. 32). It is important to note that this was an initial 'divide and conquer' strategy as Europeans feared the repercussions of an African/Indian alliance. As the author Tiya Miles writes, citing Peter Woods' (1974) *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion*: "British colonists began purposefully to divide the two groups. In 1775 Stuart again warned that 'nothing [could] be more alarming to Carolinians than the idea of an attack from Indians and Negroes'. British policy included the goal to "Discourage any Trade or Traffick being carried on between Indians and Negroes and likewise prevent any Negroe from takeing a wife among the Free Indians, or Free Indians from takeing a Slave a Wife" (Miles 2005, 33). This policy may have been the forerunner of others that helped to legitimize social and political actions based on biological determinants.

Next, it is important to note a few specific policies within the last couple hundred years that have impacted Indigenous Americans as a whole and each of the groups in this study in particular, as some feel it is these very policies that have facilitated the creation of contemporary internal fractions within these societies.

## “Civilizing” the Indian

As previously discussed, one of the most significant policies, among many, that impacted Native Americans had to do with the “civilizing” efforts of Euro-Americans – this was undertaken with the idea that if Indians were more sedentary and given individual plots of land, they would no longer require vast land for foraging, hunting, fishing, etc. The policy sought to assimilate Indians to the degree necessary so that their land would be more easily accessible and more easily confiscated.

As European settlements substantially increased, however, it became apparent that more land was needed. As Euro-Americans proliferated and expanded; the Indian policies of containment and “buy-out” expanded, as well – with the tendency towards taking the land through treaties from tribal groups in return for other favors. This began what could be called the “civilizing” period. In order to make land acquisition easier, since most Indigenous communities did not practice individual land ownership, it was believed that if the Indian was made to be more like the White man, he would be less likely to be so tied to the land and would abandon the collective nature of his social unit and would then embrace individualism. “The policy of the federal government in the nineteenth and early twentieth centuries to assimilate Native Americans into the culture and ethos of non-Indian society included, at its heart, the inculcation of a love of private property, the *sine qua non* of “civilized” peoples” (Ray 2006, 407). For Native groups, this policy resulted in a substantial loss of not only land, but also culture, tradition, status, and identity.

One of the most significant policies of the nineteenth century directed particularly at Indians living east of the Mississippi was the Indian Removal Act signed into law by President Andrew Jackson on May 28, 1830.<sup>15</sup> This Act compelled thousands of Native American communities living east of the Mississippi to be moved to lands westward so that the influx of Europeans would be entitled to the rich and vast lands of the South and Southeastern United States without the impediment of Indigenous people. Of the three groups that are the subject of this study, the Indian Removal Act only directly impacted the Cherokee Nation. Through the implementation of this Act, sixteen thousand Cherokees were moved west of the Mississippi River. The majority of the Cherokee Nation resisted (a minority signed the Treaty of New Echota agreeing to the relocation) and were forced to endure, under the guns of the U.S. military, brutal conditions resulting in a mass relocation and migration.<sup>16</sup> Three to four thousand died en route; this event has since become known as the “Trail of Tears” or in the Cherokee language, *Nunna dual Tsuny* – “the trail where they cried”. The words of the President of the United States, Andrew Jackson, reveal the mindset and attitudes that facilitated and promoted the removal and displacement of thousands of American Indians:

“It gives me pleasure to announce to Congress that the benevolent policy of the Government, steadily pursued for nearly thirty years, in relation to the removal of the Indians beyond the white settlements, is approaching to a happy consummation... It will place a dense and civilized population in large tracts of country now occupied by a few

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<sup>15</sup> See: Indian Removal Act: Primary Documents of American History (Virtual Programs & Services, Library of Congress) for information on Andrew Jackson’s Message to Congress stating the benevolence of this policy. <http://www.loc.gov/rr/program/bib/ourdocs/Indian.html>.

<sup>16</sup> See: “Indian Treaties and the Removal Act of 1830”. U.S. Department of State. Accessed: 05/24/08 from: <http://www.state.gov/r/pa/ho/time/dwe/16338.htm>.

savage hunters... It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way, and under their own rude institutions; will retard the progress of decay, which is lessening their numbers; and perhaps cause them gradually, under the protection of the Government... to cast off their savage habits and become an interesting, civilized, and Christian community (Jackson, 1830, ix).

As this removal policy became a reality and thousands of Indigenous people were “herded” into reserves or enclaves, the U.S. government required that census lists or rolls be kept to acknowledge members living on reservations and to determine to whom land, to which they were assigned, should be allotted or divided. The following is an explanation of the Act that created this policy: “The Act of July 4, 1884, (2 Stat. 76, 98) was vague, saying, ‘That hereafter each Indian agent be required, in his annual report, to submit a census of the Indians at his agency or upon the reservation under his charge.’ The Act itself did not specify the collection of names and personal information. However, the Commissioner of Indian Affairs sent a directive in 1885... reiterating the statement and adding... ‘Superintendents in charge of Indian reservations should submit annually, a census of all Indians under their charge.’”<sup>17</sup>

### The Policy of Indian Census and Other Rolls

Such “rolls” or lists were the beginning of the practice of “enrollment” which, to this day, is the manner in which Indigenous peoples are identified by the federal government and is also the tool which tribal authorities use to state lists of their members.

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<sup>17</sup> See: “Indian Census Rolls, 1885-1940”. *The U.S. National Archives & Records Administration*. Accessed: 24 May 2008 from: <http://www.archives.gov/genealogy/census/native-americans/1885-1940.html?template=print>

An explanation as to the historical rationale for this practice:

“It is clear that by 1930, there was an accepted concept of "enrollment" being employed, even though there were no official membership enrollment lists existing for many tribes. A few tribes had been involved in government supervised enrollment lists, usually relating to legal questions in which the federal government owed the tribe moneys as determined by the courts. In that case, the federal government had a vested interest in determining who was a legitimate member, to whom money was owed, and who was not. Apart from those special cases, the Superintendents and Agents had been occupied for years with the allotment process, identifying those who were eligible to receive an allotment, and they had been involved yearly in the distribution of goods and money and checking the eligible names off an annuity roll. Many tribes had accepted Annuity Roll numbers, and Allotment Roll numbers. At the discretion of the Superintendent, those that did not could not have an assigned Identifying Number. So, the concept of eligibility for services was apparently equated to a status of enrollment even if there were no actual enrollment list. The questions of eligibility were tied to allotment lists, annuity rolls, and prior census rolls.”<sup>18</sup>

The following explains the process of this form of record keeping: “...*Indian Census Rolls, 1885-1940* (692 rolls) contains census rolls that were usually submitted each year by agents or superintendents in charge of Indian reservations, to the Commissioner of Indian Affairs, as required by an act of July 4, 1884 (23 Stat. 98). The data on the rolls vary to some extent, but usually given are the English and/or Indian name of the person, roll number, age or date of birth, sex, and relationship to head of family... Beginning in 1930, the rolls also show the degree of Indian blood, marital status, ward status, place of residence, and sometimes other information.”<sup>19</sup>

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<sup>18</sup> See: “Indian Census Rolls, 1885-1940”. *The U.S. National Archives & Records Administration*. Accessed: 24 May 2008 from: <http://www.archives.gov/genealogy/census/native-americans/1885-1940.html?template=print>.

<sup>19</sup>Ibid.

At this point, it is germane to this study to note that the issue of blood quantum as a contemporary device for determining tribal membership had its origins in the manner in which federal Indian agents were instructed to keep track of tribal members; this practice did not arise out of the generic cultural traditions of Native Americans. Since, for some Indian communities, blood quantum is frequently used as a contemporary methodology for designating tribal membership, this issue is an increasingly complex reflection of identity determination, the impact of which will be more closely explored later. For now, it is important to note a description of this issue from The U.S. National Archives statement on Indian Census Rolls:

“Degree of blood was not required on the early rolls. When it was included, for a short period, blood quantities were artificially compressed into only three categories that may have led to confusion in later years when more specific categories were required. The 1930 Indian census did not allow more than three distinctions to be made in amount of blood because the census was to be tabulated using mechanical reading device. Circular 2676 (1930) said the new census form, Form 5-128, “must be filled out in absolute conformity to instructions on reverse. This ruling is necessary because a mechanical device has been installed in the Office for tabulating the data.... Thus for degree of blood then symbols “F” for full blood; “1/4+” for one-fourth or more Indian blood; and “-1/4” for less than one-fourth. No substitution of more detailed information is permissible in any column.” Later, in 1933, the agents were told to use the categories “F”, “3/4”, “1/2”, “1/4”, and “1/8.” Still later, they were urged to be exact if possible. Thus, if someone used the 1930 blood quantum information in retrospect it could lead to mistakes, since it is not possible to start from an artificially compressed category and then accurately return with greater detail.”<sup>20</sup>

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<sup>20</sup> See: “Indian Census Rolls, 1885-1940”. *The U.S. National Archives & Records Administration*. Accessed: 24 May 2008 from: <http://www.archives.gov/genealogy/census/native-americans/1885-1940.html?template=print>

Accordingly, one could argue that the significance attributed to blood quantum - an arbitrary, imprecise, culturally irrelevant methodology that had its origins in the short hand used to facilitate a mechanical reading device, has become one of the primary determinants of group citizenship and inclusion for some Indian tribes today.

In 1887, another fundamental shift in federal policies towards Indians became codified with the passing of the General Allotment Act (also known as the Dawes Severalty Act after Senator Henry L Dawes who paid a major role in getting this law passed<sup>21</sup>) which provided for, “the allotment of lands in severalty to Indians on the various reservations” and “empowered the President of the United States to divide Indian reservations into 160 acre allotments... and open remaining lands to white settlers”; this Act continued until its repeal in 1934 when it was considered to have been a failure (Carlson 1978, 274). During the inclusive years of the policy, however, its impact was felt on a substantial number of Native American communities and has not been without controversy.<sup>22</sup> Subsequent to the passage of the General Allotment Act, Congress

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<sup>21</sup> Carter, Kent. “Snakes & Scribes: The Dawes Commission and the Enrollment of the Creeks,” The U.S. National Archives & Records Administration. (Spring 2007) Vol. 29, No. 1. Accessed 05/23/08 from: <http://www.archives.gov/publications/prologue/1997/spring/dawes-commission-1.html?template=print>.

<sup>22</sup> See: “Indians Allege Fraud; Dawes Commission Said to be in a Plot to Seize Land, Charge of an Attempt to Gain Possession of Delaware Tribe’s Property and to Influence the Supreme Court,” *The New York Times Archives* Sept. 29, 1903. Accessed: 25 May 2008 from: <http://query.nytimes.com/gst/abstract.html?res=9A0CE0DC1439E433A2575AC2A96F9C946297D6CF>



established a commission in March of 1893, to negotiate land allotments with the Five Civilized Tribes (Cherokee, Creek, Choctaw, Chickasaw and Seminole).<sup>23</sup>

As stated, the Chairman of that Commission, Senator Henry L. Dawes from Massachusetts, was appointed by President Grover Cleveland in 1893 to negotiate and allot land to the members of those tribes in exchange for “abolishing their tribal governments and recognizing Federal Laws. In order to receive the land, individual tribal members first had to apply and be deemed eligible by the Commission.”<sup>24</sup> In so doing, they also had to submit to adopting an individualistic “civilized life”: Section 6 of the Act states: “And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provision of this act, or under any treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life... is hereby declared to be a citizen of the United States...”<sup>25</sup>

The list that the Dawes Commission generated from 1898-1907 was and is officially known as The Final Rolls of the Citizens and Freedmen of the Five Civilized

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<sup>23</sup> See: “Commission to the Five Civilized Tribes (The Dawes Commission), 1893-1914”. *The U.S. National Archives & Records Administration*. Accessed 25 May 2008 from: <http://www.archives.gov/genealogy/heritage/native-american/dawes.html?template=print>.

<sup>24</sup> See: “The Dawes Rolls (Final Rolls of the Citizens and Freedmen of the Five Civilized Tribes in Indian Territory)”. *The U.S. National Archives & Records Administration*. Accessed 25 May 2008 from: <http://www.archives.gov/genealogy/tutorial/dawes/index.html?template=print>.

<sup>25</sup> See: Kappler, Charles J. (1904) “Indian Affairs: Laws and Treaties” *Acts of Forty-Ninth Congress-Second Session, 1887*. Chap. 119/Chap. 320.

Tribes in Indian Territory), or the Dawes Rolls.. Though numerous rolls have been established over the last century, the Dawes Rolls have become one of the most predominant as it further spearheaded the movement to “civilize” Indians by forcing them to take private batches of assigned property instead of the communal living on their land to which most were accustomed. “The Dawes Act called for the break-up of tribally-owned land into individual allotments and their award in severalty to individual Indians and other qualified tribal members...” (Ray 2007, 407).

Kent Carter in his article on the Dawes Commission stated that, “Not everyone wanted to be allotted land and assimilated. In each tribe, both pro-and anti-allotment factions developed, and bitter struggles sometimes ended in violence” (Carter 1997, 1). He goes on to describe how some members of the Creek Nation spent more than a decade opposing and resisting the Dawes Commission. The author also indicates that in the normative Indian tradition, group membership or who belongs had been determined by tribal officials utilizing tribal “customs and usages” – that there were few laws written by most tribes and that determining who belonged was exercised through clan relationships or family ties (Ibid.). As the issues of contemporary identity and citizenship are later explored in this study, it will be important to note the early seeds of internal factionalism that emerged with these culturally neutering policies, in many ways – to this day, continue to impact certain Native American groups. Because the implementation of this policy has had such extensive implications for the American Indian community as a whole, it will be addressed here as a vital part of the history of many Native American

communities, and may help to provide the basis for some contemporary decision making and on-going dissension within many Indigenous groups

In 1901, the Dawes Rolls were further instigated by President Theodore Roosevelt who in an address to the U.S. Congress, declared this effort to be, "... a mighty, pulverizing engine to break up the tribal mass"<sup>26</sup> This was the ultimate goal behind one of the most far-reaching policies of the U.S. government toward Native Americans. The Dawes Rolls were also an attempt to rid the U.S. government of having to deal with the Indian sovereignty issue, ending the federal trust responsibility (Ray 2006, 408). This author goes on to quote Colonel Richard Pratt, founder of the Indian School who stated, "...that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man."<sup>27</sup> (Ibid. 408).

The most significant cultural implications and impact on identity maintenance arose from such policies – the establishment of the Dawes Rolls has been referred to as "pencil genocide" because the rolls were regarded as the legitimizing force in terms of who was designated Indian as well as their tribal affiliations, if any. In regards to the Cherokee, for example, the rolls were said to have "erased... African-descended families... from official tribal memory."<sup>28</sup> Some argue that the concept of "blood quantum" and degrees of "Indian blood" were first introduced with the Dawes Act and

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<sup>26</sup> Theodore Roosevelt. (1901) *The Struggle for Self-Determination*. Accessed 13 April 2008 from: [http://www.digitalhistory.uh.edu/native\\_voices/voices\\_display.cfm?id=92](http://www.digitalhistory.uh.edu/native_voices/voices_display.cfm?id=92).

<sup>27</sup> Richard C. Pratt. *Kill the Indian and Save the Man*. Accessed 13 April 2008 from: <http://historymatters.gmu.edu/d/4929/>.

<sup>28</sup> "Pencil genocide" is a term used by Richard Wilcox, interviewed in the film, *Black Indians: An American Story* (Dallas, TX: Rich-Heape Films, 2000).

through the various degrees of blood held by an individual determined his or her designation and eligibility for inclusion on the roll. “On the theory that “full-blooded” Indians were less familiar with property ownership and therefore less competent to manage their affairs, Congress required that the land of any allottee of one-half degree “Indian blood” or more would be held in trust for a determined number of years, could not be sold, and would not be taxed; allotments to those with less than one-half-degree, “Indian blood”... were subject to taxation but their owners could freely alienate their property” (Ray 2006, 408). Through this policy additional lands were also made available to Whites or non-Indians as “excess land” since only a set number of acres were calculated and set aside for those who were eligible (Ibid.)

Kimberly Tallbear states that, “Since the late 1800s, blood quantum has been used by the U.S. Department of the Interior, the BIA, and many tribal governments to determine eligibility (although not always as the sole criterion) for tribal membership and benefits” (Tallbear 2003, 88). The author goes on to say that though federally based Indian identification policies were “first instituted in treaties and subsequently reinforced or reaffirmed by the General Allotment Act of 1887 (the Dawes Act)”, others have disputed how clearly this Act focuses on blood quantum and argue that, “...the Dawes Act required that tribal group members be defined for the purpose of allotting Indian tribal property to individuals” (Ibid, 88-89.) Though the federal government does not force tribes to implement blood quantum criteria, Tallbear states that the BIA has reinforced the tendency of tribes to utilize this measure as one of the determinants of belonging by providing them with charts, for example, that help to more thoroughly

utilize blood quantum as a means of determining tribal membership (Tallbear 2003, 89). This author goes on to discuss the complex nature of the argument as to who was responsible for the racialized policies arising from blood quantum usage. She discusses the responses of some scholars who see the use of the “blood” terminology not so much as a biological determinant, but more of a metaphorical description of relatedness arising out of cultural perspectives. Tallbear cites Alexandra Harmon discussing the complexities of the symbolic versus the actual usage of the term “blood”. Harmon describes U.S. government agents establishing rules for tribal membership by overriding and often contradicting tribal council decisions (as well as custom and tradition) and insisting that tribes utilize ancestry and cultural affiliation which they metaphorically termed “blood” to determine membership (Ibid., 90). It is apparent that some scholars view such policies as having a long-lasting impact on the establishment of who belongs and who does not, who is and who is not an Indian which, one can argue, has resulted in substantially complex and conflicting notions of inclusion as practiced by some Native American groups today.

Though rolls such as the Dawes, the Kern-Clifton, the Wallace, the Guion-Miller and countless others<sup>29</sup> have been used by Native Americans since their imposition by the federal government to determine citizenship and many tribes still require that one prove an ancestor’s name on a federal roll to determine eligibility for membership; the internal

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<sup>29</sup> There are 692 Indian Census Rolls that were established by U.S. federal agents or superintendents from the late nineteenth to the mid-twentieth century. See: “Indian Census Rolls, 1885-1940”. *The U.S. National Archives & Records Administration*. Accessed: 24 May 2008 from: <http://www.archives.gov/genealogy/census/native-americans/1885-1940.html?template=print>

conflict arises, however, when it is argued that such rolls are inaccurate. Determining membership criteria and issues of Indian sovereignty in making such decisions are seen as fundamental tribal rights; to explore this area is also to explore, however, another fundamental factor: determining the legitimacy of being – the legitimacy of belonging. Among the many questions raised are: What criteria for membership should be used? Who should decide the criteria? Should there be a method for handling any disputes arising thereof? Who should address these disputes and in what venue? In-group dissension and contention arise when Indian tribal councils use, some would argue, insufficient and/or inaccurate criteria in determining that an individual or group no longer belongs and are then cast out, taken off the tribal rolls or “disenrolled”.

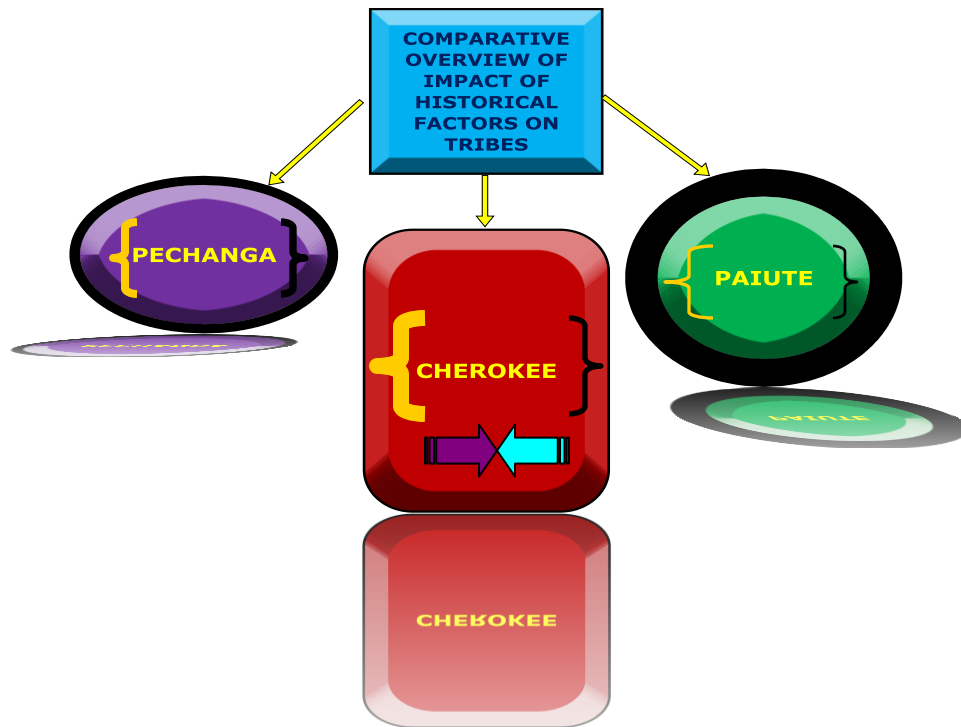
As the near and far histories of three Native American communities have been explored, the manifestation of part of that history in the form of tribal rolls and removal from those rolls will now be addressed. In the next chapter, I shall further explore the concept of tribal sovereignty and disenrollment, its origins and the impact on the Paiute, the Pechanga, and the Cherokee communities in which there is substantial contention about how the practice is currently implemented, with particular emphasis on how this contemporary method of exclusion, for some, has at its heart – the negation of being.

## Summary

In order to understand the actions of today’s Pechanga, Cherokee and Paiute leaders, it is imperative to understand those historical influences that helped to shape their internal decision-making. Accordingly, the general histories of each of these groups,

spanning the last few centuries have been sketched to demonstrate the impact of past events, including those U.S. policies that often reflected the expansionist and xenophobic views of a young nation. This exploration has revealed that each of these Indigenous communities has had distinctly different, yet similar interactions with the dominant culture ranging from being targets of forcible identity transformation through “civilizing” policies, which resulted in varying degrees of assimilation and identification with Euro-Americans, to forced mass migration and relocation.

In Figure 3.1, one can see the impact of the past in a general sense and how history shaped and influenced the identified Indigenous communities. By explaining the graphics in this Figure, I shall present a comparative summary of the key historical factors and U.S. policies that impacted each of the groups. In each geometric figure or polygon in Figure 3.1, some aspect of those histories will be revealed; to display, for example, the ability and/or willingness to withstand non-Indian influences or the representation of the insularity of each society, the degree of *perimeter thickness* encompassing each polygon varies - the more insular the group and its ability to maintain its identity, the thicker the boundary. Thus, the Las Vegas Paiute, though they had on-going and generally non-confrontational interactions with Euro-Americans, maintained a separate and distinct community even in the midst of external attempts to alter and dismantle their traditions and cultures; they are represented as having been the least impacted or influenced by Euro-American culture; the boundary, therefore, encircling the Paiute polygon is thick and difficult to penetrate. One could argue that the Pechanga Band of Luiseño Indians were also insulated against Euro-Americanism, but seem to



**FIGURE 3.1** A Comparative Overview of Key Historical Factors Impacting the Pechanga, Cherokee and Paiute

**FIGURE 3.1 KEY:**

**Perimeter thickness** = Permeability/degree of insularity from non-Indian social, cultural, political influences:



Substantial insularity from non-Indian social, cultural, political influences  
Moderate insularity from non-Indian social, cultural, political influences  
Limited insularity from non-Indian social, cultural, political influences

**Shape** = degree of internal push for assimilation:



moderate internal push for assimilation



weak internal push for assimilation



substantial internal push for assimilation


**Color** = degree of contention and overt conflict with Euro-Americans:

red = substantial contention, physical confrontation and/or legal battles/ and overt conflict with Euro-Americans

purple = some contention and overt conflict with Euro-Americans

green = little contention and overt conflict with Euro-Americans

**Historical Internal Discord**

 = Substantial Internal Contention/intra-group discord

**Reflection** = impact of U.S. removal/relocation policies:

full reflection = substantial negative impact of U.S. removal/relocation policies

half reflection = some negative impact of U.S. removal/relocation policies

minimal reflection = little or no negative impact of U.S. removal/relocation policies

**Brackets** = impact of U.S. civilizing policies



= degree of negative impact of allotment policies



= degree of marginalization



have been more open to adopting the influences of the Spanish Missionaries, thus the line encompassing the graphic representing the Pechanga is not as dense as that of the Paiute. The thin line surrounding the Cherokee graphic, however, represents a permeable, and porous boundary, as the Cherokee freely interacted, intermarried and adopted Euro-American social and political customs, and were thus known as one of the five “civilized” tribes, accordingly, their boundary is a minimal one. Similarly, the *shape* of each graphic reveals the degree to which the community embraced assimilation. The circle is used to represent the Paiute, of the three groups they were the most successful in resisting external influences and retaining their Native traditions and cultures. The Pechanga seemed to also retain their cultural identity in the midst of pressure to assimilate, though not quite to the extent of the Paiute; they are represented not by a circle, but by an oval. For the Cherokee, the polygon is not shaped like a circle or an oval, but is the shape of a rectangle – albeit one with rounded corners, signifying their tendency towards assimilation and adoption of non-Indian ways. The relationship between each group and the Euro-American dominant culture has also been explored in terms of the manner and degree of contention which is reflected in this Table in the *colors of the graphics*. For the Paiute (green), the relationship with the surrounding non-Indians, though not without conflict, was unique and basically one of economic exchanges and interactions; the Pechanga (purple) experienced some contention due to forced removal; the Cherokee (red), though they had substantial and purposeful interactions with non-Indians, experienced the most contention with Whites – through

such actions as engaging in legal battles with the federal and state governments to fight relocation and to retain their land.

The policies of relocation are further illustrated in their impact on each of these groups through the visual representation of a *mirrored reflection*. Table 3 shows the Cherokee's reflection as substantial which represents their significant plight of enduring the forced migration across this country known as the "The Trail of Tears". The Paiute were also impacted by a forced relocation, but not to the extent of the Pechanga or the Cherokee; the Paiute's relocation actually had unintended benefits – the acquisition of water rights – which in a desert region is more valuable than gold; thus, in the graphic, their reflection indicating negative impact of relocation is smaller. The Pechanga were also impacted by relocation when they were removed to the hills and would seem to compare to the Paiute in terms of the negative impact of removal. They recovered, however, and within a few years were able to return to their traditional lands.

One can conclude that U.S. policies have impacted each of the three groups in varying ways; one such policy relates to allotment regulations such as the Dawes Act which had the goal of disassembling collective cultural traditions and imposing a forced acceptance of individual landownership. For the purposes of summarizing each tribe's experience with allotment, brackets of varying intensity have been used to reflect the degree of negative impact. Policies of allotment as codified through legislation, one could argue, also contributed to the marginalization of these populations in varying degrees.

From a review of their histories, internal dissension and contention, which is the focus of this study, as characterized in Figure 3.1 by two opposing arrows only shown inside the Cherokee graphic, as the Pechanga and the Paiute have not historically been plagued by such divisions. The Cherokee division was quite consequential and split the group into factions that exist to this day.

In the next chapter, I shall address one of the critical policies that had its origins in the historical events of yesterday to which most Indian groups abide by today – the manner in which their citizenry is identified and meet the criteria for inclusion.

## **Chapter 4**

### **Exploring Tribal Enrollment and Disenrollment**

Before one can fully understand the process of disenrollment in Indigenous American groups which is the critical topic of this research, it is crucial to also have a deeper understanding of the manner in which enrollment or inclusive determinations are constructed. Because it is also important to understand the differences between formal “enrollment” and inclusion via other means, in the first half of this chapter, I shall present, for each group, a summary of contemporary enrollment criteria as compared to traditional practices of inclusion. The second half of this chapter will focus on addressing the processes of disenrollment (contemporary versus traditional) in each group and current issues of tribal sovereignty.

#### **Part I – Defining Enrollment and Inclusion as Reflected in the Pechanga, Paiute and Cherokee Communities**

In order to ascertain the substantive impact of identity determination, one need go no further than the plain spoken discourse that seems to float casually about when the topic is broached – the socio-political processes that impact the struggle of belonging and outcasting is reflected in this unfolding narrative. “I am not a real Indian,” writes the acclaimed Choctaw/Cherokee novelist Louis Owens. “Not real, essential Indian because

I am not enrolled... Because growing up in different times I naively thought that Indian was something we were, not something we did or had or were required to prove on demand. Listening to my mother's stories about Oklahoma, about brutally hard lives and dreams that cut across the fabric of every experience, I thought I was an Indian." Owens goes on to explain that a childhood friend "...was an enrollee – invested with formal citizenship in his tribe – and was 'somewhat smug about that fact'...", though at the time it meant little to him he now knows better (Garrouette 2003, 14). Garrouette begins her first chapter in *Real Indians: Identity and the Survival of Native Americans* with that quote in a chapter entitled: "Enrollees and Outalucks". While Owens' brief narrative reflects the saliency of determining Indian identity (which will be addressed in the next chapter), it also elicits consideration as to how socio-political processes such as tribal enrollment and disenrollment determine Indianness.

As has been previously explored, enrollment in American Indian societies was a procedure that began and had its formal origins in the processes of accountability instituted by agents of the U.S. federal government during the late nineteenth and early twentieth centuries to keep track of Native Americans within "their charge". This appears to also have been a consequence and byproduct of U.S. allotment policies because government agents were directed to determine to whom land and monies were being given as a result of treaty and other negotiated settlements with various Indian communities. Though, as addressed in the previous chapter, Indigenous American communities did not traditionally keep formal "lists" of those within the group, they have adopted this practice of enrolling citizens and informing the Bureau of Indian Affairs of

those individuals who meet the specific criteria for citizenship. This enrollment requirement arises out of a U.S. government stipulation that determines how federal funds are allocated. Even though each specific Indian group determines membership, such is also within the purview of the U.S. government. In answer to questions as to why Congress defines who is an Indian, the response on the American Indian Policy Center website was, "... Congress determines the eligibility for federal programs and may have defined blood requirements to limit the cost of federal programs. Blood quantum requirements also affect the services received by tribal members."<sup>30</sup>

According to the U.S. Department of the Interior (DOI), the purpose of tribal enrollment is to, "...preserve the unique character and traditions of each tribe. The tribes establish membership criteria based on shared customs, traditions, language and tribal blood."<sup>31</sup>

The DOI goes on to state that,

Tribal enrollment criteria are set forth in tribal constitutions, articles of incorporation or ordinances. The criterion varies from tribe to tribe, so uniform membership requirements do not exist. Two common requirements for membership are lineal descendency from someone named on the tribe's base roll or relationship to a tribal member who descended from someone on the base roll. (A "base roll" is the original list of members as designated in a tribal constitution or other document specifying enrollment criteria.) Other conditions such as tribal

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<sup>30</sup> American Indian Policy Center. "Tribal Governments in 2010 – Tribal Enrollment Discussion Group". Accessed 15 June 2008 from: <http://www.airpi.org/projects/f96enroll.html>.

<sup>31</sup> The U.S Department of the Interior. Accessed 15 June 2008 from: <http://www.doi.gov/enrollment.html>.

blood quantum, tribal residency, or continued contact with the tribe are common.”<sup>32</sup>

A statement from the American Indian Policy Center on the complexities of tribal enrollment:

There is tension surrounding the issue of tribal enrollment. Political and social connections to the tribe are more complicated than blood lineage. For example, one question is where an individual has to live on the reservation to be a resident... the relationship to the tribe is more important than living on the reservation. The one thing tribes can do is to create guidelines that essentially state, “If you fit, you fit; If you don’t, you don’t.”<sup>33</sup>

The BIA (Bureau of Indian Affairs) has said that “membership in an Indian tribe, band, or colony is different from membership in any... voluntary association of people. Membership in an Indian tribe, band, or colony is like citizenship in a country.” (Tallbear 2003, 83). Accordingly, an overview of membership criteria of the Cherokee, the Pechanga, and the Paiute follows immediately below.

#### Cherokee Identity Criteria for Group Inclusion

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<sup>32</sup> Ibid.

<sup>33</sup> American Indian Policy Center. “Tribal Governments in 2010 – Tribal Enrollment Discussion Group”. Accessed 15 June 2008 from: <http://www.airpi.org/projects/f96enroll.html>.

Historically, many Indigenous peoples determined relational connections through the identification of kinship ties. This is particularly true for the Cherokee people who formed kinship bonds based on a matrilineal lineage which determined not only kinship, but inclusion into the group or clan as a fundamental determinant of being and belonging. Noted anthropologist, Circe Sturm, expands on this: “In the first half of the eighteenth century, Cherokees distinguished themselves from Europeans, Africans, and other Native Americans not by skin color, race or even language, but by membership in a Cherokee clan, which was theirs by right of birth or adoption.” (2002, 30) A clan has been described as a group of individuals who believe themselves to be related by blood even though they may be unable to actually trace the lineage (Ibid.). This notion of belonging manifests in a particular social, political and ceremonial sense that for a Cherokee originated in a clan identity from one of seven matrilineal clans: Wolf, Deer, Bird, Paint, Long Hair, Potato, and Blue Clans. These clans were considered “...identical with the mother’s blood” – identifying them as Cherokee only if they had a Cherokee mother (Ibid.). The clan bonds were so strong that the relationship of brother and sister and/or mother and child superseded that of husband and wife because the former were from the same clan and the latter, as spouses, were not related at all since they did not share the same matrilineal blood and were forbidden by law to be from the same clan (Sturm 2002, 31). This practice began to change as Cherokees increasingly began to intermarry with non-Indians, yet when Cherokee women married outsiders, the status of any children born was not impacted and such offspring were still considered Cherokee; their identities



as well as clan possessions were handed down through the matrilineal kinship system (Ibid.).

There was another way in which one could be considered Cherokee and not be born into a particular clan and that was through the practice of adoption. It has been noted that though ties of kinship are traditionally established through birth, they can also be established through this method (Ray 2006, 63). As a matrilineal society, Cherokee women were instrumental in deciding who could be adopted into the community through the implementation of (what some have stated) as a painful ritual of adoption. In the eighteenth century, it has been noted that adoption was common and that, for example, a group of Cherokee women adopted into the tribe warriors from the Seneca nation who “...gained admission to a Cherokee town and council by dancing, were adopted by Cherokee women and became so much a part of Cherokee society that they played ball and went to war against the Cherokee’s enemies” (Perdue 2003, 140). Though the clan system was a fundamental aspect of Cherokee society, they often adopted prisoners of war into the community to replace those lost (Perdue 1979, 8; Ray, 2006, 63). The system of adoption helped to maintain population size; it may have also been instituted only when the tribe did not feel threatened that their ways of living and making meaning would be negatively impacted through the adoption of non-Indians. An interesting and relevant argument is the fact that issues of kinship or “kinship substance” can be “...ritually transferred through adoption ceremonies. Referring to the rituals of the Iroquois, it has been stated that adoptees began the ceremonies as one “kind of being, and emerged another. The kinship substance thus acquired is real and consequential, enabling

new relationships – both social and physical” (Garrouette 2003, 127). Thus, this illustrates and reflects a symbolic, dynamic state of identity, of being and belonging that takes its meaning from a source – not of sanguinity, but from a place of honor, respect and duty.

One could argue that the most significant circumstance of adoption in the Cherokee Nation, and one that is germane to this study, is the formal adoption - through treaty with the U.S. government - of the Freedmen into the Cherokee community. This may not have been completely voluntary as the Cherokee were duty bound to adopt the Freedmen into the Nation resulting from pressure from the U.S. government. It is unclear whether or not the adoption of the Freedmen was accompanied by the customary rituals that often accompany this manner of making relatives. The research tends not to address this issue. One could argue that absent the ritual of inclusion, this act of adoption could be interpreted as a superficial event that did not convey deep meaning or reverence (for both the Freedmen and Cherokees) and that it was done as an act of agency only to satisfy the U. S. government requirement that the Cherokee make citizens of their former slaves. “When the Cherokees adopted the Freedmen and their descendants into the Nation by the Treaty of 1866 and constitutional amendments of 1866, and later extended citizenship to intermarried whites, Shawnee and Delaware, they did so against a background of Cherokee adoption practices which, while never extensive or a challenge to the primacy of ancestry, were nonetheless sufficiently common to have engendered their own rituals” (Ray 2006, 63). As the predominance of the clan began to wane in the late nineteenth century, the system of citizenship became more prominent (Ibid.). For the

Cherokees, this probably resulted in even fewer “adoptions” into the community than had been customarily performed.

Entry into the various clans of the Cherokee Nation through adoption may still be practiced today, but it seems that the tradition – an honor only bestowed upon very special individuals represents a sacred ceremony of inclusion rarely practiced. This practice of adoption (or making relatives), as implemented in many Indian communities, will also be explored in subsequent chapters. Today, the Cherokee Nation is governed by a constitution<sup>34</sup> which delineates the manner in which tribal membership is determined; Article IV of that document declares that:

#### **Article IV. Citizenship**

**Section 1.** All citizens of the Cherokee Nation must be original enrollees or descendants of original enrollees listed on the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8th day of May, 1867, and the Shawnee Cherokees of Article III of the Shawnee Agreement dated the 9th day of June, 1869, and/or their descendants. The Cherokee Nation recognizes the basic rights retained by all distinct People and groups affiliated with the Cherokee Nation, retained from time immemorial, to remain a separate and distinct People. Nothing in this Constitution shall be construed to prohibit the Cherokee-Shawnee or Delaware-Cherokee from pursuing their inherent right to govern themselves, provided that it does not

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<sup>34</sup> The Constitution Convention Commission Archives of the Cherokee Nation states: “At least 300 years prior to the passage of the United States Constitution, North American democracy began with the Iroquois Confederacy's Law of the Great Peace. The Cherokee belong to the Iroquois language family of eastern North America. The representative democracy of the Iroquois was extensively studied and praised by Benjamin Franklin and Thomas Jefferson, who proposed it as the basis for the United States Constitution. In a backhanded compliment at the Albany Congress in 1754, Franklin said he found it hard to believe that the 13 colonies could not agree to a political union when "Six Nations of ignorant savages" had formed one.” Accessed 21 June 2008 from: <http://www.cherokee.org/Government/Default.aspx?section=Commissions&Commission=CCC>

diminish the boundaries or jurisdiction of the Cherokee Nation or conflict with Cherokee law.

**Section 2.** There shall be established a Cherokee Register, to be kept by the Registrar, for the inclusion of any Cherokee for citizenship purposes in the Cherokee Nation who presents the necessary evidence of eligibility for registration. The Council may empower the Registrar to keep and maintain other vital records.

(a) A Registration Committee shall be established. It shall be the duty of the Registration Committee to consider the qualifications and to determine the eligibility of those applying to have their names entered in the Cherokee Register. The Registration Committee shall consist of a Registrar and two (2) assistants. All members shall be appointed by the Principal Chief and confirmed by the Council.

(b) There shall be a number assigned to every name, which is approved and entered into the Cherokee Register. This number shall be preceded by the three words, "Cherokee Registry Number."

(c) The decisions of the Registration Committee shall be subject to de novo review by the lower courts created by Article VIII.

**Section 3.** Registration as used in this Article refers to the process of enrolling as a citizen of the Cherokee Nation and is not the same as registration for voting purposes.<sup>35</sup>

Interestingly, the Cherokee Constitution does not mention adoption as an acceptable method for acquiring membership. The Cherokee Constitution currently establishes the criteria for admission as follows: 1) original enrollee listed on the Dawes Commission Roll, 2) descendant of an original enrollee listed on the Dawes Roll. The legitimacy and unquestioned authenticity with which the Cherokee people have bestowed upon the Dawes Roll has, for some, taken on an air of mysticism and is, in a semiotic sense, a powerful representation and symbol of authoritative origin and inception – inception not by birth but by ‘list’ - originating in the structurally constraining demands of the U.S. government. Consequently, the mythic sense of origin which has traditionally

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<sup>35</sup> This is from the 1999 Constitution of the Cherokee Nation updated from the 1976 Constitution and ratified in 2003, Accessed, 21 June 2008 from:

<http://www.cherokee.org/TribalGovernment/Executive/CCC/cc1999Changes.pdf>

been reflected in narratives of tribal creation stories, one could argue, has been replaced by a modernist, more powerful origin artifact – that of the Dawes (and other) Rolls. The reverence given to the Dawes Rolls can be compared to the colonialists’ successful use of the Bible in shaping and framing the social, political and economic realities of a people.

In reference to this phenomenon, one can refer to the similarities between the adoption of the Dawes Rolls and the adoption of the Bible in colonial India as discussed by postcolonial theorist, Homi Bhabha’s *The Location of Culture*.<sup>36</sup> Bhabha relates the Bible (“the English book”) to its impact on India: “The discovery of the book, is at once, a moment of originality and authority. It is, as well, a process of displacement that, paradoxically, makes the presence of the book wondrous to the extent it is repeated, translated, misread, displaced... [T]he Emblem of the English book-‘signs taken for wonders’- [is] an insignia of colonial authority and a signifier of colonial desire and discipline...”

The cloak of colonialism and the manner in which the British framed and shaped East Indian society also has implications for how the U.S government, in a similar manner, shaped and framed the way in which Native American communities determined who is eligible for inclusion and citizenship. To further explore the processes of identity and group inclusion, the following section will discuss this phenomenon in the Southern Paiute people.

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<sup>36</sup> Homi Bhabha, *The Location of Culture* 145-46 (1994)

## Paiute Identity Criteria for Group Inclusion

*“Life for the Paiutes is very hard. We suffer a lot. But I think in our hearts {gestures to chest} we are happier than the whites. We are happy because we know who we are. The young people - they are worse off. They can’t talk Indian. They suffer and they don’t know who they are...”* (Holt 1992, xiii). The words of a tribal elder, as recently as the early 1980s reflected the perception of a harsh, yet hopeful, social reality for the Paiute community: This passage not only speaks to the struggle of Paiute life, but also reflects the significance of identity, affiliation and the important perspective of honoring one’s heritage.

In order to understand Paiute views on belonging, it is important to address the social context and social structure in which these practices were adopted. The following will provide a brief overview of Paiute social structure as it relates to this study.

According to Knack, the Paiutes practiced a fluidity among their social networks that was reflected in the ease with which they moved from one community to another. This proved difficult for the Bureau of Indian Affairs (BIA) and the Euro-American legal system which came up with “adoption” as being the only word close enough to describe the amorphous social flexibility exhibited when Paiutes moved from one reservation community to another (Knack 2001, 192).

Historically, the Paiute have been described as adverse to warlike behavior, subscribing to resolving conflict through shaman intervention or avoiding conflict by relocating to another location – war was very unusual in Paiute life, neither was there a “warrior culture”. The Paiutes lived an existence that reflected “ethics of reciprocity”,

“open borders” and “widespread kinship ties” (Knack 2001, 26) which meant that they shared bounty in times of need or traveled to a more productive area, thus reducing the need for violent conflict to acquire scarce resources. The Paiute “...married non-kinfolk, and extended the privileges and obligations of kinship to these new affines. Without fixed rules of residence or rigid group membership, they found that intergroup reciprocity and social openness insured greater security than private ownership of property” (Ibid. 29). Knack also states that there was no rigid social status or hierarchy in terms of allegiance to a single chief; kinship relations, friendships and social protocol dictated relationship guidelines. This flexibility helped them to remain adaptable in the face of the harsh climate and environment in which they lived (Ibid.).

An aspect of Paiute culture that is relevant to this study is the fluidity of membership criteria that this community embraced:

“Despite BIA efforts to institutionalize reservation membership decisions to a series of biological equations and legal proceedings, the Paiutes managed to operationalize quite a different set of membership criteria. People continued to move across space and change their community affiliation. They were accepted where they had relatives on either their mother’s or father’s side or through marriage. They were absorbed whether they had themselves lived on the reserve and contributed to the economy in the past or not.... People of full Paiute ancestry were viewed as community members, as were people of mixed ancestry” (Knack 2001, 194).

The above passage reflects a social environment that is quite different from that of the Cherokee as has been discussed. The relevant question, however, as it pertains to this study is - have the traditions of the past translated into a similar contemporary social openness and/or liberal standards for community inclusivity? The current Las Vegas

Paiute Constitution reflects contemporary realities. It states that membership is determined by proof of consanguinity:

In regards to tribal membership, Article III, Section I of the Constitution and Bylaws of the Las Vegas Paiute Tribe states:

“The membership of a Las Vegas Paiute Tribe shall include all persons with at least ¼ degree Paiute Indian blood whose names appear on the official census of the Las Vegas Indian Colony dated January 1, 1940, and the descendants of these persons who possess at least ¼ degree Paiute Indian blood, provided, that they are not enrolled or affiliated with another Indian tribe or a group; and, provided further that subject to the approval of the Secretary [of] the Interior or his authorized representative, corrections may be made and said census within one year following approval of this constitution and bylaws.”<sup>37</sup>

As outlined in the above passage, it seems that the onslaught of modernity has elicited a social and cultural transformation in this Paiute group into one that has more restrictive membership criteria and is more aligned with that of the Cherokee people, including utilizing a membership roll as the authenticator of genesis and origin of being. Similar to the Cherokee’s constitution, the question of adoption does not appear in the Las Vegas Paiute Constitution and accordingly, for contemporary social inclusion in this group, does not seem to be a viable alternative. The next section will address membership criteria of the Pechanga Band of Luiseño Indians as outlined in their constitution.

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<sup>37</sup> This section of the Las Vegas Paiute Constitution is from a legal opinion on the lawsuit brought against the Las Vegas Paiute Tribal Council by several disenrollees in the Las Vegas Court of Appeals of the Las Vegas Tribe of Paiute Indians – Article III Section I of the Constitution and Bylaws of the Las Vegas Paiute: Accessed 14 July 2008 from: <http://homepages.law.asu.edu/~rclinto/ConLaw1/TerryCarpenter%20Final%20Opinion.pdf>



## Pechanga Identity Criteria for Group Inclusion

The identity status of a Pechanga Indian today is subject to the authority of the community's enrollment committee, who, like the Cherokee and the Paiute, are bound by the specific criteria for inclusion as detailed in their constitutions. The Constitution and Bylaws of the Pechanga (Temecula) Band of Luiseño Mission Indians<sup>38</sup> as adopted by the Pechanga General Council December, 10, 1978 states in Article II that: "Membership is an enrolled member documented in the Band's Official Enrollment Book of 1979.

Qualifications for membership of the Temecula Band of Luiseño Mission Indians Are:

- A. Applicant must show proof of Lineal Descent from original Pechanga Temecula people.
- B. Adopted people, family or Band, and non-Indians cannot be enrolled. Exception: People who were accepted in the Indian Way prior to 1928 will be accepted.
- C. If you have ever been enrolled or recognized in any other reservation you cannot enroll in Pechanga.

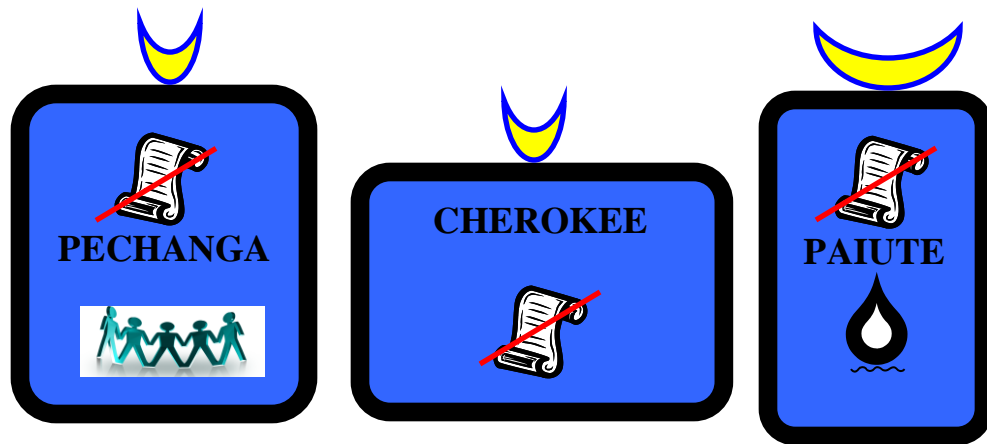
The membership enrollment will be opened the first month of each year by the Bands Enrollment Committee.”<sup>39</sup>

It seems that, like the Cherokee and the Paiute, the Pechanga also determine group membership based on consanguinity, and like the former, do require that an ancestor or descendant be listed in the Band's Official Enrollment Book. Unlike the Cherokee and the Paiute, however, the Pechanga address the issue of adoption in their

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




<sup>38</sup> Accessed 14 July 2008 from: [www.schlosserlawfiles.com/Consti%20membership%20011706.pdf](http://www.schlosserlawfiles.com/Consti%20membership%20011706.pdf)

<sup>39</sup> Ibid.



**FIGURE 4.1** Comparison of the Enrollment Criteria in the Constitutions of the Pechanga, the Cherokee and the Las Vegas Paiute

Figure 4.1 Key

-  Historically, the degree to which the community practiced fluid membership, the more open the crescent, the more open the community.
-  Omission of disenrollment criteria in tribal constitutions.
-  Rounded rectangle represents the adoption of the Dawes or other census rolls as legitimizers of origin.
-  Blue indicates consanguinity listed in tribal constitution as determinant of identity legitimacy.
-  Drop indicates blood quantum listed in tribal constitution as determinant of identity legitimacy.
-  Adoption allowed under very limited circumstances (if adopted in prior to 1928).
-  Solid boundary line indicates general disallowance of adoption in the tribal constitution

Constitution, even if it is to state that such action is not recognized as a means of establishing a legitimized identity as a member of the group except if adopted in prior to 1928. Figure 4.1 provides a general summary of the differences and similarities of

enrollment practices among the Pechanga, the Cherokee and the Paiute as reflected in each of their constitutions; at a glance it shows that all three groups currently have similar criteria for establishing membership and inclusion. It is important to note that the graphic as presented reflects a semiotic perspective and is intended to illustrate the dynamic nature of the means by which these groups determine who does and who does not belong. The crescents over each graphic depict the degree to which the community *traditionally* engaged in open/fluid membership – the more open the crescent, the more open the social environment, and the more fluid the membership practices. Accordingly, one could determine from these representations that, *historically*, each group practiced some fluidity in regards to group membership. The Luiseño Indians with whom the Pechanga Band are affiliated, practiced social fluidity to the extent that they were open to and influenced by the Missionaries in Southern California, one could also surmise that as a small band, the tendencies were toward accessibility to others as social exchange became crucial to survival. The Cherokee mirror the Pechanga in the sense that historically, they were somewhat fluid, allowing for the adoption of European Americans (in special cases) – notwithstanding the forced adoption of slaves and their descendants - into various clans. Of the three groups, traditionally, the Las Vegas Paiute were the most open as they engaged in a fluidity that allowed for varied and liberal social connections which often defied federal agents' ability to keep track of who and how they belonged.

In a continued analysis of Figure 4.1, it is significant to note that for each of the three communities, there is no specific mention of *disenrollment* processes in any of their constitutions (represented by crossed out scroll); each group, however, relies upon the

Dawes Rolls or other census documents as determinants of identity legitimacy or authenticators of origin – this may also be due, in part, to the pressure and input from the Bureau of Indian Affairs. Reliance on formal rolls is represented in the graphic by a rounded rectangle versus the traditional circle. The rounded rectangle further symbolizes a move away from historical ways of social being.

Though each group adheres to either consanguinity or blood quantum as identity determinants, it is most significant to note that, of the three, the Paiute is the only group whose constitution specifies a blood quantum (1/4) requirement. Accordingly, one could argue that of the three, the Paiute has the most restrictive membership criteria. This is quite interesting given that, traditionally as compared to the other two groups, the Paiute possessed the most fluid social framework with liberal boundaries. Though each of the groups may have allowed adoption into their social units long ago, this practice is no longer considered a legal means of inclusion into any of the three tribes; the Pechanga Band only allow it for those adopted in prior to 1928. “Historically, Native American peoples adopted captives of several races. Adoption meant that the captive, regardless of race, became a member of a kin group. His or her new relatives were obligated to assimilate the new family member in terms of the four aspects of peoplehood (Holm, Pearson, Chavis 2003, 16). One could argue, therefore, that the constraints of modernity have elicited a transformation that is currently based on legal authority versus the authority of social hierarchy, kinship and necessity.

As the criteria for enrollment has been summarized, it is also significant to take note of an additional illustration of belonging: the “Certificate of Degree of Indian

Blood” (CDIB) card (or white card) which reflects “official” or legitimized status as a Native American according to the Bureau of Indian Affairs. As alluded to earlier, because the BIA needed to determine who was eligible for land ownership, the card was promoted as a way of identifying those eligible. This card, however, is not necessary to provide membership in either of the three tribes that are the subject of this research. “Certificates of Degree of Indian Blood ("CDIBs") are issued by the BIA and are the BIA's certification that an individual possesses a specific quantum of Indian blood. A CDIB entitles the holder to participate in some government assistance programs.”<sup>40</sup>

Given that the criteria for inclusion has been addressed through an exploration of various enrollment qualifications, it is fundamental to this study to now explore the processes of disenrollment and its accompanying impact on identity determination; this will be examined through the lens of tribal sovereignty.

## **Part II – Tribal Sovereignty and Disenrollment**

The second part of this chapter will focus on tribal sovereignty as a process of authoritative decision-making – and disenrollment, often held to be within the sovereign rights of the Indigenous community. Sovereignty may be defined as “...the exclusive right to create and enforce norms over particular substantive areas and within a particular geographic domain” (Reitman 2006, 837). Sovereignty has also been characterized as the process by which Indigenous tribes implement the authority over their citizens and

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<sup>40</sup> SEE FOOTNOTE #1: Harrison v Dept. of Interior, Bureau of Indian Affairs, 2000 10CIR 1097, 229 F.3d 1163. Accessed 17 July 2008 from: <http://ca10.washburnlaw.edu/cases/2000/08/99-7108.htm>

territory and the claims of Native peoples to “precolonial government status and is based both on indigenous claims to precolonial government and United States recognition of this status in law and practice” that is also a means of “shared assertions, everyday processes, intellectual projects and lived experiences of political distinctiveness” (Cattelino 2006, 700). American Indians are in a unique situation in this country, the tribal societies to which they belong have been classified as semi-sovereign communities, which not only defines the relationship they have with their members, it also describes their relationships to the United States and the states within which they operate. This political relationship has been called, “*imperium in imperio in imperio*” (Reitman, 837), meaning a state (tribe) within a state (U.S. state) within a state (U.S. Federal government). Indigenous American groups have also been defined as, “domestic, dependent nations” that are politically and socially self sufficient, yet have a unique connection with the United States government; they may not, for example, declare war on another sovereign nation or make treaties with them (Holm, Pearson and Chavis 2003, 16).

The significance of addressing American Indian sovereignty for the sake of this research is that sovereignty reflects the authoritative foundation from which internal decision-makers use their power to normalize and legitimize who belongs and who does not. Native American sovereignty also raises issues such as that raised by Cherokee Freedmen descendant, Marilyn Vann, in asking the question, “Is the Cherokee Nation a ‘race’ or a ‘nation’?” to which author Ray noted that this “...offers a choice between a conception of a tribe as a genealogical club whose members share a common lineage, and

a notion of the tribe as a political sovereign whose citizenship criteria do not discriminate on the basis of race”; Ray also goes on to state Vann’s observation that “the federal government does not have government to government relationships with ‘races’ but with nations” (Ray 2007, 394).

The complexity of sovereignty among Native peoples is noted in the belief that, if a sovereign nation is one that is considered to be a supreme and independent political authority, then determinations of citizenship, many tribes argue, is within their purview and their purview alone. This is consistent with the rulings of the United States Supreme Court that “...upheld the right of tribes to determine their own criteria for citizenship consistent with retained tribal sovereignty and Congress’s intent to promote Indian self-government” (Ray 2007, 403). Accordingly, many Indian community leaders state that just as they alone have the jurisdiction to determine citizenship, then they alone also have the jurisdiction to determine when and under what circumstances that citizenship can be and is revoked. The basis for this jurisdiction may also be found in viewing such communities as possessing commonalities in language, territory, ritual and history and, in so doing, also possessing an *inherent sovereignty*. To take this a step further, in exploring the process of how groups utilize the concept of sovereignty to bestow and legitimize the process and criteria by which decision-makers determine citizenship and identity, it is crucial to consider a construct within which to fully explore these social-political internal transformations. Peoplehood may be one such construct.

Peoplehood was first offered by Robert K. Thomas, who in his work on group identity, used the term to “transcend the notions of statehood, nationalism, gender,

ethnicity, and sectarian membership”, which was based on the concept of “enduring peoples” by Edward H. Spicer (Holm, Pearson, and Chavis 2003, 11). As it relates to sovereignty of contemporary American Indians, peoplehood may help us understand the tenacity with which certain groups maintain and guard their identity since it elicits the idea of “persistent peoples” differentiating them from an ethnic enclave because they are a social type that is clearly and distinctly defined (Ibid.). Thus, as American Indians exist and have existed in distinct and well defined communities, the definition of peoplehood seems appropriate as a basis for the granting of sovereignty in socio-economic, political and governmental affairs. Thus, in order to fully understand the connection between tribal sovereignty and the practice of disenrollment, it may be necessary to view the revocation of citizenship as a means of perpetuating such “peoplehood”.

As previously noted, tribal “disenrollment” refers to the removal of an individual/and or groups from the list or “rolls” of members or citizens of a Native American community; it is also known as “involuntary expatriation” or the “stripping of one’s citizenship” (Reitman 2006, 795). It is a process usually implemented by a tribal citizenship council and reflects the decisions of that authoritative group to either include new members (enroll) or to remove tribal members (disenroll) who are no longer considered eligible for inclusion or membership in the community. For many Indigenous groups and for each of the groups identified in this study, contemporary disenrollment practices have become an issue of substantial internal discord.



A key point that bears highlighting is that disenrollment has been always been practiced, in one form or another, throughout the existence of most Indigenous societies; historically, the practice may have been in the form of “banishment” for violation of tribal norms and/or criminality and was seen as an extreme and severe punishment. “The power to banish tribal members is an age old tradition. Most individuals are banished from a tribe for breaking significant social or religious rules. Like any government, many tribal communities had the power to execute tribal members if they engaged in egregious criminal acts or acted in ways that jeopardized the well being of the entire community.”<sup>41</sup> The form in which this banishment takes place today, seems to be not so much an action of consequence, but one of further categorization – utilizing as the basis for expulsion, characteristics or histories that just “do not fit” the tribe’s criteria for inclusion. In terms of the processes of enrollment and disenrollment, as sovereign nations, the process by which Native communities determine how they are a people or their peoplehood can also be considered the manner in which they categorize themselves according to who is selected for inclusion and exclusion. Given the discord generated by tribal disenrollment, it could be argued that as distinct entities, Native American communities often consider sovereignty to be absolute, particularly as such relates to disenrollment concerns. This is illustrated in the statement by author S. Allen Ray in describing the legal actions brought about by the disenrolled Cherokee Freedmen, “The sovereign right of the Cherokee Nation to determine its criteria for citizenship should

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<sup>41</sup> *Indian Country Today*. “Disenrollment and Community Building” February 8, 2008, Accessed 02/10/08 from: <http://www.indiancountry.com/content.cfm?id=1096416596&print=yes>

never be denied or compromised by federal intervention. The “hard case” of whether to sustain a decision of the Cherokee Nation to exclude the Freedmen’s descendants were the issue to reach federal court or the floor of Congress, would surely, ‘make bad law’.” (Ray 2006, 462).

One must note that as practiced throughout the world community, sovereign nations are frequently open to criticism and pressure if they violate international norms and, for example, fail to engage in the humane treatment of their citizens. It is not uncommon that if the behavior of any one nation is so reprehensible, international or regional forces can and do act cohesively to abrogate sovereign borders in order to protect the citizens of a nation from their own government.

To engage in the taking away of one’s citizenship as happens in tribal disenrollment is considered by some to be a process of sovereignty that needs to be constrained:

“As an individual’s most basic and important legal affiliation, native citizenship is generally considered to be an inviolable right. In the United States, citizens are conditioned to believe that parentage and birth location determine citizenship, which thereafter vests a right that, while for the most part [is] freely alienable, can only be alienated freely. In other words, while one’s citizenship can be *given* away, or that of another nation’s voluntarily adopted, the idea that it can be *taken* away seems somehow unthinkable. The United States will deport non-citizens who immigrate illegally, denaturalize legal immigrants who procure their citizenship dishonestly, and apply capital punishment equally to native-born and naturalized citizens. Yet, involuntary expatriation (stripping of citizenship) is not an available penalty under any other state or federal statute, even those regarding allegiance-related or anti national offenses... In sharp contrast to the near-categorical prohibition on forcible expatriation by the federal government, federally-recognized Indian tribes exercise plenary power over tribal citizenship. Most can disenroll (expatriate) and banish both native-born and naturalized citizens with relative ease... While conceding that the tribes’ near plenary power over citizenship is well-established as a matter of law, and indeed central to the concept of sovereign self-determination... the best interests of the federal government, the Indian

Tribes, and ultimately the Indians themselves, would be effectuated by action on the part of the federal government that affirmatively curbs that power” (Reitman 2006, 795-799).

The analysis of tribal sovereignty and its limits are also relevant to this study because human rights issues and those of the inherent social contract that citizens have with their “states” become prominent factors when unfair and discriminatory disenrollment practices are alleged. The peculiar form of sovereignty of Native American communities in relationship to the U.S. government, as has been noted, can be considered in many aspects a “quasi-sovereignty”. The complexity of this relationship is further complicated by the fact that tribal members are not subject to the same rights and entitlements that are provided to American citizens from the U.S Constitution.

In order to redress this inequity, the Indian Civil Rights Act (ICRA) was established in 1968.<sup>42</sup> It was modeled after the rights stated under the U.S. Constitution and was passed to afford some of these protections to tribal members. With the subsequent redefining, however, of the ICRA through the ruling of *Martinez v. Santa Clara Pueblo* in 1978 (in which the U.S. Supreme Court affirmed that the Santa Clara Pueblo could legally disenroll the Martinez family due to the 1938 tribal constitutional amendment stating patrilineality as a criteria for membership); the U.S. Supreme Court found that there is no federal civil jurisdiction over the determination of tribal membership and that such was an internal, tribal matter – reaffirming tribal sovereignty in these issues of self-government.<sup>43</sup> For many Native Americans confronting disenrollment, this is viewed as a conflicting component/interpretation of the Indian Civil

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<sup>42</sup> See Appendix A

<sup>43</sup> See Barker. Indian U.S.A. p. 37

Rights Act since their claims of civil rights violations through unlawful expulsion provide them with limited access to remuneration through the federal court system. This has not prevented the disenrolled, however, from seeking legal recourse to regain their status and admittance to the tribe.

Since, enrolled tribal members, lose some legal protections against civil rights violations guaranteed under the U.S. Constitution, it is not surprising, therefore, that such becomes the foundation for intense internal discord as will be further discussed in Part III of this chapter in which I will summarize recent disenrollment actions that have taken place in the Pechanga, the Las Vegas Paiute and the Cherokee Nations.

### **Part III - Disenrollment and Exclusion as Reflected in the Pechanga, Paiute and Cherokee Communities**

In each of the three subject groups of this study, there have been within the last five to ten years, actions taken by the authoritative tribal councils to disenroll or banish members of their communities for a number of reasons. As has been illustrated, each group has its own criteria for inclusion as well as exclusion. The following will summarize some of the recent disenrollment actions and the grounds upon which such actions were taken as they relate to the specified Indian tribes. It should be noted that some of the disenrolled have had an opportunity to appeal this action to their perspective Tribal Councils. The lingering question about these actions is why do some tribes engage

in wide-spread disenrollments? This question is at the heart of the current research project – the answer to which, hopefully, will be revealed as the study progresses.

An example of the discord that is elicited when disenrollment occurs was noted by Native American, Harlan McKosato, who in an interview on National Public Radio describes the impact of disenrollment, stating: "...I can't imagine being exiled from my own tribe. It's not like you just go enroll in another tribe. For a Native American, your tribe is your heritage, your culture, your identity and often provides the foundation for your political and religious beliefs. It used to be tribes were very inclusive when it came to acceptance of others, taking care of our own and showing generosity to those in need. It used to be that tribes needed every single member they could find."<sup>44</sup>

#### Recent Disenrollment Actions in the Pechanga Band of Luiseno Indians

In March 2004, one hundred and thirty three (133) members of the Pechanga Band of Luiseño Indians and their families were ousted from the tribe, accounting for approximately ten percent of the tribe's membership. Over the past five years, the Pechanga tribe has disenrolled over two hundred adults and children (approximately 25% of tribal population) on the grounds that they cannot trace descent from people who either lived on the reservation or possessed Temecula (Pechanga) bloodlines.<sup>45</sup> Tribal authorities state that the families were disenrolled because they did not meet the

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<sup>44</sup> Michelle Norris. National Public Radio, "Commentary: Casino Gaming Has Brought More Than Money to Native Americans." Accessed 10/29/05 from: [http://nl.newsbank.com/nl-search/we/Archives?p\\_action=doc&p\\_docid=10A3B8D94255](http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=10A3B8D94255)

<sup>45</sup> *Louise V. Jeffredo v. Mark A. Macarro*. United States Supreme Court Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit filed March 18, 2010.

enrollment criteria of heritability. One of the disputes goes back hundreds of years to one of the ancestors, Pablo Apis, who was the acknowledged “headman of the Temecula Indians”, but some challenge the validity of his tribal leadership and bloodline arguing that he was not nor are his descendants really Temecula (Pechanga) Indian. Others point out that Apis was regarded as a Pechanga chief and leader of the community during his lifetime in the mid 1800s.<sup>46</sup> There is also a dispute that a family ancestor, Manuela Miranda, granddaughter of Pablo Apish, moved off the reservation years ago which disentitled her descendants from being enrolled.<sup>47</sup>

Another Pechanga disenrollment arose from similar circumstances. The descendants of late nineteenth century Paulina Hunter were outcast in 2006 because the tribal council determined that Hunter was not a Pechanga Indian. The tribe hired anthropologist, John Johnson, to study the lineage and ancestry of Hunter; though the anthropologist found that Hunter was an original Pechanga Indian, that she had been listed on tribal rolls and received a Pechanga Reservation allotment, the tribal enrollment committee still proceeded with the disenrollment of Hunter’s descendants, a family of about 100 adults.<sup>48</sup> Disenrollment has resulted in the loss of such tribal membership privileges as economic allocations (\$15,000 monthly payments), full health care, life

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<sup>46</sup> Deidre Newman “Pable Apis’ Role in 1800s Focus of Lawsuit by Disenrolled Members of the Pechanga Tribe”. MSNBC.com. Accessed 04/24/05 from: <http://msnbc.com/id/7447800/print/1/displaymode/1098/>.

<sup>47</sup> Danna Harman. “Gambling on Tribal Ancestry”. *The Christian Science Monitor*. Accessed 02/15/05 from: <http://www.csmonitor.com/2004/0414/p15s01-ussc.htm>.

<sup>48</sup> Jennifer Kabbany “Expert Contradicts Pechanga Disenrollment”. *North County Times*. Accessed 08/31/2008 from: [http://www.nctimes.com/articles/2006/09/24/news/california/20\\_45\\_019\\_23\\_06.prt](http://www.nctimes.com/articles/2006/09/24/news/california/20_45_019_23_06.prt).

insurance, death and retirement benefits, free education and hiring preferences within the tribe.<sup>49</sup>

The disenrolled Pechanga families – about 135 members and 75 or more children – approximately ten percent of the total Pechanga tribe’s membership<sup>50</sup> of about 990 individuals, have responded vociferously to the outcasting by engaging in legal, social and political counter- moves to regain their status. The disenrolled families filed a lawsuit in federal court (the Pechanga do not have a tribal court and must rely on the local, state and federal court systems) which went as far as the U.S. Supreme Court who refused to hear the case (see Appendix F). Another legal action, suing the individual members of the tribal enrollment committee, is asking for a minimum of \$38 million in damages resulting from a loss of the per capital tribal monthly payments derived from casino profits.<sup>51</sup>

Other responses by those ousted include: the taking on of socio-political activist roles through the mobilization and organization of protest marches to engage and inform the public (See Figure 4.2), talking to the media about what is perceived to be unjust actions in violation of the tribe’s constitution, as well as the development of electronic-counternarratives through blogs and websites that tell the stories of those expelled from

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<sup>49</sup> Deirdre Newman. “Disenrolled Pechanga Members Specify Minimum Dollar Amount They Are Seeking in Lawsuit”. *North County Times*. Accessed 07/13/08 from: [http://www.nctimes.com/articles/2005/08/04/news/californian/20\\_09\\_568\\_3\\_05.prt](http://www.nctimes.com/articles/2005/08/04/news/californian/20_09_568_3_05.prt).

<sup>50</sup> Marc Cooper. “Tribal Flush: Pechanga People “Disenrolled” En Masse”. *LA Weekly News*. Accessed: 07/16/08 from: <http://www.laweekly.com/news/tribal-flush-pechanga-people-disenrolled-en-masse/18010/?page=all>.

<sup>51</sup> Ibid.



**FIGURE 4.2** Protest of Pechanga Disenrollment<sup>52</sup>

the tribe. They have also gained the attention of Congresswoman Diane Watson, who supports the plight of the disenrolled from other tribes, most notably, the Cherokee Freedmen.

<sup>52</sup>Photo of protesters opposing disenrollment and tribal gaming practices of Pechanga Indians. Accessed 10/08/08 from: <http://originalpechanga.blogspot.com/2008/07/how-to-win-at-pechanga-resort-and.html>



## Recent Disenrollment Actions in the Las Vegas Paiute

In 1999 nearly fifteen adult and child members of the 38 member Las Vegas Paiute, almost a quarter of its membership, were disenrolled. They were notified via certified mail that their “tribal membership with the Las Vegas Paiute Tribe is hereby terminated, effective immediately”.<sup>53</sup> The charge was that they had been banned from the tribe for failure to prove that they met the blood quantum requirement of at least one-quarter Southern Paiute as well as a being a descendant of a Paiute listed on the 1940 membership roll; with this banishment, also came a significant loss in financial revenue. Some of the disenrolled had been members since the 1980s and some had strong ties to the tribal council either having previously served on the Paiute Tribal Council or had family members who had done so.<sup>54</sup>

It is believed that the expulsions occurred as a result of infighting - spurred on from a case earlier in 1999 involving a man who applied for membership and was allowed in; subsequent to his enrollment, however, a petition by tribal members to have him ousted was circulated and included the signatures of some of the now ousted

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<sup>53</sup> Clara NuSka. “St. Paul Law Professor to Hear Las Vegas Paiute Appeal”. *Native American Press/Ojibwa News*. November 16, 2001. Accessed 9/6/08 from: <http://www.maquah.net/clara/Press-ON/01-11-16.html>.

<sup>54</sup> Glenn Puit. “A Sovereign Nation: Ousted Paiutes Vow Fight”. *Las Vegas-Review Journal*. December 21, 2000. Accessed 09/06/08 from: [http://www.reviewjournal.com/cgi-bin/printable.cgi?Ivrj\\_home/2000/Dec-1-Sun-2000/news/15135982.ht...](http://www.reviewjournal.com/cgi-bin/printable.cgi?Ivrj_home/2000/Dec-1-Sun-2000/news/15135982.ht...)

members. The man was kicked out which began a move to inquire more deeply to determine if there were other people on the tribal rolls who did not qualify.<sup>55</sup> That inquiry led to the disenrollment of nearly a quarter of the Paiute membership which occurred amidst allegations of substantial wrongdoings and charges. This is similar to the charges of the disenrolled from other tribes, most notably, the Cherokee Freedmen, in which there have been allegations that tribal documents, relating to the membership of those expelled, had been altered – whited out (according to a forensics expert) to change the 1940 enrollment records of some of those ousted.<sup>56</sup>

Other allegations brought by those thrown out of the tribe charge that the motive for the excommunications was greed. The Las Vegas Paiute own tax free smoke shops in Las Vegas and a luxury golf course and resort which, at the time of the disenrollments, allowed annual per capital payouts to members of up to \$100,000<sup>57</sup>, some say that each tribal member received a per capita payout of \$5, 845 per month<sup>58</sup>. The ongoing debate was further exacerbated by charges that the then Tribal Chairman, and his brothers had

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<sup>55</sup> Ibid.

<sup>56</sup> Valerie Taliman. "Termination by Bureaucracy". The 2004 American Indian Film Festival – Bellevue Community College. June 30, 2002. Accessed 09/06/08 from: <http://bellevuecollege.edu/diversitycaucus/AIFF/CBE.htm>.

Glenn Puit. "A Sovereign Nation: Ousted Paiutes Vow Fight". *The Las Vegas Review-Journal*. December 31, 2000. Accessed 09/06/08 from: [http://www.reviewjournal.com/cgi-bin/printable.cgi?llvrj\\_home/2000Dec-1-Sun-2000/news/15135982.ht..](http://www.reviewjournal.com/cgi-bin/printable.cgi?llvrj_home/2000Dec-1-Sun-2000/news/15135982.ht..)

<sup>57</sup> Ibid.

<sup>58</sup> Clara NuSka. "St. Paul Law Professor to Hear Las Vegas Paiute Appeal". *Native American Press/Ojibwa News*. November 16, 2001. Accessed 09/06/08 from: <http://www.maquah.net/clara/Press-ON/01-11-16.html>.

been enrolled in another tribe and then sued to become enrolled in the Las Vegas Paiute. Some argue that the brothers by being enrolled in another Indian tribe violated the tribal constitution prohibiting members from having been members of other tribes. The brothers sat on the tribal council and participated in the disenrollment of the fourteen aforementioned Paiute.

Before the disenrollments the tribal council, in a move to reinterpret Article 3 of the tribe's constitution, declared in a new interpretation, that having Paiute Indian Blood meant "ancestry derived from Southern Paiute blood"; disallowing those who may have been from other Paiute peoples, the council then *retroactively* changed the membership status of several Las Vegas Paiute by applying the 1970 tribal constitution to the 1940 membership roll.<sup>59</sup> Following the disenrollments, the disavowed members spent years bringing legal proceedings against the tribal council trying to get the decisions reversed. At a hearing in 2000, the disenfranchised Paiutes were given an opportunity to plead their cases before the tribal council and to present evidence that supported their claims of membership. One disenrollee, presented her father's death certificate indicating his Indian heritage and "a copy of a 1940 tribal roll that lists her mother as five-eighths Paiute. Despite their documentation, all 14 were rejected by the new rules".<sup>60</sup>

The tribal ruling was appealed and on February 15, 2002, the case was remanded to the tribal court stating that by, "substituting the term Paiute Indian Blood with "Southern Paiute Blood" Resolution 99-018 effectively amends the Las Vegas

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<sup>59</sup> Valerie Taliman. "Termination by Bureaucracy". The 2004 American Indian Film Festival – Bellevue Community College. June 30, 2002. Accessed 09/06/08 from: <http://bellevuecollege.edu/diversitycaucus/AIFF/CBE.htm>.

<sup>60</sup> Ibid.

Constitution in a manner not authorized under Article IX of the Constitution and is therefore unenforceable”, meaning that by altering the requirements for membership without adhering to the manner in which the Constitution could be amended, the Paiute Tribal Council violated there own legal procedure. The Court of Appeals also stated that it must be determined if the original 1940 base roll included only those with Southern



**FIGURE 4.3** Protest at Las Vegas Paiute Smoke Shop - Former Las Vegas Paiute member Debra Faria carries a protest sign Wednesday in front of the Las Vegas Paiute Smoke Shop on North Main Street. Faria is protesting the disenrollment of 14 members of the tribe, a move that gives millions of dollars of revenue to remaining tribe members. Photo by Clint Karlsen/Review-Journal<sup>61</sup>

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<sup>61</sup> Glen Puit. "A Sovereign Nation: Ousted Paiutes Vow Fight" *Las Vegas Review-Journal*. December 31, 2000 . Accessed 09/23/07 from [http://www.reviewjournal.com/lvrj\\_home/2000/Dec-31-Sun-2000/news/15135982.html](http://www.reviewjournal.com/lvrj_home/2000/Dec-31-Sun-2000/news/15135982.html).

Paiute Blood or did it also include Paiutes or other Indians not only of Southern Paiute ancestry<sup>62</sup>. It also stated that those who had been disenrolled had been denied their rights to have their membership voted upon by the general membership of the Las Vegas Paiute and remanded the case back to the Tribal Court to conduct an evidentiary hearing to determine the criteria of the 1940 census rolls.<sup>63</sup>

According to Michael Stuhff, attorney for some of the disenrolled, the Bureau of Indian Affairs was manipulated into endorsing the banishments. He characterized the disenrollments, not as a “welfare entitlement case”, but as “a corporate hostile takeover.”<sup>64</sup> Attorney Stuhff also characterized the situation as a struggle for political power and control reflecting a void between tribal sovereignty law and the civil rights that all Americans are guaranteed.<sup>65</sup> In addition to the court proceedings and similarly to the Pechanga, those disenrolled from the Las Vegas Paiute also utilized protest demonstrations, interviews by the print and broadcast media, as well as establishing websites to inform and engage the populace about their plight.

In 2004, the disenrolled were ordered by an appeals court reinstated with years of back pay, but the Paiute Tribal Council fired its judges and declared that it would decide

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<sup>62</sup> *Carpenter et al vs. Las Vegas Paiute Tribal Council*. In the Las Vegas Paiute Court of Appeals of the Las Vegas Tribe of Paiute Indians. February 15, 2002. Accessed 04/07/08 from: <http://homepages.law.asu.edu/~rclinto/ConLaw1/Terry-Carpenter%20Final%20Opinion.pdf>.

<sup>63</sup> Ibid.

<sup>64</sup> See Note 53 above. Glenn Puitt.

<sup>65</sup> Greg Tuttle. “Blood Fight Splits Tribe” *The Las Vegas Sun*. September 2, 2000. Accessed: 09/13/08 from: <http://www.lasvegassun.com/news/2000/sep/02/blood-fight-splits-tribe/>.

the case on its own. This would have been one of the rare reversals of disputed citizenry in which some of disenrolled have been re-enrolled into the tribal community.<sup>66</sup>

### Recent Disenrollment Actions in the Cherokee Nation

Recently the Cherokee Nation of Oklahoma (Nation) voted to disenroll all of its citizens who were descendants of former slaves, known as the Cherokee Freedmen. In order to understand the recent disenrollment actions taken by the decision makers of the Cherokee Nation, it is prudent to review the history of the Nation and the Cherokee Freedmen:

“The Cherokee Nation shares with the United States a common stain on its history: the Cherokees owned African slaves. At the end of the Civil War, during which the tribe sided with the Confederacy, the Cherokee Nation and the United States entered into a treaty reestablishing relations. See Treaty with the Cherokee, July 19, 1866, 14 Stat. 799 (“1866 Treaty”). In the treaty, the Cherokee Nation renounced slavery and involuntary servitude, and promised to extend “all the rights of native Cherokees” to the former Cherokee slaves, who came to be known as “Freemen.” 1866 Treaty, art. IX.

In 1896, Congress directed the Dawes Commission to create membership rolls for the so-called Five Civilized Tribes of Oklahoma, which included the Cherokee Nation... The rolls for the Cherokees were completed in 1907 and resulted in two lists: a “Blood Roll” for native Cherokees and a “Freedmen Roll” for former slaves and their descendants. These lists serve an important function because the tribal constitution of 1976 provides that citizenship in the Cherokee Nation must be proven by reference to the Dawes Commission Rolls.”<sup>67</sup>

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<sup>66</sup> George Knapp. “Las Vegas Paiute Tribal Blood Feud”. August 23, 2005. *Las Vegas Now Eyewitness News*. Accessed 04/09/08 from: <http://www.lasvegasnow.com/Global/story.asp?s=3743279>.

<sup>67</sup> Historical background provided from: United States Court of Appeals for the District Court of Columbia Circuit. *Marilyn Vann, et al., Appellees v. Dirk Kempthorne, Secretary of the United States Department of the Interior, et al., Appellees, Cherokee Nation, Appellant*. Decided July 29, 2008.

Toward the end of the Twentieth Century, there were several efforts to strip the Freedmen of their membership in the Cherokee Nation. One such movement began in 1983 under the leadership of Chief Ross O. Swimmer who established rules that stated only those with blood lineage could be regarded as members of the Cherokee Nation. Since these rules were not codified into law, Chief Wilma Mankiller, passed a legislative amendment to the Constitution that required the Certificate Degree of Indian Blood (CDIB) card as the validating document for membership; the Act states that, "Tribal Membership is derived only through proof of Cherokee blood based on the final rolls."<sup>68</sup> This Act was passed by the Cherokee Nation Council in September, 1992.<sup>69</sup>

The effect of the 1983 and the 1992 rulings was the disenfranchisement of the Cherokee Freedmen – alienating them from the Cherokee community membership as was guaranteed under the 1866 Treaty. In May, 2003, the descendants of the Cherokee Freedmen claimed that they were not permitted to vote in two tribal elections because the Cherokee Nation said they did not have an ancestral links to the Blood Roll. This was further complicated by the election of certain tribal officers who amended the tribal constitution stating that the approval of the Secretary of the Interior (Secretary) was no longer required for such amendments. The Freedmen, contesting the election of the Principal Chief and other officers asked the Secretary to intervene by invalidating the May election. The Secretary then asked the Nation to review the Freedmen's concerns and to submit, for federal review, their election procedures, yet went on to recognize the

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<sup>68</sup> "Act Relating to the Proccsss of Enrolling as a Member of the Cherokee Nation" Accessed: 10/16/08 from: <http://www.cornsilks.com/cshipLA6-92.html>.

<sup>69</sup> John Cornsilk. "History of the Cherokee Freedmen" *The American Chronicle*. Accessed: 10/16/08 from: <http://www.americanchronicle.com/articles/59414?>

re-election of Principal Chief Chadwick Smith and referred any remaining election disputes to the tribal courts.<sup>70</sup>

“As a result of this legislative Act [1992], for nine years the Freedmen were denied citizenship rights until March 7, 2006 when the Cherokee Nation Supreme Court issued a ruling that found the 1992 Act unconstitutional, striking it down.”<sup>71</sup> The ruling by the Judicial Appeals Tribunal of the Cherokee Nation, stated that:

“The Council lacks the power to redefine tribal membership absent a constitutional amendment. The Council is empowered to enact enrollment procedures, but those laws must be consistent with the 1975 Constitution. The current legislation is contrary to the plain language of the 1975 Constitution. The 1975 Cherokee Constitution Article III of the 1975 Constitution defines eligibility for tribal membership very broadly: All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8th day of May 1867, and the Shawnee Cherokees as of Article m of the Shawnee Agreement dated the 9th day of June, 1869, and/or their descendants. There is simply no "by blood" requirement in Article HI. There is no ambiguity to resolve. The words "by blood" or "Cherokee by blood" do not appear.”<sup>72</sup>

About 2,800 Freedmen went on to register with the tribe following this decision. In March 2006, the Principal Chief of the Cherokee Nation of Oklahoma, Chad Smith, however, declared that the findings of tribal Supreme Court null and void and stated that those “eligible for membership as Cherokee Citizens, are NOT Cherokee as the Constitution requires, because they were classified by the Federal Government as Indians by Treaty in 1866 and the Cherokee people have the right [to] kick them out... following

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<sup>70</sup> Historical background provided from: United States Court of Appeals for the District Court of Columbia Circuit. *Marilyn Vann, et al., Appellees v. Dirk Kempthorne, Secretary of the United States Department of the Interior, et al., Appellees, Cherokee Nation, Appellant*. Decided July 29, 2008.

<sup>71</sup> Cornsilk

<sup>72</sup> Decision of the Judicial Appeal Tribunal of the Cherokee Nation. Accessed 10/17/08 from: <http://www.jalagi.org/allendecision.html>



a Cherokee Supreme Court ruling the Freedmen are Cherokee, by fact of law.”<sup>73</sup>

Subsequent to this action, in March 2007, Cherokee voters amended their constitution to state that only those found on the original Dawes Rolls could be citizens and to disallow citizenship to those who could not trace their ancestry to the “Blood Roll” established by the federal government for the native Cherokee, this affectively revoked the tribal citizenship of an estimated 2800 descendants of Cherokee Freedmen.

The Freedmen challenged this referendum and a tribal court in 2007 reinstated about 2800 of the expelled tribal members. The action intensified the internal discord between the descendants of the Freedmen and the Cherokee community with claims of injustice, unfairness, greed, oppression and racism being thrown about on one side and counterarguments of native sovereignty, rights to determine citizenship, cultural protection as well as accusations of greed coming from the other side.

Complicating the increasing discord between the two groups, is the inclusion of an external party, the U.S. Congress – which, through a bill introduced by Congresswoman Diane Watson in June, 2007, declared that if the Cherokee Nation fails to re-instate the Freedmen, the Department of the Interior will cut off \$300 million in funds to the Nation. In addition, the bill would suspend the Cherokee Nation’s gaming activities.

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<sup>73</sup> John Cornsilk. “The History of the Cherokee Freedmen” in *The American Chronicle*. Accessed 10/16/08 from: <http://www.americanchronicle.com/articles/59414?>



JAMES GIBBARD / Tulsa World

**FIGURE 4.4** Cherokee Freedmen Descendants Protest - JoAnn Tidwell (right) and others protest Friday outside the Page Belcher Federal Building at Fourth Street and Denver Avenue in downtown Tulsa. Demonstrators said they were rallying in support of Cherokee Freedmen descendants, who recently lost their tribal citizenship.<sup>74</sup>

Though the opponents (the Cherokee Nation and its supporters) of this Congressional legislative action consider this to be interference into a matter of Indian sovereignty and internal interest by effectively suppressing the inherent right to determine who belongs, Congresswoman Watson has suggested that the Cherokee nation,

<sup>74</sup> S.E. Ruckman "Freedmen Descendants Rally Against Cherokee Vote." May 12, 2007. *Tulsa World*. Accessed: 09/10/08 from: [http://www.tulsaworld.com/news/article.aspx?articleID=070512\\_1\\_A15\\_hThey18175](http://www.tulsaworld.com/news/article.aspx?articleID=070512_1_A15_hThey18175).

which annually receives millions in public funds, cannot use such funds to continue to discriminate against the Freedmen.<sup>75</sup>

In March, 2008, the Federal District Court ruled that the Cherokee Nation, because of the disenrollments, may be open to suit by the Freedmen; this action was appealed by the tribe and in August, 2008, the D.C. Circuit Court of Appeals ruled that the tribe, because of sovereign immunity, could not be sued, but in a decision that seemed to support the Freedmen, the Court also ruled that the tribal officers of the Cherokee Nation were not immune from legal action and, therefore, could be sued. The case was then remanded back to the Federal District Court to determine if the suit against the officers of the tribe can proceed, which, as of this writing, is the status of the ongoing conflict between the Cherokee Nation and the Cherokee Freedmen.

In comparison to the Pechanga and the Paiute disenrollees, the Cherokee Freedmen also engaged in a barrage of actions, in addition to legal recourse, that reflected their desire for justice and to regain admission to their tribal communities; this was reflected in protest demonstrations (See Figure 4.5), interviews in print and broadcast media, soliciting and acquiring Congressional support which allowed Congressional hearings on the disenrollments to be held.

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<sup>75</sup> *National Public Radio*. "Cherokee Nation Faces New Battle" June 22, 2007. Accessed: 08/22/08 from: <http://www.npr.org/templates/story/story.php?storyId=11280553>

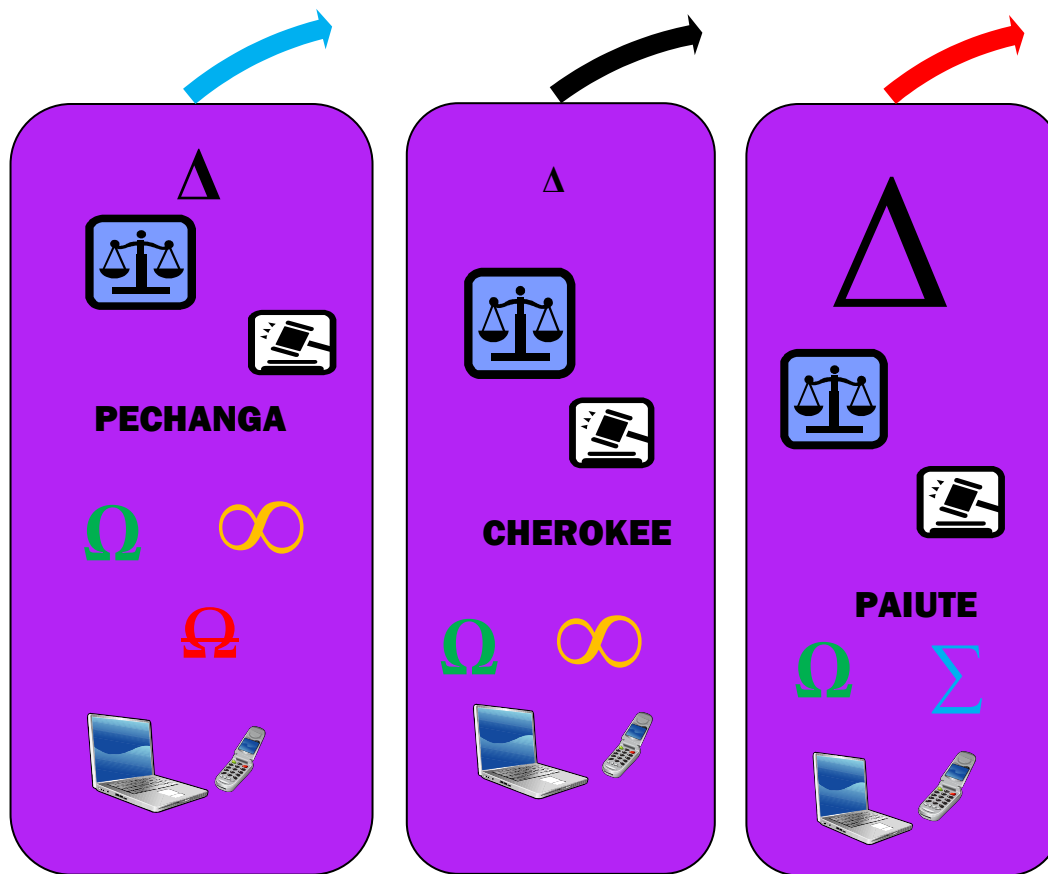


**FIGURE 4.5** Cherokee Freedmen Descendants Protest at BIA - Descendants of Freedmen and Supporters Demonstrate outside Bureau of Indian Affairs Office in Muskogee Oklahoma for Treaty Rights on September 19 2008<sup>76</sup>

### Summary

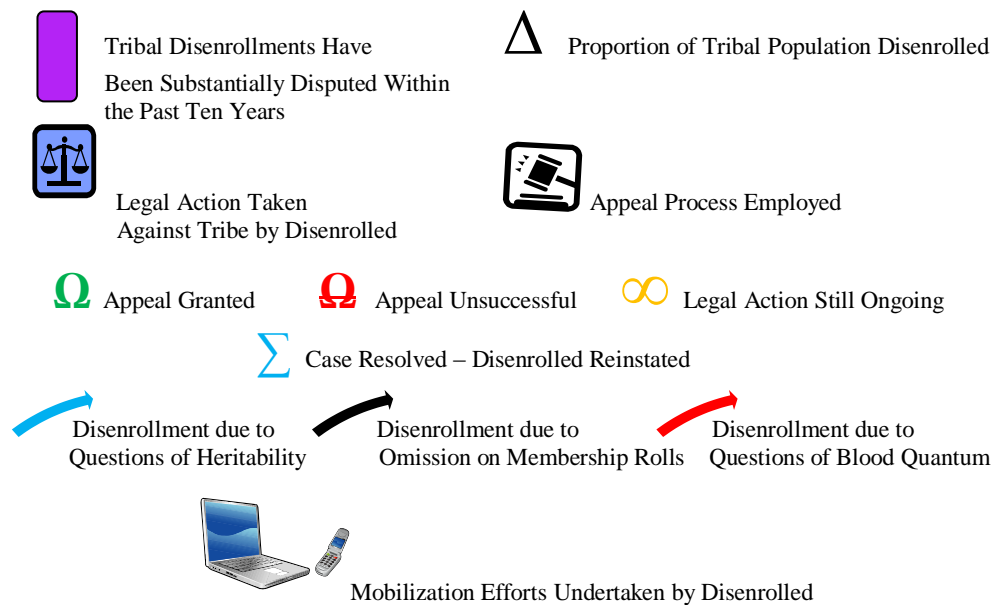
Figure 4.6 summarizes, in a semiotic framework, the intersecting narratives of the three Native American communities and their recent experiences with tribal disenrollment. The Figure Key indicates the meaning behind the symbols that are

<sup>76</sup>Accessed 09/30/08 from: [www.originalpechanga.blogspot.com](http://www.originalpechanga.blogspot.com).



**Figure 4.6** Comparative Summary of Disenrollment Actions Among the Pechanga Band of Luiseño Indians, the Cherokee, and the Las Vegas Paiute

**Figure 4.6 Key**



illustrated in the graphic. Each of the tribal communities is characterized by a magenta oblong polygon – symbolizing the common experience of a disputed tribal disenrollment. The out-going arrows in the graphic depict the basis for the expulsions which varies by color. The blue arrow emerging from the Pechanga polygon depicts the basis for the disputed disenrollment due to questions of heritability and ancestry. For the Cherokee, the basis for disenrollment has been a lack of proof of ancestry on one of the legitimized federal membership rolls; the Paiute is the only group of the three that used blood quantum as a basis for its recent disenrollments.

The delta/triangle as symbolic of change, represents the proportion of the total population that was expelled, for the Pechanga it was about 10% of the total population, for the Cherokee, however, those expelled were a very small proportion of their 250,000 members – about 1.1%; the Paiute, on the other hand, ousted nearly one-quarter of their tribal members.

The significance of the disenrollments is reflected in the subsequent legal actions taken. For each Native community in this study, their expelled members sought legal redress - symbolized in the graphic by a scale of justice icon. In each group the legal case continued on and went before an appeals court, represented in Figure 4.6 by a gavel. For one group of disenrollees, the Pechanga, their appeal to the U.S. Supreme Court was denied, therefore unsuccessful and is exemplified in Figure 4.6 by a red omega symbol with a strike through, yet their legal action is still ongoing which is represented by a yellow infinity sign. For the disenrolled Pechanga and Cherokee Freedmen, however, the appeal process was granted and is still ongoing, symbolized in the graphic by a green

omega. At the moment of this writing, the legal actions are still ongoing for the disenrolled from the Pechanga and the Cherokee Nation; in Figure 4.6 this is symbolized by the infinity symbol; the Paiute is the only tribe among the three where the appeal resulted in the reinstatement of the disenrolled members, this is represented by the blue epsilon symbol.

Though each of these tribes has had similar experiences with disenrollment, the outcomes have varied and the course of action of the expelled members has reflected the degree to which they engaged in a legal recourse within and outside of the tribal communities. The disenrolled utilized widespread mobilizing efforts to reclaim their citizenship status by appealing not only to others who had had similar experiences, but to those outside the tribe to help in regaining what some see as an illegal revocation of their citizenship and identity as well as a violation of their civil rights. This was done through protest marches and rallies, appeals to the American populace in general through legislative hearings, television, radio, and print media. In addition, some banished tribal members have set up websites to share their narratives of disenfranchisement with other disenrollees across Indian country and the world. These external (to the tribe) contemporary mobilization efforts by the disenrolled are symbolized in Figure 4.6 by a laptop/cell phone icon.

It is interesting to note, that the disenrolled from these Native American communities did not perceive a traditional Indigenous remedy for resolving internal disputes as being beneficial, instrumental, available or even appropriate in their attempts to regain their status. As this study proceeds, I will share some of the narratives that are

reflective of the disenrollment experience and will explore more closely what the disenrolled perceive as causal factors or reasons for their expulsions.

Before the determinants of causality are explored, however, it is germane to this study to address a salient component of this social dynamic – identity and its legitimacy as a social relational construct. The presence or absence of a constructed, legitimized social identity, the validity of which is instrumental to understanding the actions of the disenrolled and the disenrollers, some argue, is at the heart of this discord.



## **Chapter 5**

### **Complexities of Identity Construction and Deconstruction: Defining Native Americans**

In attempting to understand the complexities of American Indian identity and the internal conflicts surrounding tribal disenrollment in the three subject groups, it is crucial to the thoroughness of this study, to address the value and significance of identity in Indigenous American groups. To understand the struggle and to enhance the thoroughness of this project, I will explore this contemporary dilemma by not only examining some theoretical perspectives of social identity, but will also delve into the process of *being* as a non-linear emergent system (more fully discussed in the methodology chapter). A non-linear system is a system with multiple, intricate relations through which meaning is gathered from the expression of behavior interacting with one another and the environment (Peroff 1999, 487). To reflect this non-linearity, the concept of Indianness will be explored from three levels, self, ingroup and outgroup.

The complexity of this dynamic, in some circumstances, produces an ever-evolving gap among the three conceptual perspectives – that of self definition, the constructed definition of the self as imposed by the ingroup and the constructed definition imposed by those external to the group. It is within these gaps of often competing

definitions of *being* that, one may argue, are the spaces for discord. The greater the distances between and among the various perceptions of identity, the greater the discord or dissonance. This reflects the significance of the relational aspects of identity which will also be discussed in this chapter. For Native peoples, the construction of identity may vary depending upon the group to which one belongs and to whom one is relating. There are requirements of group inclusion that relate to historical and/or contemporary ties to ancestral lands, heritability as defined by current or ancestral roll membership, genealogical connection through the line of descent or blood degree, requirements of group loyalty demonstrated by the connection to *one* primary Indian community and no other, compliance with federal policies that frame Native American identification, or designation of Indianness through self-identification. The composition of identity may encompass some of the aforementioned criteria or may be more reflective of the traditional, cultural and social practices of what the individual perceives to be the essence of Indianness versus the “artificial” impositions from external forces. Historically, one could also obtain a Native identity and thus inclusion through ritualistic adoption into the group, this is still practiced by some Native societies, but is becoming more rare.

There is a sense of peoplehood that elicits a social, and from the perspective of the individual, an emotional bond as well that integrates and ties the individual’s identity to the community. Thus, for many Indians, their individual identities are subordinate to the collective identities of their people, clan, or tribe and may be more akin to the cultural perspective of in-group cooperation characteristic of east Asian cultures versus intergroup

comparison as is the focus of social identity theory. Yuki raises the issue that though social identity theory is widely accepted in Western countries, its applicability to other cultural contexts elicits on-going debates. He posits that the theory focuses on intergroup comparisons and questions its applicability to situations in which intergroup comparisons are not salient, but the complexities of intragroup structures are preponderant (Yuki 2003, 166, 177). Thus, for this study, as issues of Native American identities are explored pertaining to specific tribal groups, it is crucial to keep in mind the significance and importance of studying such within a dynamic cultural context focusing on intragroup or in-group dynamics.

In attempting to understand the significance of social identity in Native American societies, it is germane to this undertaking to note the concept of identity salience which is defined as "...the most important identity for the individual, and [it] can be influenced by such factors as permeable-impermeable group boundaries, identity distinctiveness issues, and the socialization processes (Korostelina 2006, 102). For most American Indians, identity salience is reflected in the prominence of inclusion in the tribe, clan or other kinship formation; there is also the variability of identity as recognized by those external to the group. Peroff alludes to this ever-changing and evolving state of Indian identity: "Sometimes researchers in Indian Studies, particularly from the broader fields of sociology and anthropology, will provide definitions of Indianness that are dynamic or changing rather than static and fixed in time. Indianness is defined as a natural and ongoing process of Indian adaptation and adjustment to the dominant society" (Peroff 1997, 486). The dynamic of American Indian identity may also reflect the significance of

the hierarchy of identity salience – as social identities compete for prominence within the individual; this has been described as a process whereby one commits to a certain identity, at a given time or situation, and subjugates others (Korostelina 2006, 102).

It has been noted that there is often little agreement and consensus, particularly from external sources, on “precisely what constitutes an indigenous identity, how to measure it, and who truly has it. Indeed, there is not even a consensus on appropriate terms. Are we talking about Indians, American Indians, Natives, Native Americans, indigenous people, or First Nations people? Once we get that sorted out, are we talking about race, ethnicity, cultural identity, tribal identity, acculturation, enculturation, bicultural identity, multicultural identity, or some other form of identity?” (Weaver 2001, 240). Native American identity, therefore, in all of its complexity can be multilayered with different identities presented in different contexts (Ibid. 243), “Thus, an American Indian might be a ‘mixed-blood’ on the reservation, from ‘Pine Ridge’ when speaking to someone from another reservation, an ‘Ogala Sioux’ or ‘Lakota’ when asked about tribal affiliation, or an ‘American Indian’ when interacting with non-Indians” (Nagel 1996, 21). This underscores a crucial component of exploring identity, in general, and Indigenous identity, in particular - the relational aspects of social identity that reside in meaning-making from how one relates to others, the varied identities that are embodied depending upon with whom one is interacting and the shifting of meaning that envelops within this social dynamic which determine which identity at any given time, becomes salient and which ones remain subordinate (Tilly 2005, 8-9).

In order to facilitate an understanding of the notion of identity and its configurations as internalized by decision-makers as well as those who are the object of those decisions, this chapter will discuss identity-construction as practiced, in a general sense, by Native American groups, keeping in mind that since each Indian community is responsible for establishing legal membership criteria, identity standards differ from tribe to tribe. This may be considered the collective axiology or system of values that anchors and or defines the group. “A collective axiology defines boundaries and relations among groups and establishes criteria for ingroup/outgroup membership. Through its collective axiology, a group traces its development from a sacred past, extracted from mythic episodes beyond the life of mortals, and seeks permanence” (Rothbart and Korostelina 2006, 4). Accordingly, this chapter will look at Native American identity through the collective axiology of four types of identity construction: construction of identity through blood quantum, through sacred history and ties to the land, lines of descent and social/cultural connections.

In this country the legal, social, economic, historical and biological elements of identity seem to come together to describe the modern Indian in America. As previously discussed, it is an identity of high salience meaning that it has primacy in the designation of the social self. This is further complicated by the sociological process of who defines whom. In other words, what entity determines Native American identity? Is it the decision of each individual Indian, each Indian tribe or the greater society in the form of the U.S. federal government? Since the legitimacy of Indian identity and the negation of Indian identity are paramount to this study, it requires a look into the manner in which

Indigenous American identity is shaped, reckoned with, developed, classified, and - given the assimilation with other groups – the manner in which multi-ethnicities impact the validity of identities.

As reviewed and stated in Chapter 4, there are federal legal and group normative boundaries that constitute the determination of identity for the three groups that are the subject of this study. In discussing these criteria, it is meaningful to note that there often exists competing perceptions of being – one reflecting the official identity that is embraced by the tribe and supported by the U.S. government, the other is the identity that is, in a relational sense, embraced by the individual who sees himself or herself as a member of the group whether or not there is an official recognition (which will be explored later in this chapter). As alluded to previously, it is within these differences that the dissonance of being ferments, the degree of acceptance, and recognition simmers - presenting the potential for individual perceptions of rejection and ostracism, as well as intragroup discord and dissension – the greater the gap, one could argue, the more intense the feelings of alienation and internal discord.

The official membership criteria of the Cherokee, Las Vegas Paiute and the Pechanga communities, as summarized below, reflect, in some instances, input from external forces as well as determinations originating from within each group. It may be helpful to review these criteria as the focus on Indigenous identities continues and its legitimacy is explored:

Membership Criteria:

**Cherokee:**

- Original enrollee or descendant of enrollees on the Dawes Commission Rolls (Constitution amended in 2007 to restrict membership to blood descendants, then reconsidered after Freedmen protests)

**Las Vegas Paiute:**

- ¼ degree Paiute Indian blood
- Name must appear on the official Las Vegas census of January 1, 1940 and the descendants of these persons who have at least ¼ degree of Paiute blood
- No affiliation with another Indian group
- Subject to the approval of the U.S. Secretary of the Interior

**Pechanga:**

- Lineal descent from original Pechanga Temecula people.

Though this study focuses on the above three American Indian groups, in order to understand the complexities of identity and its impact on determining group membership and cohesion, it is fundamental to understand the significance of Native American identity as constructed and deconstructed, in general. Looking at the complexity of identity formation in the Indian community, Garrouette states that, “Accordingly, the example of Indian identity provides an instructive study for anyone attempting to think through the issues and consequences associated with various ways of defining racial groups. Examining Indian identity may help us understand how racial identity is asserted and recognized in groups where the possibility of multiple affiliations – and multiple possible bases for affiliation – is explicitly and formally acknowledged. More importantly, it may allow us to assess the consequences of various choices for those most directly affected by them” (Garrouette 2003, 9-10).

As has been previously addressed, one of the most widespread methods of determining Native American identity is through the use of blood quantum – usually analyzed in conjunction with other criteria such as lineal descent or having lived on tribal lands, etc. Scholars Pauline Strong and Barrick Van Winkle in their article, entitled “Indian Blood”: Reflections on the Reckoning and Refiguring of Native North American Identity”, state that even though blood quantum is “never the sole marker of Indian identity... genealogy, private property, and “competence in civilization” in conjunction with blood quantum often compose identity criteria, but blood quantum, used in as many as 25 percent of Indian Nations, is the most common criterion” (Strong and Van Winkle 1996, 555). It has been noted that more so than with any other ethnic group in this country, Indian identity has been expressed as a measurable or quantifiable entity (Peroff 1997, 486).

As the discussion about blood quantum unfolds, it will be helpful to explore why this form of identity formation is still being used, establish who uses it and reflect critically on this method of membership-making. Chapter 3 of this study addressed relevant historical factors, revealing that the U.S. government, in trying to establish its degree of responsibility to whom allotment payments would be given and as a means of establishing efficient administrative oversight of tribes, developed blood quantum as a generalized method of determining Indian ancestry and identity. This method of identifying membership can be considered an externally imposed criteria - adopted by most Native American communities (or federal aid would not be forthcoming) and continues to be in practice today. About two-thirds of Native groups today still use blood



quantum (of the three groups that are the subject of this research, only the Las Vegas Paiute currently have a blood quantum requirement). Usually the minimum blood quantum is one-quarter, but may vary.

The historical impact of external influences on Indian means of identity making is still being argued today as a lasting legacy of federal impositions which constrains and complicates internal decision-making.

“Who has the right to identify and be identified as an Indian, and so who has the juridical control over the management of membership criteria, are fundamental questions of indigenous sovereignty. Though they have certainly changed considerably since their formal establishment in the 1880s, identification policies are for many the embodiment of historically consistent attempts by the U.S. government and adverse economic interests to undermine indigenous rights to sovereignty and the means and abilities of indigenous peoples to exercise self-determination. Tribal identification policies have had the considerable burden of negotiating those attempts while adhering to their own divergent concepts of membership, belonging, and affiliation” (Baker 2003, 27).

Using blood quantum to determine identity has been viewed as racialized and based on nineteenth and early twentieth century race theories introduced by Euro-Americans to provide a system whereby government responsibility to Indians would end – as Native Americans through intermarriage became “indistinguishable from other citizens”(Garrouette 2001, 225). The degree to which some see blood quantum as a hold-over from the acts of oppression suffered by Native peoples is illustrated in the following comment by Charlotte Black Elk, a scholar of Lakota oral history: “Blood quantum is part of the whole American policy of genocide by bureaucracy. The history of U.S. government warfare that diminished our people was insidiously replaced by small pox

blankets. I believe that using blood quantum, a pedigree, to establish who we are as citizen not a member of the Oglala Lakota Sioux.

“To say that I am a member of an organization that has a pedigree diminishes who I am, who my nation is. Euro-Americans, because they left their countries wanted citizenship of the land, saying if you were born here you’re eligible to be a citizen. It’s living my culture, knowing my culture that makes me Lakota, not because I have a degree of Indian blood... Before white contact, our policy was one of inclusiveness... Genetically, Lakotas knew it was important to marry out from our camps. We were always bringing in fresh blood. We brought in women for breeding purposes and we kept those children. And when the women chose to stay, we adopted them. It has always been our tradition to set our own rules. Historically, if we married only within our own people, we would have died out.”<sup>77</sup>

Though the original value of such a system may be considered by some to be anachronistic, contemporary tribal decisions as to who belongs are often still made based on this criteria; this may be further complicated by additional membership criteria - blood quantum often being only one factor - that constitute the legal definitions for identifying tribal citizens

A review of historical practices in which blood quantum as a determinant of identity was first initiated by the U.S. Department of the Interior and in many Indian groups is still practiced today indicates the tenacity of the practice. Scholar, Kimberly Tallbear, stated that, “Since the late 1800s, blood quantum has been used by the U.S. Department of the Interior, the BIA, and many tribal governments to determine eligibility (although not always as a sole criterion) for tribal membership and benefits” (Tallbear 2003, 88).” She goes on to say that, “Many critics characterize blood quantum policies as

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<sup>77</sup> Ibid.

solely representing Euro-American definitions of race imposed on native peoples by the U.S. government” (Ibid., 89) The underlying original purpose of blood quantum was racial classification and distinction.

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As an example of the complexity, significance, and critical consequences of identity formation, S.A. Ray discusses the actions of the Cherokee nation, “The political crisis of the Cherokee Nation also signals of crisis of social identity: what makes one a Cherokee? Indeed, the latter question underlies the political options of blood or base rolls, because how voters in 2007 determined tribal citizenship criteria depended upon how they variously recognized – and defined – their fellow Cherokees” (Ray 2006, 399).

The complexity of Indigenous identification practices is also illustrated in notions of heritability and parental lineage. Some tribes, for example, base membership only on matrilineal or patrilineal descent. An illustrative example: An Indian living at the Santa Clara Pueblo since birth, which was his mother’s home, raises his children and grandchildren there, but cannot be enrolled in the Santa Clara pueblo because enrollment is only through paternal descent – and his father was not from there, but was from another nearby pueblo. “[He] has inherited the rights to his mother’s property, but his

ability to enforce those rights remains uncertain” (Garrouette 2001, 226). He may be an Indian without a tribe, a citizen without a home. Situations where there are mixed-race children adds to the complexity resulting in some instances of them being expelled from the reservation (Ibid.).

Another example of the complexity of determining Indian identity is that encountered by the Onondaga Nation in the 1970s. During that time intermarriages with individuals outside the community began to take place with substantial concern that non-Indians were living on Onondaga land. “It was quite serious for us because the definition of our nation is carried by the women... Under traditional law, the women carry the clans and the nation, if your mother is Onondaga, then you are. But if a man marries a non-Indian, then the children are what their mother is. The chiefs saw that the number of intermarriages would eventually reduce our numbers and decided to take the issue to the people”.<sup>78</sup> After several months of debate and considering traditional law, the chiefs decided that, “In order to keep the integrity of the nation, the people agreed that we would only have Indians living on the nation... When you have non-Indians, they bring federal law with them because they are American citizens. So you have the question of jurisdiction and that’s a direct challenge to our sovereignty.”<sup>79</sup> The non-Indians were evicted from the Onondaga community, most went peacefully. One woman burned down her house.<sup>80</sup>

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<sup>78</sup> Valerie Taliman. “Termination by Bureaucracy”. The 2004 American Indian Film Festival – Bellevue Community College. June 30, 2002. Accessed 09/06/08 from: <http://bellevuecollege.edu/diversitycaucus/AIFF/CBE.htm>.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

Another issue that adds to the complexity of determining Indian identity is the ubiquitous rise of the bio-technology available to determine genetic strands and a plethora of human biological traits and tendencies; it is not surprising that such tools are now being used to determine Native ancestry. At no other time in our modern history has such technology been available, so for some, this is a starting or ending point in determining the essence of being. This construction of identity through scientific and biological analysis does have its limitations, but for the purposes of this research, it is one aspect among others that some use to determine Indianness. Genetic testing is typically not used to determine Indian identity for tribal records because it can only establish genetic traits related to all Native Americans; but cannot determine, for example, if one is a Pechanga, Paiute or Cherokee. As has been previously discussed in this study, it is also important to note that using biological constructs to determine racial classifications has been historically a matter of fact. With the recent acquisition of knowledge in the bio-sciences, including genetics and heredity, it is now accepted that race as a strictly biological construct has all but since been disproven and noted to be an erroneous and even flawed view. Referring to the *Webster's Medical Dictionary's* definition of race as, "a division of mankind possessing traits that are transmissible by descent and sufficient to characterize it as a distinct human type", scholars, Lee, Mountain and Koenig state that, "This usage of the term reflects an outmoded concept that attempts to convey biological difference among human population groups as the defining feature of seemingly distinct sub-human populations... By contrast, the fields of physical or biological anthropology and population genetics have long held that the idea that distinct human races exist is

scientifically incorrect, as well as harmful” (Lee, Mountain and Koenig 2001, 39). The authors go on to state that as a biological construct, the “genetic variation within a socially recognized population is greater than the genetic variation between population groups” (Ibid.), which is to say that a Paiute and a Cherokee may be more similar genetically than any two Paiutes or any two Cherokees.

It is significant to note that as pertains to some Indian communities, the erroneous and flawed concept of “racial purity” is at the heart of their Native identity. Given the gains of contemporary biogenetic science, one can only wonder how does this updated knowledge impact or relate, if at all, to criteria such as blood quantum that some Native American communities adopt for identity legitimization?

Another element necessary for belonging in some Indigenous communities relates to sacred histories and ties to the land. “Indigenous identity is connected to a sense of peoplehood inseparably linked to sacred traditions, place (homeland or holyland), and a shared history as aboriginal people” that some say cannot be captured in the “restrictive terminology or limited methodologies available to academic research in the social sciences” (Peroff 1997, 486). As illustrated earlier, living or being on the reservation or having a specific connection to legal Indian territory reflects the sacred importance of the land to most Native American societies. Some tribes, therefore, do maintain some manner of association with the land as a means of identity legitimization. This may be reflected in a requirement, for example, that the individual has always lived on the reservation. Of the three groups that are the focus of his research, none requires ties to the land in order to maintain identity with the tribe.

Though Indian communities determine their standards for inclusion, it has been noted, however, that tribal guidelines can change which implies some flexibility, but also belies group instability. This instability has been raised by Reitman in his article for the Virginia Law Review about tribal membership and sovereign power, “As most citizenship guidelines are racial, familial, geographic or genetic in nature, one would expect them to remain relatively stable over time. Yet recent years have seen a number of changes in the guidelines of various tribes. Some tribes have become more inclusive, promulgating less restrictive definitions in order to combat the problem of ever-thinning bloodlines” (Reitman 2006, 816). The author gives examples of tribes dropping blood quantum requirements or only requiring lineal descent for membership; he also states that altering enrollment is often done as a legal act, but can be a “malicious manipulation of citizenry” the result being an effective disenrollment (Reitman 2006, 819). Such practices reflect an attempt at the manipulation of identity formation and/or its legitimization.

As previously noted, one must, also, certainly acknowledge that there may be legitimate reasons for tribal authorities to revoke citizenship status; if there has been fraud, miscreant behavior or malfeasance, expulsion from the group may be considered to be a valid action. It is in those circumstances, however, where there is a purposeful attempt to “legally” remove members through the *altering* of identity requirements that reflects the focus of this study. The question, therefore, arises as to why would some Indigenous groups engage in often large scale attempts at altering membership criteria and thus, the status of a member’s identity? Absent clearly defined grounds for such

actions - attempts at delegitimizing identity elicit questions as to motive and rationale.

The focus of this study, accordingly, is to highlight certain possibilities - among which is whether or not some of these actions are the result of economic interests that drive the

decisions of tribal authorities. There have been, for example, recent attempts to

delegitimize identity through wide-scale disenrollments in many California tribes. It has been stated that tribes in California disenrolled up to 2,000 Indians in 2004 (Ibid., 818).

Table 5.1 illustrates a few tribes in California where this has happened (including the

Pechanga Band of Luiseño Indians who are the subject of this study). As exemplified in

Table 5.1, there have been some high percentages of disenrollment in these groups.

Given the very small populations of these communities, high percentages of expulsions

can certainly raise questions as to not only the obvious impact on those who have been

banished, such actions also have a tremendous impact (one could surmise - negative as

well as positive) on those remaining in the group and elicits queries about the motives of

tribal authorities. Some charge that the specific issue of economic greed as a basis for

disenrollment is prevalent as a contributing factor when expulsion actions are undertaken

by tribal decision-makers. For this research, the relationship of economic wealth and

tribal disenrollment will be more thoroughly explored in subsequent chapters. I will, in

the next chapter, delve into gaming activities and other eco-enterprises that some argue,

because of tribal wealth, drive disenrollments which then becomes a principle factor in

determining who does and who does not belong.

This fluidity of identity legitimization raises another basis of determining Indian



**TABLE 5.1** Some California Tribes That Have Engaged in Disenrollment.<sup>81</sup>

| <b>Members Gaming Tribe</b>              | <b>Disenrolled</b> | <b>Population in 2000</b> | <b>Percent Disenrolled</b> |
|--|--------------------|---------------------------|----------------------------|
| Mooretown Rancheria of Maidu Indians     | 40                 | 105                       | 38%                        |
| Santa Rosa Indian Community              | 78                 | 215                       | 36%                        |
| Berry Creek Rancheria                    | 27                 | 127                       | 21%                        |
| Cahto Tribe of the Laytonville Rancheria | 26                 | 175                       | 15%                        |
| <b>Pechanga Band of Luiseño Indians</b>  | <b>130</b>         | <b>934</b>                | <b>14%</b>                 |
| Picayune Rancheria of Chukchansi Indians | 200                | 1,519                     | 13%                        |
| Isleta Pueblo (New Mexico)               | 132                | 4,421                     | 3%                         |

identity - the sense of self that is obtained through social-cultural connections. As has been discussed, there are several criteria used by each tribe to determine belonging. It seems one of the least used, in terms of contemporary American Indian societies, is that which relies on social-cultural attributes or actions. One could argue that this aspect of being-making reflects historical and traditional practices more so than contemporary

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<sup>81</sup> Reitman, Eric (2006) “An Argument for the Partial Abrogation of Federally Recognized Indian Tribes’ Sovereign Power Over Membership”. *Virginia Law Review*, Vol. 92, No. 4 (June) at p. 819. See also his footnote #98 pp. 818-819 on other disenrollments.

ones. This would include, for example, practices such as knowing the language, attending sacred ceremonies, adopting the group's religious beliefs, knowing the tribe's history, sacred stories, symbols and rituals, etc. These criteria, one could argue, were most likely in existence prior to the decimation of traditional Indian societies by the onslaught of European settlers and the intrusion into their lives by the U.S. federal government. It was not uncommon, for example, in some pre-contact tribal communities, to adopt captured war victims or slaves into their fold – some having to go through elaborate rituals before becoming accepted as valid members of the society. In other words, the identity of these “new” members was transformed into something “more” – something that gave legitimacy to their individual status – no longer as an outsider, or member of an outgroup, but as a being – a renaissance person - reborn and now protected by the sanctity of the ingroup.

The manipulation of legitimized identity is the main focus of this study and, as such, is significantly relevant to understand the processes that Native communities undertake in order to determine inclusive or exclusive parameters. In order to fully comprehend the nature of identity in Indian societies, it is vital to understand the process of meaning-making as shaped by historical factors that forced adaptation to non-Indian social standards and demands. As has been stated, the federal government requires a minimum blood quantum standard for purposes of tribal identity and federal recognition. Thus, it can be argued that contemporary Indigenous Americans function within the constraints of federal guidelines as well as economic and social realities, for if the tribal

community fails to comply with said guidelines, it will relinquish substantial federal funds. Thus, one could argue that the external impact of the government adds significantly to the complexity of identity construction and determination. It is further complicated by the heterogeneity of Native communities, and their varying methods for determining who does and who does not “win the prize” of group membership and belonging. Adding to an already complex process, internal cleavages and political infighting contributes to the variability in identity construction as well as identity deconstruction.

Another factor to be raised when it comes to determining Indian identity is that it may be the goal to maintain the integrity of the group by restricting membership, such may eventually contribute to the demise of the group as a future viable entity if membership criteria become too restrictive; this may not be relevant to larger groups, but may be particularly applicable for smaller communities. Reitman states that “While overly-inclusive guidelines might raise questions about the ethical entitlement of those who are only minimally Native Americans to receive federal (and other) related benefits, a far more serious problem is posed when tribes cut off individuals whose status as tribal citizens has never before been in question” (2006, 817).

For many tribal enrollment committees, their task, in determining who belongs, also involves a process of deconstruction of identity; this is done by dissecting the elements of any one tribal member’s life in an attempt to uncover flaws or inconsistencies in historical records, oral histories, blood quantum, attachment to the land, etc. In being granted such power, that reflects actions veiled in absolutism, the tribal enrollment

committees have the potential to yield significant and life-altering decisions in regards to the authentication and legitimization of identity. This process is further complicated when resources are considered. Each of the tribes that are subject of this study, for example, has acquired substantial wealth and abundant resources due to a variety of economic enterprises which will be explored in the next chapter. For the purposes of exploring identity deconstruction, however, some argue that the allure of having to share abundant resources with fewer people has become a recurring factor in the failure to find certain individuals' identities to be valid and legitimate. The element of power and its abuse has been a consistent charge of those whose formal social identities have been altered by tribal committees.

Many theorists have written about the essence of being and social identity formation, but most of these writings relate to the construction of individual identity from within; a more accurate perspective of such Native American communities as the Pechanga, the Paiute and the Cherokee, is that identity is formulated in an internal *as well as external* – (government oversight input) group process of consensus as to the criteria for inclusion. It becomes a complex framework of membership qualifications reflecting the agency of both Native American society and federal institutions, typifying structuration theory's enabling and constraining elements as elaborated by Anthony Giddens' (1984, 25). Thus, the construction as well as deconstruction of identity may be viewed as a function of the institutions of tribal authorities and the federal government, with the individual normally lacking the power to alter the decisions of either. The individual does, however, have the power to self-designate in spite of external definitions

of being (with limited recognition). It is, however, within the differences of perceptions between the individual and the greater social unit(s) wherein one finds psychological pain, feelings of threat and alienation; this may, for the individual, increase identity salience; though social identity salience has been found to occur when the ingroup is threatened (Rothbart and Korestelina 2006, 104), one could surmise that the identity of the individual becomes salient, as well, when so threatened.

One must, therefore, distinguish between identity as a socio-psychological construct, a state of individual being in relation to and experiencing others or identity as a utilitarian (political) label. As a socio-psychological construct, identity encompasses the internal perceptions of the individual on a multi-tiered level reflecting the complexity of existence; it is sacred to the person and may be considered primordial in its definitiveness and concreteness as well as malleable depending upon to whom one is relating. As a utilitarian (political) label, identity embodies the perception of outsiders, external forces over which the individual may have little or no control. It is within the confines of these social roles that the construction and deconstruction of identity, depending upon the author, reflects a social (relational), political (utilitarian) reality or somewhere in between – an amalgamation of both.

#### Power, Legitimization and Delegitimization of Identity

In previous chapters, I have discussed some aspects of Native identity, such as identity by biological construct, historical affiliation, or heritability. One aspect that has yet to be explored relates to contentious and competing identities. Categorized identities

that may or may not possess validity and legitimacy are the product of those who have the supreme *power* to make such determinations. For the purposes of this study, “power” may be defined as, the intention and the will to have control over the outcome and the process of an event and is reflective of Max Weber’s definition that power is a social relationship and is defined as the “...capacity of an individual to impose his or her will on another individual despite resistance” (Barrett 2002, 36). In this context, power refers to the will and the ability to construct, as well as deconstruct, identity in a manner that impacts, through limitation or allowance, one’s access to cultural, legal, economic and social benefits.

If, for example, one were to focus on the identity of the self as perceived by the individual – that category may be in contention with a larger social perspective which may or may not coincide with the individual’s point of reference. If the government, assigns one to be in a particular ethnic category, but one fails to consider himself as so designated, whose identity assignation carries the most legitimacy when it comes to functioning within the broader society? Thus, there is a sweeping and definitive perspective of identity that originates within the power structure of any given group. For Native Americans, these competing identities have been constructed with input from the tribe, but have also been constructed by the federal government. With this duality of sources in determining origins of identity (the tribal government and the federal government), there leaves little, if any room for a tertiary (self) source of identity formation as it relates to tribal membership. Some argue that internal tribal manipulations also help to create the gap between personal identity and that imposed by

tribal authorities. There is, however, a movement within Indian country that includes self-identification as a means of establishing and determining Native Americanism. Garrouette describes self-identification as a “system of rules that systematically direct attention away from questions of law, blood or culture. They concentrate, instead, upon the individual’s understanding of herself as she expresses it in a personal profession of identity” (2003, 82). In other words, someone would be an Indian if that is how they refer to themselves, if they *say* they are an Indian. This reflects a contemporary trend to establish group cohesion outside of tribal boundaries – through the mobilization of like individuals with similar claims, some of whom may have Indian heritages from a number of tribal groups who come together to form “Indian descendant recruitment organizations”.

This phenomenon of identity assertion reflects the complexity of determining the meaning of the self through the creation of new communities in order to experience the culture, rituals, and prestige of established Indigenous societies. This method of identity-making, however, though it may allow some access to scholarships and other entitlements that may have been previously closed without the Indian designation, is often frowned upon by those who see themselves as “legitimate”. Though the self-identification movement is an attempt to combat the structural boundaries and constraints of tribal authorities and the federal government, it possesses power only in that it produces a sense of self-satisfaction through the individual’s chosen group affiliation and self-identification as an Indian, but fails to produce a legitimized and authorized individual who is accepted and sanctioned by the larger society.

It would seem, therefore, that legitimacy of being is bestowed by those who possess the power to dictate and confirm such. This power arises from the structural dictates of the federal government and local tribal authorities which, one could argue, act to constrain the freedom of the individual from having a voice in his or her identity determination. Baker explores a similar point in her writings as she cites Ong, Foucault and others.

“In "Making the Biopolitical Subject: Cambodian Immigrants, Refugee Medicine, and Cultural Citizenship in California," Aihwa Ong writes that state (national) power is "deployed mainly through social regulation acts . . . dedicated to making individuals, families and collectivities 'governable'" (1995, 1250). These acts are captured by specific administrative categories that state agencies use to administer their services and funds. By continually readjusting individuals and social groups to fit within these categories, state agencies "dominate" those that they are charged with serving, "adjusting" individuals and groups to "normalizing standards" that render them "governable" (Ong 1995, 1250; Foucault 1979).

Ong helps me think about the ways that identifying indigenous people by the discursive links between the rolls, the certificate, blood, identity, culture, and a racialized authenticity is a means by which the United States continually reinvents its authority to govern indigenous people. Making indigenous people "governable" by roll or certificate or blood allows the United States to reinvent its power to govern indigenous people as citizens "of a particular kind" as those who can be enrolled, recognized, qualified, and eliminated. Blood quantum is, after all, a most effective means for readjusting individuals to the kinds of "normalizing standards" of group identity that can be managed by the state. For under what other regime of identification is it easier to ask and so answer questions like "How much Indian are you?" (Barker and Teaiwa 1994). Blood, and its endless supplies of degree and notions of authenticity, expedites the administrative and legal processes of enrollment, and so disenrollment, that maintain and normalize the state's power to govern indigenous people.

This is not to suggest that the state works alone or that its power is evenly realized. Nor is it to suggest that state departments and 32 R agents are the only ones implicated in the story of oppression. The fluency of discourses of race, genetics, culture, and identity out of which blood emerges and functions as a signifier for membership and integrity demonstrates that there are important fissures between the efforts of the state to establish its control over indigenous people and the outcomes of state policies (Foucault 1972, 1979; Ong 1995; Lomawaima 1994; Alfred 1999). This is marked in powerful ways by the inherent irony or perhaps a better word for it is hypocrisy of the deployment of blood as a criterion of membership in the administration of allotment at the same



time that the processes of administering allotment were facilitating all kinds of fraud in the rolls that would result in hundreds if not thousands of nontribal people being granted membership. Racial purity, it would seem, is a difficult thing to legislate when confronted with the social forces of greed.” (Baker 2000, 32-33).

One could argue, and it is significant to note, that legitimizing or delegitimizing identity is afforded to the entity that has the power; it, also, elicits and invites an opposition to that power – by those who seek and employ resistance to the stripping of said identity. There are at least five types of delegitimization<sup>82</sup> as recognized by Bar-Tal: Dehumanization – categorizing a group as non-human; Trait characterization – attributing extremely negative traits; Out-casting – violators of social norms (e.g. disenrolled Native Americans), Political labels – group that is rejected by the values of the delegitimizing group; Group comparison – equating the outsider to an extremely negativity group (e.g. Vandals, Huns) (Bar-Tal 2004, 1). Though Bar-Tal focuses on intergroup conflict, the processes of rejection and accompanying social-psychological constructs may also apply to intragroup discord and exemplifies the power differentials between the offending and defending factions (Ibid.).

In looking at the use or abuse of power by those who delegitimize identity, it is instrumental to note that some of the functions of this behavior; they include: justifying

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<sup>82</sup> “In general, delegitimization refers to extremely negative [stereotypes](#) that are used to describe a specific group. Delegitimized groups are viewed as violating basic human norms or values, and are therefore excluded from being characterized as "good" or even "acceptable" people. Delegitimization does not appear in every inter-group conflict. It tends to emerge especially in very violent and intractable conflicts, when the contested goals are perceived as endangering the fundamental goals of the group. In such situations, most of the information that the rivals receive about each other is dominated by conflict-related themes. These themes present the malevolent characteristics, intentions, and acts of the other side.” (Bar-Tal 2004).

destructive behavior (e.g justifying outcasting because of lack of official papers), creating a sense of differentiation and superiority and implying threat to the group so that mobilization and actions of refutation can proceed (Ibid.). In other words, the process of disenrollment and attempts to delegitimize identities reflect a power relationship that through its very existence elicits a counter-response – a resistance to that power. This complex duality of power is explored by Barrett in his work, *Culture Meets Power*, wherein he discusses Foucault's *History of Sexuality* and his view of power. "In Foucault's epistemology, everything seems to be happening at once. Power suppresses an activity, then encourages it. Power is the cause of something that happens, but also its effect. Power opposes knowledge while simultaneously nourishing it. Power is ever on the move, generating coalitions and then disrupting them, settling momentarily on individuals and then flitting through institutions, leaving both individual and institutions ravished or enriched in the process" (Barrett 2002, 36). It is without question that there exists a power relation between the disenrolled and the tribal authorities; this is concretized by the embracing and reflecting of the the multi-discourses of said power.

In looking at the power differentials between the disenrolled and tribal authorities, Reitman (2006, 800-801) states that,

"The asymmetry in power between tribal elites and those whose citizenship rights they abuse has already resulted in violence, and it is increasingly likely to do so in the future as the stakes and abuses arise. Plenary membership power is in the final analysis a tyrannical power, one that is irreconcilable with modern republican values, and whose only true palliative is revolution. It is up to Congress to determine whether that revolution will take the form of a series of violent uprisings or a bloodless sea change in the extent to which tribes are permitted to retain control over their membership."

Accordingly, the *reactions* of those stripped of their tribal citizenship and Native identities are embodiments of resistance to that legitimized power and authority; it is significant to this work to note that this resistance may take on varied forms and could be social, political, economic as well as psychological, which will be more fully explored later in this study. An example of such resistance can be viewed in the following cartoon. In Figure 5.1, A Humorous Look at Identity, Disenrollment and Tribal Gaming,



FIGURE 1.2. Tribal “downsizing.” Adjustments to tribal enrollment requirements generate suspicion and criticism. (Source: Drawn by Richard MacPhie, a Minnesota Chippewa, who publishes his cartoons in *Indian Country Today* and in the *Minneapolis Star Tribune*. Printed in *Indian Country Today*.)

**FIGURE 5.1** A Humorous Look at Identity, Disenrollment and Tribal Gaming<sup>83</sup>

<sup>83</sup> Garrouette (2003, 23)

we see a cartoonist's illustration of the manipulation of identities. Garrouette states that, when it comes to current disenrollments, (as illustrated in the above cartoon), "Legal identities, being strictly documentary, are open to manipulation by corrupt interests. Sometimes those interests work from within the tribes themselves. The cartoon represents a "humorous scenario of "downsizing" carried out at the behest of an economy-minded tribal government. But accusations of illicit revocation of citizenship do occur in real life" (Garrouette 2003, 22).

This chapter has explored the complexities of identity construction and deconstruction in Native American communities, which in contemporary Indigenous societies often elicits internal and external disharmony, conflict and discord. The next chapter will explore what some argue contributes to contemporary tribal discord generated by a variety of eco-enterprises, most notably Class III gaming or Las Vegas style casino gambling.

## **Chapter 6**

### **Eco-Enterprise as the "New Buffalo": Class III Gaming and Other Economic Endeavors of the Pechanga Band of Luiseño Indians, the Cherokee and the Las Vegas Paiute**

In order to understand the underlying complexities of contemporary Native American tribal life, it is prudent to explore the economic transformations that are occurring in many Indian communities. Some of these changes reflect novel enterprises that have generated substantial wealth for tribal groups. Wealthy tribes, however, are still in the minority throughout Indigenous America. Though many are experiencing a renaissance partly due to successful legal challenges that have returned reservation lands to Indian nations, most Native American communities are struggling to develop viable economic enterprises to address depressed reservation economies and social, as well as physical infrastructures (Bodinger de Uriarte 2003, 549). Regarding the three groups that are highlighted in this research, one underlying commonality is that each group has amassed substantial wealth due to a profitable eco-enterprise (economic/ecological enterprise). This chapter will provide a brief overview of eco-enterprises in American Indian communities with a closer look at such endeavors in the Pechanga, Cherokee and Paiute Nations.

## Tradition of Gaming in Native American Communities

As we enter into the second decade of the 21<sup>st</sup> Century, and as has already been evident in this social exploration, historical practices continue to impact Native societies. Following this theme, it is germane to the background development of this study to consider, as historical tradition, the gaming practices in American Indian communities. Gaming has traditionally been a way for Indian societies to integrate social, psychological, economic and political energy into a communicative interaction that facilitates the smooth functioning of the group. Though many may believe that the current focus on Indian casinos is a contemporary evolution, gaming has substantial historical origins. "Gambling, in a variety of forms, has long been an important part of American Indian culture and tradition. One ancient game called "stick game" among northwest tribes has variations among most tribes and is still played at tribal gatherings. Horse and foot races were an important focus of traditional gambling activity. Today, gambling provides many tribes with revenue for essential governmental services... The Indian Gaming Regulatory Act (IGRA), passed by Congress in 1988, is the centerpiece of Indian gaming law today. Events leading to and following the passage of this act, as well as the act itself, constitute the body of Indian gaming law."<sup>84</sup>

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<sup>84</sup> The National American Indian Court Judges Association's The National Tribal Resource Justice Center. *Gaming Law*. Accessed 11/07/08 from: <http://www.ntjrc.org/legal/legallinks.asp?54>.

The significance of gaming in traditional Indian societies has been found to satisfy demands that address the multi-faceted needs of the community. Fenelon elicits this in an interview with a traditional women elder:

Fenelon: Are some traditionals against gambling?

Interviewee 7: I never heard that... When you go to Prairie Island... to their Casino Treasure Island, or to Prairie Knights (on Standing Rock), or the new casinos up around Fort Berthold, lots of elders will be there... but there was nothing against gambling or gaming in traditional societies.

Fenelon: What ideas about gaming do most traditionals express?

Interviewee 7: I still use gambling paraphernalia in some of my demonstrations of traditional life... The Dakota practiced “*hampa ape’ achunjpi*” for kind of gambling... These games could go on for three days and nights.

Fenelon: Were these games mostly for entertainment or leisure time?

Interviewee 7: Not at all... One could or would put pressure on somebody to cause them lose... Besides the handgame, there was a kind of a dice game, which used carved plum pits, sometimes elk, sometimes buffalo... People could bet a great deal on these... There were other purposes... they might want to “know” something, about the future for instance... and there were mystical aspects, ways of knowing that were mysterious, “*waken*.” These might be sponsored by a family with a sick person, hoping to benefit from it.<sup>85</sup>

The historical practices of gaming have been recognized in early encounters with Native groups highlighting the social camaraderie, skill and gamesmanship found to exist in Indian communities across North America. In *Indian Country Diaries*, it is stated that, “In the late 1800s, historian Andrew McFarland Davis went through records from the 1600s and 1700s of the early explorers and found accounts of games and gambling of Native Americans at the time of first contact. The games showed up in the accounts of tribes from Maine to Florida and from the Atlantic to the Pacific. Some were games of

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<sup>85</sup> Fenelon Interview with elder. Fenelon (2006, 383-384).

skill; some were games of pure chance. Almost, invariably, the games were accompanied by gambling with serious stakes at risk.”<sup>86</sup> Some Northern tribes, for example, played a game called “platter” or “dice” in which the dice “with two sides of different colors were tossed up into the air. If all the dice came down showing the same color the player generally won. There were various ways of scoring other combinations of dice. What was common in all the games was how much was at stake.”<sup>87</sup>

There is also a social-psychological aspect of gaming referred to as “sacred play” in which rituals and metaphors help establish a sense of control or order, which has been associated with humans since they began to interact with each other. Johan Huizinga, a historian of play in human culture, in his 1935 work *Homo Ludens* (Man the Player), “described gambling as an innate human urge that influenced the development of religion, law, the performing arts, and foreign policy” (Pasquaretta 2003, 115).

In contemporary society, the focus on games has remained a significant part of American Indian societies, particularly during festivals and other social events. They continue to be a way that Native groups link themselves to a larger social network. Some communities actively carry on these traditions, adapt them to modern form and include this spirit into their celebratory lives. “As in other areas, American Indians are actively carrying on long-standing traditions, creatively appropriating and adapting games from elsewhere, and participating fully... they engage as fans and players in the state’s athletic

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<sup>86</sup> “Traditional Indian Gaming” *Indian Country Diaries*. Accessed 02/15/09 from: <http://www.pbs.org/indiancountry/challenges/games.html>

<sup>87</sup> Ibid.



teams and participate in the same games, from dominoes and video games to company-picnic sack races, that are enjoyed by their non-Native neighbors.<sup>88</sup>

The cultural strength of Indian gaming was evident in the work of American ethnologist, Stewart Culin's *Games of the North American Indian*, which was published in 1903 by the Smithsonian's Bureau of American Ethnology. The book "included material on 229 different Native groups in North America and Mexico. It identified thirty-six different types of games, which Culin divided into two categories: games of skill and dexterity, and games of chance" (Pasquaretta 2003, 120). Culin also described the cultural aspects of gaming, that there were employed as rites to please the gods, to drive away sickness, bring on rain, increase fertilization and production of plants and animals (Ibid.)

As has been stated, gaming has ancient, multi-functional roots in Native America - serving to connect people to their traditions and histories, they were used as sacred rites, communal rituals and celebrations; games of chance were associated with rituals of play and storytelling. Games were also used as giveaways – a method of resource distribution to counter materialism (Ibid., 123). The following description of the Salishan stick game reflects the social aspect of traditional Indian gaming:

*In the evening, people made large bonfires in the open air and challenged other tribes to play stick games. Lively songs were sung by both sides, and each team tried to distract the other while it was trying to hide the two bones. The object of the game was for the other side to guess which hand had a particular bone. Each side had a long pole stretched across in front and pounded*

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<sup>88</sup> Games, American Indian. Accessed 02/15/09 from:  
<http://digital.library.okstate.edu/encyclopedia/entries/G/GA006.html>

*On it with a short stick, keeping time with the songs. Bets of robes Blankets, coins and so forth were piled in the middle. Anyone Could bet on a team, even women. Women also had their betting Games, which could last for hours or several days. All bets had to be absolutely matched. Anyone who wanted to make a bet had to match it against one for the other side. After the game, a winner got back double on the bet... All gambling required good sports-manship. It was shameful for a poor loser to grieve. They would get no sympathy.”<sup>89</sup>*

Another example of the ritual of gaming is the Sacred Bowl Game of the Haudenosaunee people; it is a celebratory rite of thanks and rebirth of the mid winter passage and the beginning of another cycle of nature.

“Also known as the Peach Stone Game, Gus-ka-eh is played with a wooden or cane bowl and flat stones, fruit pits, nut shells, or some other flat, two-sided object. Players take turns shaking the bowl and betting on the probability of different showings of the pieces. Each bowl shaker has a set number of bean or corn seeds, a portion of which is staked on each round of the game. The winning player is the one who collects all the beans or kernels. When played during the four-day Mid-winter, the game is said to amuse the life-giving forces, please the plant and animal kingdoms, and to make the Creator laugh” (Pasquaretta 2003, 121)

The tradition of gaming in Native American communities is strong and served a viable and vital cultural, social and economic function. In contemporary Indian nations, the adaptation of European gambling has created an interesting and sometimes contentious debate within Indian and non-Native communities, as well.

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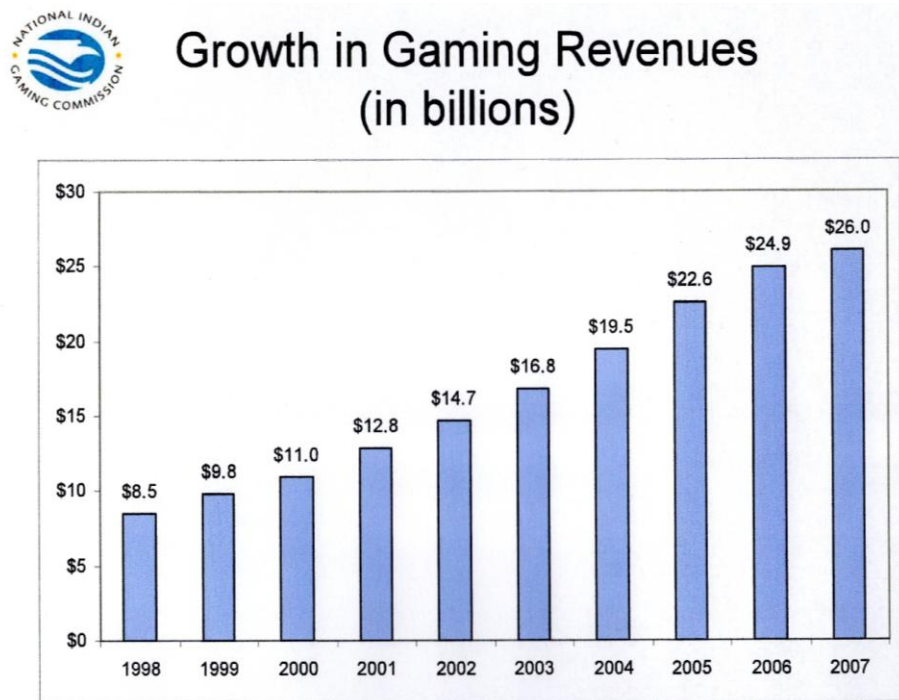
<sup>89</sup> In Pasquaretta’s chapter, “On the Indianness of Bingo”, he includes this passage from Mourning Dove’s description of the Salishan stick game (2003, 122-123).

## Gaming and Other Eco-Enterprises in Contemporary Native America

In contemporary Native America, the focus on economic self-sufficiency is closely tied to the theory and practice of political sovereignty. In other words, most Native communities believe that the manner in which they solicit income and wealth is solely the prerogative of any given Indigenous society and, as such, is private and outside the realm of non-Indian, public domain. Thus, it is argued that any external views are just that – external and irrelevant to the “domestic” functioning of the sovereign Native nation. Accordingly, concerns about gaming (particularly) have elicited substantial reactions from within American Indian communities and, as well, from those external to these Indigenous societies. This fact contributes to the complexity of gaming as a contemporary expression of economic sovereignty and power. To contribute to the understanding of the dynamics of these economic enterprises, it is noteworthy to discuss that tribal communities typically adhere to revenue-sharing agreements with the states in which they operate. Some see state revenue-sharing as states wielding authority at the expense of native groups; others see it as a cooperative arrangement between Indigenous people and the greater community. Some argue that, “Revenue-sharing agreements may be right for some tribes, but not for others” (Light, Rand and Meister 2004, 659). Revenue-sharing, though not a focus of this study, does add to the understanding of the dynamics of casino and other enterprise-generated wealth as it impacts the Native Indian community and the external non-Indian community, as well.

As economic opportunities in Indian Country are discussed, it is imperative to look at gaming, in particular, as reflective of substantial economic power. In 2007, for

**TABLE 6.1** Growth in Native American Gaming Revenues from 1998-2007<sup>90</sup>



example, according to the National Indian Gaming Commission, a trade organization, Indian gaming grossed \$26 billion<sup>91</sup> in revenues (see Table 6.1); one can see the steady

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<sup>90</sup> Ibid.

<sup>91</sup> See the National Indian Gaming Commission; Accessed 04/26, 2004 from:  
<http://www.nigc.gov/Portals/0/NIGC%20Uploads/Tribal%20Data/growth1998to2007.pdf>

and progressive growth in gaming revenue which, over the last ten years, has almost tripled. In the next section, I will briefly address gaming and other economic enterprises in the three groups that are the subject of this study, but will first discuss the legislation that provided the foundation for casino gaming in Indian country

### The Indian Gaming Regulatory Act (IGRA) and Other Relevant Legislation

The rights of Native America to engage in gaming activities have been assured by the Commerce Clause of the U.S. Constitution and was upheld in 1988 by the U.S. Supreme Court (See Appendix B). In 1988, the case of *California v. The Cabazon Band of Mission Indians*, in which the state of California tried to block the Cabazon from operating a gaming enterprise, was heard before the U.S. Supreme Court. The Supreme Court ruled that both entities, the state of California and the Cabazon Indians, were separate sovereigns and thus affirmed the tribe's right to operate gaming enterprises. Following this ruling, in 1988, Congress passed the Indian Gaming Regulatory Act (IGRA) (See Appendix B).<sup>92</sup>

“Under IGRA, all gambling activities on the reservations are subject to each tribe's own gaming laws, ordinances, and commissions. Class II gambling (e.g., bingo and related games) and Class III gambling (including, e.g., slot machines and casino games) are both subject to the oversight of the federal National Indian Gaming Commission. And Class III gambling may be subject to state regulation and oversight

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<sup>92</sup> See pages iv and v: “A Policy Primer on American Indian Governments and Their Gaming Operations” in Taylor and Kalt.

depending on how these are specified and negotiated in intergovernmental tribal-state compacts.

Paralleling the decisions of many states to operate state lottery businesses in order to help fund state governmental activities, approximately 200 tribal governments are currently engaged in Class II (e.g., bingo) or Class III (e.g., full-scale casinos) gaming. As required by IGRA, revenues from tribal governmental gaming must be directed towards: funding tribal government operations and programs; providing for the general welfare of tribal citizens; promoting economic development; supporting charitable organizations; and funding operations for local, non-tribal government agencies.”<sup>93</sup>

Under IGRA, there are three classes of gaming that are important to understand:

The term "**class I gaming**" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

The term "**class II gaming**" means -the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) - which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and card games that - are explicitly authorized by the laws of the State, or are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. The term "**class II gaming**" does not include any banking card games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

The term "**class III gaming**" means all forms of gaming that are not class I gaming or class II gaming.<sup>94</sup>

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<sup>93</sup> Ibid.

<sup>94</sup> National Indian Gaming Commission. Indian Gaming Regulatory Act. Accessed 04/12/09 from: <http://www.nigc.gov/LawsRegulations/IndianGamingRegulatoryAct/tabid/605/Default.aspx>.

It is Class III gaming that is of most interest in this study as it applies to high-stakes casino gambling and has been the subject of sovereign rights and economic gain, yet also fear and dissension within certain Native communities. The complexity of this issue is widespread. “Rather, reservation gambling is an exercise of tribal sovereignty for the purposes of moneymaking. Because of its overtly capitalistic value, traditionalists fear that reservation gambling will foster materialism, acquisitiveness, and self-interest divested of the group. Along with eroding the core values on which Native society is founded, tribal gaming is a controversial political issue that has had the unfortunate effect of increasing tensions between Indian and non-Indian groups” (Pasquaretta 2003, 123). The following sections will provide a brief overview of the contemporary economic enterprises of each of the tribes that are the subject of this study.

#### Economic Enterprises of the Cherokee Nation

The Cherokee Nation possesses a substantial array of economic activities. The following “snapshots” presented as graphics (Figures 6.1-6.7) represent the most lucrative and significant businesses currently being operated by the Cherokee and detail some of the Cherokee holdings. Figure 6.1 below offers an overview of the Cherokee business operations.

### **About Cherokee Nation Enterprises**

Cherokee Nation Enterprises is the retail, gaming, entertainment, hospitality and cultural tourism entity of the Cherokee Nation. CNE operates casinos in Tulsa, Claremore, Roland, West Siloam Springs, Fort Gibson, Sallisaw and Tahlequah, as well as the Cherokee Travel Plaza, two Cherokee Outpost convenience stores, six retail tobacco shops, four gift shops, two golf courses and three hotels. The company is currently undergoing a \$150 million expansion at its flagship resort property in Tulsa which will now be branded as a Hard Rock Hotel & Casino, and a \$125 million expansion at Cherokee Casino West Siloam Springs.

For the past two years, CNE has been voted the number one company to work for in Oklahoma by Oklahoma magazine, a statewide publication. The company currently employs more than 3,200 people throughout northeastern Oklahoma and northwestern Arkansas.

CNE began operating in 1990 with the opening of the Roland Bingo Hall, later to be expanded into Cherokee Casino Roland. In 2007, CNE's total revenue reached \$418.6 million. CNE continues to grow, with 100 percent of the profit benefiting the Cherokee Nation through job creation and funding for vital government services, such as health, education, housing and community services.<sup>95</sup>

**FIGURE 6.1** Overview of Cherokee Enterprises

Figure 6.2 is an excerpt from a letter dated November 15<sup>th</sup> 2006 from the Cherokee Nation Principal Chief, Chad Smith to the National Indian Gaming Commission in Washington, DC protesting proposed changes to regulations regarding Class II gaming; it provides a glimpse of the Cherokee Nation's gaming facilities and economic reach.

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<sup>95</sup> <http://www.cherokee.org/NewsRoom/FullStory/2734/Page/Default.aspx>



The Cherokee Nation's gaming facilities, which employ over 3,000 people, the majority of which are tribal members or members of other tribes, have been able to produce revenues that allow the tribe to allocate resources in areas of the most need for our tribal members. The funds generated by Class II games— which are distributed in the form of services such as scholarships, roads, bridges, health care, and local governmental services, such as fire fighting, law enforcement, and EMS — would be significantly reduced, if not completely eliminated under the proposed rule. While no current Class II specific revenue data is available because electronic games revenues are now consolidated, Cherokee Nation Enterprises (CNE) reported in October 2004 (which is prior to the introduction of Class III games) a gross net profit of \$16 million for the month (net income was \$4.4 million). This number gives an idea as to how much revenue can potentially be erased. If the proposed rule stands, Cherokee Nation would have to scale back needed services, which would decelerate the progress we have made in the areas of self-governance, self-help and economic self-sufficiency for our tribal citizens.

Additionally, Cherokee Nation's gaming facilities provide economic opportunities for other non-tribal businesses located near or in our tribal gaming facilities. Changing the rules in the middle of operations, after so much time, energy and resources have been utilized in structuring business within the given framework is unfair, not only to Cherokee Nation and its business ventures, but to non-Indian businesses which rely on our success for theirs. In speaking of the businesses that exist within our gaming facilities, an estimated \$10 million is paid out to non-gaming vendors each month. At last review, the funds distributed by CNE in the form of payroll and vendor payments "rolls over" 4 times in the local economy making an estimated \$720 million impact on the local economy; this equates to approximately \$180 million per year. This does not include the additional funds generated for non-tribal business located near gaming facilities that rely on our success to produce the increased foot traffic that currently exists.

**FIGURE 6.2** Excerpt from Letter of Principal Chief Chad Smith to the National Indian Gaming Commission.<sup>96</sup>

#### COMPANY OVERVIEW

Cherokee Nation Enterprises, Inc. operates in the retail, gaming, entertainment, and hospitality sectors. It operates casinos, convenience stores, hotels, resorts, restaurants, retail tobacco shops, gift shops, and golf courses. The company also owns and operates a horse racetrack, as well as provides facilities for entertainment, tournaments, meetings, and promotions. In addition, it offers motor coach and group tours. Cherokee Nation Enterprises, Inc. provides products in various categories, such as baskets, prints, apparel, beadwork, books, videos, music, dream catchers, seal items, and pottery. The company is based in Catoosa, Oklahoma. Cherokee Nation Enterprises, Inc. operates as a subsidiary of The Cherokee Nation.

**FIGURE 6.3** Brief overview of the Cherokee Nation Enterprises from *Business Week*.<sup>97</sup>

<sup>96</sup> Excerpt from Cherokee Principal Chief Chad Smith's letter to National Indian Gaming Commission dated November 15, 2006. Accessed 04/04/09 from: [http://www.nigc.gov/Portals/0/NIGC%20Uploads/classiigmeclasfnstds/comtsrecdftrtribe\\_cherokeeanation.pdf](http://www.nigc.gov/Portals/0/NIGC%20Uploads/classiigmeclasfnstds/comtsrecdftrtribe_cherokeeanation.pdf)

<sup>97</sup> <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=4772220>

The **Cherokee Casino Resort Hotel** is decorated with beautiful historical and cultural styling from the Cherokee tribe and stunning art deco effects reminiscent of historic downtown Tulsa in the 1920s.

Inside you'll find 150 well-appointed rooms with spaces ranging from a standard or deluxe room to an exquisite honeymoon or chief suite. No matter what your taste or budget, you're sure to find a room to accommodate your needs. And with so many comforting amenities, you'll feel right at home.



**FIGURE 6.4** Cherokee Casino Resort Hotel in Tulsa, Oklahoma<sup>98</sup>

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<sup>98</sup> <http://www.cherokeecasino.com/Hotels/Tulsa/CherokeeCasinoResortHotel/tabid/66/Default.aspx>



### *Will Rogers Downs*

Just 20 minutes from downtown Tulsa, you can experience the thrill of Oklahoma's #1 racino

**Cherokee Casino Will Rogers Downs** offers all the exciting casino gaming action you could want and a whole lot more! Experience the thrill of live horse racing with trackside excitement from February to May and hot simulcast racing action from around the country every day. The new casino and entertainment complex, open seven days a week, features exciting Las Vegas style electronic games and video poker. If you love great food, fabulous entertainment and dancing, then northeast Oklahoma's newest nightspot, Dog Iron Saloon is the place to be.

**FIGURE 6.5** Cherokee Casino Will Rogers Downs Racetrack<sup>99</sup>

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<sup>99</sup> <http://www.cherokeecasino.com/Golf/Tulsa/CherokeeHillsGolfClub/tabid/212/Default.aspx>



Designed by renowned golf architect Perry Maxwell in 1924, the course at **Cherokee Hills Golf Club** is rich in Oklahoma history. The course was recently redesigned by Tripp Davis and has proven to be one of the most beautiful and challenging courses in the state.

Four teeing areas beckon golfers of all skill levels to traverse tree-lined fairways, dramatic elevation changes, demanding bent grass greens, natural rock outcroppings and babbling brooks.

**FIGURE 6.6** Cherokee Hills Golf Club<sup>100</sup>

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<sup>100</sup> Ibid.

The above provides an overview of the substantial economic enterprises of the Cherokee Nation. The next section will explore the economic holdings of the Pechanga Band of Luiseño Indians.

#### Economic Enterprises of The Pechanga Band of Luiseño Indians

The Pechanga have extensive business enterprises which are outlined in the following table graphics. Figure 6.7 is an overview of the Pechanga's economic plan and provides a glimpse at how business enterprises benefit the community.

The following Figures 6.7 - 6.10 illustrate and describe some of the current holdings of the Pechanga, starting with an overview of their casino which is the largest in the state of California, followed by a look at the Pechanga Resort which opened to a AAA four-star rating in June, 2002. The Pechanga, since the mid-twentieth century, have sought outside revenue to strengthen economic development, such as selling sand, winery and holding swap meets which were unsuccessful endeavors. Their most successful endeavor to date has been gaming. As alluded to previously, games of chance are not new to Native Americans, two games played by the Pechanga, *tepanish* and *chehut* were described in a report from the Bureau of Ethnology in 1908 (Spilde 2004, 11). "The casino-style gambling that takes place today on the Pechanga Reservation, of course, bears little stylistic resemblance to the traditional games historically played by the Luiseño people, but the concept of gambling is culturally congruent for Luiseño" (Ibid.).

### **Pechanga Development Corporation**

The tribe's enterprises are viewed as a means to create jobs, and achieve long-term economic development.

### **Modern Tribal Economic Development**

Indian gaming has proven itself as one of the most successful business enterprises for tribes across the country, bringing funds for education, infrastructure development and economic diversification that for a variety of reasons were sorely lacking in the past.

The Pechanga people have always valued tribal self-sufficiency and economic self-determination. In the early nineties, the Pechanga Band deliberated long and hard before entering into gaming. Pechanga's thoughtful management of its gaming enterprises has resulted in revenues that have allowed it to partner in projects with neighboring, non-native communities while improving life on our reservation.

Two of Pechanga Tribal government's primary responsibilities are to provide soundly managed economic development opportunities to its people and to plan effective strategies that provide sources of needed revenues for government services and programs. In the summer of 1999 the Pechanga Development Corporation unveiled a five-year master plan calling for the construction of the permanent casino, hotel, meeting and convention center, 18-hole championship golf course, 170-space recreational vehicle resort (opened on March 1, 2000), and a new maintenance-administration building. Together, these facilities complement Temecula and Murrietta tourist attractions, helping develop southwest Riverside County as a major regional visitor destination. The Pechanga Development Corporation ensures wise management and skillful administration.

Prior to the implementation in 1998 of the master plan construction, the Pechanga gas station, mini-mart, walk-in/ drive-through fast food restaurant and automated car wash were built. As with prior development, master plan construction includes park-like landscaping, open spaces to enhance the environment and aesthetic transitions and buffer zones between neighboring housing developments.

### **Positive Impacts on the Community at Large**

Our neighbors have benefited from the Pechanga Development Corporation's skillful planning and implementation of projects. In 1998 Pechanga built a 2,000-foot-long wall, designed in cooperation with the City of Temecula, providing a buffer between reservation enterprises and neighboring residential areas. The wall included park-like landscaping. To improve vehicular traffic flow, construction was completed on the new \$10 million bridge on the Pechanga Parkway, crossing the Temecula Creek. This was a joint project of the Pechanga Government and City of Temecula, as was additional routing and widening of a section of Pechanga Parkway, plus the installation of larger sewer lines. Additionally, a jointly funded project between the Pechanga Government and city government resulted in the installation of a new Pechanga Parkway signal light at one of the main entrance to the new Pechanga Resort & Casino.

Improving the tribe's own community's economic condition has resulted in significant infrastructure improvements, and additional economic and tourism-based opportunities for our neighboring communities, as well.

**FIGURE 6.7** Overview of the Pechanga Economic Development<sup>101</sup>

<sup>101</sup>From the Pechanga Band of Luiseño Indians' website. Overview of the Pechanga Economic Development. Accessed 04/13/09 from: <http://www.pechanga-nsn.gov/page?pageId=39>.



## Pechanga Casino

**A vast 188,000 square foot gaming floor makes Pechanga California's biggest casino. A multitude of AAA 4-Diamond amenities and services make Pechanga California's best!**

Designed with player comfort in mind, the casino is equipped with a state-of-the-art air filtration system and offers extensive non-smoking areas. The casino's well-planned layout allows guests to move easily among 2000 state-of-the art slot and video machines and over 160 table games including Blackjack, 3-Card Poker, Pai Gow, Mini Baccarat, and Pechanga Craps. Those who enjoy high stakes wagering will appreciate the amenities and features of the elegantly appointed *High Limit Gaming Area* complete with an appealing lounge and exclusive cash cage. The separate 54-table Pechanga Poker Room is located on the second floor of the casino, easily accessible by escalator, elevator or stairs. Knowledgeable, courteous dealers and floor staff provide gaming action 24 hours a day, year-round.

Cocktail service is available to guests on the gaming floor and several bars, lounges and restaurants can be found close to the casino action including the aptly named Round Bar, centrally located and elevated at mezzanine level above the gaming floor providing a bird's eye view of the casino action. Dining options abound at Pechanga including quick service Mexican, Italian, Asian and American food court choices available at the Temptations Food Walk situated just off the casino floor.

**FIGURE 6.8** The Pechanga Casino<sup>102</sup>

<sup>102</sup>From the Pechanga Band of Luiseño Indians' website. Pechanga Resort and Casino. Accessed 04/13/09 from: <http://www.pechanga.com/casino/>.

## Pechanga Resort



Designed in a style reminiscent of Frank Lloyd Wright, the architecture of Pechanga Resort & Casino reflects a casual elegance embracing nature and infused with Native American art and culture. Earning the AAA Four Diamond rating award annually since opening in 2002, Pechanga's status as a recipient of that coveted award evidenced throughout in amenities and service.

A striking porte cochere entry flanked by two water features greets arriving hotel guests who are welcomed into an inviting lobby highlighted by a massive true-to-life oak tree and granite water feature. Met by attentive Front Desk Registration Attendants, guests can observe original art and photographs depicting the culture and history of the Pechanga Band of Luiseño Indians that accent the lobby area. Other the public rooms and hallways are similarly completed by original paintings, baskets and art.

Pechanga hotel guests will find Four Diamond comfort and amenities in each of its 522 spacious guest rooms and suites, including 24-hour room service. Each oversized deluxe room is unique with floor to ceiling windows and an impressive master bath. One bedroom suites offer sitting rooms with a wet bar, separate sleeping quarters and a one-and-a-half bath. Jacuzzi Suites combine the comfort of a deluxe room with an additional cozy sitting room and a full Jacuzzi tub for two. Hotel guests have complimentary use of the fully equipped health club, seasonal pool and sundeck with private cabanas, and a knowledgeable concierge service. Massage therapy is available by appointment at the spa located on the third floor adjacent to the pool and health club.



**FIGURE 6.9** Pechanga Resort<sup>103</sup>

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<sup>103</sup> Ibid.





## Welcome to **Journey!**

Nestled in the scenic Temecula, California wine country, an impressive, world class golf course beckons – *Journey at Pechanga*. Destined to be one of California's finest, *Journey* unwinds gracefully along a spectacular boulder strewn mountain with over 7 miles of cart paths and will boast a dramatic 62,000 square foot Clubhouse with high-end resort amenities.

*Journey* offers an ideal golfing experience for all skill levels. The course is challenging but playable with a choice of five tee boxes. *Journey* winds its way across the Pechanga River over impressive, rustic wooden bridges and takes full advantage of the simply awe-inspiring terrain which rises and falls some 300 feet - often with majestic views of the Temecula Valley. As the name implies, this golf course presents an exhilarating "journey" that is sure to create an unforgettable and lasting memory for every golf enthusiast who sets foot on the course.

**FIGURE 6.10** Pechanga Journey Golf Course<sup>104</sup>

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<sup>104</sup> Ibid..Pechanga Golf Course. Accessed 04/13/09 from: <http://www.journeyatpechanga.com/index.asp>

## Economic Enterprises of The Las Vegas Paiute

The business holdings of the Las Vegas Paiute differ slightly, yet are also similar to the Cherokee and the Pechanga. As of this writing, the Las Vegas Paiute do not

### Las Vegas Paiute Smoke Shop



### Las Vegas Paiute Golf Course



### Las Vegas Paiute Golf Resort



**FIGURE 6.11** Economic Enterprises of The Las Vegas Paiute<sup>105</sup>

<sup>105</sup> Figure 6.12 illustrations are from the Las Vegas Paiute website:

### Las Vegas Paiute Golf Resort Continued



**FIGURE 6.12** Economic Enterprises of The Las Vegas Paiute Continued

have a gaming enterprise, their wealth is generated from a golf resort and smoke shops, see Figures 6.11-6.12.

### Economic Need and the Impact of Wealth Acquisition in the Cherokee, Pechanga and Paiute Communities

As seen in the previous section, each of the subject groups has engaged in successful business enterprises, which it is important to note, is not reflective of the economic development of most Indigenous American communities. In exploring the nature of the economic development in the three subject communities, a general comparison (see Figure 6.13) illustrates that they all three have profited from golf resorts,



**Economic Comparison of the Major Enterprises of the Cherokee Nation, the Pechanga Band of Luiseno Indians and the Las Vegas Paiute**

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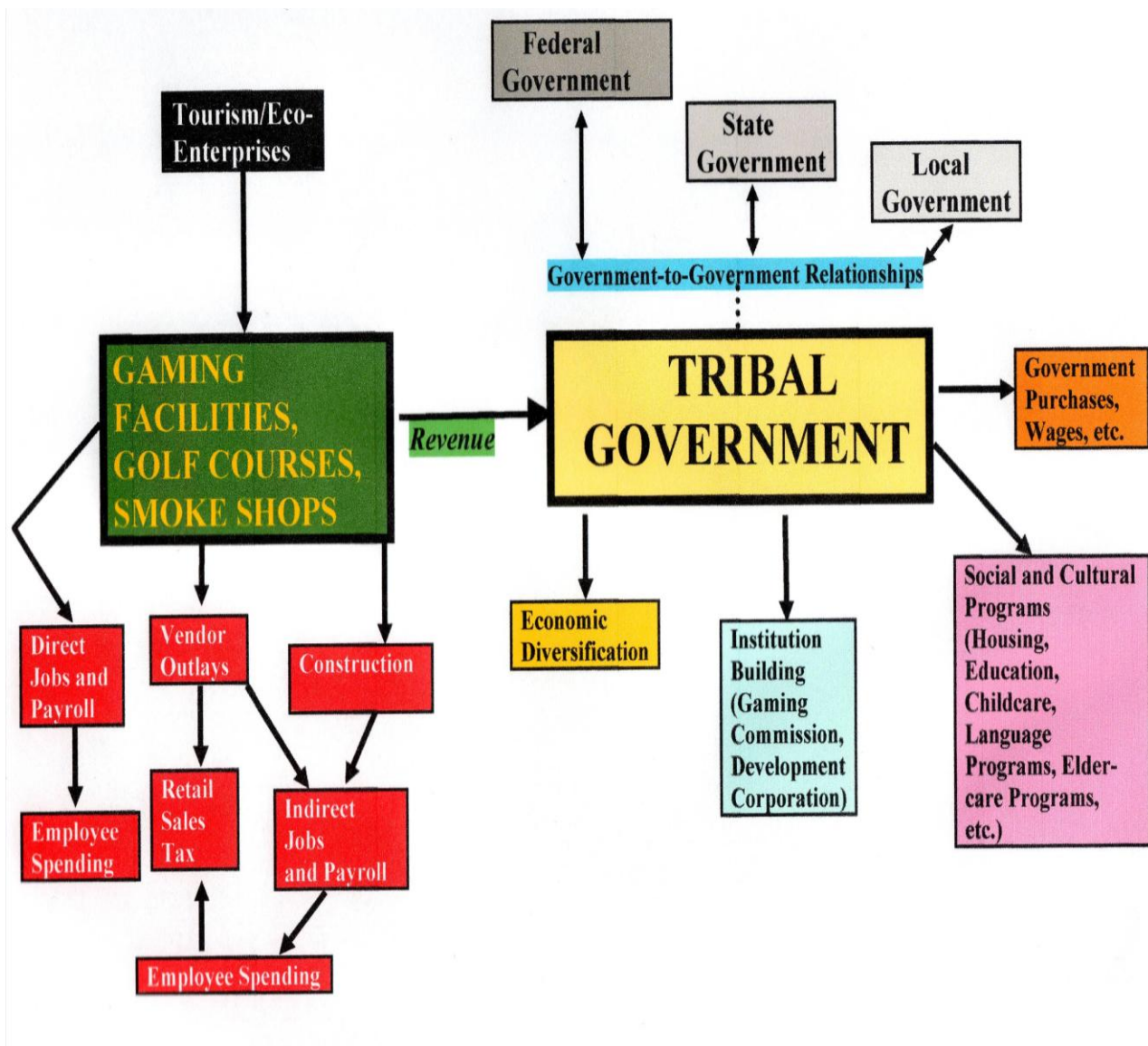
**FIGURE 6.13** Comparison of Major Economic Enterprises of the Cherokee, Pechanga and Paiute

only two, the Cherokee and the Pechanga also have gaming facilities. Only the Las Vegas Paiute have smoke shops as an additional major business undertaking. As this discussion unfolds, it is crucial to keep in mind that though gaming may be one of the

hottest and most talked about economic opportunities in Native Country, the implications of this study actually relate to Indigenous wealth-generation in any form – whether it be Class III casino gaming, golf resorts, smoke shops, etc.

As Native American communities are also considered sovereign nations, it is incumbent upon tribal authorities to provide social services to their citizens. Each group utilizes their revenues to improve the lives of their citizens as they also engage in nation and institution building. Each group, for example, is committed to developing programs that focus on developing strong institutions to help build effective self-governance.

Each community also has certain development projects to strengthen social, cultural and economic corporate institutions. This includes revenue sharing with the surrounding local non-Indian community, local community reinvestment activities, active political participation, extensive legal representation to oversee tribal and business endeavors, etc. The three tribes have, for example, used their revenue from corporate endeavors to take on projects such as, building medical clinics, language revitalization programs, scholarships, programs for the elderly, community development home construction, engineering and sanitation, maintenance of infrastructure - see Figure 6.14.



**FIGURE 6.14** Economic Enterprises Inputs and Subsequent Tribal Outputs - is adapted from one developed by the Harvard Project on American Indian Economic Development – with my addition of Eco-Enterprises, Smoke Shops and Golf Courses as tribal revenue (See Spilde 2004, “The Politics of Indian Gaming in the United States”).

Figure 6.14 illustrates an overview of the output of tribal economic enterprises, the subsequent input into tribal governments and shows how wealth is utilized to benefit their internal citizenry; in addition, it shows that tribal governments, as sovereign nations, must also maintain nation to nation relationships with the U.S. government as well as state and local authorities.<sup>106</sup>

As tribal communities increasingly turn to various economic endeavors, such as gaming, it is important for the focus of this study to address the point that it is an endeavor in complexity at various levels of Indian society. It has been noted that recently there has been much growth in Indian communities as tribal corporate entities emerge. “Fortunately, tribal economic development has been progressing pleasantly well as a fairly substantial number of tribes operating corporate business ventures have recognized marginal profits. In recent years, the success of the tribal gaming industry has helped a number of smaller tribes recognize marginal profits. However, for most tribes, these corporate business ventures’ profits, whether they be in the gaming or non-gaming industry are *marginal*” (Annson and Oravetz 2006, 441). This trend has also been noted by Clarkson who discusses Indian Country as American’s domestic emerging market which can be correlated with similar discussions of emerging markets worldwide since many Native American economies are on par with those in the Third World. Clarkson states that gaming often generates only a marginal revenue for most tribes adopting this form of economic enterprise, and that the majority of the 500 federally recognized tribal

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<sup>106</sup> Figure 6.16 is adapted from one developed by the Harvard Project on American Indian Economic Development – with my addition of Eco-Enterprises, Smoke Shops and Golf Courses as tribal revenue. (See Spilde 2004, “The Politics of Indian Gaming in the United States”).



communities do not have gaming as a business venture and only a handful (like the Cherokee and the Pechanga who are the subject of this study) receive generous revenues (Clarkson 2008, 2). The author goes on to state that the benefits of these revenues are not distributed evenly across Indian nations; some casinos are built far from population centers which often results in the failure of the business to thrive (Ibid). “The unemployment rate in Indian Country, for example, hovers around 50 percent for those who live on reservations, nearly ten times that for the nation as a whole. Almost one third of American Indians live in poverty”, where there is often nearly 50% unemployment, low per capital income and low educational achievement (Ibid.).

Whereas the Indian Nations that are the focus of this study, for the most part, have met with substantial economic success, it is imperative to remember a harsh reality that reflects a much different picture for most Indigenous peoples in this country. Many tribes continue to struggle to maintain adequate plumbing, have roads that are passable, access to electricity and basic infrastructure that are up to 21<sup>st</sup> Century standards. An example of the dire conditions that still impact most Indian communities: 20% lack the facilities for complete plumbing as compared to 1% of the general U.S. population (Clarkson 2008, 8-9).

I have attempted to provide a snapshot of the contemporary economic state of Native America in general and the three subject tribes in particular. To be accurate, however, it is crucial to this study to view the economic sector in these Indian communities as only one component of the struggle to integrate wealth, cultural identity, and sovereignty. There exist ongoing complexities of balancing the traditional with the



contemporary, negotiating the ways of being an Indian and the accompanying cultural implications with non-Indian standards of successful living. As discussed by Mezey, looking at Indian gaming through a cultural paradigm prism, she highlights the competing interests of nonmaterialism that reflect Native traditions and economic enterprises that are successful and generate substantial revenues, “Gaming, with its concomitant postmodern consumerism, forces tribes that seek to engage in it to assess the commensurability of wealth, cultural identity, and sovereignty. In doing so, gaming complicates the distinction between the material and nonmaterial” (Mezey 1996, 713).

The author goes on to discuss how gaming can be considered a distributive mechanism that also must include discussions of identity and sovereignty, “Cultural identity and sovereignty are essential to the discussion of Indian gaming as a distributive mechanism... I take sovereignty and cultural identity to be nonmaterial distributive goods in that they are as much about unquantifiable social institutions and relationships as about quantifiable utility. Although distributive justice is traditionally concerned with easily quantifiable material goods such as wealth and jobs, unquantifiable nonmaterial goods, such as rights, are also subject to distribution.” (Ibid., 716).

To illustrate a significant point about the fluidity of identity in the maelstrom of postmodern integration of wealth generation, culture and identity, Mezey uses the example of the Pequot Indians who currently have one of the most successful gaming operations in this country (Foxwoods), but whose authenticity and manner in which

federal recognition was obtained, is questioned by many outsiders.<sup>107</sup> Mezey, in discussing the Pequot Nation, for example, and the perception to outsiders that they are inauthentic, makes another important point that needs to be considered, “Yet regardless of its origin, any charge of inauthenticity rests on the assumption that something like a pure Indian exists from which degrees of Indianness can be measured. Under a postmodern cultural model, however, authenticity [read also legitimacy – *brackets mine*] is an empty term since it needs a normative standard to be meaningful; at most authenticity is a label that adds value to the cultural commodity. In fact, the Pequots, with a rather postmodern élan, seem to abandon claims to authenticity. They appreciate that culture is a commodity” (Ibid., 726). In other words, the state of existing and belonging as an Indian can be “authenticated/legitimized” if there is sufficient cultural acceptance; one could also add that having the economic power to support such claims is also beneficial. For the purposes of the project at hand, this observation is a significant one that speaks to the competing views of economic status, belonging, and identity that will be more fully explored when individual narratives are analyzed in the next chapter.

As this chapter addresses the impact of economic endeavors across Native America in general and within the three identified groups, in particular, it is responsible to explore such within the perspective of not only the positive outcomes of enterprises such as Class III gaming facilities (casinos), but the phenomenon must also be explored in terms of the political realities of intratribal tension. These tensions can be reflected

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<sup>107</sup> For a fascinating perspective on the rise of the Pequot Nation as a wealthy gaming tribe, see *Without Reservation* (2000) by Jeff Benedict.

within the group in many ways, for example, sometimes there is ingroup categorization – and discord as political divisions crystallize into “traditionals” versus “progressives” (the former wanting tradition and custom to take precedent in the community and the latter wanting to integrate a more contemporary view of being Indian). This brings us to the salient perspective in this study – how do such economic endeavors elicit conflict and contention within Native societies?

An example of such contention can be observed by looking at the occurrences of political occupation (the physical occupation of a space and refusal to willingly move unless and until certain objectives are met) that occur within certain Indian communities. Wetzel provides an interesting view of this notion by providing examples of tribal communities with gaming and looks at how dissent is manifested within those Nations (from 1973-2002, 43 symbolic to actual occupations occurred); he states that since the passage of the Indian Gaming Regulatory Act in 1988, there have been a resurgence of occupations – claiming that nearly half of the occupations since 1988 have been related to gaming or gaming-related issues (Wetzel 2006, 286). He raises the question, “*Who is, and is not, a member of the community eligible to share in the benefits anticipated to be accrued through gaming?*” (Italics – Wetzel’s). This is a question that tribes engaged in gaming are challenged with answering as they deal with the reality that some will seek to “leverage their genealogies for economic ends” and the “increased membership applications and assertions of tribal rights” that are likely to occur (Ibid. 291). Even more critical, and as is the subject of this study, is the manner in which “internal disputes about gaming drive some tribes to revisit their membership rolls”; this is further

exacerbated by the perceptual differences of being “traditional” or not and the meaning behind such. Additional challenges that beg to be addressed center around the reconciliation of sovereignty and questions such as, “When, how and why do tribal nations adopt either inclusive or exclusive standards for tribal membership? In what ways does gaming shape and reshape these practices?” (Wetzel 2006, 291).

As this study proceeds, it is important to carefully address these tensions and to adhere to, as Cattelino states, the “need to analyze gaming narratives [and I would add those of other economic endeavors] in Indian communities as complex social discourses” that are akin to a single-generation transformation – that is, a leap out of poverty and into prosperity, similar to other single-commodity nation-states, such as oil states (Catellino 2005, 192). The next chapter on the methodology employed in this study will further discuss this view as narratology as meaning-making is employed.

## **Chapter 7**

### **Modes of Inquiry (Research Methodology)**

#### Overview and Introduction

Before beginning a discussion on the project at hand, it is prudent to include an initial explanation of qualitative inquiry as reflective of social validity that forms the rationale for this particular research methodology. Tilly (2005) discusses a colleague whose theses challenge the social sciences for taking the hard sciences, specifically physics, as their model. “Symbolic or cultural processes take place primarily in people’s minds. Instead of being unconscious subdisciplines of biology, the social sciences should be sciences of culture and the mind... Quantification and mathematical modeling, applied to the study of social “structures” tended to treat them as if they evolved mechanically. Mental reality, in turn – i.e., the meaning that people assign to their actions- was postulated to be a mere reflection of these structural processes, and therefore was grossly under-researched... The problems of this paradigm are seen in the failure of social-scientific predictions and the inability of social science to provide useful solution to social problems” (p. 3). Thus, this current social inquiry involves the study of perceptions, beliefs, attitudes and actions based on them. It reflects a social constructionist framework in which meaning is created and interpreted from the identified experiences mirrored in the narrative process. It reflects a grounded research

theory approach in that it looks at the way in which language (particularly metaphors) are used to describe and make sense of these experiences. These descriptions are organized and then categorized into a conceptual framework (*conceptual ordering*) to facilitate the development of theory (Strauss and Corbin 1998, 20).

This research project explores cultures that are simultaneously contemporary and traditional, Western and non-Western, impacted by the destinies of their futures as much as shaped by the legacies of their pasts. To honor such cultures is to inculcate their manner of meaning-making in as much of an undertaking such as this, as is realistic to employ. Accordingly, paying homage to the American Indian tradition of oral transmission of legend, origin, spirituality, social frameworks, etc., I chose a mode of inquiry that reflects the supremacy of the *narrative* in Indigenous communities, where storytelling served and in some cases, still is, a multi-functionality through which occurs the transmission of normative values, ideas, culture and traditions. Using 21<sup>st</sup> Century Indigenous narratives, I develop a means of exploration and inquiry that captures internal divisions and also reflects the pain of being stripped of one's identity through tribal expulsion and outcasting. I employ an *explicative* process of the social fragmentation that occurs when decision-makers in the three subject groups, decide to outcast and strip individuals of their tribal citizenship, in effect making each impacted member, *persona non grata*. In so doing, I utilize a grounded theory approach to reveal patterns of connections and relationships among the narratives.

The hypothesis for this study is that the process of disenrollment and expulsion from Native American communities, even though the lack of identity legitimacy *appears*

to be the causative issue, is most likely to occur when substantial wealth is generated by the tribe. A multiplicity of factors further impacts this process which reflects the complexities inherent in ingroup relationships. In order to verify this hypothesis, this project is undertaken within the framework of a multi-modal constructivist research methodology.

The primary methodologies employed in this project are comparative and narrative analyses using an approach of grounded research. This study explores the differences and similarities among these three Indian nations, their stories about the process of forcible identity transformation, the resulting conflict behavior and, where applicable, actions leading to resolution.

### Sampling

Three cases comprise the primary sources of information, the Pechanga Band of Luiseño Indians, the Las Vegas Paiute and the Cherokee community, all of whom have fairly recently acquired substantial wealth due to economic enterprises - the Pechanga due to Class III casino gaming and golf resorts, the Las Vegas Paiute due to successful smoke shops and golf resorts, and the Cherokee, casino gaming, resorts and other enterprises. Each of these tribes has also been engaged in contentious disenrollment actions. Each group has experienced strong opposition to the ousting of members to the point of legal intervention, some of the members of the Las Vegas Paiute who were cast out, however, were reinstated into the tribe, whereas most of the Pechanga still remain disenfranchised; the Cherokee Freedmen are in continuous legal battle.

One of the explanatory methods employed utilizes a comparative mode of inquiry through which I ascertain the similarities and differences in the process of disenrollment and its impact among the Pechanga, the Paiute and the Cherokee. In looking at the commonalities of the three, for example, I determine patterns of behavior that may have implications for studying clashes of identity and economic development in other Indigenous communities around the globe. In employing comparative analysis, I focus on looking at how the three groups were similar and dissimilar in terms of histories, contemporary enrollment criteria, disenrollment processes, economic wealth, litigious actions, etc. I hope to implement a process of categorization that would make it easier to explain what was happening in each group and to ascertain patterns of behavior, actions and contention.

#### Procedures of Research

Data are from a variety of sources, but predominantly from testimonials given at Congressional hearings, print, video and other electronic sources; narratives (See sample narrative in Appendix E) and data are also from primary resources and from a few direct interviews. Passages of commentary and story are interpreted for embedded meaning through the identification of recurrent symbolic themes and metaphors as they relate to identity transformation, economic gain, group acceptance or rejection and the accompanying intragroup contention, as well as suggestions for reconciliation and healing.



## Structure of Research Project

The following provides a summary of the structure of this research project:

- I.** This is a multi modal (three case) embedded design with analysis occurring on the subunit and holistic levels - studying individuals as well as their relationship(s) with those within the community and their views about the group as a holistic entity.
- II.** Data Collection Procedures
  - Statements on tribal disenrollment given at Congressional Hearings were recorded, transcribed, and analyzed.
  - Interviews (See Appendix A for interview questions) and commentary from print, video and electronic media as well as from primary sources comprise the working data. Data from those who were disenrolled/outcast as well as those who are tribal leaders and decision-makers also compose sources of information.
  - Data include written reports, print interviews, oral commentaries, historical documents, letters, other primary research instruments and artifacts to ascertain the narrative of identity transformation or alteration.
- III.** Analyses

- A.** Analysis of relevant narratives

Given that this study focuses on Native American cultural interactions, in a constructivist tradition it is imperative to address such in the contextual milieu that is representative of Indigenous ways of knowing by incorporating, whenever possible, a Native epistemological framework. Such is fundamental to communicating Indigenous meaning making. In so doing, one of the research methodologies adopted in this study that reflects this perspective is the praxis of narratology; it is through narratives, therefore, that I explore the impact of ostracism, expulsion and disenrollment.

According to Scanlon, Crowe and Weenie (2004, 33), "Narrative research-  
"research as story" is, in many aspects, the most appropriate to Indigenous  
epistemology". These authors go on to say that, "Indigenous research methodologies  
often use personal narratives to validate the experiences and knowledge of Indigenous  
understandings" (Ibid. 35). An analysis of perspective, including a temporal framework  
(past, present, future; linear or circuitous) is crucial to ascertain identifiable patterns  
associated with others who have been disenrolled. From the analysis of these patterns  
and other symbolic or metaphorical constructs, a hypothesis emerges from which to  
develop an explanation of the impact on identity and its transformation and also  
information from which to possibly develop successful interventions.

As explained by Castellano (2000, 27), Indigenous oral traditions are transmitted  
in a relational context, embracing the intellectual as well as the emotional aspects of the  
relationship. She states that, "Aboriginal knowledge is said to be personal, oral,  
experiential, holistic and conveyed in narrative or metaphorical language." (Ibid. 25). In  
exploring the focus of this study and the dynamics of member expulsion as contrary to  
traditional Native teachings, Indigenous counternarratives (Cornell 2000, 111) in which a  
rewriting of the narrative occurs with new meaning and content is also explored.

Narrative analysis as the primary method of discovery employed in this study,  
focuses on the constructs of language as illustrated in the "...power of riddles and  
charms, of metaphor and magic, of reading and listening" as reflected in the essence of  
aboriginal styles of communication (Chamberlin 2000, 124). That is to say, the  
metaphorical and semiotic nature of the narratives obtained in this project are

contextually analyzed and examined in an interpretive manner. The importance of story in understanding Indigenous community is explained by Chamberlin discussing the significance of, "The stories we tell: stories of origin and purpose of things, of causes and effects and consequences of events, of what holds us together and keeps us apart...using our intelligence and imagination to create an understanding of ourselves, individually and collectively, as human beings" (Ibid. 131). Accordingly, particular emphasis is on identifiable metaphors found in the data. According to Lakoff and Johnson (1980), metaphors are pervasive, not only in our language, but in our thoughts and actions as well, they provide the means through which we operate conceptually. This seems particularly relevant, as discussed above by Chamberlin, when exploring aboriginal styles of communication.

This method includes eliciting personal narratives of *life stories* as reflected in the interviewee's narrative perspective. (See sample interview questions in Appendix A.) Through employing such methods, the nuances of identity transformation resulting from disenrollment, surface. It has been said that "adults create their identities mainly through the psychosocial construction of life stories" (Polya, et. al. 2005). This process is particularly instrumental in this study because of the attempts to transform the identities of the disenrolled. Polya et. al. (2005) state that the "subtle shifts in narrative perspective can be highly informative to an audience, because they can signal the narrator's acceptance of, and emotional response to, the identity categories described in their life stories" (Ibid). The narratives obtained are categorized at different levels of abstraction,

i.e. the individual, the group and the entire sphere of Native Americans who have been disenrolled.

To enhance the analysis of narrative in this study, I specifically look at the usage of metaphor. The significance of the symbolism behind language has been referred to as a fundamental epistemology of Native thought. “Through metaphor, our understanding of things is acquired, defined, and organized in terms of our existing knowledge of things already retained in our minds as remembered images, symbols, stereotypes, and theories” (Peroff 1997, 488). The author goes on to say, “Indianness exists at the level of meaningful relations between parts of a living community and cannot be reduced to physics or chemistry which are sciences of matter. It is a symbolic construction rather than material construction.” (Ibid.)

#### B. Comparative Case Study

As previously discussed, this study compares narratives and other data from three Native American communities: the Pechanga Band of Luiseño Indians from Southern California, the Cherokee largely based in Oklahoma and the Las Vegas Paiute. The comparative data also include: historical factors (including impact of U.S. forced removal and relocation practices, U.S. civilizing policies, assimilation and marginalization, and the presence of internal discord); also, compared were: tribal constitutions’ enrollment norms; disenrollment actions (including legal actions); mobilization efforts to protest disenrollments; identity construction and deconstruction efforts; tribal membership criteria; tribal adoption practices; and tribal economic

enterprises. This study also focuses on the embedded and obvious ways in which the disenrolled in the three groups perceive attempts by tribal decision-makers to transform aspects of their individual identities. It must be noted that in addition to the comparative analysis of pertinent data, comparative explanations are provided throughout this project to illustrate shared histories, background information, economic status, etc.

It is salient to this research project to also emphasize that the process of identity comparisons focuses on construction of identity through blood quantum, through sacred history and ties to the land, lines of descent and social/cultural connections.

In the actual analysis of data, through comparison, the narratives take on an emphasis, an exclamation point, if you will, as they coincide or diverge which validates and adds richness to what had been said or written and provides heft to the explanations of actions.

#### C. Measures of reliability and validity

It is important to note that this study be judged within the qualitative research standards of reliability and validity. Issues of reproducibility, according to Strauss and Corbin (1998), arise when, "Given the same theoretical perspective of the original researcher, following the same general rules for data gathering and analysis and assuming a similar set of conditions, other researchers would be able to come up with either the same or very similar theoretical explanation..." (Ibid., 267). This explanatory power,

therefore, would have "predictive ability" (Ibid.). Thus, for qualitative research, the generalizability of such occurs, not only in terms of a broad general theory, but as it relates to the specific population studied (Ibid). In other words, for this research endeavor my goal is that any theory arising out of this study would be reproducible enough to reflect a reality specific to those Native Americans involved in disenrollment.

In terms of narrative analysis, Riessman discusses four ways to address validity (Riessman, 1993, 67)): persuasiveness - making sure the interpretation of what is being narrated is reasonable and convincing; correspondence - returning the work to the participants of the study to elicit validity and to affirm interpretations; coherence - three kinds: global (narrator's beliefs and goals), local (the structure of the narrative) and themal (recurrent themes that unify the text); and pragmatic use - the extent to which the current research can become basis for subsequent study by others. In undertaking this study, I employ those strategies that elicit validity and reliability in a manner that maintained the integrity of the narrative experience.

Triangulation is utilized to further establish the rigor of and corroborate this study. It involves not only interviews from which to conduct narrative analysis, but includes other forms of data: documents, visual and print media, including videos, e-data from blogs, etc., and theory triangulation, using multiple theories and perspectives. This process is significant so that independent measures will be in agreement with or will not contradict the findings (Miles and Huberman 1994, 266).

The next chapter provides a look at the assembled data, how they were categorized, the framework for analysis and the accompanying research results.

## **Chapter 8**

### **Research Results**

This chapter will present my research findings by first discussing an overview of the narrative data, then it will present that data in clusters derived from the topics composing the discourse. The first section will discuss the findings in general, the second part will look at the data disaggregated into relevant clusters. Finally the data as specifically relevant to the research hypothesis will be presented.

#### General Overview of Findings

This study revealed some anticipated and some unanticipated findings. My hypothesis for this project is that, even though the lack of identity legitimacy *appears* to be the causative issue for individuals to be disenfranchised and expelled from their communities, tribal disenrollments are most likely to occur when substantial wealth is generated by the tribe. From the interpretation of meaning derived from the subject narrative statements, the findings indicate that some of those who were ousted from their tribal groups feel that such actions were primarily due to economic factors. This was an anticipated result. Other anticipated results include, the pervasiveness of negative comments reflecting the social-psychological-emotional impact surrounding

disenrollment and the degree to which identity saliency remained firm and seemingly became more virulently embraced by those who had been expelled. Another anticipated result was the perception of abuse of power that also characterized many narratives. A result that was unanticipated, but is understandable, relates to the significant degree to which retrospective temporality or the prominence of history, as an over-arching gestalt, characterized the narratives. The ramifications of this and the other findings will be more fully explored in the Discussion chapter.

To obtain the data for this project, I obtained narratives from spoken statements written texts and interviewed a few of the disenrolled. The analysis of this data occurred from the deconstruction of those narratives mostly - from those ousted from the tribe - to reveal distinct patterns in phrases and statements; the resulting categorizations provide an explicative value, particularly from the perspective of the disenfranchised, into the process and impact of tribal disenrollment. Excising the most frequently occurring phrases and statements and placing them in appropriate categories and clusters, reveal the results as mentioned. Then an interpretive analysis that focused on Native meaning-making was employed using the categories that were most pronounced – this was derived from the narratives themselves and the recurring themes that arose within them. The identified themes occurred in each of the three groups studied.

As discussed in the methodology chapter, the narrative data were derived from relevant statements and phrases originating from a variety of sources. The data were then placed in preliminary categories according to frequency of occurrence; they reflect the following five (5) major themes as shown in Figure 8.1 References to Identity,



References to Sovereignty and Power, References to Temporality, References to Emotional States of Being, and References Using Metaphorical Framing. Each of these five major themes was further deconstructed into areas of greater specificity as depicted in Figures 8.1 and Table 8.1.



**FIGURE 8.1** Major Themes and Sub-Categorizations

Table 8.1 displays the total number of narrative sources and is broken down into the frequency of occurrence of each major theme expressed in the narrative statements.

**TABLE 8.1** FREQUENCY OF MAJOR THEMES IN NARRATIVES

| <b>Native American Affiliation</b>                              | <b>Totals</b> | <b>*Cherokee Freedmen</b> | <b>Pechanga</b> | <b>Las Vegas Paiute</b> |
|---|---------------|---------------------------|-----------------|-------------------------|
| <b>Narrative Sources</b>  | <b>N=96</b>   | n=59                      | n=29            | n=8                     |
| <b>References to Identity Legitimacy</b>                        | 49<br>(.51)   | 32<br>(.54)               | 10<br>(.34)     | 7<br>(.88)              |
| <b>References to Wealth Acquisition Linked to Disenrollment</b> | 53<br>(.55)   | *26<br>(.44)              | 21<br>(.72)     | 6<br>(.75)              |
| <b>References to a Retrospective Temporality</b>                | 73<br>(.76)   | 48<br>(.81)               | 18<br>(.55)     | 7<br>(.88)              |
| <b>References to Social-Psychological State of Being</b>        | 78<br>(.81)   | 50<br>(.85)               | 11<br>(.38)     | 8<br>(1.0)              |
| <b>References to Sovereignty and Power</b>                      | 61<br>(.64)   | 36<br>(.61)               | 17<br>(.59)     | 8<br>(1.0)              |

**Table 8.1** This table displays information about how frequently each of the major themes is discussed in each narrative sample. It is displayed in a comparative format to see the commonalities or lack thereof among the groups studied. The numbers in parentheses are ratios of each reference cluster to the total narratives from that particular group.

\*There is another category that was mentioned in a significant number of the Cherokee Freedmen which did not apply to the two other groups and that was the element of race. The Cherokee Freedmen mentioned race or ethnic origin as primary causes of disenrollment with some frequency. Out of 59 narratives, twelve (.20) linked race to disenrollment. This may be one reason why Freedmen numbers are lower in this category and why they were less likely to focus on disenfranchisement being attributed to wealth acquisition as compared to the other two groups.

In determining the count for this data display, I chose to record only one comment per narrative belonging to any given reference category. If, for example, the individual referred to psychological distress five (5) times, I only counted it once. This is because in any given narrative, there were frequently multiple references in any given category. To avoid an unwieldy set of numbers, this method of counting was done in the analysis of all the narratives. (I chose to address intensity through the analysis of metaphorical language which will be addressed below). From Table 8.1, it can be surmised that, in terms of my hypothesis, more than half (55%) see a link between disenrollment and acquisition of tribal wealth. This is particularly true for the Pechanga and the Paiute (72 and 75% respectively), less so for the Cherokee Freedmen. For the Freedmen, their responses illustrate the complexity of disenrollment because, as noted in the comment box for Table 8.1, there is an issue of race that impacts them to the degree not relevant in the other two groups. In regards to identity legitimacy, there is some difference among the three groups; the Las Vegas Paiute referred to identity legitimacy with substantially greater frequency (almost 90%) than did the Freedmen (54%) and the Pechanga (34%). I have no explanation for this variance other than that it could be, as stated in Chapter 4, that the Las Vegas Paiute, (population- approximately 100), as the smallest group among the three, elicits greater kinship ties – more like the kinship ties of an extended family, wherein identity becomes even more pronounced and salient.

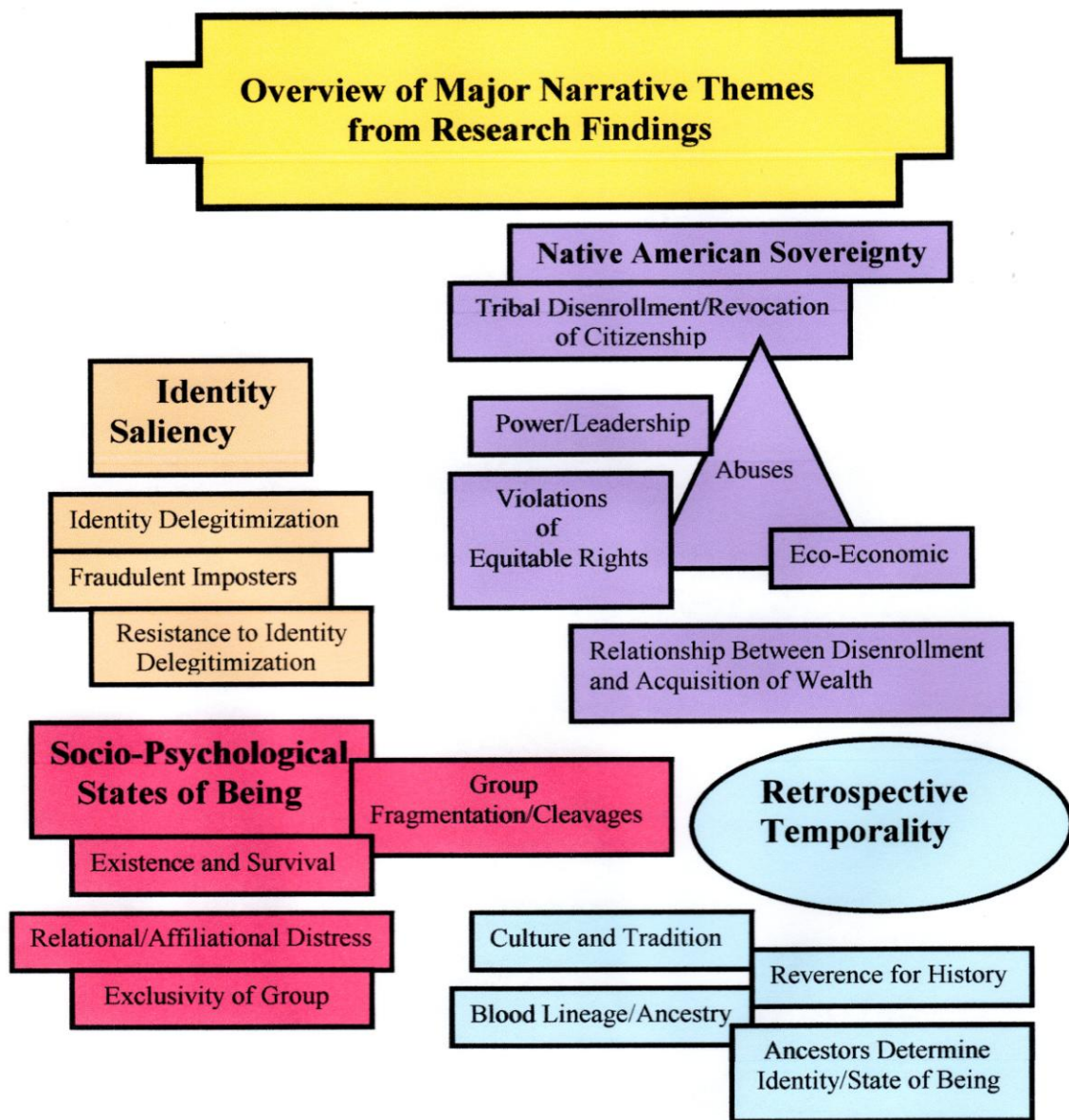
Table 8.1 also shows that there were substantial references that carried a retrospective focus – either through mention of ancestry, family and/or tribal history, or past injustices; though this is not unexpected, the degree to which there is mention of the

past is surprising. The Freedmen and the Paiute made significantly more references to the past (81% and 88% respectively) as compared to the Pechanga (55%); the frequency of occurrence for all three may indicate that it is a substantive and meaningful perspective. The narratives for each group revealed substantial psychological hurt and pain – so much so that in 85% of the Cherokee Freedmen and in all of the Paiute narratives, there were references to upset, hurt, suffering, physical illnesses, etc. The high prevalence of such pain indicators for the Paiute may be due to their small numbers and close kinship; for the Freedmen, this may be due to feeling the pain of rejection experienced on more than one sociological and psychological level which includes racial discrimination. Generally, for each group, there were frequent references to the gravity of being outcast, this is to be expected. In terms of power and sovereignty, all of the Las Vegas Paiute narratives (100%) included references to power/and its abuse and sovereignty – again their small population may elicit substantial perceptions of powerlessness in that group. The Freedmen (61%) and the Pechanga (59%) made similar references to power and sovereignty in their narratives, but not as often as the Paiute.

In the next section, this same data will be reviewed by first exploring an overview of the major narrative themes and the subcategories that were derived from them.

#### Overview and Clustering of Major Narrative Themes

Figure 8.2 displays a compilation of the general themes found throughout the



**FIGURE 8.2** Overview of Major Narrative Themes

narratives. The groupings are according to similarities of concepts and importance as revealed in the narrative discourse. An explanation of Figure 8.2 follows (a detailed analysis of these groupings will be included in the next section). As illustrated in this graphic, at the top of the groupings is the concept of Native American sovereignty. Concerns about sovereignty, of which disenrollment is one, remains a focus that was substantially repeated by those in authority in terms of their right to exercise power, as well as those stripped of their tribal citizenships who were the targets of authoritative decisions. For the disenrolled, sovereignty as agency elicits charges of political and civil abuses, violations of civil and human rights, abuse of power and leadership and abuse of proceeds gained from economic or eco-enterprises. Accordingly, economic gain and abuse of power were often linked and noted as contributing factors to expulsions from Native American communities.

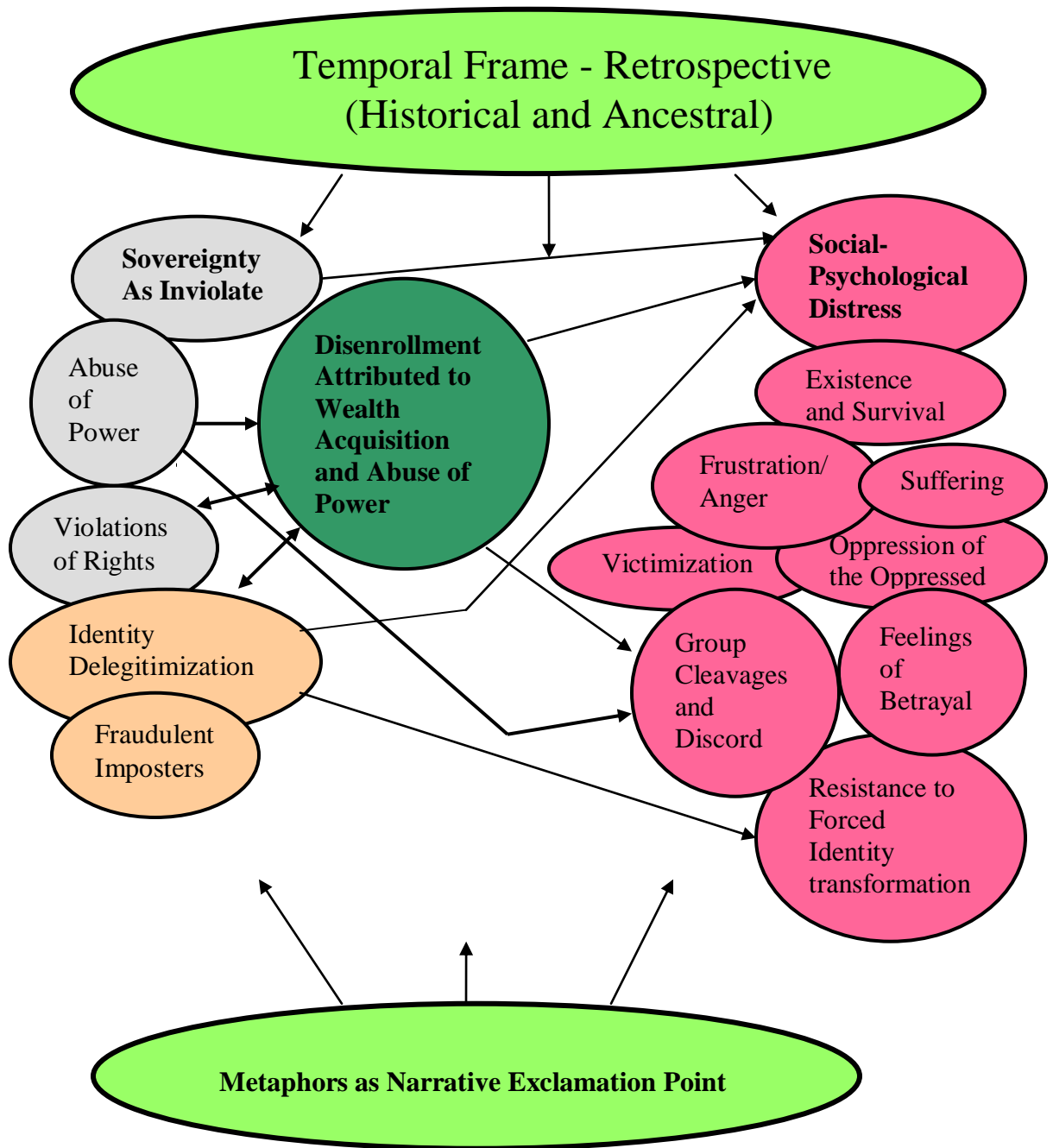
The numerous references to emotional states by the disenfranchised constitute another category that reflects actions of group exclusivity, relational distress and in-group fragmentation and cleavages. Statements about identity legitimacy constitute another significant grouping of narrative concepts and include resistance to attempts at identity transformation, as well as references to imposterism. It must be said that though there is a category for “Restrospective Temporality”, the subcategories included therein may also be considered a part of identity, but in the deconstruction of meaning derived from the narratives, it made more sense to include them here due to the significance given to

history and ancestors. Two overarching themes that frequently occurred and will also be analyzed in the next section include discursive framing through temporal and metaphorical perspectives.

In order to ascertain a reduction of meaning in the above narrative themes, Figure 8.3 is a concept map that illustrates a clustering of connected themes and shows how they overlap and are connected. This also illustrates the complexities of the discourse surrounding the major themes. Understanding the numerous variables and their relationships elicits further explicative value, as well as, contributes to clarifying and comprehending these social processes. The temporal focus on the past, for example, permeates each of the major themes and can be considered an “umbrella” under which the narrative discourse falls. References, for example, to ancestry, history, blood identity (which is identity through a specific biological marker), misuse of power, gaming wealth, etc. are often made with a retrospective view. This includes statements related to social-emotional distress as well as strength of identity, identity legitimacy, the significance of sovereignty and the use and misuse of power.

At the bottom of Figure 8.3, there is a reference to metaphors as narrative exclamation points with arrows pointing to each of the cluster groupings. This relates to the metaphoric language and the layers of meaning that characterizes the narratives; such language is often used to make statements more emphatic or dramatic. In interpreting the subject narratives, I particularly focus on how metaphors are used to capture the obvious, as well as, the underlying meanings of the spoken or written word. (Lakoff and Johnson’s 1980 work, *Metaphors We Live By*) is key to this analysis. Their work

### Clustering of Major Narrative Themes



**FIGURE 8.3** Clustering of Major Narrative Themes provides an illustration of the clustering of those major themes found in Table 8.2 in a manner that demonstrates connections and overlapping of meaning and narrative relevance.



suggests that beyond the poetic nature of metaphoric language, it is embedded in the mundacity of our lives – in our very thoughts, actions and conceptual reasoning. In their words, “The essence of metaphor is understanding and experiencing one kind of thing in terms of another” (1980, 5). It is within this frame that some of the following analysis will unfold.

The temporal, retrospective gestalt is a meaningful core concept that permeates the discourse as illustrated in Figure 8.3. Retrospective framing is placed at the top of the chart in an umbrella position to underscore its strong significance in the narratives as a guide that shapes meaning. It is a level of abstraction that is oriented to the past and is characterized, for example, by such statements as, *“Let me take you back to 1838-1839 and the forced removal of all Indian Nations west of the Mississippi.”* Note that “forced removal” also carries an implied message of social-emotional pain – of an event that was done against one’s will; or note the passage, *“We’ve asked for the Constitutional Article that allows for the Armed Forces. It’s an opportunity to restore our Cherokee Nation back to its former glory.”* This statement embodies a desire to regain the warrior status of the past, but also implies and is reflective of a hope for contemporary action by the Nation through use of its sovereign powers.

The retrospective frame is also present in such statements as, *“History and heritage converge in concentric circles should be remembered and honored and if you do not understand what an indigenous nation is, the struggle that Indian people have had - not to survive as individuals, but for our Nations to survive, then, you do not understand our collective heritage and our collective histories.”* This statement encompasses social

emotional struggles, as well as the obvious reference to ancestry; it is a statement of rich metaphoric meaning – the concentric circles provide a visual perceptual image of continuity, connectedness and the perpetuity of being. This statement also elicits a sense of doubt and frustration; it highlights, as well, the notion of group survival - another meaningful theme that permeates much of the discourse.

Other clusters are interconnected, as well. For example, the discourse related to sovereignty and power also encompasses social emotional difficulties, and identity delegitimization. Take the following statement, for example, “*Tribes [are] committing crimes in the name of sovereignty and escaping prosecution by invoking immunity.*” This statement implies a deep frustration and disappointment in tribal authorities’ actions and evokes the impression that there have been unprosecutable illegal activities which adds to a sense of victimization and helplessness. Or take the statement, “*Gaming has brought in the dominant culture’s disease of greed.*” The implication being that the assimilation of the dominant culture’s values has contributed to and has elicited troubling actions by the decision-makers in the community. Note the use of the metaphor “disease” to connote sickness and pathology as opposed to normative Native American values.

Another example of the interconnectedness of the narratives relates to the frustration of attempts at identity delegitimization; the misused power of tribal decision-makers is seen in the following statement. “*Now I have three children that are Cherokee Freedmen, so this touches home. And I got tired of my children being bounced around as though they were a game - O.K., you’re in- you’re out- you’re in – you’re out – you’re a*

*citizen, you're not a citizen, you're a citizen – temporarily.*” This passage displays rich metaphoric language – “touching home” – home is sacrosanct – it is a place to be protected. *“Children being bounced around as if they were a game”* implies manipulation – it implies mistreatment of those who we need to protect – it illustrates a deep frustration with the back and forth decisions of the community leaders. This statement encompasses several layers of meaning: the legitimacy of identity, frustration, anger, misuse of power as well as a call to action to do something which the speaker also alluded to in the following: *“It’s not right, now if anybody can’t see that – something’s wrong – they need to check themselves. You see, that’s wrong. So we had to do something – we had to do something.”*

As illustrated, it is apparent that the complexities of discourse allows for interrelated connections that help to understand the experiences of those members of Indian communities who are struggling to maintain the status quo or seek to right a perceived wrong. In the next section, I will explore how the discourse relates to the hypothesis of this study.

#### Deconstruction of Narrative Data Supporting Research Hypothesis

This section will address how the data specifically supports the hypothesis that tribal disenrollment, though presented as a way to maintain ethnic legitimacy, is also implemented as a tool to enhance economic gain. The data that confirm the original hypothesis of this study were found in the statements by the disenfranchised - that tribal

economic gain is an instrumental contributing factor to their being disenrolled, this particularly applies to comments from the Pechanga and Las Vegas Paiute; for the Cherokee Freedmen, the sources of their disenrollment added to the complexity of the actions. Though there was some discussion of economic gain, the Freedmen struggles with disenrollment frequently involved issues of race and ethnic origin.

In terms of the connection between disenrollment and eco-enterprises, there are similarities among all three, but more so between the Pechanga and the Las Vegas Paiute whose statements frequently link tribal expulsions to wealth acquisition. Statements such as, *“The motives vary from tribe to tribe, I would say money is at the bottom of a lot of it,”* reflect this connection. Using a metaphorical frame in the analysis of this phrase – “money is at the bottom of a lot of it” – the words are saying that money is at the foundation, the root, the origin, the source and the genesis of the disenrollments. Or take the statement, *“No coincidence that [disenrollment] actions occur after casinos legalized,”* it implies that there is a direct correlation between the wealth generated by the casinos and actions of banishment. The statement, *“Visions of more money blinded some with greed and envy,”* implies that actions were impaired by the desire for money. This comment is rich with metaphoric language that will be addressed when the next data display is discussed.

This is exemplified in the narrative samples shown in Figure 8-4. Figure 8-4 illustrates a comparative perspective representing samples of discourse categorized under the cluster themes.

**Comparative Samples of Narrative Statements Compiled Under Major Themes  
for the Cherokee, Pechanga and Las Vegas Paiute**

|  | <b>Cherokee</b>   | <b>Pechanga</b>  | <b>Las Vegas Paiute</b>  |
|--|---|--|--|
| <p>Temporality - Retrospective</p> <p>(Historical Reference)</p> | <p>"I come from one of the oldest families west of the Mississippi. My people came here in – the museum said - 1698 and helped establish the Territory of Oklahoma."</p> <p>"So the Dawes Commission was given the charge to separate the races – to separate the dark skinned from the light skinned."</p> <p>"I think it is about time our young people know where they come from, and who they are so that they can thrive in their Indian heritage."</p> <p>"This government killed over 5000 Indian women and children forced them west of the Mississippi to relinquish 12-15 states of land."</p> <p>"It's almost like our history has been erased."</p> <p>"Whether you are an Indian or a non-Indian what your ancestors went through determines who you are as a person and how you will respond."</p> <p>"Stories constantly banged in my head about our ancestors being here when Europeans came."</p> <p>"You have people who want to erase their past... they've always tried to run from the shadow of slavery."</p> | <p>"Yeah, so you know... it's just the hypocrisy that we're dealing with - and they're trying to change history."</p> <p>"We still have a responsibility to our ancestors."</p> <p>"Tribal leaders disrespect tribal ancestors and have forgotten the way of their Indian People."</p> <p>"I think that what makes me proudest about being a person a member of the tribe is the history and how intertwined the history of not only the Pechanga Band but the history of the Southern California Indians themselves."</p> | <p><b>"Nobody has the right to tamper with my family's heritage."</b></p> <p><b>"I never realized my own family and friends within the tribe would do this to me. They've stolen my heritage, my blood and my family history."</b></p> |

|  | Cherokee   | Pechanga  | Las Vegas Paiute  |
|--|--|---|---|
| Disenrollment<br>Linked to Wealth<br>Acquisition | <p>“Members stripped to limit numbers who benefit from tribal gaming.”</p> <p>“Freedmen as strangers who want to obtain services [is] far from the truth.”</p> <p>“So, our people, the Freedmen people have participated in the communities, have been a part and given and given – and for those that say that the Freedmen were only interested in casino revenues or benefits, they are thin bloods.”</p> <p>“No coincidence that [disenrollment] actions occur after legalized casinos legalize.”</p> <p>“Most of them are what I call thin blood. They are thin blood, they have no culture and didn’t grow up in it. They found out there’s a casino and “I want some money.”</p> <p>“Don’t get taken advantage of by these people. They will suck you dry.”</p> | <p>“In...California nearly 3000 Indian individuals have been stripped of their tribal identities and many more have been denied their birthright to be a member of their tribe. And it is no coincidence that these actions have taken place since the passage of ballot initiatives that legalized Indian casinos in California.”</p> <p>“The motives vary from tribe to tribe, I would say money is at the bottom of a lot of it.”</p> <p>“So, there was that conflict, and then, of course, there was the money... with tribal gaming resort. There’s been a lot of wonderful things that’s happened, and there’s also been some bad things that have happened.”</p> <p>“Visions of more money blinded some with greed and envy.”</p> <p>“Who would have thought that the Indian wars would begin anew – not racist whites who wanted to move west – this is greed Indians who want more money no matter which tribal members they hurt.”</p> <p>“People started trying to figure out ways they can get more. And probably the most effective way is to get rid of a hundred, well almost two hundred people, you gonna...you gonna change your wallet pretty good.”</p> <p>“It will reduce the members to pay casino money to, but in the end the tribe will become extinct.”</p> | <p><b>“I have family on the Council and they won’t talk to me – they’ve shown money is what is important to them.”</b></p> <p><b>“I’ve lost my home and my truck... the whole thing is over money, greed and hate.”</b></p> <p><b>“[Some] believe that the (Paiute) tribal council was motivated by a desire to cut them out of future smoke shop and golf resort revenues. “This is not a money issue for me, they took away my heritage.”</b></p> <p><b>“It’s all about money... money makes people crazy.”</b></p> |

|                              | Cherokee  | Pechanga   | Las Vegas Paiute   |
|------------------------------|---|--|--|
| Identity<br>Delegitimization | <p>“It’s an Indian thing, we do not want non-Indians in the tribe, our Indian blood is what binds us together.”</p> <p>“Because this is who we are. Most of the Freedmen they know who their Indian people are - It’s not a matter of stories, it’s a matter of who we are. This is who we are, we will fight for our rights.”</p> <p>“Because right now, the way I feel is you are trying to create Cherokee Indians that don’t exist. And it’s an issue of identity.”</p> <p>Tired of tribal inconsistencies – “You’re in-you’re out- you’re in-you’re out – you’re a citizen- you’re not a citizen-temporarily.”</p> <p>“First the white man stole our tribe, now the black people are trying to steal our tribe”</p> <p>They know these people exist. And they’re trying to push them aside as though they were never with them.”</p> <p>“Protect Cherokee culture for our children, for our daughter(s)... fight against the infiltration.”</p> <p>“More people want to the tribe these days. But it’s not so much because of subsidized healthcare and housing, but rather a search for cultural identity.”</p> | <p>“Disenrollment was invented in 1996 about six months after we opened our first casino.”</p> <p>“If tribes continue this way, they will need to insure that members marry other members or they risk running out of blood.”</p> <p>“But as far as who we are and how we know ourselves Knowing your people, that hasn’t changed. It doesn’t change our identity. We can’t change our DNA.”</p> <p>“I know who I am and no one is going to make me leave this place.”</p> <p>“They’ve taken away our rights, taken away our whole past. We don’t know if we are from Jupiter or Mars.”</p> <p>“As far as they’re concerned, I’m a non-Indian, I feel totally displaced, totally homeless just kicked to the curb.”</p> <p>“It’s about carving people away from their identity.”</p> | <p><b>“Nobody has the right to tamper with my family’s heritage.”</b></p> <p><b>“In my heart, I will always be Paiute. You cannot take that away from me.”</b></p> <p><b>“You grow up all your life knowing and believing that you are going to be Indian all your life, until the day you die. Then out of the blue, they say you are the white man.”</b></p> <p><b>“This is an attack by a corrupt government on my identity.”</b></p> |

|   | Cherokee   | Pechanga   | Las Vegas Paiute   |
|---|--|--|--|
| <p>Sovereignty/Power</p> <p>(This also includes references to in-fighting for power and control of tribal leadership)</p> | <p>“Cherokee Nation using the same rights as the states rights – that they have sovereign immunity and don’t have to comply.”</p> <p>“Throughout Indian country the rights of individual Indians are being violated by arbitrary and unjust acts committed by Cherokee officials.”</p> <p>“The Cherokee Nation is doing what the United States government itself cannot do and that is to strip persons of their citizenship and nationality without them having committed treason, sedition, high crimes or trying to overthrow the government.”</p> <p>“If you run with the big dogs, you will be treated like the big dogs.”</p> <p>“[We are] some of your your <i>strongest</i> warriors – we will fight to the bitter end for our sovereignty.”</p> <p>“Anyone can move into an Indian tribe that’s not an Indian and use Sovereignty as shield”.</p> | <p>“The responsibility of who is and is not a citizen falls squarely on the Indian tribes.”</p> <p>“They have what they want right now. They still want power and it would go away if we were in there.”</p> <p>“That was a concern for some of those in power, because they got accustomed to having those positions and all the perks that go with it and uh, you know, they may have seen our family and others as a roadblock for them continuing on in the positions of power.”</p> <p>“Sovereignty has been abused by the people in power to go after their own people.”</p> <p>*Despite their hostile attempts to force their way into the tribe, we voted them in later and accepted them into the tribe anyway.</p> | <p><b>“It is a dictatorship... what happened is people got a little bit too comfortable and now look where we are.”</b></p> <p><b>“There is a violation of trust at the hands of their own people.”</b></p>                        |
| <p>Social-Psychological Distress</p>  | <p>“A vote that took place, it never should have happened. It is racist, it is a violation of human and civil rights and it is wrong.”</p> <p>“The Freedmen people, they know their legal rights. And we going to fight, we’re going to continue to fight.”</p>  | <p>“My family and other families within the tribe were very upset about dividing our tribe.”</p> <p>“[They were] victimized by the very people who were charged with protecting their rights.”</p> <p>“It really hurts a person to live through this.”</p>   | <p><b>“A lot of bad feelings, families against families, friends don’t talk to each other... Nobody trusts anybody.”</b></p> <p><b>“That’s the tribe’s weak point - off the rez, that’s where I intend to take my battle.”</b></p> |



|  | Cherokee   | Pechanga   | Las Vegas Paiute   |
|--|--|--|--|
|  | <p>“For several years I have watched the Cherokee Nation of Oklahoma violate the rights of the Freedmen Indians. And as an Indian person, it saddens me because I know their pain.”</p> <p>“The Cherokee Nation told me I am no longer a Cherokee. I am a Cherokee. I will die a Cherokee Freedman – whatever you want to call it.”</p> <p>“It’s oppressed people that’s oppressing people.”</p> <p>“Don’t get taken advantage of by these people, they will suck you dry. Don’t let black freedmen back you into a corner. Protect Cherokee culture for our children. For our daughters... Fight against the infiltration.”</p> <p>“It’s ethnic cleansing, that’s what it is – ethnic cleansing.”</p> <p>“Is it because of the color of my skin the reason I’m not accepted. That’s how I feel about it sometimes.”</p> | <p>“I got pissed off [when disenrolled]– I threw away all the goodies they gave me when I won the Silver Feather award, the jacket, the buffet card, everything.”</p> <p>“The 21<sup>st</sup> Century Indian War is now Indian vs. Indian.”</p> <p>“I return to my people and they don’t acknowledge me. It really is pathetic.”</p> <p>“Now, somehow, we [disenrolled] have become traitors.”</p> | <p><b>“It was a shock... It hurt in the heart. Nobody has the right to tamper with my family’s heritage.”</b></p> <p><b>(Upon being jailed)</b><br/><b>“They treated me like a terrorist.”</b></p> <p><b>“When first disenrolled, I cried all the time – I couldn’t believe it – I’d get my hopes up only to be let down. Now I don’t expect a thing.”</b></p> <p><b>“I am angry... what right do they have to take our blood away from us?”</b></p> <p><b>“When I think of the possibility that we might not be let back in, it makes me sick.”</b></p> |

**FIGURE 8.4** Comparative Samples of Narrative Statements Compiled Under Major Themes for the Cherokee, Pechanga and Las Vegas Paiute

In this section, I will discuss the data on a higher level of abstraction. When presenting data quantitatively, determining whether there is a relationship between two variables and the strength of that relationship, in this case wealth acquisition and disenrollment, could be ascertained by conducting a regression analysis to discover whether or not a significant correlation exists between the identified dependent and independent variables. Such an analysis, however, would reveal only superficial relatedness and would fail to provide an understanding of underlying perception, motivation, and the effect and impact on individual or group action and reactions. I would argue that employing an analysis of metaphoric language can not only reveal correlation (or the perception thereof), but can provide a glimpse at the depth, breadth and layers of meaning that underlie that relationship. In other words, the strength of the relationship can be inferred from the vividness and intensity of the metaphoric image. I am saying that perception is embedded in the narrative – that is - the more vivid the metaphoric image, the greater the strength of the descriptive relationship to the event/episode and the greater the intensity of the psychological/emotional labeling.

The following is a continued explanation of the data based on an analysis of metaphoric language found in the subject narratives. Figure 8-4 above illustrates some of the narrative responses that are similar among the three groups to the common experience of banishment. The general narrative themes that were presented in Figure 8-4 are further defined here through the categorization of similar statements compared across each group. These are samples of narrative that shape the discourse on tribal

disenrollment. As previously noted, there are some similarities in perception and beliefs that are common to each group.

There are four areas of similarity that will be discussed here. First, they all expressed strong ties to the past and ancestry, which given the traumatic history of Native Americans and fears of extinction in this country, is understandable. It could be that their history is the only viable concept that these groups have as a means of establishing group security; it may also equate to their struggles for justice. This temporal perspective was so pervasive that it necessitates a designation as a significant finding in this study. Accordingly, historical references, focusing on the past and ancestry may be considered the gestalt through which most of the narratives evolved. This can be found in such comments as, *"It's almost like our history has been erased."* This statement from a Cherokee Freedmen refers to the deep significance of history; it is used metaphorically to represent a feeling of nonexistence or non-being which, resulting in a debilitating ostracism, can be a fate worse than death (Williams and Zadro 2005, 5). Other temporal statements such as, *"We still have a responsibility to our ancestors,"* implies a burden of accountability, in terms of contemporary actions, to those who have gone before. The comment, *"Whether you are an Indian or a non-Indian what your ancestors went through determines who you are as a person and how you will respond,"* speaks to the relationship and value of tradition and heritage to the present – as if the narrator is saying one's past determines one's present and/or future. Similar points of view, which I call a "retrospective" frame as represented in Figure 8.4 were found in each group and will be

more fully discussed in the Conclusion.

A second major theme encapsulated in the narratives from each group is identity delegitimization. This includes comments such as, *“In my heart, I will always be Paiute. You cannot take that away from me.”* The speaker is revealing the depth of connection to the group – it is something that goes to his “core” – “his heart” – he is saying that his identity is intrinsic and will always be regardless of attempts to “steal” it. Another statement, *“It’s about carving people away from their identity,”* provides a vivid metaphoric image of a knife whittling away and trying to separate people from their being. The statement, *“Protect Cherokee culture for our children, for our daughter(s) ... fight against the infiltration,”* is indicative to a call to battle – it is as if there is an imminent enemy invasion. The word “infiltration” is particularly pernicious. The phrase of “protecting daughters” has been utilized in the past as code by Whites for protection from miscegenation. A racial undercurrent was specifically found in the Cherokee narratives that was not present in the other two groups. This may be a remnant of the political and economic victimization experienced by African Americans and Indians and the policy of creating divisions between them to neutralize potential threats to the dominant group (Greenbaum 1991, 111).

In a third major theme, the social-psychological aspect or the emotionality associated with disenrollment, the narratives reveal the pain suffered by those who no longer belong. Again, this is common in all three groups. Comments such as, *“The 21<sup>st</sup> Century Indian War is now Indian vs. Indian,”* imply that the discord is particularly

pernicious and warrants a comparison to the kind of conflict that occurs between two disparate peoples rather than brother against brother. The statement, “*When I think of the possibility that we might not be let back in, it makes me sick,*” illustrates that being expelled from the tribe carries with it a burden of not only emotional distress, but a physical reaction, as well. The following metaphorically descriptive statement links disenrollment to the ultimate betrayal: “*Now, somehow, we [disenrolled] have become traitors.*” The speaker feels that in the process of being expelled, their status has been diluted to one that is distrusted, unsafe, disloyal, - a turncoat. There seems little if any room for redemption.

A fourth significant theme that was frequently found in the narratives of each group relates to power, authority and sovereignty or the abuse thereof. Comments such as, “*Anyone can move into an Indian tribe that’s not an Indian and use Sovereignty as a shield*”, seem to warn that tribes need to be wary of imposters who may hide behind the protection of sovereignty. One speaker who was concerned that tribal leaders want all the protections of being a sovereign nation, without the responsibilities, remarked, “*If you run with the big dogs, you will be treated like the big dogs.*” This is a common metaphor used to indicate that grand actions must be undertaken while accepting the responsibilities that they carry.

The above analyses explore the meanings behind the narrative utterances as they relate to tribal disenrollment. In the next part of this discussion, I will include a higher level of abstraction to look at the same through the lens of complex and emergent systems.

When exploring any conflict situation, it is apparent that there are cognitive and emotional underpinnings that underscore its complexity. It is important, therefore, to turn to those theoretical perspectives that facilitate deeper understanding of these phenomena, such as complex and emergent systems, which take us out of the singlemindedness and simplicity of linearity and forces us to see the event with all of its accompanying interrelated tendencies toward chaos.

This is illustrated in Sandole's (1999) work, *Capturing the Complexity of Conflict*, which discusses the complex system of interethnic discord. I would argue, however, that not only does complexity theory apply to multi-faceted interethnic conflicts as discussed by Sandole, it can be instrumental in understanding the subtle and not so subtle complexities that characterize Native American intra-group discord. In Figure 8.5, I present a sampling of the various layers of meaning, the interconnectedness and the dynamism that characterizes the narratives of those alienated from their Native American communities. It is a display of emergent complexity in action. According to the science of emergent systems, complexity emerges out of simple actions. As this relates to the current study, it is reflected in Figure 8.5 which presents some of the narrative statements and not only connects them to the relevant frame, it also shows how the narratives are connected across several frames. This is a representation of a simple utterance carrying complex baggage. As Figure 8.5 illustrates and as has been discussed in the previous narrative analyses, many of the statements reflect multiple themes which are connected to other themes. Figure 8.5 exemplifies this pattern of complexity.

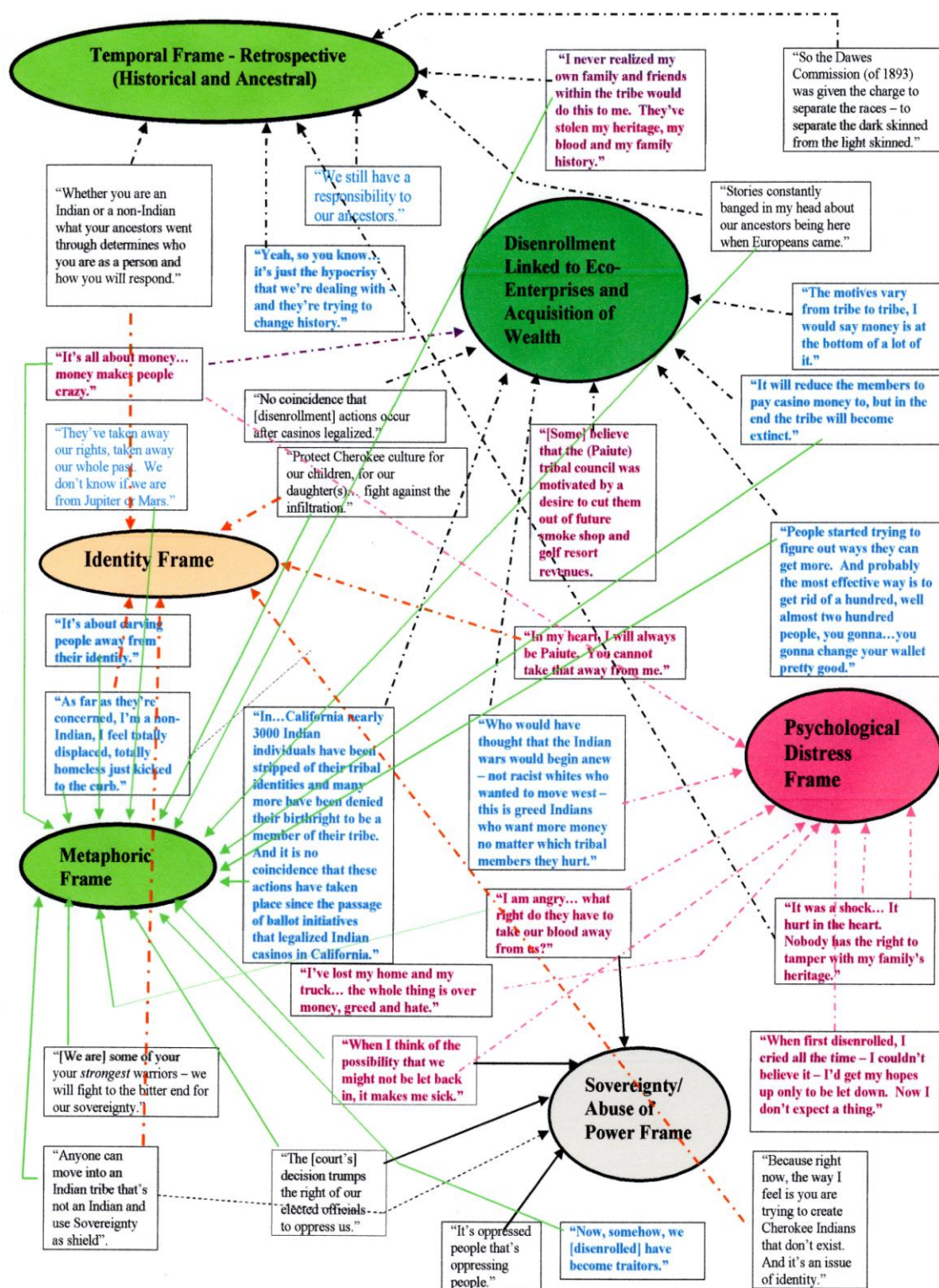


FIGURE 8.5 Complexities of Narrative Statements

This chart illustrates that narratives associated with tribal disenrollments are intricately related under the umbrella of several common themes. Though the connections of the major themes are not specifically displayed in the aforementioned Figure 8.5, there can be an inferred relationship arising out of the many connections among the narrative statements themselves. For example, the identified themes of retrospective temporality can be associated with issues of sovereignty, identity, as well as linked to psychological and social concerns - just as singular statements concerning identity legitimacy can be interpreted in terms of retrospective view, carry a social emotional frame as well as one that links disenrollment to wealth. It is through such complexity that emerges a more complete and realistic impression of the dynamism associated with tribal disenrollment.



## **Chapter 9**

### **Conclusion**

In this study, I have developed an explanation for the conflict behavior that characterizes the internal struggles in some contemporary Indigenous American communities as reflected in the expulsion of members seen as non-legitimate. This internal discord has sometimes occurred in those Native communities where recent economic wealth has generated from a variety of resources. By doing this research, I hope to facilitate an understanding of tribal disenrollment, in particular, and discord within certain groups, in general. For Native Americans, disenrollment is a phenomenon that many consider to be the sacrosanct privilege and the decision-making right of Indian sovereign nations. It is not a concern of “outsiders”. With the greatest of respect to this sentiment, I hope this study will help to pull back the blinds just a bit to let in a sliver of dawn. While it is not exhaustive, by any means, and it raises many more questions than it answers; I attempt to provide an explanation for a social phenomenon that characterizes certain groups.

Before getting to the heart of this discussion, there are four salient points I would like to make. First, and as previously stated, it is without question that this study

has only skimmed the surface of what is a complex and complicated process – deciding who does and who does not belong. Secondly, my aim is to help provide an understanding and a limited explanation of a controversial “family” secret, the complexities of which typically go unknown to non-Indians. It has certainly not been my intention to misquote, misunderstand or misrepresent any aspect of Native American society or culture (particularly that of the Cherokee, the Pechanga Band of Luiseño Indians or the Las Vegas Paiute), for which I have the highest regard. As an African American and as a member of a visible minority group that has seen and experienced its share of struggles, I was quite pained to discover the divisions in some American Indian communities resulting from the perceptions of unwarranted disenrollments. As a scholar, I wanted to find out why was it so easy for this to happen in what have traditionally been inclusive and fearless societies that historically may not have been intimidated by identity markers that may now be often perceived as a threat to internal security.

Thirdly, I strongly affirm that those American Indian communities that do have highly successful economic enterprises such as casinos and golf resorts, are few; they are certainly not the norm in and throughout Native America. This cannot be stated emphatically enough. There continues to be widespread poverty, social distress, joblessness – all the ills of the larger society concentrated and intensified in smaller Indigenous enclaves. It must also be said that not every Indigenous American tribe that engages in successful economic enterprises engages in widespread disenrollment actions.

And finally, it is important to note that homogeneity across Native America does not and probably has never existed. These are groups of distinct peoples with distinctive traditions and cultures that function within the generic umbrella of “Indianness”.

## Discussion

I conclude that in contemporary Native American communities, eco-enterprise may be seen as a welcome path to development and/or modernization. In those Indigenous groups where there is substantial identity salience, in addition to the positive impact of providing health care facilities, home subsidies, educational centers, sizeable monthly financial allocations to its members, etc., I argue that the benefits from single-generation wealth acquisition can also elicit some challenging pressures on group identity, group cohesion and functioning. One of the challenges, among many, may include a transformation of social and cultural norms which is not uncommon for traditionally oppressed groups who may continue to be subject to the influences of a dominant culture. I assert that this elicits dissonance in being - dissonance that spans not only cognition, but psychological and social spheres, as well. For Native American tribes struggling for economic, social and political “fit”, despite the generation of wealth through various enterprises, I argue that these communities may need to exercise caution so as not to incur divisive social and cultural costs that accompany this transformation in what may be considered examples of internal structural violence. In this last chapter of my research project, I will examine these dynamics within the frame of a few key

theoretical perspectives; I will also address community healing and reconciliation and present some broader implications.

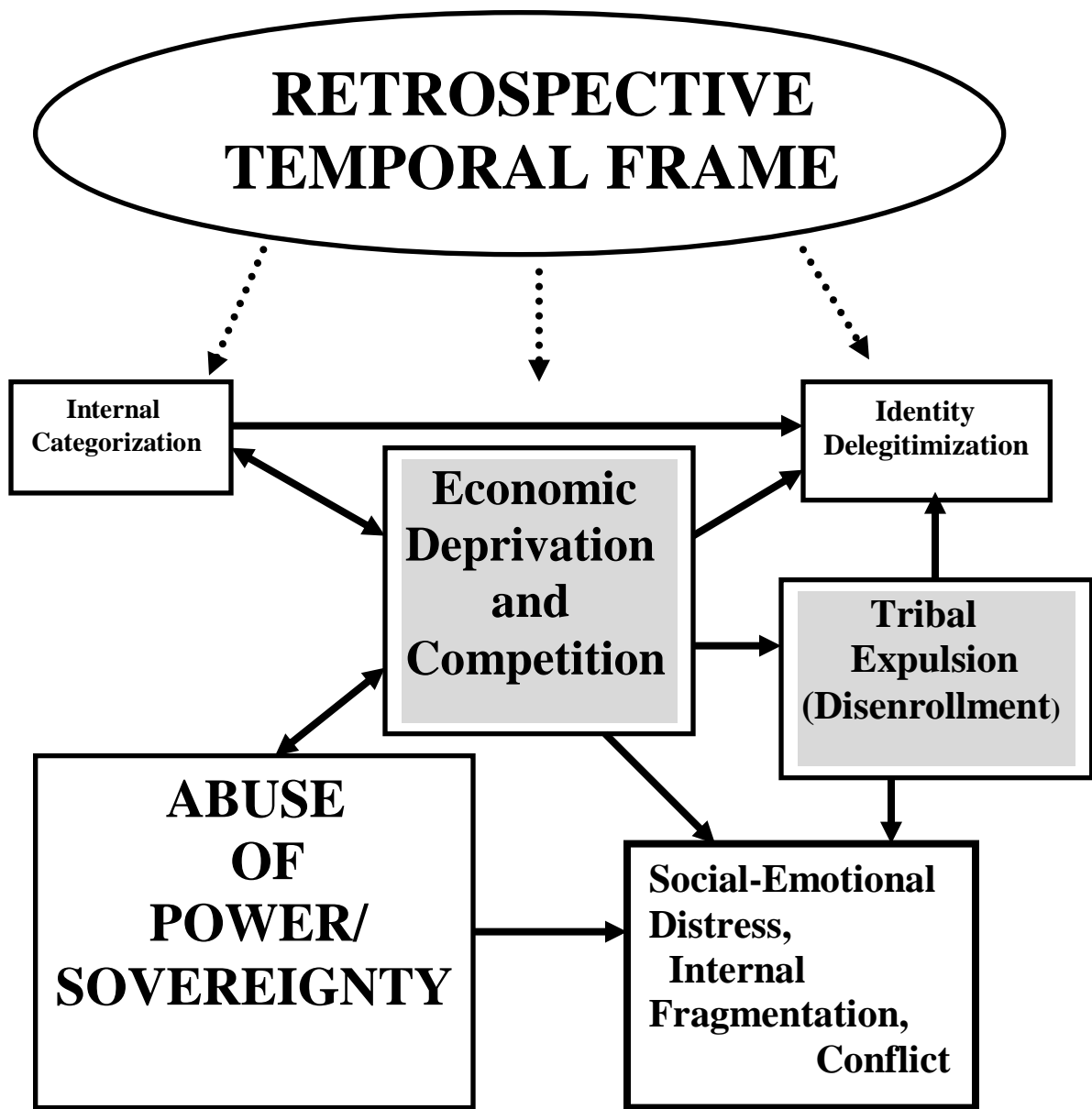
In terms of the hypothesis for this study, I conclude that from the narratives of those impacted by tribal disenrollment, it appears that many do see a link between eco-enterprise development and expulsion from the group. They see their disenfranchisement not so much as a concerted attempt at purging (maintaining identity legitimacy) to keep the tribe “pure” and identity salient, but as a result of group infighting and political power seeking spurred by the desire to have greater wealth and/or power for fewer people.

Figure 9.1 is a re-formation of the hypothesis model (see Figure 1.1 in Chapter 1) that includes additional findings; I illustrate, through the size of the print, the significance allotted to those factors as revealed in the narratives. In Figure 9.1, I demonstrate how a retrospective temporality and concerns about power abuses dominate the model. As hypothesized and as previously discussed, I found that matters of economic gain were significant in terms of their relationship to disenrollment actions. In the model, I illustrate that identity delegitimization results from self categorization which is further exacerbated by substantive wealth acquisition which, for some, results in economic deprivation and internal competition for belonging (I belong; you do not.).

For the Cherokee Freedmen, there was an additional variable identified in some narratives - a racialized focus tied to aspects of economic gain that some Freedmen see as a barrier to entry. On the other hand, as stated on the Cherokee tribal website<sup>108</sup>,

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<sup>108</sup> <http://freedmen.cherokee.org/> (Last accessed 15Nov2009)



**FIGURE 9.1** Highlights of Research Results in View of Hypothesis – This model builds on the one used at the beginning of this study to explain the research hypothesis. It has been expanded to include factors that dominated the research outcomes, the larger the print the more substantial weight given in the study narratives.

some members claim that race is not a factor, social fit and belonging have only to do with ancestry as noted on the Dawes Rolls (see Appendix E). As the complexities of these and other findings have already been noted, I will look at certain observations that seem to most significantly impact these communities. I identify five realms that will emerge in this conclusion. One realm relates to sovereignty and power, the second focuses on the impact of oppression, the third relates to Indigenous identity in the Twenty-First Century, the last has to do with healing and reconciliation and the fifth discusses broader, generalized implications of this study.

As previously stated, I found that power seeking and the perceived abuse of that power were prevalent themes frequently voiced in the narrative data for this study. The question arises - given a group of high identity salience, when and why does the marginalization of the marginalized take place? In other words, why do groups with high identity salience who have been traditionally oppressed and are also in social and economic transition engage in actions that threaten internal security and group cohesion? There are several underlying factors that I surmise contribute to this phenomenon.

One underlying factor is that as historically oppressed groups, many, if not most, Native American communities have experienced isolation, forced relocation, racism, denigration, poverty, decimation of population, etc. at the hands of the dominant community. I would argue that these realities have resulted in the occurrence of chosen traumas and all the psychological and sociological constraints, as well as ritualized aggression, that reflect this state of being. As Volkan states, a chosen trauma is “the mental representation of an event that has caused a large group to face drastic losses, feel

helpless and victimized by another group, and share a humiliating injury – [it] is key to discerning the process of transgenerational transmission of past historical events” (Volkan, 2006).

In this case, the trauma would be the oppression experienced by Native American tribes; there is the tendency for groups that have undergone such trauma to experience aggression turned inward (it cannot be successfully directed at the oppressor); this is handed down from generation to generation and is exacerbated if mourning for the group’s traumatic past has not been adequately resolved<sup>109</sup>. I surmise that when and if this aggression is turned inward, those in positions of power and leadership may engage in acts of “purification” – sometimes without a clear and substantial foundation for such measures. This may result in actions of brother dehumanizing or denying brother, which in turn may elicit occurrences of hostility, rigid boundary setting (us versus them duality) and exaggerated threat perceptions that are often reserved for one’s enemies (Rothbart and Korostelina 2006). I conclude that this is a process of enemy imaging that occurs internally. Leaders then use their power and influence to “reposition” their citizenry to accept such actions by claiming that these expulsions are for the benefit of all.

I posit, therefore, that the relevance of the aforementioned to the issue of *disputed* tribal disenrollments, is that the decision-makers in those communities may, under certain circumstances, create a false perception of internal threat which facilitates general

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<sup>109</sup> Volkan (2006) discusses South Africa and the process of aggression turned inward and large-group mourning for a traumatic past and Archbishop Desmond Tutu’s attempt to help channel the derivatives of that aggression through the Truth and Reconciliation Commission. The Commission, both a memorial and a monument, helped to reconcile a turbulent, abusive past; it focused on both the victims and the victimizer.

membership acceptance of the disenrollments (Ibid.). Once the expulsions are complete, other acts of aggression – other battles begin. Most play out as legal battles, but acts of shunning, refutation of being, physical barring, etc. have occurred. Also, I argue that it is possible that the *ease* with which such internal aggression occurs may be a result of the low status and the powerlessness due to oppression that has characterized Indigenous American groups. In other words, I surmise that contemporary tribal disenrollment, where there fails to be clear and irrefutable justification for such, may continue to be perceived as a form of heightened abuse of power, aggression turned inward and decremental deprivation (individuals losing what they previously had). When the evidence for the disenfranchisements is ill-defined, questionable or remains refutable, I conclude that though the banishment action may be definitive, the impact of these actions exists within that nebulous continuum of being and non-being; it is here along this continuum that the seeds of discord and refutation are created. It is as if the state constrains and declares a person to be one thing and he or she refutes and sees himself or herself as being something quite different. I argue that it is within this disparity of power that conflict and conflict behavior occurs. This circumstance is then exacerbated by substantive economic gain as it reflects new pressures on the group; for some, the disenrollment proceedings then begin to resemble actions of greed and avarice versus compassion and caring.

I find that one way that victims deal with this chosen trauma is to focus on the chosen glories of ancestors. This may help to explain why, in a substantial number of the narratives, there was reference to ancestors or tribal history – a retrospective view. It



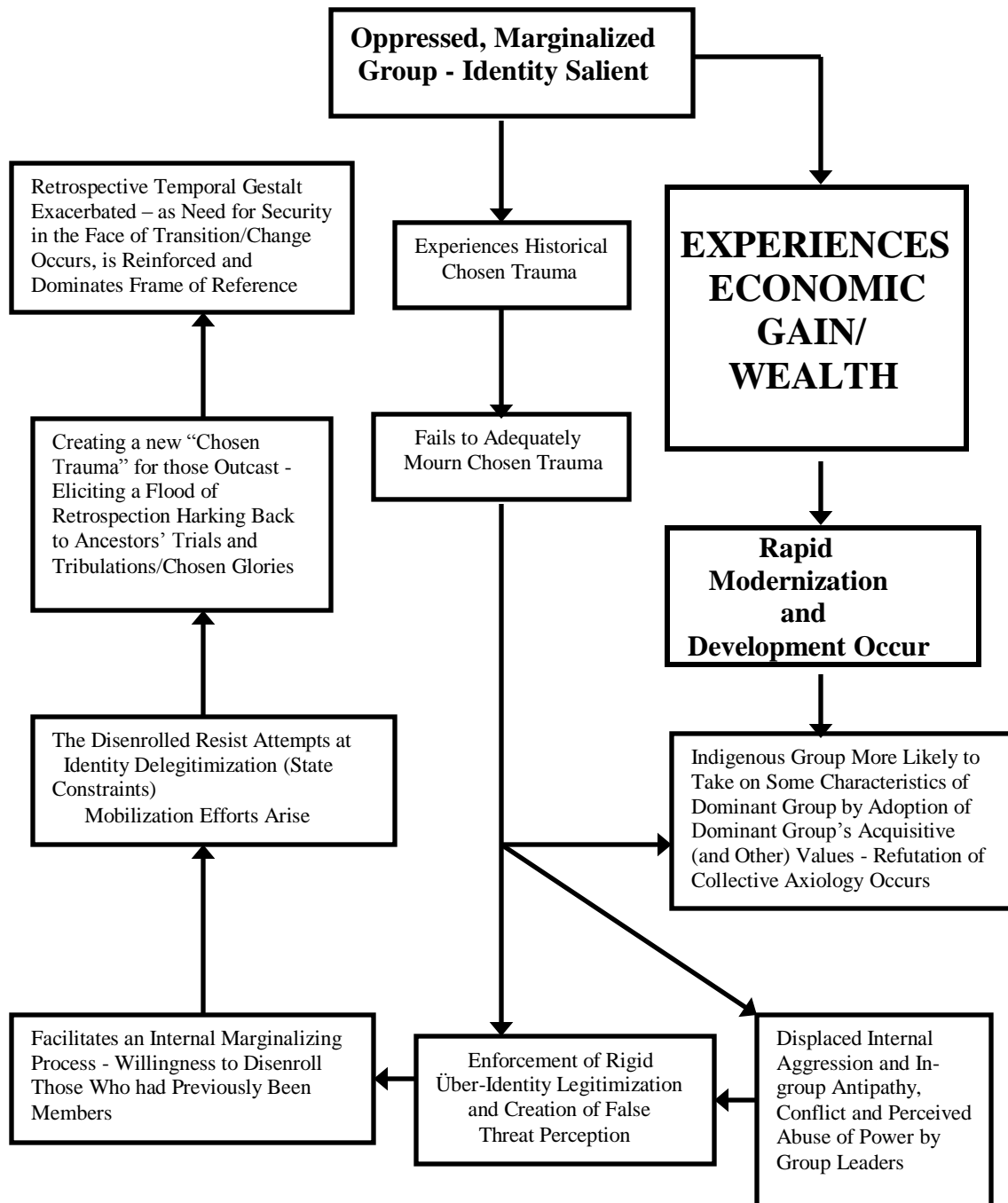
must be noted that the significance of history and ancestors shapes the cultural gestalt of many Indigenous peoples. As such, in terms of internal struggles, it can be surmised that one's history and ancestry may be considered a salient part of identity. I would posit that just like other fundamental or basic human needs theorized by Burton (1990) in the field of conflict resolution, *retrospection as security*, is a significant component of that need. That is, just as preservation of identity is fundamental to social existence, the perception of one's group- history (ethno-history) and **preserving** it (the social narrative) could very much be considered a fundamental component of being. I refer to this as a *retrospective temporal gestalt or view*. This may be particularly true for an ethnic minority that is still battling the impact of living within the influence of a dominant culture or any group that has suffered greatly at the hands of another.

In order to cope with historical and contemporary injustices, I argue that an adaptation mechanism of identity saliency and strengthening evolves as a form of comfort and security in which this retrospective view holds on to and intensifies chosen glories of ancestors' deeds (ubiquitously present in narratives). This also keeps fresh the memories of oppression. As previously stated, many cultures have a deep reference for those who have gone before – this occurs within the normal milieu of cultural tradition and often helps to integrate the identity into contemporary life. For the disenrolled, there is an even greater focus and internalization of the retrospective narrative, simply because this is part of their history that reflects their personal “origin stories” their beginning – their ontology of being.

Another factor that I address in this process is the economic impact of rapid wealth acquisition – particularly when such wealth occurs over a relatively short span of time – within a single generation; this is quite instrumental and particularly meaningful for those groups that have small populations. I assert that this rapid access to wealth, as occurs in some groups, can help accelerate a drive to modernity in which the subsequent relaxing of group cultural traditions and norms occurs and are replaced by the embracing of non-Indigene customs and practices. In looking at casino revenue and the profit from other enterprises such as smoke shops, golf resorts, etc., I argue that ecotourism may be seen as a double edged sword, particularly, for smaller groups where wealth generation may provide substantial income to group members. Thus, the fundamental challenge for Native communities is to be able to recognize the possible negative impact of such a positive set of circumstances. Historically, when there was a scarcity of resources, Indigenous groups tended to employ methods that focused on an egalitarian sharing of the bounty. In the contemporary world when some groups have just the opposite – an abundance of bounty, I surmise that such resource abundance may overshadow traditional thinking and facilitates greed and exclusionary behavior. I would also argue that such reflects an economic conflict which promotes revenue gain at the expense of tradition and culture as discussed by Johnson in, *“Is the Sacred for Sale?”* (Johnson 2006).

In Figure 9.2, a Conflict Map of Tribal Disenrollment, I provide a mapping of the process described in this study. In summary, it reflects the above discussion by showing that an oppressed group that experiences a chosen trauma may take on characteristics of the dominant group by adopting a maladaptive form of the dominant group’s values. I

## CONFLICT MAP OF TRIBAL DISENROLLMENT IN SUBJECT GROUPS



**FIGURE 9.2** Conflict Map of Tribal Disenrollment

surmise that when such groups fail to adequately mourn their chosen trauma, this may cause aggression – an aggression which should be directed towards the oppressor, yet turns inward towards group members (a form of structural violence) causing in-group antipathy, as well as conflict and abuse of power by leaders. When an economic surge happens through ecotourism, bringing development and rapid modernization, I assert that the ensuing gain may further exacerbate and enflame this social-cultural imbalance. I also assert that this imbalance exacerbates and paves the way for the willingness of some decision-makers to create an atmosphere of an exaggerated or false threat perception, which then facilitates actions of *über-identity* legitimization and paves the way for the group acceptance of actions to disenroll previously accepted members; which, then, becomes *the ousted members*’ “chosen trauma”. I argue that the disenrolled resist and refute attempts of the state’s (tribal authority’s) constraints of identity delegitimization and engage in acts to correct the perceived wrong, such as, mobilizing, protesting, filing lawsuits and joining with others in similar situations. In order to cope with historical and contemporary injustices, an adaptation mechanism of identity strengthening and security occurs in which there is a retrospective view that holds on to chosen glories (ancestors’ glories) of the past (ubiquitously present in narratives).

Though many may see this retrospective gestalt as a part of the Native American worldview, I argue that it may also form a core component of social relatedness. It may be seen as a part of identity, but could it not serve as another component outside the realm of identity – something more central to the core of existence in which one’s forebears continue to have such a distinct influence that they become a part of the *manner*

in which one connects to others? Is this temporal perspective a part of identity or does this focus on ethno-history, this retrospective view, deserve a category on its own which describes how certain groups function?

Another factor that may contribute to the ease in which tribal disenrollment occurs, is the perception of low group status. I assert that marginalization in such groups must be viewed through the lens of oppression. Are low status groups more likely to disenfranchise members in the face of substantive economic gain and wealth? Is this a factor of limited resource-sharing and the conflict that results? I would also argue that this internal cleavage is not due to limited resources – per se, but that, in some situations, the existence of *expansive* economic resources elicits actions that some characterize as non-Indian – actions of greed and selfishness. How do tribal communities, in an attempt to maintain group identity and integrity, assure that their leaders and decision-makers utilize well defined, corroborated and irrefutable evidence when making enrollment and/or disenrollment decisions? These are questions that perhaps others will be able to answer.

For many Indigenous and/or minority groups, there may be a tendency to forego some traditions and cultural nuances in favor of the adoption of the social, political and cultural markers of the majority group. Depending on the value adopted, this may elicit dissonance within the group and exacerbate conflict behavior. In those Native American communities in which disenrollments are based on refutable data, I argue that this may reflect a willingness on the part of decision-makers to engage in actions to expel members, a form of ritualized aggression, that would have been unheard of in their

traditional communities, wherein expulsions only occurred for great travesties or anticipated harm against tribal members. (Not unlike any sovereign nation that has severe consequences when individuals engage in offenses against the community or state, acts of treason, etc.) I assert that when it comes to contemporary exclusionary practices, such as a perceived unjustified tribal disenrollment, ancestral traditions (which typically leaned toward more - rather than less inclusivity - depending upon the circumstances), seem to have become conveniently forgotten and/or ignored. That is to say, the *sacred knowledge* of the community may be overshadowed, ignored and/or forgotten.

On another pertinent note, it must be stated that in these contemporary times of rapid social change and transition, there are many Native communities who, in terms of inclusivity, adopt the position that their survival is not in membership restriction, but in membership inclusion; they have, accordingly, adopted more relaxed guidelines. In other words, these communities embrace a process of adaptation that reflects the flexibility needed to face contemporary transition and seek to avoid rigid membership criteria, but practice, instead, a more open process towards citizenship acquisition. I posit that this may be relevant and feasible for some Native American communities; it may not be relevant and feasible for others.

I argue that contemporary membership practices may reflect the influence of the federal government whose hand in the codifying of identity is prevalent. I also argue that the invention of such membership criteria as citizenship rolls and blood quantum are purely Western (non-Indian) concepts that continue to dominate Native communities and

have permeated their constitutions. This coercive and constraining influence may have facilitated the ease with which contemporary tribal leaders adopt non-traditional actions such as membership expulsion in the name of tribal sanctity. Perhaps some Twenty-First Century Native American communities may see the benefit in moving beyond these restraints and embracing the creativity and adaptability of their ancestors by trying novel ways of being Indian and recognizing Indianness. I suggest that a relevant discussion that may be pertinent to this dilemma is one that the Indigenous people of New Zealand, the Maori, have been having about the new ways of being Maori, which will be discussed later.

### Healing and Reconciliation

It must be noted that leaders in contemporary Native communities, like leaders of any sovereign nation, have the challenging position of trying to balance an overwhelming set of circumstances and situations. They must not only struggle to integrate social programs, economic endeavors and a myriad of governmental relationships that reach from the local, to the state and national levels, I assert that these decision-makers must also balance and maintain a thriving membership that is acceptable to their communities. It is not unlike the challenge that the United States or other sovereign governments face when addressing issues of immigration – there are certain criteria for determining who does and who does not gain the opportunity for citizenship.

Historically, the notion of who does and who does not belong – the legitimizing of being in Native communities, one may surmise, was most likely much less complex and complicated. It is, however, the present and the future that now holds our attention. We have seen how within the gaps of differing perceptions of identity and belonging, exists a continuum of discord and disharmony. I illustrate that along this continuum exists the opportunity for ongoing dissension or strife, reconciliation or resolution, or the stagnation of the status quo.

An important factor must be acknowledged – regardless of contemporary enrollment policies - and that is the frequently painful history of the relationship between the United States government and Native American communities. I argue that it may be beneficial, in order to modulate the effects of the past, to consider ways to effectively mourn for the past and to adopt, as previously mentioned, public as well as private ways to acknowledge such. This could entail recognition, reconciliation and healing actions between and within both Indian and non-Indian communities. To a certain degree, such acknowledgments may have already occurred.

I also affirm that the purpose of such acts of healing is to provide a balm over old, as well as new, wounds. This may help reduce some of the “meanness towards each other” that some Natives say characterizes the relationships within some Indian communities or between Native peoples. Needless to say, before any restorative healing can occur, there also needs to be an acknowledgement and willingness in both communities (Indian and non-Indian, specifically, the United States federal government) to address the actions of the past. In order for such a reconciliation to happen, there



needs to be a symbolic coming together – an invitation from one – a hand outstretched to the other. I assert that we, as a society, could use our own form of Truth and Reconciliation Commission that acknowledges and apologizes for the horrors of the past. This may help move this country into a new social realm and may be cleansing for both Indians and non-Indians. By recognizing the healing reverence that purposeful ritual and ceremony (and the deep significance of honoring sacred knowledge) embodies, I argue that this may help to facilitate groups to move past their chosen traumas so that appropriate mourning, reconciliation, recovery and growth can occur – even when such traumas occurred in the distant past.

I also argue that there needs to be concerns about the avoidance of creating new chosen traumas for those who are expelled from membership. In other words, the *manner* in which individuals are expelled should have *meaning*. Most Native communities are built on ties of kinship in which the relational aspect of being carries substantial meaning. If a person who has been one's sister is no longer identified as such, the relational process does not have to end, actually it often does not end - emotions and memories are so complex that they do not just end when the formal relationship does despite the existence of documents of severance – in this case, letters from the tribe severing ties of identity. I would argue that strong kinship bonds are what kept Native peoples together through some horrendous times. The bond is powerful; it is a tie that is quite difficult to break. That is why many disenrolled persistently refuse to see themselves as anything other than who they have been most or all of their lives.

It is important to underscore that of the three groups studied for this research, only the Las Vegas Paiute permanently reinstated disenrolled members (even though the disenrolled had to engage in a legal battle to do so). A question arises, does the fact that historically, this group was the one with the most membership fluidity and perhaps least influenced or dominated by the majority culture help create the environment for this re-enrollment decision? I would argue that such actions of re-entry for those who have been *erroneously* disenrolled are the first step to paving the way for healing and reconciliation within the community.

Accordingly, it is my position that some Indigenous societies may need to embrace a forward looking, *prospective* focus - looking at the future in a more expansive manner that includes maintaining membership or citizenry in the same manner that other sovereign nations do that have populations in transition. For smaller tribal groups, in order to insure future viability, I argue that there may need to be, for example, some provisions developed for adoption in of members (a form of immigration) or to at least expand and/or loosen the criteria for membership. Could there, for example, be gradations of membership as occurs in some sovereign nations? (In the United States, an immigrant can function quite well in this society with a “green card”, but may not have access to all the benefits of being an American citizen, such as voting, etc.) What about the preservation of cultural markers? Will the transgeneration of identity substantially change as Indian communities undergo economic transition? These and other important questions are beyond the scope of this study, but may arise as tribes struggle to thrive during the next several decades of the Twenty-First Century and beyond.

Some argue that without new “blood” certain Native communities, particularly those that are small, may very well face extinction. There is only so much intermarriage that is possible or feasible in very small societies. Smaller Indigenous communities (with substantial resources) may wind up needing to do what some European countries do – fearing the impact of low birth rates, many European governments have developed incentive programs that encourage couples to have children and provide various social supports when they do. On the other hand, for some Native societies, the growth of population, however, not the lack thereof, reflects a current reality. Accordingly, larger communities may have immunity from dwindling population concerns.

I argue that keeping the historic past close to the heart while also keeping one’s head in the future, may characterize the contemporary way of being Indian. This may include, for example, valuing *sacred knowledge*, employing traditional rituals, values or methods of meaning making with a contemporary frame in order to find a way to follow the spirit of the ancestors’ methods of maintaining group cohesion – particularly, in regards to expelled members. Because many of the disenrolled see themselves as legitimate members of their tribes, they *feel* no less authentic than those who are recognized members. They hold on tightly to their tribal identities; many have been actively involved in cyber-campaigns to share their narratives and to seek support in this age of electronic technologies. I find that this is understandably reflected in the concerted move on the part of the disenrolled to mobilize across Indian Country, which is evidence of a contemporary approach to a current problem, much like the undertakings of the New Zealand Maori.

Modernist or progressive Indians may find it helpful to follow the path of the Indigenous people of New Zealand, the Maori. In that country, there is a move to identify a way to be “new” Maori – in other words, how to be a contemporary (urban) Maori in the Twenty First Century while still maintaining important cultural traditions, rituals, ways of knowing and meaning-making. They have been looking at trans-community or pan-Maori relationship and capacity building which cross and/or supersede smaller group or tribal identities (Meredith 2000).

Along the same lines, I suggest that Native communities may want to consider forums to strengthen the process of identifying who does and who does not belong when a dispute arises. This may include, for example, peer review courts or impartial tribunals that consist of members from *other* Indigenous communities (perhaps forum membership could consist of those groups who have avoided widespread enrollment disputes) to help those who are ousted in membership conflicts and to provide a compassionate medium through which their voices may be heard – a transnational Indian panel or court that would provide due process in a manner that also gives reverence to Native traditions. For Indigenous Americans, I assert, this could also mean establishing and utilizing inter-tribal connections - connections that act as checks and balances; it may also mean building unions that are prospective in nature and that look to the future while still honoring the spirit of the past. I suggest that there is a need to continue to build more trans-Indian economic alliances, particularly for those communities that have economic strength. This is already occurring in many instances, but bears repeating here. Like the European Union, there could be a Native American (economic) Union or something

similar. As stated, these alliances may be able to provide, for example, an impartial forum for internal membership disputes. Such impartial forums are commonplace amongst the world's sovereign nations who understand that in order to successfully engage in international transactions/economic development, some sovereignty is relinquished so that the business/trade agreements, peace-keeping forces, human rights agreements, other treaties, etc. may be forged. I suggest that Native nations may need to do something similar – this may facilitate greater resource development, but even more importantly, may help to ensure human rights compliance as they specifically relate to tribal membership disputes. Such a step could help to provide a foundation for stronger internal communities, capacity building and, as sovereign nations, could easily help to sustain productive inter-tribal connections. This potential future reality inches closer as more Native communities use their economic strength to educate young members and as these members enter and graduate college with degrees ranging from law and political science to business and economics.

Thus, I argue, it is important to add to the temporal gestalt of retrospection – a prospective one, one that looks more to the future in which there is a “vision” of being. In order to engage in this “quest of vision”, Native societies may need to ask themselves, “How do we see ourselves in 20, 30, 40, 100 years? How are we preparing future generations to not only cope, for example, but to thrive in an increasingly interconnected world? Beyond that, what does it take to escape from the grip of one's chosen trauma while still maintaining the dignity of one's past?

I suggest that groups may need to engage in constructed and purposeful assimilation which is what comes along with development, modernization and eco-enterprise. If done well, an Indigenous community can have the “best of both worlds” – while having one foot firmly in the past, the other in the present and its head in the future.

The goal of this project is to shed some light on a very sensitive and relevant topic. At its core, the goal is to facilitate understanding and to provide an explanation for expulsions from some Native American groups – particularly those who have recently acquired wealth due to economic or eco-enterprises and to help us comprehend why some tribal governments use their authoritative capacity as a tool for exclusion rather than inclusion - to treat someone who had once been his brother or sister as his or her enemy. I argue that the mark of any progressive civilization is the manner in which it is able to adapt to and utilize novel information and scientific discovery. For contemporary Native Americans, I posit that the transgenerational challenge will be - to be able to maintain distinction in determining group inclusion in a just manner while adapting to twenty-first century realities.

In the course of this study, I have found several reasons why certain attitudes and actions have occurred. The underlying explanation is complex, complicated, multi-generational, temporal, historical, framed in identity issues, compounded by the impact of minority-majority status and relations with the dominant culture, filled with psychological and emotional pain, sociological fragmentation and divisiveness, encapsulated by culture, clouded by economic gain and wealth, and elicits the danger, for

any group, of a tenuous or non-existent long term future and the ability to not only survive, but to thrive.

I hope that this study will provide a spring board from which to expand the discourse and to create dialogue to help begin the healing and reconciliation process impacting not only the three communities that are the subject of this project, but also those decision-makers and other stakeholders who are striving to successfully lead Native people into the mid-Twenty-First Century and beyond, not only as members of the American society, but as valued contributing members to the world community, as well.

In these last pages, I will discuss not only the implications for Native American communities, but will try to also expand these conclusions to a more generalized application.

### Broader Implications

It may seem that the exploration of the internal processes of selected Native American communities may have little, if any, relevance to the broader populace. As previously stated, and as of this writing, I assert that the dynamics of in-group or intra-group discord have not been widely studied in the field of conflict and its resolution. It is hoped that this research will offer a glimpse into the complexities of internal dissension and will spur others to further explore this phenomenon. I argue that the process of internal fragmentation in salient groups is significant to understanding and may have broader implications for resolving civil strife, for example. I also argue that the value of such research is in understanding and identifying the degree to which such occurrences

can de-stabilize communities. This may have broader implications for developing strategies to bring fragmenting communities together to avoid civil contention; there may also be value in addressing such issues before fractionalization occurs. In other words, I suggest that interventions that help communities heal may need to focus on the significance of certain salient and meaningful in-group perspectives – that of, say, temporality or other group identity markers and how this relates to the group’s cooperative function, as well as, how it facilitates or underlies discordant behavior.

Finally, in implementing this study through the process of grounded theory, another implication of note emerges.<sup>110</sup> I refer to it as the *economy of identity valuation and saliency* (See Figure 9.3). The economy of identity valuation and saliency refers to the process and degree of value attributed to another member of the group; it is measured in the syntax of degrees and value and may be instrumental in analyzing intra-group discordant behavior and the likelihood of dissension.<sup>111</sup> I argue that it is a process of identity one-upmanship that may be exacerbated by a precipitating event or occurrence (e.g. rapid access to substantial wealth, etc.) It is a process that is framed by an internal “*more than*” with an implied, “*less than*”. The internal discourse which ultimately becomes external, says, for example, “I am *more* Cherokee *than* you”, or “I am *more* patriotic *than* you”, or I am *more* radical *than* you”, or “I am *more* fundamentalist *than*

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<sup>110</sup> See the significance of *emergence* in grounded theory development (Strauss and Corbin, 34).

<sup>111</sup> I would surmise that this may mostly apply to groups with distinct and well-defined parameters, such as enrollment criteria or other legitimizing “credentials”. Thus, it may be important to ascertain what are the salient element(s) of that set; for a group of physicians, it may be degrees of competency, for congressmen, it may be patriotism, etc. There may also need to be a precipitating event to spur such intense reactions.



[illegible]

you". This narrative discourse, I affirm, may then be viewed as perceiving those within one's own group on a continuum of identity salience; this may facilitate, legitimize and create an image of any group member as being closer to oneself or at the opposite end of

that continuum (see Figure 9.3). If, for example, I am much more patriotic than you - escalates or moves along the continuum to “I am a patriot and you are not”, then you may be “banished” to the opposite end of the spectrum which is in the realm of “traitor”. If I perceive you as having such lessened value, (“devaluation of being”), then I may be more likely to treat you disrespectfully, fail to listen to you, or even engage in hostile actions or do psychological or physical harm towards you because now you are perceived to be a danger to me or threaten me in some way. If I perceive you as less legitimate, if I perceive you as an imposter, then I can metaphorically “disenroll” you or further attribute negative traits to you or literally “banish” you to the other end of the spectrum. I argue that it is at that point where conflict behavior within the group begins to proliferate. I will leave it to others to determine the inherent “value” of this observation and its relevance to understanding in-group tensions.

In summary, I have explored intragroup dissension through the study of disenrollment in the identified Native American societies and have presented possible suggestions for healing and reconciliation in those effected communities. In addition, I have provided a look at the broader implications for understanding intragroup discord. In so doing, I hope that I have also shed some light on how members of salient groups may devalue each other through an economy of identity valuation and legitimizing process, which on the negative spectrum, may threaten group or community cohesion and viability. It is without question that additional study of how groups come together and how they fragment may be of instrumental significance to further understanding the human condition. In the subsequent investigations into these phenomena, hopefully, this

unveiling - this process of discovery succeeds in opening the doors for the development of preventative, relevant and effective interventions that heal the social soul and soothe the community heart.

## **Appendix A**

### **Interview Questions**

1. Let's talk about your disenrollment. Tell me what does it mean to you to be a Cherokee/Freedman? What makes you proud to be a Cherokee/Freedman?
2. Tell me about disenrollment. How does this change the way you identify yourself and how has it effected your life?
- 3(a) How does disenrollment reflect or not reflect your people's cultural traditions?
- (b) What was the traditional policy of sharing and how did it change with the casino/smoke shops/resort?
4. Tell me how we can deal with this issue. What traditional ways of healing and/or methods of conflict resolution would be helpful?

### **Follow-Up Interview Questions**

1. What would you like to add to your story?
2. What would you like to see happen now?

## **Appendix B**

### **Select Sections of the Indian Gaming Regulatory Act**

#### **Indian Gaming Regulatory Act<sup>112</sup>**

**Public Law 100-497-Oct. 17, 1988 100th Congress Sec. 2701.**

#### **Sec. 2701 Findings**

The Congress finds that -

- (1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;
- (2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;
- (3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;
- (4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and
- (5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

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<sup>112</sup> The National Indian Gaming Commission. Accessed 07/09/08 from:  
<http://www.nigc.gov/LawsRegulations/IndianGamingRegulatoryAct/tabid/605/Default.aspx>

## Sec. 2709. Interim authority to regulate gaming

Notwithstanding any other provision of this Act, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before the date of enactment of this Act [enacted Oct. 17, 1988] relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

## Sec. 2710. Tribal gaming ordinances

(a) Jurisdiction over class I and class II gaming activity.

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts.

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if--

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that--

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than--

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of \$ 25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which--

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes--

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or

enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if--

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4) (A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B) (i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if--

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 13 of the Act [25 USCS § 2712],

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 18(a)(1) [25 USCS § 2717(a)(1)] for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on the date of enactment of this Act [enacted Oct. 17, 1988].

(iii) Within sixty days of the date of enactment of this Act [enacted Oct. 17, 1988], the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation.

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II), the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which--

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after the date of the enactment of this Act [enacted Oct. 17, 1988]; and

(B) has otherwise complied with the provisions of this section may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has--

(A) conducted its gaming activity in a manner which--

- (i) has resulted in an effective and honest accounting of all revenues;
- (ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and
- (iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for--

- (i) accounting for all revenues from the activity;
- (ii) investigation, licensing, and monitoring of all employees of the gaming activity; and
- (iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations;

and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation--

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 7(b) [25 USCS § 2706(b)(1)-(4)];

(B) the tribe shall continue to submit an annual independent audit as required by section 11(b)(2)(C) [25 USCS § 2710(b)(2)(C)] and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 18 [25 USCS § 2717] in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact.

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are--

(A) authorized by an ordinance or resolution that--

- (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,
- (ii) meets the requirements of subsection (b), and
- (iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity,

and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2) (A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b).

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that--

- (i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or
- (ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 12(e)(1)(D) [25 USCS § 2711(e)(1)(D)].

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D) (i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

- (ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.
- (iii) Notwithstanding any other provision of this subsection--

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in



conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3) (A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to--

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 5 of the Act of January 2, 1951 (64 Stat. 1135) [15 USCS § 1175] shall not apply to any gaming conducted under a Tribal-State compact that--

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7) (A) The United States district courts shall have jurisdiction over--

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B) (i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that--

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe [tribe] to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court--

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this Act and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures--

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this Act, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8) (A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates--

(i) any provision of this Act,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this Act.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 12 [25 USCS § 2711(b)-(d), (f)-(h)].

(e) Approval of ordinances. For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this Act.

## Sec. 2711. Management contracts

(a) Class II gaming activity; information on operators.

(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 11(b)(1) [25 USCS § 2710(b)(1)], but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this Act, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) Approval. The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least--

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) Fee based on percentage of net revenues.

(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) Period for approval; extension. By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) Disapproval. The Chairman shall not approve any contract if the Chairman determines that--

- (1) any person listed pursuant to subsection (a)(1)(A) of this section--
- (A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;
  - (B) has been or subsequently is convicted of any felony or gaming offense;
  - (C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this Act or has refused to respond to questions propounded pursuant to subsection (a)(2); or
  - (D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;
- (2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;
- (3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or
- (4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.
- (f) Modification or voiding. The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.
- (g) Interest in land. No management contract for the operation and management of a gaming activity regulated by this Act shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.
- (h) Authority. The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81), relating to management contracts regulated pursuant to this Act, is hereby transferred to the Commission.
- (i) Investigation fee. The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

## **Appendix C**

### **Indian Civil Rights Act**

## **Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-03)<sup>113</sup>**

### **§ 1301. *Definitions***

For purposes of this subchapter, the term -

1. "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
2. "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
3. "Indian court" means any Indian tribal court or court of Indian offense.

### **§ 1302. *Constitutional rights***

No Indian tribe in exercising powers of self-government shall -

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. subject any person for the same offense to be twice put in jeopardy;
4. compel any person in any criminal case to be a witness against himself;
5. take any private property for a public use without just compensation;
6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

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<sup>113</sup> The Tribal Law and Policy Institute. Accessed 09/30/08 from:  
<http://www.tribalinstitute.org/lists/icra1968.htm>.

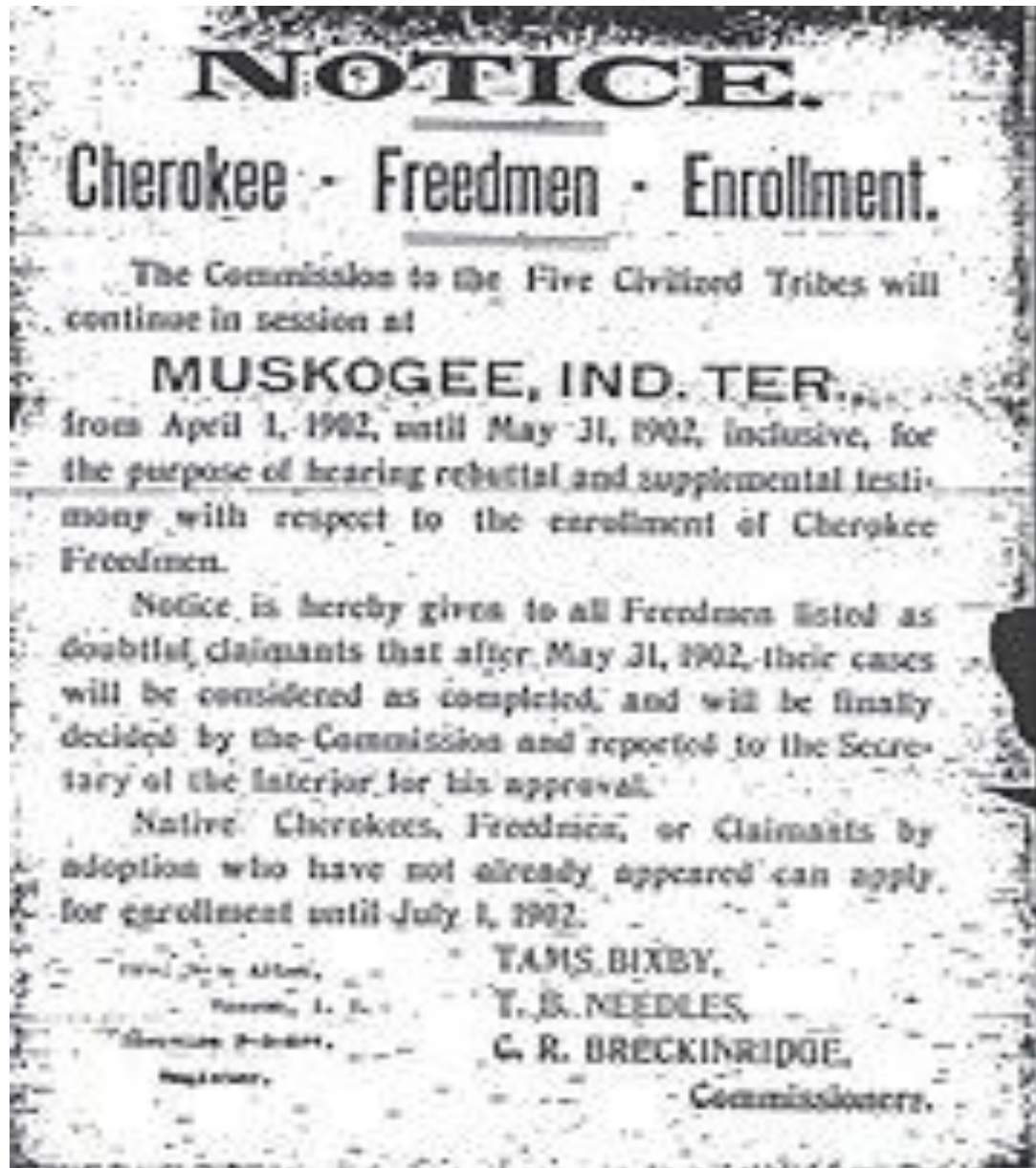
7. require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and [1] a fine of \$5,000, or both;
8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
9. pass any bill of attainder or ex post facto law; or
10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

### **§ 1303. *Habeas corpus***

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

## Appendix D

### 1902 Cherokee Freedmen Enrollment Notice \*



\*From: Wikipedia, the free encyclopedia. Accessed: 10/18/08 from:  
[http://en.wikipedia.org/wiki/Cherokee\\_freedmen\\_controversy9](http://en.wikipedia.org/wiki/Cherokee_freedmen_controversy9)



## APPENDIX E

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CHEROKEE NATION®

—We Are Cherokee—



Jamie Blackfox  
Cherokee-Mexican



John Ross  
Cherokee Full blood



Felicia Wing  
Cherokee-Ecuadorian



Nigel Turner  
Cherokee-African American



Eric Crittenden  
Cherokee-German



Erika Hoang  
Cherokee-Vietnamese



DeAnthoney Pennington  
Cherokee-African American



Thressa Tate  
Cherokee-Irish



Heather Williams  
Cherokee-African American



Sharon Dry  
Cherokee Full blood



Haley Buzzard  
Cherokee-Kickapoo



Ryan Sierra  
Cherokee-Mexican

---

The Cherokee Nation is a *family of families* and a community of communities. What binds us all together is our common Indian ancestry. Cherokee citizens have voted that the Cherokee Nation should be an inclusive Indian nation, allowing *anyone* with an Indian ancestor listed on the base rolls of the Cherokee Nation to be a citizen.



# Indian Tribes Have the Right to Decide Their Own Citizenship

The Cherokee Nation has defended its sovereignty against attacks from outsiders for more than two centuries. Today, our Nation holds dear its inherent and God-given authority to govern ourselves and define our identity as a people. The United States government fully recognizes this authority. Today, we enjoy the full right to self-governance as a free and sovereign people, united by to our common Indian ancestors on the base roll of the Cherokee Nation.

## Tribal Rights Affirmed and Re-affirmed By Courts

The U.S. courts have ruled time and again that Indian tribes and only Indian tribes have the right to determine citizenship.

- The Supreme Court held that Indian tribes are a "separate people" with the right to make their own membership requirements (Santa Clara Pueblo v. Martinez, 1978).
- In rejecting a Freedman suit that already went through the courts, the 10th Circuit Federal Court of Appeals ruled that "No right is more integral" to a tribe's self-governance "than its ability to establish its membership." (Nero v. Cherokee Nation of Oklahoma, 1989).

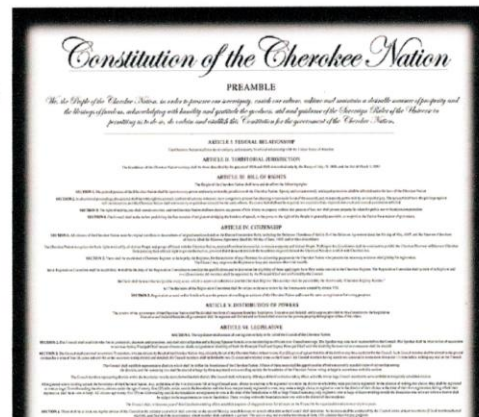
Tribal courts agree on the by-blood requirements

- In December 2001, the Cherokee Nation Judicial Appeals Tribunal upheld a Cherokee Nation Constitutional Amendment defining citizenship as by blood (Riggs v. Ummersteskee).

## Our Cherished Constitutional Rights

In 2006, the Cherokee Nation Judicial Appeals Tribunal ruled that Cherokee citizens have the ultimate authority to define tribal citizenship, and acknowledged our absolute right to vote on the matter.

- They said the Constitution could be amended to require that all citizens possess Cherokee blood.
- They called for an open and transparent democratic vote – which was held in March of 2007.
- Our people spoke, and 77% agreed that you must be an Indian to be a member of our Indian tribe.
- The record turnout for the vote – even more people than voted for our 1975 Constitution itself – shows that Cherokee identity is close to the hearts of the Cherokee people.



The Cherokee people cherish our democratic freedoms and we paid dearly for them. Our Constitution grants us the right to determine for ourselves the requirements for Cherokee citizenship – and that right has been recognized fully, over and over again by the United States of America.



Cherokee Nation  
Female Seminary c1887  
Tahlequah

Cherokee Nation,  
Indian Territory



Cherokee Nation  
immersion class  
Tahlequah, Oklahoma

APPENDIX F

**Recent Legal Action Taken by Disenrolled Members of the Pechanga Band**

No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

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LOUISE VICTORIA JEFFREDO, ET AL.,  
*Petitioners,*  
v.

MARK A. MACARRO, ET AL.,  
*Respondents.*

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*On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Ninth Circuit*

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**PETITION FOR WRIT OF CERTIORARI**

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March 18, 2010

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### **QUESTIONS PRESENTED FOR REVIEW**

1. Is the Writ of Habeas Corpus under the Indian Civil Rights Act limited solely to tribal criminal proceedings instead of also including tribal civil proceedings which result in the disenrollment of life-long tribal citizens?
2. Does the combination of “disenrollment,” which is the stripping away of Appellants’ life-long tribal citizenship and the current and potential restrictions placed on Appellants, constitute a severe restraint on their liberty so as to satisfy the “detention” requirement of Section 1303 of the Indian Civil Rights Act?
3. Does the disenrollment of life-long tribal members, by itself, constitute a severe restraint of liberty so as to satisfy the “detention” requirement of the Indian Civil Rights Act?
4. Did the Appellants exhaust their tribal remedies by going through every Pechanga Tribal appeal proceeding available to contest their disenrollment?

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## **Curriculum Vitae**

Janice R. McRae received her Bachelor of Science degree from Michigan State University, a Master of Arts degree in Counseling Psychology from The University of Michigan and a Master of Arts degree in Comparative Politics from The American University. Among her many endeavors, she currently teaches Master Degree students through distance learning in the field of International Dispute Resolution at the Werner Institute, Creighton University School of Law.

