BEYOND BLOOD QUANTUM:
EXPLORING THE ORIGINS & IMPLICATIONS OF IMPOSED INDIGENOUS IDENTIFICATION POLICIES TO RECLAIM TRIBAL CITIZESNHIP & REBUILD NATIVE NATIONHOOD

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I certify that I have read *From Imposed Beyond Blood Quantum: Exploring the Origins & Implications of Imposed Indigenous Identification Policies to Reclaim Tribal Citizenship & Rebuild Native Nationhood* by Erika Eva Chase, and that in my opinion this work is fully adequate in scope and quality as an undergraduate honors thesis.

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- Abstract -

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Since colonial times Indigenous peoples of the world have remained in a constant state of explanation having to prove and justify one's native heritage facilitated through the mechanism of Indigenous identification policies. Many of the settler-nation-state imposed policies and procedures were created with assimilative and racialized tactics, namely the institutionalization of blood-quantum systems. Policies established in the 1800s continue to have great effects on many contemporary Indigenous communities, including cases of internalization where blood-quantum currently determines "membership."

Through a historical comparative study of Indigenous identification policies in British settler colonial states, a review of federal policies maintaining blood-quantum systems, and a case study demonstrating how these concepts have become internalized in tribal communities, this thesis attempts to initiate the process and discussion of decolonizing Indigenous citizenship. I argue that for the sake of Indigenous nationhood, tribes must move beyond blood-quantum and towards innovative and culturally relevant concepts of citizenship.

- Acknowledgments -

Erika Eva Chase a:whilye'
Na:Tini-Xwe' 'qeh iwha:l na: Shinnecock 'qeh iwha:l
Tsediya' Ahtine' Whima:lyo' Na:Tinixw-ding miwa'na: Shinnecock-ding

Tsediya' and Tabutnee to the family, friends, peoples, and places "*I go along with.*"

Le:ne: sa'a: nah so:de:tL-te'
"we will all work together"

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- Table of Contents -

Preface
- MY PLACE & PURPOSE IN THIS PROJECT -

- The Product of a Na:Tini-Xwe' Father and Shinnecock Mother -

Although the idea of defining indigenous peoples, for political purposes, originated in colonial times of the seventeenth century, the complications and complexities of defining *who an Indigenous individual is* truly remains a contentious issue. From the personal perspective of an Indigenous person of the United States, past implications of such historical policies, legislation, and governmental procedures that affect, define, and validate one's native identity, has in fact been a part of my life since I was born in the year 1988 to a Na:Tini-Xwe' (Hupa) father and a Shinnecock mother.

My tribal enrollment number was assigned to me upon the signature of my father, who like myself, is an enrolled member of the Hoopa Valley Tribe of Northern California. According to our tribal archives, and through the lineal decent of my father's bloodline, I am recognized as 3/8 Hupa Indian which qualifies me as an enrolled tribal member, able to claim an Indigenous identity recognizable by the Federal Government, the Bureau of Indian Affairs, and the Hoopa Valley Tribe which is one of the 564[1] Federally Recognized tribes in the United States of America.

However, my mother's people, the Shinnecock Indian Nation is one of over 200 non-federally recognized tribes in the United States, despite their negotiated treaties and interactions with the colony of Southampton throughout the seventeenth century. Regardless, as a state-recognized tribe and consistent existence and governance on their small reservation on Long Island, New York, I have inherited a strong Shinnecock line through my maternal grandmother's lineage as well. Based on the commonly accepted concept of blood-quantum I have inherited another 1/4 of "Indian blood" from my mother. Federal opinion and

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[1]. This number changes frequently as many non-federally recognized tribes are in constantly in the petitioning process. see Bureau of Indian Affairs Website, "What We Do," http://www.bia.gov/WhatWeDo/index.htm

enrollment complexities aside, I was raised knowing that I too am a member of the Shinnecock Indian Nation.

My remaining 3/8 of identity, consists of a mixture of British, Black, Irish, and various other Indigenous American tribes such as Georgia Creek, Paumunkee of Virginia, and Quinault of Washington, though the fractional make-ups of each, I am not sure. Based on these fractioned ideals, 5/8ths recognizable "Indian Blood" (Hupa and Shinnecock combined) plus another 3/8ths of other heritage creates the identity of 1 whole person (see Figure 1). This concept of "Indian Blood" has defined my Indigenous identity and has similarly subjected countless individuals to blood-quantum systems across Indian Country. Yet, despite these percentages and numbers associated with my "Indian-ness," I cannot dismiss the fact that my sense of self and tribal belonging rarely entailed an elementary school addition problem providing the sums of my fractioned "Indian-blood."

Both my mother and father were raised with close relationships to their respective reservations and cultures. Similarly, this has reflected in the way they chose to raise their children, instilling pride, respect and love for their people, their homelands, and their traditions, values, and beliefs. Before I understood quantums I knew that half of a whole was a half. Therefore, in my mind I was half of my whole father and half of my whole mother. Self-proclaimed and greatly accepted by my parents, in my childhood world-view I was half Hupa, half Shinnecock, taught to never forget one or the other, and raised to understand their equal importance in creating my unique identity (see Figure 2). Attempting to live my life in this balanced way, between two tribes, I have learned to embrace both cultures, tribes, and places wholly – though I am bitterly reminded that I am formally recognized as a fraction every time I look at my Tribal Identification Card or am forced to fill out a form asking for my "enrolled tribe."

This complex concept of mutli-culturalism and more so, mixed-tribal make-up, has been very impactful on my personal views on identity; however it seems that there is not much room for personal ideals of identity in this very linear and limiting system of Indigenous identification. Further, any ideas of Indigenous identity are commonly complicated simply because there are numerous legal and political

factors that seem to overpower any individual's personal or even social ideals, circumstances and perspectives. This becomes the fundamental issue at hand - *how and why have these political implications taken precedence over personal ideals of Indigenous identity?*

My own complicated Indigenous identity is an example demonstrating only a few facets of identity that are further convoluted by the fact that I have inherited Indigenous blood from more than one tribe. There are many intricate differences between my mother and father's tribes from cultural, political, and social perspectives of Indigenous identity. However, for the purpose of this thesis we will focus on the social, political and legal clash that exists between Federal Governments, Tribal Governments, and Traditional Individuals who all seem to have varying ideas of who an Indigenous person is and is not. From varying membership criteria (blood quantum vs descendancy) to restrictions on singular tribal enrollment, there are many complications that have shaped my views of such policies simply because I have been subject to them.

L. Scott Gould referenced a nationally known American Indian leader who publicly shuned "lax membership criteria" as an enrolled tribal member looking from the inside out.[2] This concept is further exemplified by the distinction of certain scholars who have written in support of more lax membership criteria as outsiders looking in, "Indians who seek cultural acknowledgement as being Indian but are not members of the tribes whose race-based memberships are recognized by the government."[3] I therefore can characterize myself as an *insider looking in*, attempting to better explicate the origins of such identity policies while also critiquing its place and practices within my own communities from the perspective of an enrolled tribal member subject to the "racialized" membership criteria Gould refers to. Though my situation is merely a glimpse into the complexities of Indigenous identity, I feel that this personal connection is vital to the development and progression of this thesis.

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[2] L. Scott Gould, "Mixing Bodies and Beliefs: The Predicament of Tribes," *Columbia Law Review* 101 (2001): 702-772.
[3] Ibid., 765-766.

It is explicitly true that justifications and limitations are placed on my indigenous identity, arguably because of past enforced, imposed, and encouraged ideals of western governance and colonization. The fractioned identity associated with my name and enrollment number is a product of the past historical policies that unfortunately continue to burden my people through both external enforcement and tribal internalization.

I feel it is necessary to look further into the origins of these influential policies and particularly at the evolution of these external definitions of Indigenous identity for many tribal governments and societies have internalized these ideals. I do not believe that blatant exclusion was a part of our culture and it seems to be a vital component to allow a true act of self-determination to occur. It is apparent that many of these oppressive policies are prohibiting people from their Indigenous identities based on nation-state government-influenced decisions.

This thesis will further explore and more so expose instances in which tribes have internalized and embraced the tactics of the colonizers, as it pertains to defining Indigenous identities. It is my belief that the majority of native peoples who internalized and currently abide by these practices, my tribes included, are very much unaware or unwilling to acknowledge the historical and colonial origins of these concepts, which have been responsible for the complex and contentious identity issues that are unique to Indigenous peoples today. Continuing to base indigenous identities solely upon racial formulation is no longer a viable option if tribes wish to continue towards building and re-building[4] their nations. It is due time to right the wrongs of past legislation, recognize how they have influenced where are today, and reclaim our identities by defining ourselves based on our own tribal concepts and needs of our evolving cultures.

[4] Oren Lyons, *Foreword* for *Rebuilding Native Nations*: *Strategies for Governance and Development*, (Tucson: University of Arizona Press, 2007), viii.

Introduction
- A CONSTANT STATE OF EXPLANATION -

- Overcoming Others and Ourselves -

For generations Indigenous peoples have been in a constant state of explanation - held to specific legal definitions that have attempted to define the racial and cultural identities of Indigenous individuals since the points of European contact. Policies commonly initiated by formal nation-state governments had and continue to have great implications for Indigenous peoples. Specifically, many indigenous identification policies - those that attempt to define legal/racial/social aspects of Indigenous identity – were created and implemented in times of "New World" colonization.

However, these definitional legislations, some nearly 120 years old, have influenced and/or occasionally continues to be the accepted definitions commonly used today. Many such policies that attempt to define and influence Indigenous identities have evolved and transformed over time; yet, policies still exist that are reflective of the colonial and assimilative motifs that were historically created by non-Indigenous peoples. Therefore, we are faced with many questions about both the origin and contemporary use of such legislation.

How do the policies and definitions of today mirror or defy those historical policies heavily imposed upon countless Indigenous individuals, communities, and nations? Have policies and ideals of legally defined Indigenous identity changed over time? Are the policies currently dictating who an Indigenous person is and is

not the most appropriate for self-determined Indigenous nations of today? Through the use of comparative policy reviews, historical evidence, political theory, and tribal knowledge this thesis will attempt to discuss and suggest potential answers for each pressing question.

Taiaiake Alfred, a renowned Kanien'kehaka (Mohawk) scholar of Canada has written extensively on the issues and obstacles of identifying definitional policies for Indigenous peoples. In his 1999 work, *Peace, Power, Righteousness: An Indigenous Manifesto*, Alfred proclaims that:

> The imposition of labels and definitions on indigenous people has been a central feature of the colonization process from the start. Thus another fundamental task facing Native Communities is to overcome the racial, territorial, and 'status' divisions that have become features of the political landscape.[5]

The process of overcoming these imposed "divisions" will become the essence and backbone of this work. Embracing two important realities, 1) that we have been subject to imposed policies; and 2) that many are now subjecting themselves to such policies, we are immediately faced with this "fundamental task." It seems that a vital and viable task Tribal Nations have the opportunity to address is reclaiming their right to self-define their peoples as a true act of self-determination.

Tribal governments and communities alike must face these realities in order to truly *overcome* what has historically been imposed upon them. Therefore, this paper will focus on two angles of overcoming, which are both necessary in the

[5] Taiaiake Alfred. *Peace, Power, Righteousness: An Indigenous Manifesto*. (New York: Oxford University Press, USA, 1999).

attempt to be self-determined, strong and sustainable Indigenous nations. Following the introduction of the importance of Indigenous Identification policies and Nationhood political theory, the first section will be guided by the concept of *overcoming others.* This will attempt to illuminate international cases of change by explicating legal histories and Indigenous policy evolution. Initially focusing on the imposed policies, practices, decisions, and legislations federal governments have used to regulate and define Indigenous identity, the goal of this section is to demonstrate how things have come to be and the apparent need to overcome these external forces.

Similarly, the next section will be dedicated to *overcoming ourselves,* as there is thorough evidence that Indigenous Nations are internalizing many of these colonial policies regardless of the fact that outsiders once heavily imposed them. Exploring federal implications in the context of a small tribal community, part two will attempt to bring light to the complex political infiltrations of these definitions and identification concepts as well as the "colonial amnesia"[6] that has plagued our communities. Finally, part three will identify ways to move forward once we have overcome all that we have needed to. *Changing political landscapes* will allow for a discussion and proposal of decolonized tribal citizenship, enrollment, and membership practices to take place in a very culturally and tribally specific way building upon the case study of part two.

[6] Robert Odawi Porter. "The Decolonization of Indigenous Governance." In *For Indigenous Eyes Only: A Decolonization Handbook (*Sante fe: School Of American Research Press, 2005). 90.

The process of initiating the "fundamental task" at hand will be realized in a suggestive dialogue, demonstrating and advocating for the potential of internal change, revisions of enrollment/tribal membership criteria, and process modification from within Indigenous communities themselves. The ultimate goals is something similar to Carole Goldberg's observation in working with tribal leaders on constitutional reform, which consists of "suggesting other ways the tribe might sustain cultural coherence while maintaining more inclusive citizenship provisions."[7] This goal is a vital component of the process of tribal nation empowerment that seems very achievable in many Indigenous communities with the desire to continue on the path of building strong native nations.

- Indigenous Identification Policies – Malleable & Stagnant -

In the article, "One Step Forward, Two Giant Steps Back," Suzianne D. Painter-Thorne, correctly argues "when a law is imposed by outsiders, it becomes a means of colonization, forcing one group to conform to another culture's expectations and beliefs" as she reviews contemporary issues in American Indian Law.[8] In the form of laws and legislation, imposed ideas of what foreigners constitute as Indigenous individuals and groups, have originated as tools of colonization and continue to have harmful and oppressive affects on many contemporary Indigenous groups.

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[7] Carole Goldberg. "Members Only? Designing Citizenship Requirements for Indian Nations." (*Kansas Law Review* 50, 2001-2002): 444

[8] Suzianne D. Painter-Thorne. "One Step Forward, Two Giant Steps Back: How The 'Existing Indian Family' Exception (RE)Imposes Anglo American Legal Values On American Indian Tribes To The Detriment of Cultural Autonomy."(*American Indian Law Review* 33, no. 2008-2009): 1

Over time, there have been drastic changes in the ideas of what an Indigenous person should or should not be, consequentially regulating who is entitled to the rights and resources of Indigenous peoples. Tribal citizenship, or more commonly known as membership, is "intimately entangled with fundamental cultural, social, economic, and political dimensions of tribal life." [9] This aspect further complicates the reasons Indigenous identification policies are both necessary and relevant in today's society. Historically these policies, most commonly based on biological theories of Indian blood, were used to determine who would become a beneficiary of treaty rights and who would be subject to Indigenous assimilation/paternalist policies that were often nation-state initiated.

For example, in the United States and elsewhere, "British colonies and later states similarly applied fractionated amounts of blood to define the legal status of mixed race people for various purposes."[10] Such policies have included restrictions of federal citizen's rights, the enforcement of miscegenation laws, and the placement of Indian children into government boarding schools. Additionally the allocated Indigenous blood-quantum was commonly indicative of what rights or benefits one was entitled to from land allocation to food rations - "blood" has been forced to matter since point of European settlement.

Yet, today, "blood" still matters, and may in fact matter even more, as it now applies to all realms of Indigenous identities, as an individual, on a tribal level, and in the context of the Federal government. On a personal level, in every day

[9] Golderg, "Members Only?," 439.
[10] Paul Spruhan, "A Legal History of Blood Quantum in Federal Indian Law to 1935" (51 South Dakota Law Review 4, 2006): 41.

interactions, an Indigenous individual may be asked at any given moment, "how much are you?" revealing just how engrained these historic concepts of percentages, quantum, and fractions have become in our society. From the perspective of tribal membership, an enrollment number may be associated with an individual's right to fish, hunt, or gather, to participate in tribal elections, one's ability to claim financial support in education scholarships and grants, attend certain events, or claim tribal dividends from any tribe that has the economic capabilities to do so. Further, tribal membership in a federally recognized tribe may also allow individuals to apply for and utilize services and programs under the Bureau of Indian Affairs, including Indian Health Services, education grants, and tribal employment opportunities among other things.[11]

All of these factors, and more, truly contribute to the complexities and contentiousness of Indigenous identification policies. The interconnectedness and contradictions that are implied and enforced through very limiting policies, such as those that utilize methods of blood-quantum, have become increasingly complex. The fact that these definitions have become attached to racial, social, political, and even cultural/spiritual Indigenous identities makes the issue of Indigenous identity extremely multi-faceted. These issues of tribal membership arise in various settings, from traditional cultural gatherings to reservation basketball tournaments, in school hallways and around kitchen tables, these identities and policies are controversial

[11] Circe Dawn Sturm, Sturm, *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma*. (Berkeley: University of California Press, 2002): 3

issues that have truly become a part of Indigenous life – "so familiar as to almost seem *natural"* as Mik'maw scholar, Bonita Lawrence has described.[12]

The rights and potential entitlements that are attached to tribal membership and membership criteria truly complicate the critique of such policies and practices simply because the special recognition of Indigenous peoples must be regulated in order to protect the rights and resources of tribal nations. Although issues of Indigenous citizenship will vary from tribe to tribe, the fact that federal influences and impositions of policies and theories have been applied over time and throughout many spaces reveals their inconsistent and sporadic nature. There are many blatant limitations that were enacted to suppress any tribal, cultural, or racial change within Indigenous peoples. Therefore, it is vital that these policies and definitions be critiqued and reevaluated so that tribal needs and cultural appropriateness may exist in such a clearly foundational and fundamental tribal matter – Indigenous identity and what it means to have it.

Attempting to identify a list of core components of indigenous identity that could potentially be applied to Indigenous groups, Wilmer and Alfred, co-authored a three-part definition of indigenous peoples that is "broad enough to encompass the approximately 350 million indigenous peoples throughout the world."[13] Their quite inclusive definition consists of the following:

> (1) They are descended from the original inhabitants of the geographic areas they continue to occupy, hence, they are

[12] Bonita Lawrence, "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview." (Hypatia vol. 18.no. 2 (2003): 3-31): 1
[13] Jeff J. Corntassell, "Who is Indigenous? 'Peoplehood' and Ethnonationalist Approaches to Rearticulating Indigenous Identity." (*Nationalism and Ethnic Politics, Vol. 9, No. 1. Spring 2003): 77*

> aboriginal; (2) They wish to live in conformity with their continuously evolving cultural traditions; (3) They do not now control their political destiny, and consequently, are frequently subjected to policies arising from the cultural hegemony originally imposed by an 'outside' force.[14]

The second point seems to truly address the unavoidable certainty that cultures and identities are not stagnant, they do change, and this is an important factor that cannot be overlooked in terms of any identification policy. Change is unavoidable. However, one must question why such lineal and limiting Indigenous identity policies are not suited to react to the changes that have occurred and are occurring. Additionally, these policies are not easily changeable to address such a phenomenon of evolution.

The lack of change in such policies and definitions are quite alarming yet also quite diverse across different contexts of varying nation-states, even those with common settlers and settler practices. An additional component of this project is to contrast instances of Identification policies undergoing drastic changes on Federal levels compared to a nation-state that has had relatively very little change in theory or practice over time. Exemplified through a brief review of change that has occurred on federal levels in a few progressive countries, varying levels of policy evolution will be illustrated.

Writing and researching from the perspective of an Indigenous American, the focus and detailed accounts covered will revolve around American Indian federal

[14] Gerald R. Alfred and Franke Wilmer "Indigenous Peoples, States and Conflict" in David Carment and Patrick James (eds) *Wars in the Midst of Peace* 1997

and tribal policies that exist within the United States of America. However, it is this case of the United States that will serve as a settler nation-state that have continued to have quite stagnant ideas and policies of Indigenous identity definitions.

Drawing on examples from other developed, British chartered and colonized nation-states, that have histories of imposing Indigenous identification policies upon the original inhabitants of their respective territories, it seems appropriate to acknowledge progressive changes that have occurred to demonstrate successful acts of *overcoming others*. I do not believe that there is any one nation-state that has flawless practices or relationships with its Indigenous peoples and similarly I am not arguing that the policies reviewed in this international survey section of Indigenous identity policies abroad are flawless.

Nevertheless, I feel that examples of change are incredibly significant so that places where no change is occurring can model movements, challenge ideas, and change policies and practices similarly. The following places and the changing policies, reports, and statues of each country will exemplify nation-state initiated or imposed Indigenous identity theories and practices. Identifying the fruitions of transformative Indigenous identification policies over time, within the spaces of Canada, Australia, New Zealand, may bring forth the potential that exists here in the United States. By way of this comparative study, the possibilities and potential for change become quite tangible.

In the United States of America, much of the Indigenous identification policies that have continuously fractioned and limited Indigenous identities and tribal nations have surprisingly remained stagnant and constant over time. Such

flexible, culturally sensitive, and Indigenous initiated policies and movements of policy change, are far from the norm in this country. Today the most commonly accepted, used, and internalized Indigenous definitions echo the exact arguments of maintaining a minimum blood quantum requirement of one-fourth (¼) "Indian blood" in 1933[15] and reflect a concept drafted in they year 1866.[16] Comparatively, progressive change has not occurred in the United States the same way that it has in the nation-states of Australia, Canada, and New Zealand, regardless of common characteristics these four countries share.

Consequentially, an alarming amount of American Indian Tribes (and other Indigenous peoples of American territories, including Alaska Natives and Native Hawaiians) have become subject to the remnants of these historical policies. The colonial legacy has continued. As of the year 2000, over seventy-five percent of federally require one-quarter degree blood to qualify (others require upwards of ½ while the lowest reported is 1/64).[17] Due to this wide acceptance amongst tribes themselves, a minority of individuals, and even fewer tribal nations have questioned, critiqued, or challenged the institutional oppression existing within their own tribal communities and governing documents.

Blood quantum has become a system inherited and internalized within Indigenous individuals and groups, regardless of the fact that the system was introduced through forced outsider imposition. It is my belief that the majority of

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[15] Spruhan, "A Legal History of Blood Quantum in Federal Indian Law to 1935," (*51 South Dakota Law Review 2* 2006); citing Commissioner of Indian Affairs, 1933-34 John Collier
[16] *Ibid.* 5.
[17] Gould, "Mixing Bodies and Beliefs: The Predicament of Tribes" (*101 Columbia Law Review 702,* 2006):

native peoples who abide by and internalized these practices are unaware of the origins of these concepts of racially based enrollment, blood-quantum, disenrollment, and other oppressive indigenous identity policies that exist today. Therefore, this project attempts to explicate the origins of such policies while also discussing methods of alleviating their harms. This realization and reevaluation process is vital to the prosperity of Indigenous nations.

- Indigenous Nationhood & Self-Determination -

In the work *Political Theory and the Rights of Indigenous Peoples,* published in 2001, Mohawk scholar Audra Simpson suggests that "when articulating and analyzing indigenous nationhood… the abstractions of 'nationalism,' 'nationhood,' and 'the state' are departure points" for understanding, researching, and explaining Indigenous experiences and identities.[18] Such approaches, concepts, theories and terms of nationhood and nationalism have not regularly been applied to Indigenous groups and peoples until more recent years. However, this is not to say that they should not be.

Indigenous peoples have quite unique situations and relationships with their respective nation-states as well as a distinct place in international law. Jean L. Elliot and Augie Fleras, authors of *The Nations Within,* explains that "aboriginal peoples share a common experience in terms of who they are, what they want, and how they propose to get it through decolonization of their relations with the state…

[18] Audra Simpson, "Paths Toward a Mohawk Nation: Narratives of Citizenship and Nationhood at Kahnawake." In *Political Theory and the Rights of Indigenous Peoples*. (New York: Cambridge University Press, 2000): 122

[advocating for the restoration of] self-determining ethos of a nation within a state."[19] These experiences and desires are what have contributed to the resurgence of Indigenous rights movements, community empowerment, and Indigenous nation-[re]building. Therefore, political theories and philosophies of nationhood, boundaries, citizenship, and self-determination are quite applicable and appropriate while attempting to relay the experiences and desires Indigenous nations are pursuing and protecting.

Up-lifting Indigenous tribes and communities by acknowledging them as nations, moving beyond racialized membership and enrollment criteria to tribal citizenship and participation will allow for Indigenous nationhood to grow and prosper. Backed by the rhetoric of self-determination and nationhood political theory, philosophy and debates, the critiquing process of Indigenous identity policies and practices of both past federal policy and current tribal legislation will be enhanced. Speaking of her own Indigenous community of Kahnawake in Canada, Audra Simpson further proclaims that tribally specific citizenship, "must be re-centered in nationalist terms, as these are the terms that are their own."[20]

Acknowledging that Indigenous peoples were essentially nations in essence pre-colonial times contact, legitimizes the current nation building, and nation [re]building.[21] This realization allows for nationhood theory and self-government to stand in the conversation of Indigenous citizenship and sovereignty. Even the

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[19] Jean Leonard Elliott and Augie Fleras. *The "Nations Within": Aboriginal-State Relations in Canada, the United States, and New Zealand*. (New York: Oxford University Press, USA, 1992): 221.
[20] Simpson, "Citizenship in Kahnawake" featured in *Political Theory and the Rights of Indigenous Peoples*, 120
[21] Lyons, Foreword for *ReBuilding Native Nations*

renowned political theorist Will Kymlicka has advocated for such recognition as "indigenous peoples… only lost their self-government as a result of coercion and colonization"[22] and were therefore initially self-determined nations.

Therefore, the use of both liberal and communitarian schools of thought on nationalism will be incorporated throughout to explicate both community centric and justice necessary facets of Indigenous nationhood. Exploring pro-nationalist theory that consists of arguments based upon identity, human flourishing, and self-determination will aid in the justification of the claim that Indigenous peoples are in fact 'nations within' as stated by Fleras and Elliot.[23]

Further, another fundamental component of nationhood and identity, are the development and maintenance of boundaries, "separating people from one another" which produces both personal and collective identities.[24] With respects to Indigenous groups, this concept must not be overlooked for "defining for itself the composition of its membership or citizenship… [is the]… bedrock expression of self-determination by any nation or people."[25] As self-determined tribal nations and because boundaries have become such an important component of Indigenous identity (both on individual and tribal levels), self-established forms of citizenship should be guaranteed as a right of self-determination.

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[22] Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*. (New York: Oxford University Press, USA, 2001): 147
[23] Miscevic, Nenad, "Nationalism", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/nationalism/>.
[24] Simpson. "Citizenship in Kahnawake" in *Political Theory and the Rights of Indigenous Peoples*, 120
[25] Ward Churchill, "A Question of Identity." In *A Will to Survive: Indigenous Essays on the Politics of Culture, Language, and Identity*. (1 ed. New York City: McGraw-Hill Humanities/Social Sciences/Languages, 2003): 59-94.

According to the *Stanford Encyclopedia of Philosophy,* "citizenship" consists of a three-pronged definition. Citizenship is considered to be:

> a legal status, defined by civil, political and social rights… [considers] citizens specifically as political agents, actively participating in a society's political institutions... [and refers to citizenship as] membership in a political community that furnishes a distinct source of identity.[26]

Therefore it becomes apparent that these different aspects of citizenship are quite intersectional and influential on many different levels of identity, from individual to collective.

Further a strong civic identity can motivate citizens to participate actively in their societies political life, which "signals to individuals the social ideal, but suffuses everyday life with a sense of nationhood."[27] Carole Goldberg may provide the most applicable definition for this thesis thus far by recognizing that "while citizenship has no universal definition, at its heart, it refers to the rights of participation and protection (along with accompanying obligations of loyalty.)"[28] Participation, protection, obligations, and loyalty are all aspects that can be found in current and potential citizenship practices and policies initiated by Indigenous nations.

It immediately seems that the only way to reverse an act of internalization is actually from within, therefore the most viable antidotes addressing this legacy of imposed racial and legal constructs of Indigenous identity are in tribal communities

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[26] Leydet, Dominique, "Citizenship", *The Stanford Encyclopedia of Philosophy (Spring 2009 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2009/entries/citizenship/>.
[27] Simpson,"Citizenship in Kahnawake," 127
[28] Golderg, "Members Only?," FN 428.

themselves. This can only be done through the dismantling of the imposed system from within, realizing and acknowledging the histories of these policies; understanding that tribal communities are capable of creating lasting and viable change; and [re]membering the traditional values and aspects of indigenous identity that are important to their tribal well-being so that strong nations can be [re]built.

Indigenous peoples have been oppressed on many levels over the span of more than half a millennia – it is both necessary and feasible to begin breaking free from oppression by way of realizing the origins of common Indigenous identification policies and re-thinking the current practices existing within our communities. Paulo Freire similarly illuminates the process of decolonization and reclamation based on his work *Pedagogy of the Oppressed*:[29]

> To overcome oppression people must first critically recognize its causes. One cause is people's own internalization of the oppressor consciousness… Until the oppressed seek to remove this internalized oppressor, they cannot be free. They will continue to live in the duality of both oppressed and oppressor.[30]

Freire claims that liberation can only occur when both "praxis" and activism occur simultaneously with "serious reflection."[31] Based on this idea, I will argue that the process of colonization can only be undone through internal decolonization which calls upon tribal leaders and communities to be ready and willing to question,

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[29] Paulo Freire, *Pedagogy of the Oppressed*. 30 Anv Sub (ed. New York: Continuum International Publishing Group, 1970 [2000 ed])
[30] Crittenden, Jack, "Civic Education", *The Stanford Encyclopedia of Philosophy (Winter 2008 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2008/entries/civic-education/>.
[31] Freire, *Pedagogy of the Oppressed*.

critique, and create policies that originate from within their cultures, values, and beliefs, rather than those of the oppressor and others. Therefore, moving away from historically imposed policies and reclaiming the right to self-define as a true act of self-determination seems to be an accessible route for tribal communities and governments to undertake in the pursuit of healthy, strong, and growing individual Indigenous nations. The first act must be one of reflection. Identifying the origins of our current policies and therefore recognizing their causes and impacts on our own Indigenous identities. Looking back at colonial times when others became the main oppressors will begin the process of overcoming them.

Part One
- OVERCOMING OTHERS -

- Under The Protection of Great Britain -

In September 2007 four countries were grouped together as the only countries to openly reject the *United Nations Declaration of the Rights of Indigenous Peoples*[32]. Australia, New Zealand, Canada, and the United States were opposed to many of the provisions set forth in the declaration from the drafting stage to its adoption.[33] Not only were the current indigenous and nation-state relations of these respective countries put into question but many also began to question their associations as four powerful and developed countries with significant Indigenous populations opposed to such a declaration.[34] Although government styles are not equivalent in all four countries, nor are their Indigenous populations perfectly paralleled, there is in fact a common thread that connects them – they share a colonial heritage of British Imperialism.

Though it may be far fetched to state that patterns of British colonization have lead to their responses on contemporary International Indigenous policy, it is quite a sound argument to say that many of the policies still in place and upheld by the governments of these respective nation-states have been influenced by British colonial frameworks and political ideals. Namely the most striking reflections of

[32] See http://www.un.org/esa/socdev/unpfii/en/declaration.html for complete *Declaration on the Rights of Indigenous Peoples* and voting records
[33] See http://www.globalissues.org/article/693/rights-of-indigenous-people about "the four" and their opposition to the declaration.
[34] It should also be noted however, that since then, Australia has signed onto the Declaration (April 2009) as has Aotearoa/New Zealand (May 2010)

ideas produced during the craze of New World colonialism and expansion can be found in the policies, statutes, and laws pertaining to the Indigenous peoples of the existing states of Canada, Australia, Aotearoa (New Zealand) and the United States of America.

The origins of the policies that apply to Indigenous peoples of these countries can easily be traced to the suggestions, observations, and opinions of the British Parliament's 1837 *Report* issued by the House of Commons Select Committee on Aborigines. It was stated that "The situation of Great Britain brings her beyond any other power into communication with the uncivilized nations of the earth" and therefore the committee felt it necessary to "examine into the actual state of our [British] relations with uncivilized nations."[35]

A global force to be reckoned with, the British Empire was growing rapidly in various places throughout the world. This report attempted to review the "barbarous regions likely to be more immediately affected by the policy of Great Britain" which included "Australia, the islands in the Pacific Ocean… the immense tract which constitutes the most northerly part of the American continent, and stretches from the Pacific to the Atlantic Ocean."[36] British settlements that initially existed in the present day United States, Canada, Australia, and New Zealand were included in this review. Suggestions, policies, and ideals expressed in this report were in fact applied to the Indigenous peoples of these respective places.

Leaning heavily upon the elitism of divine right and Providence, the Indigenous peoples that inhabited these "New World" lands were acknowledged in a

[35] British Parliament House of Commons, *Report of the Select Committee on Aborigines*, 1837, 1
[36] Ibid. 4

way that can only be described as an obstacle that must be assimilated or exterminated.

> He who has made Great Britain what she is, will inquire at our hand how we have employed the influence He has left to us, in our dealings with the untutored and defenseless savage; whether it has been engaged in seizing their lands, warring upon their people, and transplanting unknown disease and deeper degradation through the remote regions of the earth; or whether we have, as far as we have been able, informed their ignorance, invited and afforded them the opportunity of becoming partakers of that civilization, that innocent commerce, that knowledge and that faith with which it has pleased a gracious Providence to bless our own country.[37]

Acknowledging the happenings that were taking place in the various regions of British colonies and consequentially against the Indigenous peoples of those particular regions, brought light to the amounts of injustices, land dispossession, fatalities, and attempts of assimilation for the survivors to become incorporated into western civilization. Yet, the superior and paternalistic attitudes would remain through settler colonial statehood well into modern history.

Further, many of the concrete suggestions that were outlined in the 1837 Report are easily found in the Indigenous political histories of these countries and some are still in affect to a certain extent. For example, the first listed suggestion of the ten points illustrated in the report is that the "Protection of Natives to Devolve on the Executive" declaring that:

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[37] *Report of the Select Committee on Aborigines:* 104

> the protection of the Aborigines should be considered as a duty peculiarly belonging and appropriate to the executive government… retaining the government of our relations with the Aborigines in more impartial hands.[38]

Additionally, provisions and regulations regarding the selling, acquisition, and rights of land were outlined in these sections, keeping the approval in the hands of "Her Majesty" and not solely in the hands of the governors of the particular colonies.[39]

Further, missionaries, religious instruction and provided education were all outlined calling for "Protectors" deemed as "gratuitous and invaluable agents" placed in charge of the civilization process of the remaining Indigenous peoples.[40] Finally, issues of crime and punishment and treaty making were addressed outlining suggested procedures and jurisdiction provisions that allow for relations to exist between the Crown and the original inhabitants of their colonial regions. All of the aforementioned provisions have occurred through New World Indigenous political history and in some case have become institutionalized well into today's political systems.

Between the periods of European contact in the New World territories and the latter parts of the eighteenth century intrusion into the daily lives of Indigenous peoples were not actively initiated on a larger governmental level. However, as competition began to drive imperialism and expansion and settlement expanded policies and provisions began to aim at "managing aboriginal peoples by controlling

[38] Ibid. 117
[39] Ibid. 119
[40] Ibid. 120-122

their land use, settlements, government, and daily life."[41] Therefore, the specificities of these various policies and procedures required the governments and enforcers to define whom exactly these provisions would apply to.

> Endless emphasis on the difference between 'natives' and themselves was one of the necessary props of the empire. They could only have ruled subject peoples… by honestly believing themselves to be racially superior, and the subject race to be biologically different.[42]

This matter of difference became an emphasis that only furthered the idea of European, and more specifically, those of Great Britain were self-proclaimed superior. No such policies, regulations, or stipulations were created to regulate the daily lives of British subjects.

Such policies were only imposed upon the Indigenous peoples of the New World territories for their "savage" ways were seen as only obstacles to their efforts "to find soil to which our [Great Britain's] surplus population may retreat."[43] Protectors and agents were put in place to see forth the assimilation process of Indigenous peoples in addition to warring tactics of relocation and extermination therefore a great separation of native vs European dichotomy strongly existed. But who were the "Aborigines" that constituted the native groups these institutions were supposed to target, regulate, and impose "civilization" upon?

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[41] Andrew Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand. (*Vancouver, BC: University of British Columbia, 1995), 5
[42] Ronald Hyam, *Britain's Imperial Century 1815-1914 A Study of Empire and Expansion, (Edition: 3*. New York: Palgrave Macmillan, 2003.)
[43] *Report of the Select Committee on Aborigines, (*1837): 105

The 1995 work *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand* further elaborates on the fact that for any social policy set aside for a specific group of separated peoples, "a working definition of those people to whom it is meant to apply" is vital. Further he elaborates how and easily aligned these definitions can become, in terms of separation:

> This is true whether the policy is to disregard their existence, to provide them with protected status, to assimilate them, or to give them control over their communities. The practical process of making these distinctions can take no other form than an official act of racial definition.[44]

In the earlier periods of colonization these definitions were used to enforce the first set of policy examples, coalescing in policies that encroached upon the freedoms of Indigenous lives.

The racialization of Indigenous identity originated in colonial times before the contemporary nation states of Australia, Canada, Aotearoa, and the United States were in existence. The most convenient and commonly used racial definition applied to the original inhabitants of these British chartered colonies and territories transformed from purely phonotypical distinctions of skin color to a "system of fractioned amounts of blood to define the legal status of mixed-race people"[45] as inter-racial interactions were increasingly occurring with the wave of settler colonialism. This was maintained as a continuum of the dichotomy between the

[44] Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand:* 22
[45] Spruhan. "A Legal History of Blood Quantum in Federal Indian Law to 1935." (*South Dakota Law Review* 51 2006): 5

pure European races and the *others*, furthering the ideals of superiority established during colonization.

In addition to the shared influences the *1837 House of Commons Select Committee on Aborigines* had on the development of the policies, laws, and statutes that Indigenous peoples of the four countries; another unifying factor is the imposition and use of highly racialized definitions. Used to determine who is and who is not a citizen of the indigenous nations that did not choose to "live as a minority within an alien country"[46] these policies have had great implications. One easily identifiable alien and externally imposed policy that has been incorporated into the political Indigenous histories of Canada, the United States, Australia, and New Zealand, is the usage of blood-quantum measures for Indigenous identification and therefore to administer the initiatives and services Indigenous peoples were subject to.

The numerous fundamental assimilationist objectives have been the "cornerstone of government and popular thinking" for well over 150 years in each of these countries so it is no surprise that to overcome such objectives is no easy task for Indigenous peoples, especially those that are of a small minority of the greater nation-state population and political system. However it is quite astonishing to see the evolution of such policies and procedures that have been attached to the definitional aspects of Indigenous identity and lifestyles in the comparative context of all four countries.

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[46] Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand,* 10

Overcoming What Others Have Imposed
- Changing Views & Active Reactions -

Although the exact time frames of contact and colonization vary from country to country and the Indigenous make-up and traditional structures are diverse amongst each other (even within each nation-state) there are numerous similarities that suggest a closer look to increase perspective on potential methods of change. The processes of reflection, realization, and the reassessments of other Indigenous nations and communities can be extremely insightful, especially with regards to something that has been commonly shared, such as policies that incorporate blood-quantum and other racialized measures into definitions of Indigenous identity.

As much as past policies and reports have miraculously been maintained in many instances of Indigenous policies, there are in fact, examples of challenges and successful contests of the numerous oppressive definitions and procedures that were imposed upon Indigenous identities and individuals. Regardless of the methods and means these examples of change were brought about, it is quite likely that some tactics used elsewhere may be useful or at the very least spark ideas for what could potentially be done in places where change has been quite limited.

The following policy analysis and discussions are to provide brief overviews of definitional evolution in the three of the four countries that have appeared to go through great transitions in the reformation process of determining who is Indigenous and who should be entitled to make such a distinction. Much can be learned by what others have done in their trials and tribulations of overcoming the

others: the nation-states, federal governments, and their imposed policies of what it means to be or not to be Indigenous.

- Changing the Purposes of Policies -

Every policy constructed to assist, assimilate, include or exclude Indigenous peoples was created with a specific purpose at hand and end-goal in sight. The purpose of any policy is created so that it may be upheld, and most definitely held to specific standards, especially regarding who such policies should be applied to. In the case of Australia and the policies affecting their Indigenous peoples over time the evolution of political purpose has additionally called for an evolution of the definitions used to identify the Indigenous. The commonly used methods used to define who an Indigenous Australian was and was not has not remained constant, it has been transformed in many ways. Legally today, many of the policies and statues set in place to define a person's eligibility to claim aboriginal or indigenous descent, are fairly far from the ideals or methods of colonial times, and justly so.

Social policy scholar, Andrew Armitage, has identified four principal periods that can accurately highlight the history and changing phases of Australian policy towards Indigenous peoples. Those four stages consist of Initial Contact (1788-1930), Protected Status (1860-1930), Assimilation (1930-1970) and Integration with Limited Self-Management (1967 -).[47] A great deal of overlap exists among these periods simply because there were no Crown treaties with the Aboriginal

[47] Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand.* This section is greatly influenced by his chapter "Australia: The General Structure of Aboriginal Policy," 14-40

peoples of Australia and therefore each Australian state developed its own policies and definitions.[48] Therefore, this is a factor unique to Australia because each state maintained it own legislative code resulted in any "person who was an Aborigine in one jurisdiction was not necessarily an Aborigine in another."[49]

For the sake of fully demonstrating the evolution of policy purpose through the different stages of political history, the territory of South Australia will be utilized to exemplify the way the states' Indigenous definitions transformed into what exists today, which is additionally reflective of other Australian states. Upon contact British colonists highly emphasized the otherness and assumed inferiority of the original inhabitants of the land, defined as nothing more than 'black, uncivilized, and pagan' all that would be deemed characteristics of 'Aborigines' throughout the period of initial contact. Because the Indigenous peoples of Australia were left on the outside of even a legal definition of a person, collectively they became "vulnerable to being attacked, robbed, and killed" during settler colonialism.[50]

Due to the many injustices being imposed upon the "Aborigines" of Australia and the establishment of the Select Committee on Aboriginal Affairs much attention was placed on the relations and realities of the colonial states and their respective Indigenous populations. Heavily influenced by the ideals and work being done towards the *1837 House of Commons Report* issued by the Committee, many states were beginning to form varying forms of "Aboriginal Departments" to attempt to

[48] Armitage, 14
[49] Ibid. 25
[50] Ibid.

alleviate and aid in the welfare and protection of these uncivilized peoples. In the joint regions of South Australia and the Northern Territory an Aboriginals Department was established, appointing an official "protector" in 1881. This would be the birth of the protection period of South Australia's political history.[51]

Officials called protectors and sub-protectors were placed into positions of authority throughout Australia, entitled to the power to attempt to control and regulate the everyday lives of all Aboriginal peoples.[52] Overseeing every day things like where one could live to where one was to work, a clear legal definition was needed to determine who was subject to the protector(s) authority. Physical characteristics and assumptions could no longer be the sole indicator of who an Aboriginal person was.

The Aborigines Act of 1911 was established as "an Act to make provision for the better Protection and Control of the Aboriginal and Half-caste Inhabitants of the State of South Australia."[53] The Act outlines very distinctly and complicated a highly racialized and regulatory definition in Section 4, entitled, "Who Are Aboriginals." The answer is stated as every person who is:

> (a) An aboriginal native of Australia or of any of the islands adjacent or belonging thereto; or (b) A half-caste who lives with such an aboriginal native as wife or husband; or (c) A half-caste who, otherwise than as a wife or husband of an aboriginal native, habitually lives or associates with such aboriginal natives; or (d) A half-caste child whose age does not

[51] See http://www.aboriginaleducation.sa.edu.au for complete timeline and details of Australian Aboriginal Peoples. Quotes taken from "Timeline of Legislation Affecting Aboriginal People" DECS Curriculum Services via above website. Accessed May 2010
[52] Armitage, *Comparing the Policy of Aboriginal Assimilation,* 18 - 23
[53] South Australia, *The Aborigines Act of 1911* : 1,

> apparently exceed sixteen years shall be deemed to be an aboriginal within the meaning of this Act and of every Act passed before or after this Act.[54]

Although the origins of definitions based on descent originated with the basic concept of full or full-blooded Indigenous persons, the amount of interactions between settlers and original inhabitants were increasing and therefore so were the amounts of 'half-caste' people.

In the particular case of South Australia it is apparent that there was an emphasis not only on blood or descent but also lifestyle and association, another interesting uniqueness that will become more apparent in contrast to other countries. Regardless, these definitions were used to further oppress and limit the Aboriginal populations by continuously encroaching upon their freedoms as human beings, confining some to reserves and arresting others for disobeying boundaries and other regulations.

The following period of assimilation was motivated by many factors, a prominent one being the realization that more and more Aboriginal peoples were acquiring less "Aboriginal blood" suggesting that this was "a sign that Aboriginal identity could be destroyed through a process of absorption."[55] However, as time passed, it became more and more difficult to continue to keep up with the Aboriginal descent patterns and the appropriate administrative decisions for the various groups and subgroups. Therefore, the newer solution turned from enforced

[54] South Australia, *The Aborigines Act of 1911*; Section 4
[55] Armitage, *Comparing the Policy of Aboriginal Assimilation*: 19

regulations and observations to a matter of administrative and judgmental methods based on western social and cultural standards.[56]

A new approach to legislative definitions of Indigenous identity was put into place as administrative or judicial decisions commonly entailing a tracking system and register of sorts. However, "this form did not necessarily completely replace earlier definitions" and in some cases was built upon the old methods to easily identify those that were previously falling through the cracks of such definitions.[57]

The *Aborigines Act of 1934 and 1939*[58] exemplify this process of categorization and further involvement in the regulation of everyday life simply because such persons were deemed Aboriginal. Not only were Aboriginal children deemed wards, and restrictions on movement and forced settlement upheld, but a new tactic of regulation was put in place allowing for an "aborigine" to "cease *to be* an aborigine."[59] Similar to the suggestions found in the *1837 House of Commons Report*, a "board" was established to regulate the registrar of Aborigines and whom this Act applied to, and further had the power to exempt an individual.

It was the opinion of he board that deemed if an "aborigine" was of a certain "character and standard of intelligence and development" which would therefore result in the exemption from the act.[60] Further, it was clearly stated that "any such declaration may be made unconditionally by the board and any unconditional declaration shall not be revocable," meaning that one could potentially lose the legal

[56] Armitage, *Comparing the Policy of Aboriginal Assimilation* : 23
[57] Ibid
[58] Upheld and amended throughout this five year period, it is known as *Aborigines Act 1934-1939*
[59] South Australia, *Aborigines Act, 1934-1939* Section 11a. "Exemption from Act": 1
[60] Ibid.

status of Aboriginal status indefinitely.[61] Not only was one held to a standard definition set in place by the state, but it was left up to the state to determine if one truly acted or as an Indigenous person was expected to, by Western standards. This was clearly an infringement upon any ideals or beliefs of what it means to be a descendant of the original inhabitants of that land. Exemption and revocation of Aboriginal status were distinct attempts to perpetuate the period of assimilation by encouraging the "elevation" of "Aborigines to a level of development, which would enable them to become full members of the white community."[62]

The Aboriginal Affairs Act of 1962 which was created to end *the 1934-1939* policies continued this same concept however in a more concrete way:

> '[A Register of Aborigines is to be complied and maintained by the board, which] shall from time to time remove therefrom the names of those persons who, in its opinion, are capable of accepting the full responsibilities of citizenship.[63]

This revision further addressed the fact that many who were products of the exemption clause of the previous policies would revert back to their "primitive" ways. Therefore, at this point, as Armitage points out, the

> removal from the legal classification of 'Aborgine,' 'Assisted-Aborigine,' 'Native,' 'Ward,' or other similar designations was [no longer] permanent. The administrative authority could revoke such declarations where the Aboriginal person failed to

[61] South Australia, *Aborigines Act, 1934-1939* Section 11a. "Exemption from Act": 2
[62] Armitage, *Comparing the Policy of Aboriginal Assimilation* : 25
[63] South Australia, *The Aboriginal Affairs Act, 1962* as cited in Armitage: 25

> maintain what was considered to be the proper standard of behaviour.[64]

Additionally though, language of previous acts were changed to de-emphasize the usage of "half-caste" and "race" yet was only addressed through the introduction "person of Aboriginal blood" instead.[65] The stated intention continued to be one of "welfare and advancement of Aborigines" of South Australia.[66]

However, in more recent times it seems that such intentions finally becoming realized. The current period consists of Indigenous Australians asserting themselves to ensure the rights of their own communities. Through policies based on the principle of self-management definitions of "Aboriginal" are moving towards a direction of traditionally reflective, inclusive, and self-definitive methods of identifying those who are "Aboriginal."[67] Today such definitions are being applied to statutes and legislation dealing with:

> rights of access to, and residence on, reserves and heritage sites; rights of participation in community government; rights to hunt or fish, particularly for food; rights to benefit from administrative activities, grants, and representation provisions not available to other Australians as rights of citizenship; and

[64] Armitage, *Comparing the Policy of Aboriginal Assimilation* 25
[65] South Australia, (No. 45) *Aboriginal Affairs Act, 1962* Section 30: 143
[66] South Australia, (No. 45) *Aboriginal Affairs Act, 1962* "An Act to repeal the Aborigines Act 1934-1939 and to promote the welfare and advancement of Aborigines and of persons of Aboriginal blood in South Australia"
[67] Armitage, *Comparing the Policy of Aboriginal Assimilation*, 26

rights to special consideration benefits with respect to social legislation.[68]

One such example of an act fostering self-management and Indigenous inclusion and incorporation into state policy is South Australia's *Pitjantjatjara Lands Act of 1981.*[69]

The act itself establishes the "Anangu Pitjantjatjaraku" as body corporate, where all Pitjantjatjaras are members, and therefore manage the land, see forth the wishes and opinions of the traditional owners of the land, and negotiate with persons desiring to use, occupy, or gain access to their lands.[70] Incorporating simple, straightforward and inclusive ideals of what it means to be Aboriginal for the Pitjantjatjara peoples of Indigenous Australia, two definitions are in place for a Pitjantjatjara person and traditional owner. Pitjantjatjara is defined as "(a) a member of the Pitjantjatjara, Yungkutatjara or Ngaanatjara people; and (b) a traditional owner of the lands, or a part of them" while a "traditional owner" is defined in relation to the lands as "an Aboriginal person who has, in accordance with Aboriginal tradition, social, economic, and spiritual affiliations with and responsibilities for, the lands, or any part of them."[71]

These definitions seem to exemplify a potential mode for collaboration and cultural sensitivity for Indigenous policymaking. There is a major change between this current policy (and others like it) and the earlier policies. Allowing for an Indigenous Australian identity to exist, while also creating a space for cultural specificity and respect for that provision is quite innovative in its policy

[68] Armitage, *Comparing the Policy of Aboriginal Assimilation* 26
[69] South Australia, *Pitjantjatjara Lands Act of 1981*
[70] Ibid. Part II, Division II, "Power and Functions of Anangu Pitjantjatjara"
[71] Ibid. Part I : 2

incorporation. Today in Southern Australia, and a few other Australian States, "government control of how it [Indigenous identity] is defined and of the administrative task of applying it has, in some cases, been transferred to Aboriginal people themselves" which truly is a progressive step in the right direction, attempting to right many of the wrongs that were incurred by the design and usage of past policies.[72] Changing policies will have changing purposes. Cultures, identities, and lifestyles will change with time and circumstances; therefore, the policies that attempt to define these should be malleable as well.

- Reviewing & Rightly Reassessing -

The initial contact period of Aotearoa (New Zealand) existed between the years of 1769 and 1840 beginning with the British navigator James Cook. In 1840 the Treaty of Waitangi was signed as an agreement acknowledging that Maori preceded the British Crown as occupants of New Zealand but exchanging their "surrender of sovereignty" for the recognized right that the Maori have the right "to govern their own people."[73] This foundational treaty "provided a sound base for New Zealand social policy by extending to all citizens – irrespective of race."[74] This meant that there were no existing definitions necessary to differentiate who was eligible and ineligible for basic human rights simply because by law they were guaranteed to all citizens, who in this case included the Indigenous peoples of this territory. However, this lack of definition greatly led to somewhat sporadic and

[72] Armitage, , *Comparing the Policy of Aboriginal Assimilation* 27
[73] Ibid. 140
[74] Ibid. 150

inconsistent interpretations and distinctions of who should and should not be legally defined as Maori.

Also influenced by the *1837 House of Commons Select Committee on Aborigines*[75] specialized Maori agencies were created in the 1860s as the period of assimilation was well underway. Although such organizations were held in place until the 1960's there was no agreed upon definition of what a Maori person should and shouldn't be. Many policies were set in place that were pertinent to Maori specific peoples and rights; however, many complications arose when Crown legislations were being produced in a way that was further complicating who such statutes would apply to or not. It seemed that there were two initial methods yet both were simultaneously enforced varying from policy to policy, alternating between the use of descendancy and blood quantum.

In 1935 *The Maori Housing Act***,** which was an act "to make better provisions for the housing of the Maori people" the definition of what constituted a Maori and therefore who this particular policy was applicable to was surprisingly straight forward and inclusive. It was stated that, "Maori means a person belonging to the aboriginal race of New Zealand, and includes a person descended from a Maori."[76] Although this definition explicitly states that the definition of a Maori individual is a person belonging to a particular race, the fact that a specific quantum or amount of "aboriginal" blood is omitted seems quite progressive for its time. This however raises the question of why such definition was incorporated into this policy, as we will investigate other instances of a vastly different definitional methods utilized.

[75] Armitage *Comparing the Policy of Aboriginal Assimilation*:136
[76] Crown of New Zealand, *Maori Housing Act 1935* No. 34 : 1

In 1952 and 1953 the *Maori Affairs Bill* advocated for a different approach. During the discussion period of the Bill's review there was much acknowledgement that Maori "position in the community [was] very different now from what it was a few decades ago."[77] Less than twenty years after the Housing Act, the definition was altered drastically for one apparent reason – land. It was stated that " the diminishing area of Maori lands available have created weighty administrative problems," placing blame on the "increasingly large number of owners of Maori land who are not legally Maoris" were overtaking available lands.[78] Said to be a piece of legislation that was designed to "mop up the remnants of Maori land" there are many indicators that this is true as limits needed to be placed on Maori peoples so that limits on their entitled land could be upheld.[79]

The definition of who *was not* a Maori was strictly explicated as anyone "less than one half Maori blood." Indigenous land rights, and more so their threat to those of the settlers' entitlement, appeared to be the trigger that established such a racialized and limiting definition. Not only were their worries of land supply, division, and succession mentioned by the Crown, but the reason stated for such issues at stake was "the high reproduction rate of the Maori" which was "rapidly becoming worse."[80] It seems that this would be another aspect of the times factored into the policy formulation and regulation, noting the increase of Maori population; however, the reaction translated into New Zealand's fear of more Maori, meaning

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[77] Crown of New Zealand, *Maori Housing Act 1935* No. 34
[78] *Ibid. 1*
[79] Armitage, *Comparing the Policy of Aboriginal Assimilation :* 156 quote taken from *Whawhai Tonu Matou: Struggle Without End*
[80] Crown of New Zealand, *Maori Housing Act 1935* No. 34 : 3

more land to be set aside for Maori individuals. The slanted politics of such definitions are clearly demonstrated in this policy especially when comparable to the more inclusive rhetoric of descent criteria.

Though the use of a certain blood quantum as a definitive factor of who is and is not Maori was extremely specific and concretely stated, this method was not strong enough to be upheld in every policy to follow. Only five years after the rigid definition of the *Maori Affairs Bill* was enforced, the *Maori Soldiers Trust Act of 1957* took a similar approach to that of the *Maori Housing Act.* An act designed to provide for the "establishment and administration of a trust for the benefit of Maori veterans" a legal definition of Maori was needed.[81] In this scenario, that entailed the management of a trust and scholarship fun, "Maori meant a person belonging to the aboriginal race of New Zealand; and includes any descendant of a Maori" identical to the language found in the 1935 Act. The inconsistencies over time were clearly an obvious issue between the different standards put in place and the confusion caused over a person being deemed Maori in some scenarios and deemed non-Maori in others.

However, reform and change was soon to approach, especially as the period of integration began to take shape. In 1960, J.K. Hunn, the Acting Secretary of Maori Affairs initiated a process of review and reform. In theory this review was formed similar to the discussion period of the *Maori Affairs Bill* reviewing past policies and 'necessary' amendments. However, the outcome of this review was much greater, especially with respect to the legal definitions of Maori. *The Report on the*

[81] Crown of New Zealand, *Maori Soldiers Trust Act 1957*

Department of Maori Affairs[82] was published in 1960 and was adopted by the Crown in 1961. One of the suggestions gathered from the report was that "the government intent was that one's individual status as Maori should become an entirely private matter, unrecognized by the state" simply because of the scattered usages and inconsistent standards that were in existence by this time.[83]

Further, in the year 1962 Hunn co-authored an additional report entitled "The Integration of Maori and Pakeha in New Zealand" which incorporated an extensive review of the numerous Maori definitions used in policy and legislation over time.[84] In Appendix C of the report all of the "statutory definitions of Maori" were illustrated, identifying two approaches that included "half-castes and persons of pure descent" while the other defined Maori as "persons belonging to the aboriginal race of New Zealand and any persons descended from them."[85] Yet due to this review and the inconsistencies that clearly existed in practice, one's Maori identity has become an exclusively personal and tribal matter – the Crown has withdrawn its say in the matter today.

Armitage has said that "by 1962, more than three generations after first settlement, the administrations of who could and could not be defined as Maori was permissive – one could claim Maori status if one wished to be recognized as Maori and had at least one Maori ancestor."[86] Further, today a great deal of self-regulation is in existence based on methods of "self-definition and Maori peer evaluation"

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[82] J.K. Hunn, *Report on Department of Maori Affairs (1960)*
[83] Armitage, *Comparing the Policy of Aboriginal Assimilation* 159
[84] Hunn, J.K. and J.M. Booth. "Integration of Mäori and Päkeha (1962)
[85] Armitage *Comparing the Policy of Aboriginal Assimilation* 150
[86] Ibid.

which allows the states impositions to remain out of the question to a certain extent. Today tribes themselves regulate who is and isn't a tribal citizen. This has recently become a formal matter of registering one's claim to *whakapapa*, or ancestral origin and genealogy, demonstrating one's familial ties to the particular levels of Maori communal identity.[87]

- Amending an Old Act to Reflect the Times -

The policies that were being proposed in the reports issued by the *1837 House of Commons Select Committee on Aborigines* were evaluating and reviewing the "worldwide view of Britain's imperial and civilizing role."[88] Many suggestions could be reviewed and implemented in many territories; however, this was not the case for those in North America. Creating agreements and statutes between native peoples and the British Crown have dated back to the *Royal Proclamation of 1763,*[89] which preceded the Committee and their viewpoints.

From contact to the 1850's "First Nations defined themselves, and… were also individually recognized as separate peoples."[90] This level of understanding and initial respect was rooted in the fact that no definition of 'Indian' was needed as the *Royal Proclamation* was a "result of the British military policy and recognized the importance of First Nations allies in the victory over the French in the way of 1755-

[87] See Kukutai for further information on contemporary Maori enumeration. See further tribal enrollment practices here - http://www.tainui.co.nz/tridevunit/tribal_rego.htm
[88] Armitage *Comparing the Policy of Aboriginal Assimilation,* 74
[89] British Parliament, *Royal Proclamation* of 1763
[90] Armitage *Comparing the Policy of Aboriginal Assimilation,* 83

1830."[91] Unfortunately this realization and appreciation for the autonomy of tribes as sovereign nations was not long lasting – specific legal definitions were soon to be imposed.

In 1850, *An Act for the Better Protection of Lands and Property of Indians in Lower Canada*[92] was the first time that a legal definition of who was and was not an "Indian" was established. There were rights and regulations being put in place specifically for the Indigenous peoples of this territory and therefore definitions were needed to determine who would benefit or be subject to such laws. The definition of the time, and first ever in the First Nations territories was, "persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands and their descendants."[93] Additionally there were existing provisions addressing the realities that by this period there were varying non-natives residing with those who were of 'Indian blood.' Such residency exceptions included those that were married into, adopted by, or lived amongst the tribes and villages.[94]

Although, this was quite an inclusive and seemingly progressive definition (relative to many of those earlier discussed), what must be emphasized is that this was the first time that

> the civil government, an agency beyond the control of Indians, a body in which Indians were not even eligible to have representation, arrogated to itself the authority to define who was, and who was not, an Indian.[95]

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[91] Armitage *Comparing the Policy of Aboriginal Assimilation* 73
[92] Canada, *An Act for the Better Protection of Lands and Property of Indians in Lower Canada,* 1850
[93] Armitage *Comparing the Policy of Aboriginal Assimilation* 83
[94] Canada, *An Act for the Better Protection of the Lands and Property of Indians in Lower Canada*, 1850
[95] Armitage *Comparing the Policy of Aboriginal Assimilation* referencing Miller, J.R. *Skyscrapers Hid the Heavens: A History of Indian-White Relations in Canada.* Toronto: University of Toronto Press 1989

This would be the legacy that would continue until very recent history and would be similarly implemented in the United States, regardless of the great detriments and vast alterations to Indigenous identity that have resulted over time.

In 1876 the *Indian Act* was established as a paramount act of Canada that included provisions for numerous things[96] including the definition of 'Indian' all to be regulated and administered through "agents of the superintendant of Indian Affairs" which were products of the protectors advocated by the Committee on Aborigines.[97] To fulfill the goal of the administration, a definition was designed with intentions to assimilate those deemed 'Indian.' Precisely doing so, the term 'Indian' in the 1876 act was three pronged:

> (1) Any male person of Indian blood reputed to belong to a particular band,
> (2) Any child of any such person;
> (3) Any woman who is or was lawfully married to any such person. [98]

There were also special provisions set in place for 'half-breeds,' and other categories such as 'illegitimate' and 'absentees' which were all regulated and deemed 'Indian' or not Indian the "administrative decision made by the superintendent of Indian affairs or his agent."[99]

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[96] Armitage *Comparing the Policy of Aboriginal Assimilation* : 77 "the recognition, protection, management, and sale of reserves; the payment of moneys to the support and benefit of Indians, including 'contributions to schools frequented by such Indians'; the election of councils and chiefs; Indian privileges, particularly the exemption from taxation and from debt obligations of all types; provision for receiving the 'evidence of non-Christian Indians' in criminal prosecutions; special measures for the control of intoxicants; and provisions for 'enfranchisement.'"
[97] Ibid. 78
[98] Cananda, *Indian Act of 1876* as cited in Armitage *Comparing the Policy of Aboriginal Assimilation* 84
[99] Ibid.

Further, the combination of the three main aspects of the definition fully embraced a stance of paternalism and therefore provided that women were simply dependants of those they were married to. Armitage has pointed out that the "major cultural impositions" occurred due to European assumptions, such as "that the head of household had to be male; that women and children could and should be related to as though they were forms of property; and that 'illigitimacy' and 'half-breed' were both valid, meaningful concepts."[100] In the case of the Indigenous Canadian woman this act and the system set up within it allowed her 'Indian status' to be lost if she married anyone other than a 'status Indian' who met all requirements of the established definition.

Additionally there were two other utilized to limit the 'status Indian' population further. The 'non-treaty Indian' was stated to be "any person of Indian blood who reputed to belong to an irregular band [not recognized through a Treaty with the Canadian Parliament] or who follow the Indian mode of life."[101] This would further limit the population able to claim treaty rights and other benefits provided in the recognized treaties – 'non Status' Indians would have no such ability.

However, even those that were easily able to claim 'Indian status' there were ways to have it taken away. The 'enfranchised Indian' was someone who, "following the grant of letter patent [on behalf of Indian Affairs], had ceased to be an Indian" usually after the successful three year

[100] Armitage *Comparing the Policy of Aboriginal Assimilation*: 84
[101] *Indian Act of 1876* as cited in Armitage *Comparing the Policy of Aboriginal Assimilation*: 84

probationary period to farm in a European manner or if one was successful in qualifying to hold a civilized profession.[102] This provision was essential to the success of this assimilation policy simply because an enfranchised Indian ceased, in law, to be an Indian.

Although enfranchisement was only available to adult males it was also "extended to their spouses and minor children."[103] Similarly, the overarching tactics of trying to target all of the Indian populations in the country, while also limiting the legal status of as many as possible, became realized in its application to all First Nations peoples from British Columbia to the Prairies and the Northern most territories. Affecting so many groups and individuals, "the implications of these definitions were enormous" especially because regardless of the fact that there were numerous ways to prohibit or lose one's Indian status there was not one way "a former Indian or descendant of an Indian could [legally] become, again, an Indian."[104] Unfortunately these definitions and regulations were virtually untouchable for quite some time.

In 1951, the 'Indian' definition of *The Indian Act* was amended and shortened describing a 'status Indian' to be "a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian."[105] No longer a strictly gendered and racial matter the notion of being an 'Indian' had become an

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[102] Armitage *Comparing the Policy of Aboriginal Assimilation* 84 *civilized profession included Lawyer, Minister, Doctor, Teacher, etc
[103] Ibid. 78
[104] Ibid.
[105] *Indian Act* 1951 as cited in Armitage *Comparing the Policy of Aboriginal Assimilation*, 85

administrative matter involving one's name on a list overseen, managed and maintained by an Indian Affairs department.[106] Carrying on the increasing rates of enfranchisement this amendment furthered the reality that any First Nations person has the means and ability to get off this list, but no ways or methods of getting back on it.[107] Still heavily influenced by the original act of 1876, and with the evidence of nearly eighty years of damage behind it, the provision that "every 'Indian' had to be a registered member of a 'band' replaced definitions based on 'blood' and 'mode of life.'[108]

Finally in the 1980s movements of change and Indigenous and Canadian government relations were being questioned and making waves. In 1982 the use of 'Indian' as the most commonly used political category of Indigenous peoples in Canada was dropped and "Aboriginal people" became defined as the First Nation/Indian, Inuit, and Metis peoples of Canada under the *1982 Canadian Constitution Act* which was much more inclusive and diverse allowing for the overall Indigenous population to grow.[109] That same year the Charter of Rights and Freedoms was adopted and began one of the tactics used to address the 'Indian' definitions contained in the *Indian Act*. Following its passage, "the federal government introduced legislation to correct the Indian Act's discriminatory provisions concerning women" however, prior to its passage an action was brought

[106] Armitage, *Comparing the Policy of Aboriginal Assimilation* : 85
[107] Ibid.
[108] Ibid.
[109] Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State (*Vancouver: University Of British Columbia Press, 2000.): 69

to the *United Nations Covenant on Civil and Political Rights* by a woman who had lost her Indian status through marriage. [110]

Scholar Jo-Anne Friske emphasizes the great damage that has come from over one-hundred years of such practices. She states:

> By upholding implicit and explicit assumptions of fraternal nationhood and patriarchal privilege, legislation that defines 'Indians' and exercises control over them and their land has had pernicious consequences for generations of women.[111]

In *1985 Bill C-31* was instated amending the definitions and attempting to alleviate some of the wrongs set in place by the *Indian Act* for so long. The main provisions of the Bill repealed the discriminatory section of the *Indian Act* that had deprived Indian women and their children of Indian status if they married a non-status person, bringing the *Indian Act* "into conformity with the *Charter of Rights and Freedoms*."[112] *Bill C-31* had substantial impacts on all fronts of Indigenous definitions in Canada, including:

> removing sex discrimination clauses, abolishing the concept of enfranchisement, restoring Indian status and band membership to those individuals and their children who had lost them through the operation of discriminatory clauses, and providing bands with the power to pass by-laws, thus giving them limited control over their members.[113]

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[110] Armitage, *Comparing the Policy of Aboriginal Assimilation* : 86
[111] Jo-Anne Fiske, "Constitutionalizing the Space to be Aboriginal Women: The Indian Act and the Struggle for First Nations Citizenship." In *Aboriginal Self-Government in Canada: Current Trends and Issues (Purich's Aboriginal Issues Series)*. 3 ed. Sasatoon, Canada: Purich Pub., 2008: 310
[112] Cairns, *Citizens Plus,* 70
[113] Armitage, *Comparing the Policy of Aboriginal Assimilation* : 86

This was the first time that tribal bands had the ability to do so, and it must be acknowledged that limited control is undoubtedly better than no control. Like any amendment it was not flawless or the end all to the definitional issues that have plagued Indigenous communities in Canada and else where for generations.

For example, those who had relinquished their Indian status through enfranchisement could not simply resume it as they had to undergo a strenuous application process while many persons who were adopted out or severed community ties would have to do extensive research and in some cases assume their places.[114] Further it has been estimated that only five years following the amendment nearly 100,000 status Indians were able to restore their identities as such, most of those being women and children.[115] Consequentially issues such as housing shortages and other "impediments have prevented more than a handful from returning to their reserves" and others have encountered issues of urban relocation and therefore hardships returning to their "homes" hoping for "the supportive cultural environment of land-based communities" they did not necessarily receive elsewhere.[116] This is without a doubt something that can be seen in any of the communities mentioned previously.[117]

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[114] Armitage, *Comparing the Policy of Aboriginal Assimilation* : 87
[115] Cairns, *Citizens Plus,* 74
[116] Ibid.
[117] For a full discussion on the transitional periods of Bill C-31 see Lawrence, Bonita. "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview." *Hypatia* vol. 18, no. no. 2 (2003): 3-31. Indigenous Identity (accessed September 28, 2009). And *Real" Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood*. Lincoln and London: University of Nebraska Press, 2004.

Overcoming What Others Have Imposed
- The Case of the United States -

Just as the development of Canadian policies preceded the *1837 House of Commons Select Committee on Aborigines*, many treaties and policies pertaining to the Indigenous peoples of what would become the United States were well established by then. However, many of the British colonial values and ideals began to be imposed on the American ideas of Indigenous identity. Like the other three countries reviewed, the British application of "fractioned amounts of blood" were used to define the legal status of mixed-race peoples, especially with the influx of settlers and their increased access to native peoples, communities, and resources.[118]

Spanning the times of treaty negotiations (>1817-1871), the reservation period (1871-1887), the allotment period (1887-1934), the Indian Reorganization Act of 1934, and self-determination periods (up to present)[119], "residence, cultural affiliation, language, recognition by a community, genealogical lines of descent, self-identification, and degree of 'blood'"[120] have all been used at some point to define American Indian population. The most prevalent method that has withstood the test of time would be "blood-quantum" for even today "the concept of blood quantum confronts anyone interested in American Indian identity in the United States" [121] in a way it may not in the other countries. Overtime, "the branches of the federal

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[118] Paul Spruhan, "A Legal History of Blood Quantum in Federal Indian Law to 1935." (*South Dakota Law Review* 51 2006): 4

[119] Dates & Periods based on the research of Spruhan, see "A Legal History…" and Wilkins, *American Indian Politics and the American Political System*

[120] Meyer, Melissa L.. "American Indian Blood Quantum Requirements: Blood Is Thicker Than Family." In *Over the Edge: Remapping the American West*. (Berkeley: University of California Press, 1999.) : 233

[121] Spruhan, "A Legal History of Blood Quantum in Federal Indian law to 1935," 9

government took different positions and applied different approaches to the definition of Indian and tribal membership" which were all dependent upon "the purpose of the federal action" and their interest for its application.[122]

During much of the treaty-making period the government was not necessarily concerned with the membership of the tribes for they were very much treated as "international sovereigns."[123] Although, the language of "blood" was occasionally used by government officials to describe people of "mixed Indian and non-Indian ancestry" the legal implications attached to such titles of half-blood, full-blood, etc, were minimal and inconsistent.[124] According to Paul Spruhan, it was not until the period between the "end of treaties and the beginning of allotment" that saw the rise of congressional and executive control over "internal tribal affairs," increasingly involving themselves in the "day to day existence of tribal groups and individual Indians."[125]

In the mid 1800's the Bureau of Indian Affairs (BIA), initially under the War Department, then later transferred to the Department of the Interior, where it remains today, became the main actor in overseeing "this day to day existence."

> Through legislation and regulation, Congress and the Bureau of Indian Affairs encouraged the assimilation of individual Indians into American society. The BIA expanded to a vast bureaucratic system that managed day-to-day affairs on reservations, including the distribution of annuity payments and other benefits, the establishment and regulation of police

[122] Spruhan, "A Legal History of Blood Quantum in Federal Indian law to 1935," 9
[123] Wilkins, David E.. *American Indian Politics and the American Political System (Spectrum Series)*. 2 ed. Lanham: Rowman & Littlefield Publishers, Inc., 2006.
[124] Spruhan, "A Legal History of Blood Quantum in Federal Indian law to 1935," 10-11
[125] Ibid. 20

> forces and courts, and the education of Indians in western ways.[126]

Spruhan further claims that during this period "BIA agents used language of blood to describe persons of mixed ancestry, [and] there was no nationally applied rule of blood quantum."[127] Indigenous identity was then regulated by "enrollment with other Indians" which he claims to have been the "most important [formal] recognition of mixed-bloods by the BIA."[128]

Therefore, the historic roots of tribal enrollment "extend back to the early nineteenth century when treaties with the U.S. government began to establish entitlement for specific rights, privileges, goods, services, and money."[129] In 1831, the seminal Supreme Court case *Cherokee Nation v. Georgia*, Chief Justice John Marshall stated that the United States had a relationship with tribes resembling that of a "guardian" to a "ward."[130] After Senate ratified the treaties, and the Supreme Court established this relationship, "officials performing federal treaty obligations had to decide whether mixed-bloods were legally Indian."[131] This became a method that Congress and the Executive Branch asserted their powers of "guardianship authority" to control "Indian lands, money, and transactions with non-Indians"

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[126] Spruhan, "A Legal History of Blood Quantum in Federal Indian law to 1935," 20
[127] Ibid, 21
[128] Ibid.
[129] Meyer, "American Indian Blood Quantum Requirements: Blood Is Thicker Than Family." In *Over the Edge: Remapping the American West*.
[130] Getches, David H., Charles F. Wilkinson, and Robert A. Williams. *Cases and Materials on Federal Indian Law (American Casebook Series)*. Eagan, MN: West, 2004.
Citing *Cherokee Nation v. Georgia* and highlight the rest of the trilogy for context
[131] Spruhan, "A Legal History of Blood Quantum in Federal Indian law to 1935," 12

which meant formally recognizing who was and was not to be recognized as an Indian, establishing "mixed-blood beneficiaries."[132]

This collision of Indigenous legal identities and recognized entitlements in the United States have gone through many phases and forms, but remarkably have remained unresolved to this day. The following federal policies and decisions are very much affecting the lives of contemporary Native American peoples today but must be understood so that a change can occur as they have in other regions of the world.

- Dividing Land & Identities -

In his article reviewing the legal history of blood quantum in United States Federal Indian Law, Paul Spruhan has said that the "various strands of legal thought on Indian status in the nineteenth century coalesced in the allotment era."[133] In 1887, Congress passed the *General Allotment Act*, also known as the Dawes Act that divided communally held lands into individual allotments and gave individuals title to a portion of the land as private property.[134] Many have claimed that this pivotal policy has had detrimental affects on Indigenous communities.

> This pattern of land holding was more in conformity with European and U.S. legal traditions and their emphasis on individual rights… The purpose of allotment was to consciously

[132] Spruhan, "A Legal History of Blood Quantum in Federal Indian law to 1935," 13
[133] Ibid. 23
[134] Painter-Thorne, Suzianne D.. "One Step Forward, Two Giant Steps Back: How The 'Existing Indian Family' Exception (RE)Imposes Anglo American Legal Values On American Indian Tribes To The Detriment of Cultural Autonomy." (*American Indian Law Review* 33, no. 2008-2009): 8

> destroy tribalism and to assimilate American Indians by urging them to learn 'proper' business practices and farming… [and] also designed to eliminate the traditions of holding land in common.[135]

Not only was the allotment policy an "all-out attack on the collective nature of American Indian life" as some have claimed but it was also a mechanism used by the federal government to appropriate large amounts of land set aside for reserves protected by the various historical treaties.[136]

As part of the U.S. government's forced assimilation campaign, "reservations across the country were divided into parcels from 10 to 160 acres and assigned to individuals" with the hope that "owning private property would magically transform collective values of most Indians."[137] Allotments were to be allocated to individual Indians; however, it was the "eugenic notion that Native-American identity was tied to Indian blood quantum" that dictated who was and was not Indian, and therefore entitled to such plots of land.[138]

Crucial to the policy's implementation, only Indigenous peoples, living on reservations that were documented as "one-half or more Indian blood" received allotments, while those who did not, were excluded.[139] The use of such a strict blood-quantum based definition of "Indianness" guaranteed that a limited amount of Native peoples would be able to meet such a requirement which translated to the

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[135] Painter-Thorne, "One Step Forward, Two Giant Steps Back," 8
[136] Lawrence, "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview," 16
[137] Meyer, "Blood Is Thicker Than Family," 232
[138] Sturm, Circe *Blood Politics* pg 78
[139] Getches, David H., Charles F. Wilkinson, and Robert A. Williams. *Cases and Materials on Federal Indian Law (American Casebook Series)*. Eagan, MN: West, 2004. See *Dawes Act Section*

fact that "there were not enough Native Americans who met this criteria to absorb all of the existing reservation acreage."[140] The land unclaimed, meaning the land that was un-allotted to all other "Indians" of less than fifty percent Indian blood, was immediately made available for non-Indian use and settlement, leading to a "massive reduction of tribal held lands" and "tribal power in general."[141]

Some scholars have argued that because of the various obligations provided in many of the historic treaties called for economic assistance to Native Americans in exchange for land the "federal government had to find a way to minimize or avoid these payments altogether while appearing to honor its commitments."[142] M. Annette Jaimes has suggested that the federal government, facilitated through the use of the Dawes Act, devised blood quantum standards of identification specifically to "delimit" the Native American population.[143] If this was the intention and a large increase of "free land" was the desired outcome, the Dawes Act was more than moderately successful. Issued in a report published by the Commissioner of Indian Affairs, it was stated that between the entire allotment era, from 1887 to 1934, "the aggregate Indian land base within the United States was 'legally' reduced from about 138 million acres to about 48 million."[144]

Indigenous scholar, Bonita Lawrence has credited the entire allotment period, solely responsible for the "100,000 Indians [that were left] landless, deprived of over ninety million acres of former reservation land, and official

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[140] Sturm, Circe Dawn. *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma*. (Berkeley: University of California Press, 2002) : 79
[141] Sturm, Circe *Blood Politics,* 79
[142] Ibid. & see Jaimes, M Annette
[143] Ibid. & see Jaimes, M. Annette (1992) : 116
[144] Ibid. 79 citing *John Collier 1934 Report*

discourse of racial classification that had become permanently enshrined in Indian Country."[145] The Dawes Act became the pivotal federally imposed policy, initiating the process of "dividing 'fullbloods' from 'mixed-bloods'" through the use of Indian individual's blood-quantum calculations.[146] Land was being divided, taken out of tribal hands and communal ownership; tribes were being divided, creating distinct separations between 'full-bloods' and others; all while individual identities were being fractioned, determining one's place within or without a tribal affiliation or legal Indian status.

The effects of this act, initiated nearly 125 years ago, can still be found within the contemporary communities of American Indigenous peoples. The official censuses that were compiled to administer the names of those eligible to receive allotments at each reservation have commonly become the base and official "tribal rolls" giving status to each member of a specific tribe. Calculated and codified by government appointed "enrollment commissions" who were awarded the responsibility to decide peoples fractional degrees of Indian blood, determined eligibility requirements and consequently continue to influence them. Yet, despite the many "widespread stories of miscalculation" most Native people must reckon their blood-quantum by reference to the lists codified during the Allotment Era.[147] The Dawes Act is without a doubt heralded the "most important period in the evolution of tribal enrollment."[148]

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[145] Lawrence, "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview," 17
[146] Ibid.
[147] Meyer, "Blood is Thicker Than Family," 233
[148] Ibid.

- Tribal Self-Government, Federally Determined -

In an attempt to "relieve the poverty brought about by ill-conceived allotment policies" and foster economic development opportunities in Indian Country, Congress passed the Wheeler-Howard Act, commonly known as the Indian Reorganization Act (IRA).[149] Carole Goldberg, Federal Indian law scholar explains that "federal law and policy took a more active role in directing Indian nations' citizenship requirements" which is greatly exemplified by the Indian Reorganization Act.[150] The Act not only specified that the Secretary of the Interior must approve all constitutions of tribes organized under its terms[151] but also allowed blood quantum to become "firmly entrenched in federal Indian policy."[152]

More than 150 tribes "chose" to organize under IRA by "not mustering more than half the eligible voters to reject its terms."[153] The Bureau of Indian Affairs quickly encouraged those who accepted IRA to adopt formal tribal constitutions based on a U.S. model designed to sanction "tribal governments patterned after corporations."[154] These tribal governments were also forced to develop enrollment requirements in their constitutions, which would further outline "rules on individuals' eligibility.[155] Melissa L. Meyer has acknowledged IRA for giving "long-overdue support to Indian political organization" but recognizes that this was done

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[149] Meyer, "Blood is Thicker Than Family," 233
[150] Goldberg, Carole. "Members Only? Designing Citizenship Requirements for Indian Nations." (*Kansas Law Review* 50, 2002): 446
[151] Ibid.
[152] Spruhan, "A Legal History of Blood Quantum," 4
[153] Goldberg, "Members Only?," 446 also see see Getches et al *Cases and Materials on Federal Indian Law,* 192 "during the 2 year period within which tribes could accept or reject the IRA, 258 elections were held. In these elections, 181 tribes (129,750 Indians) accepted the Act and 77 tribes (86,365 Indians, including 45,000 Navajos) rejected it"
[154] Meyer, "Blood is Thicker Than Family," 233
[155] Ibid.

only "at the expense of Indigenous forms and practices" and in a way that was still very limiting on the freedoms of native nations.[156]

The Bureau did not recognize the citizenship provisions required for drafting the constitutions of Indigenous nations. Instead, IRA labeled such concepts as "membership" potentially limiting the potential for a native nation to be acknowledged as such.[157] The Indian Reorganization Act itself "did not dictate who could qualify for tribal membership under a tribal constitution" but it did explicitly provide a "definition of 'Indian' for purposes of determining who could… establish a constitutional government in the first place."[158] The following statute of the act, established the criteria for the tribal "leaders" that were entitled to participate in the creation of the IRA constitution:

> The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation and shall further include all other persons of one-half or more Indian blood.[159]

This definition was justified by the Secretary of the Interior as an attempt to "limit such membership to persons who reasonably can be expected to participate in tribal relations and affairs."[160]

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[156] Meyer, "Blood is Thicker Than Family," 233
[157] Goldberg, "Members Only?," 446
[158] Ibid.
[159] Department of the Interior, *Wheeler Howard Act (Indian Reorganization Act) 1934* Section 19
[160] Goldberg, "Members Only?," 447

The initial definition that was put forth for those able to establish the tribal constitutions of those tribes who accepted the terms of IRA appeared to be quite contentious amongst tribes and internally. Therefore, the Secretary further realized that not only Departmental agents but also "the Indians themselves, must understand the importance of these limitations for 'their own welfare.'"[161] The Secretary of the Interior proclaimed that there was great benefit in "preventing the admission to tribal membership of a large number of applicants of small degree of Indian blood."[162] Although, the Secretary offered several "illustrations" of appropriate membership limitations, to be incorporated into the tribal constitutions, a minimum blood requirement became the most heavily pushed example towards tribal leaders.[163]

In 1932, The Board of Indian Commissioners, under the Department of the Interior issued an Annual Report that attempted to address the issue of "Defining an Indian."[164] Only two years before the adoption of the Indian Reorganization Act, the issue of what should be constituted as the definition of an Indian became a contentious and timely issue. Highly racialized, it became the opinion of the Board that "Congress should enact legislation so that no person of less than one-fourth degree Indian blood shall be enrolled and become entitled to tribal rights in the future." This was justified by the observation that "thousands of persons, more white than Indian and often with but a trace of Indian blood, have thus received

[161] Goldberg, "Members Only?" 447
[162] Ibid.
[163] Ibid.
[164] United States Department of the Interior *Annual Report of the Board of Indian Commissions to the Secretary of the Interior for the Fiscal Year Ended June 30, 1932*

rights which entitled them to shares in tribal estates and other benefits as Indians and wards of the Federal Government." These concepts began to influence and infiltrate the consciousness of the Department of the Interior.

John Collier, Commissioner of Indian Affairs, and "architect of reorganization" initially proposed a definition for the IRA that included "all those of Indian descent who were members of recognized tribes, their descendants who resided on a reservation, and all other Indians of one-quarter or more blood."[165] The incorporation of one-fourth blood-quantum was highly protested by strong political champions like Senator Wheeler of Montana who claimed:

> If you pass it to where they are quarter blood Indians you are going to have all kinds of people coming in and claiming they are quarter blood Indians and want to be put on the government rolls… what we are trying to do is get rid of the Indian problem rather than to add to it.[166]

These were the sentiments held and endorsed by various leaders in the United States government who were making the decisions that affected the lives of American Indian individuals.

Therefore, much of the proposals and models put forth to IRA tribal governments, and others, were influenced by these beliefs and intents. This is revealed through the review of current membership practices and citizenship measures still in existence today. Realized by renowned scholar Augie Fleras in his work, the *Nations Within,* he reviews in a comparative study the state of Indigenous

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[165] Suprahn, "History of Blood Quantum," 46
[166] *Hearing Before the Committee On Indian Affairs, United States Senate,* 73d Cong. 263-264 (1934) (statement of Sen. Wheeler) as cited in Suprahn, "History of Blood Quantum…"

peoples/nation-state relations in Canada, New Zealand, and the United States. Illuminating the detriment of such policies and undermining methods of assimilation and "detribalization" it is stated that:

> If the American faith in democracy were to be put into action, the definition of self-determination would be broadened to include aboriginal self-government. Native people would define their own group membership criteria and control their geopolitical and ethnic boundaries. The tribal councils set up under the IRA would be replaced by political organizations and structures determined by the tribes.[167]

Tribes are now moving towards doing exactly that, or at the very least are striving to ensure their rights are upheld if they so choose.

- The Right to Choose & Realizing Where We Are -

One of the earliest definitions utilizing Indian blood-quantum was an 1866 Virginia Act, which deemed an Indian individual as, "every person, not a colored person, having one-fourth or more Indian blood."[168] The federal government, through the Bureau of Indian Affairs, continues to regulate Native American identity and associated benefits through the use of blood-quantum. Today, those who wish to "receive benefits such as health care, housing and food commodities must meet a biological standard, usually set at one-quarter or more Indian blood, and must also present a certificate degree of Indian blood (CDIB) authenticated by their tribe and

[167] Elliot & Fleras, *The Nations Within*, 168
[168] *Act of October 24, 1866* as cited in Suprahn, "History of Blood Quantum," 5

the BIA."[169] The legacies of these "racial ideologies" continue, as they are internalized and institutionalized, for "among federally recognized tribes in the United States, Indian blood quantum continues to be the most common criterion of membership."[170] However, blood quantum is not a federal government mandate for tribal enrollment provision.

In the era of self-determination, Indian civil rights, and public outcries of the late 60's and 70's there were many laws passed attempting to incorporate policies and statues that "afforded American Indian tribes a greater level of involvement in the creation of laws that concern them."[171] *The Indian Civil Rights Act of 1968* began to be heavily leaned upon in federal court decisions of this time as they were attempting to "balance the need to preserve the tribes' cultural identity by strengthening tribal courts."[172] The idea was to keep tribal affairs in the hands of tribal peoples, attempting to allow their issues to be resolved in culturally appropriate ways. In 1978 the federal court decision of *Santa Clara Pueblo v. Martinez* became instrumental in granting full tribal self-determination over matters of tribal membership.

The case was a result of a female Santa Clara Pueblo tribal member who brought suit in federal court against the tribe and its governor, "seeking declaratory and injunctive relief against enforcement of a tribal ordinance denying membership

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[169] Sturm, *Blood Politics,* 3
[170] Ibid 86 and Strong, Pauline Turner, and Barrik Van Winkle. ""Indian Blood": Reflections on the Reckoning and Refiguring of Native North American Identity." (*Cultural Anthropology* vol. 11, no. Resisting Identities Nov 1996) : 554
[171] Painter-Thorne, "One Step Forward…" : 12
[172] Getches, et al., *Cases & Materials on Federal Indian Law,* 399

in the tribe to children of female members who marry outside the tribe."[173] This case required the courts to "decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members" as stated by Justice Marshall and Justice Rehnquist.[174] Initially, the District Court found the ordinance to "reflect traditional values of patriarchy still significant in tribal life" and determined that "membership rules were 'nor more or less than a mechanism of social… self-definition,' and as such were basic to the tribe's survival as a cultural and economic entity."[175] The Court of Appeals similarly concluded that "because the classification was one based upon sex it was presumptively invidious and could be sustained only if justified by a compelling tribal interest," [176] – it was the tribe's interest that would remain protected in this case.

Although the individual case itself is quite debatable, the implications are not. The tribe was in fact found to be organized under a constitution adopted under the Indian Reorganization Act in 1935 and there have been numerous positions papers revolving around the ordinance's cultural validity.[177] However, because I am not Santa Clara, nor am I familiar with Tewa cultural practices and beliefs I am not one to put forth an opinion on the cultural validity of the tribal membership definition the respondent challenged. Nevertheless what is concretely taken away from the *Santa Clara* decision is that tribes have the rights and protections necessary to

[173] Getches, et al., *Cases & Materials on Federal Indian Law,* 391
[174] Ibid.
[175] Ibid. 393
[176] Ibid.
[177] see Ibid. 398 - 404

develop membership criteria they see fit especially when a "compelling tribal interest" exists. This ruling still stands today.

Although, many argue that despite the "pronouncements of the Supreme Court in *Santa Clara Pueblo v. Martinez,*" scholars such as Carole Goldberg have stated that, "federal involvement in tribal decision-making about citizenship is alive and well."[178] In the twentieth century, matters of tribal enrollment were further complicated, as the "U.S. government established its own eligibility criteria for benefits like educational aid and health care."[179] For instance, one commonly overlooked aspect of the *Santa Clara* case is the fact that the dispute arose in part "because the Martinez children were denied the services of the Indian Health Service on the ground that they were not enrolled tribal members" which trumped the fact that both of their parents were enrolled members (the mother Santa Clara Pueblo, the father Navajo).[180] This is where involvement is most commonly manifested, "when federal decision-making intersects with definitions of tribal citizenship."[181]

Goldberg has continued to bring forth the notion that over the past three decades, Supreme Court decisions and federal statues have "increasingly tied benefits to more formal tribal membership or eligibility for such membership" as techniques of influencing tribal citizenship and regulating who is a legally defined "Indian."[182] Designed to cater to the desires of the federal government and

[178] Goldberg, "Members Only?..." 448
[179] Meyers, "Blood Is Thicker Than Family," 233
[180] Getches, et al., *Cases & Materials on Federal Indian Law,* 397
[181] Goldberg, "Members Only?..." 448
[182] Ibid. 451

dependent upon what is at stake if membership is more inclusive or exclusive, Goldberg further explicates that:

> Federal law and policy continue to exert an effect on tribal citizenship requirements directly through the actions of the Bureau in administering federal programs and executing directives built into tribal constitutions themselves, such as review of enrollment disputes or approval of constitutional amendments… the federal government has established legal rules that create incentives for Indian nations to fashion their citizenship provisions in particular ways.[183]

It is no coincidence that the most common criteria used today by both tribal governments, to establish membership and the U.S. government, to determine who an American Indian is, is a certain degree of Indian blood or "blood-quantum."[184]

- Overcoming Others And Asserting Ourselves -

Augie Fleras has argued that, "it is important that aboriginal peoples themselves state their own criteria for membership in their group [because]… such self-definition – the prerogative of independent nations – has direct implications for their morale, health and ultimate survival."[185] This is not to simply say Indigenous groups need to continue perpetuating what has been placed upon them, but suggests that self-definition, means reassessing what was imposed and reclaiming their own Indigenous identification policies as self-determined Native Nations.

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[183] Goldberg, "Members Only?..." 450
[184] Meyer, "Blood Is Thicker…" 234
[185] Elliot & Fleras, *Nations Within,* 165

Based on the historical evidence and policy reviews of these four British colonized settler nation-states, it is obvious that such statues have had great implications on our peoples on varying levels of Indigenous identity. Bonita Lawrence has elaborated on the relation of collective, individual, and external identities of native peoples.

> For Native people, individual identity is always being negotiated in relation to collective identity, and in the face of an external, colonizing society. Bodies of law defining and controlling Indianness [and Indigeneity] have for years distorted and disrupted older Indigenous ways of identifying the self in relation not only to collective identity bust also to the land.[186]

Since the different points of contact the Indigenous populations of the territories of present day Australia, New Zealand, Canada and the United States this has held true, though the reactions of the peoples have varied.

All four countries have faced racialized concepts of Indigenous definitions imposed upon their peoples; however, not all remain in such a state. In Australia and Aotearoa there has been a great influx in the movement towards self-definition, tribal and community peer review of those claiming Indigenous heritage, and more inclusive traditional based ideas of what it means to be Maori or Indigenous Australian are being utilized. A deeply tribal issue is being placed in the hands of tribal people, incorporating the Indigenous voice into who should and should not be called Indigenous.

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[186] Lawrence, ""Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview.": 4

In Canada, Indigenous communities have been subjected to a highly racialized and gendered definition of "Indian" which has had detrimental affects on many generations. Although the scars of these historic policies have not been fully healed, and much controversy and inter-tribal, as well as intra-tribal contention has arisen as a result of the amendment to "right the wrongs," some form of movement existed to make those changes. I do not argue that Indigenous identification policies in these three countries are ideal, because they are most likely far from it; however, I do feel that relatively speaking, the Indigenous peoples of these countries have mobilized, taken action, and continue to maintain and utilize their rights as Indigenous peoples, which includes the right to challenge imposed policies and ideas of what the "colonizer" has claimed to be Indigenous.

Today, in the United States there are "more than four thousand federal laws and treaties" that concern American Indians. Additionally there are numerous tribal laws, state laws, administrative rulings, and Bureau of Indian Affairs directives that also impact tribes and individual Indians. Of these countless policies and legislations, "many… were implemented with little, if any tribal input."[187] Many of these policies towards American Indians had stressed termination and assimilation and are exemplified as doing such by the simple fact that these Euro-American constructed laws were imposed upon tribes, without any consultation, regardless of

[187] Painter-Thorne, Suzianne D.. "One Step Forward, Two Giant Steps Back: How The 'Existing Indian Family' Exception (RE)Imposes Anglo American Legal Values On American Indian Tribes To The Detriment of Cultural Autonomy."(*American Indian Law Review* 33, no. 2008-2009): 3

the impact such laws and policies would have on their lives as Indigenous peoples.[188]

Although many of these historic policies have remained in effect or referenced in contemporary court decisions, their validity has remained fairly unchallenged, especially by those who should be most concerned – Indigenous peoples, leaders, and communities. While others have rejected ideas of blood-quantum as an adequate defining characteristic of tribal members and Indigenous individuals, we, as Indigenous peoples of the United States have become known for our "blood-reckoning" methods in contemporary times. Coined by cultural anthropologists Pauline Strong and Barrick Van Winkle, "blood-reckoning" has been used to describe the process in which "blood remains 'central to individuals' and communities' struggles for existence, resources and recognition.'"[189]

This process has been perpetuated by the intentions and ideals of the federal government, the Bureau of Indian Affairs,[190] and the many tribal constitutions written and consulted in the wake of the *1934 Indian Reorganization Act*. In the United States of American the use of blood-quantum as tribal enrollment criteria has transformed from imposed to internalized which is what we are currently faced with as contemporary Indigenous communities. We must now find ways to move forward and overcome ourselves.

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[188] Painter-Thorne, "One Step Forward, Two Giant Steps Back,"11
[189] Strong & Van Winkle, ""Indian Blood": Reflections on the Reckoning and Refiguring of Native North American Identity." : 256 also see, Sturm, *Blood Politics, 86*
[190] Today the Bureau of Indian Affairs states that "as a general rule, an American Indian or Alaska Native person is someone who has blood degree from and is recognized as such by a federally recognized tribe or village (as an enrolled tribal member)." Via BIA Website

Part Two
- OVERCOMING OURSELVES -

- Fractioned Identities, Fractioned Communities -

Driving along a well-traveled road on the reservation, "1/4 FAMILY" is spray painted red on a plywood square, nailed to a tree that faces traffic for the world to see. This was a remnant of what was a modern day inter-tribal battle. The debate was between advocates attempting to amend tribal enrollment criteria and others wishing to keep the tribal membership process the way it has arguably "always been." This tug-of-war, debating what requirements should comprise the constitutional definition of a Hoopa Valley Tribal member was far from any progressive political movement or tribal revolution.

Tensions were overwhelming within my home community during this time simply because families and individuals were focused on the factions of fractioned identities more than the real underlying issues at hand. The competing parties were campaigning for either a change in a denominator or blood-quantum or to uphold the denominator of blood-quantum that has dominated our tribal membership roll since its first adoption in the year 1949.[191] This lead me to question, were there any sustainable benefits in either decision?

The potential outcomes of substituting "at least one-eighth (1/8) Indian blood" for "at least one-fourth (1/4) Indian blood" were quite uninspiring and

[191] Frist, Edmund T. "Rights of Indians in the Hoopa Valley Reservation" Opinion of the Department of Interior Deputy Solicitor to the Commissioner of Indian Affairs (February 5, 1958)

forced me to face two important realizations, that I believe tribal individuals, leaders, and communities must contemplate as well. First, how do we view ourselves as tribal individuals; and second, how do our tribal governments and governing documents reflect that view?

This specific tribal membership practice, of blood-quantum assignment, has become somewhat of a comfort for many tribes; yet, it seems that many tribal leaders and members are unaware of their oppressive origins and ill intentions exemplified in the Allotment and Reorganization Eras, previously discussed. By highlighting the implications of these important periods in American Indian political history and more so exposing their direct affects on tribal communities and Indigenous individuals may better illustrate the imposed ideals worth overcoming.

Realizing the definitions, and governing practices initiated by the Federal Government of the United States of America and imposed upon our tribal governments will further illuminate the detrimental effects our peoples have faced. The Hoopa Valley Tribe, my own people and victim of such oppression, may briefly serve as a specific example of how exclusionary membership practices were deemed necessary and potentially beneficial to all "organized" Indigenous nations of the United States. These were the methods that facilitated the transformation of such definitions, from imposed to internalized. Though specific situations, dates, and methods may have varied from tribe to tribe, this case study will serve as a point of reflection, highlighting the actual tribal and community implications the initiatives such policies have had on many generations of tribal peoples, families, and individuals across Indian Country.

Post-Reservation Political History of Na:Tinixw and Na:Tini-xwe' - Hoopa & Hupa, The Place & Its People, 1876 to 1970 -

The Hoopa Valley Indian Reservation of Humboldt County, California was established by Executive Order on June 23, 1876 under the administration of President Ulysses S. Grant.[192] Setting aside 89,572.43 acres (less than 12 square miles), the reservation encompasses the Hoopa Valley of far Northern California, portions of the surrounding conifer tree covered hills and mountains, and the Trinity River which bisects the reservation, as it still exists today.[193] Similar to all other federally recognized Indian tribes of the United States, the provisions of the *Dawes (General Allotment) Act* extended to Hoopa, consequentially leading to Indian Affairs Agent Turpin submitting 465 allotments for approval in 1895.[194]

Later, in 1909, Indian Agent Superintendant Mortsolf was informed that "each man, woman, and child belonging to or having tribal relations on the Hoopa Valley Reservation is entitled to an allotment thereon."[195] Between, 1918 and 1923, nearly 777 allotments were submitted for the benefit of Hoopa Valley tribal Indians who were listed on Allotment Rolls; however, many original petitioners (over half) past away before their allotments were approved.[196] Consequently, it became apparent that reservation land was becoming scarce as more allotments were being promised and no more aboriginal territory was being granted. Tribal people and

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[192] Byron Nelson Jr., *Our Home Forever: A Hupa Tribal History. (*Hupa Tribe: CA 1978) 189
[193]Hoopa Valley Tribe, Offical Website http://www.hoopa-nsn.gov/government/statistics.htm (accessed Feb 2010)
[194] Nelson, *Our Home Forever:,* 195
[195] Ibid. see Appendix V for complete *Survey & Allotment Attempt Timeline 1875-1935*
[196] Ibid. 195

Indian Agents alike began to realize that there were more people than there was land available for allotment. Eligibility for allotment became more and more of an issue as it was obvious some would need to be denied. The process of defining who was eligible became a debate of who was deemed "Indian enough" by the Bureau of Indian Affairs. By 1932, there were not enough allotments for all eligible Indians of the Hoopa Valley Indian Reservation.[197]

Exclusion became inevitable within the allotment system and only became more apparent with the passing of the Wheeler Howard Act (IRA) in 1934. Ass matters regarding land allocation and other compensations to be provided by the federal government became more contentious, the Indian Bureau made it very clear in stating that "only those persons enrolled as Indians on the Hoopa Valley Reservation or voluntarily adopted by the tribal business committee could be granted 'any benefits whatsoever as Indians of the Hoopa Valley Reservation.'"[198] Yet, one must question what forms of enrollment could have occurred at such an early stage of westernized tribal government practices.

In this particular case, the base roll of tribal members consisted of Indians of the reservation that Special Allotting Agents deemed eligible for allotment in the Dawes Era of the late nineteenth century, only nine years after reservation boundaries were drawn. Further, even though the Hoopa tribal council (which consisted of seven elected representatives, as it does today) was established in 1933, a year preceding the Indian Reorganization Act, the wrath of Washington was

[197] Nelson, *Our Home Forever*, 196
[198] Frist, Edmund T. "Rights of Indians in the Hoopa Valley Reservation" Opinion of the Department of Interior Deputy Solicitor to the Commissioner of Indian Affairs (February 5, 1958) see pages 8-11

not avoided in this council's development, its governing documents, or enrollment ordinances.

On November 20, 1933, the Commissioner of Indian Affairs and architect of Indian Reorganization, John Collier approved the Hoopa Business Council's constitution and by-laws.[199] This was only months before the Indian Reorganization Act was signed into law, which was originally proposed by Collier who was also proponent of adopting the IRA definition of Indian to be "all those of Indian descent who were members of recognized tribes, their descendants who resided on a reservation, and all other Indians of *one quarter or more Indian blood*."[200] For the Hoopa Valley Tribe, a strict one-fourth blood-quantum remained the standard definition of Hupa Indian until 2008 when the tribal Constitution and By-laws were amended to reduce blood-quantum requirements to one-eighth by means of petition and special election.[201] The correlation and continual usage speak for themselves, as the use of blood-quantum has remained the norm since its introduction.

Juaneno/Yaqui scholar and activist M. Annette Jaimes incorporates a testimonial of a former Indian education program coordinator and her frustrations with the hypocrisy of governmental Indian identification policies,

> First there was this strict blood quantum thing, and it was enforced for a hundred years, over the strong objections of a lot of Indians. Then, when things were sufficiently screwed up

[199] Boggess, M. Owen Supt. Hoopa Valley Agency to Commissioner of Indian Affairs, 7/10/33, encl. *Constitution and By-laws, Hoopa Business Council* as cited on page 169 in *Our Home Forever* also see Deputy Solicitor Frist Opinion (1958)
[200] Spruhan, Paul. "A Legal History of Blood Quantum in Federal Indian Law to 1935" (2006)
[201] *Constitution and By Laws* and the *Title 9 Enrollment Ordinance of the Hoopa Valley Tribe* were amended on March 4, 2008; also the first evidence of ¼ used (thus far) occurs in 1949, I am still looking for the original constitution Collier approved.

> because of that, the feds suddenly reverse themselves completely, saying it's all a matter of self-identification.[202]

Referring specifically to the evolution of definitional policies from the Dawes Act to the *Santa Clara* decision, from federal imposition to full tribal control, it is apparent that the past involvement of the United States of America has greatly affected the state of definitional policies today. In many cases, previous initiatives and federal policies have dictated the Indigenous identification policies individuals are subject to.

However, the fact that this is a commonly unknown correlation is the product of an expansive process of federal disassociation to such issues. Because there is a lack of acknowledgement of these past policies and practices by those that have originally imposed them, it becomes even more difficult for the victims of such imposition to address and question these policies and practices. It is this lack of acknowledgement that has continuously evolved into a 'tribal issue' above all else, as the federal government has seemed to have washed its hands from such matters, though these concepts were first introduced by them. This separation of involvement has further complicated the process of uncovering the origins and initiators of such definitions and membership criteria.

In the case of the Hoopa Valley Tribe this concept can be illustrated in an opinion written by the Deputy Solicitor of the Department of Interior in 1958. Responding to the Commissioner of Indian Affairs, this document over-viewing

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[202] Jaimes, M. Annette. "Federal Indian Identification Policy – A Usurpation of Indigenous Sovereignty in North America" *State of Native America: Genocide, Colonization, Resistance.* : 130, quoting Lorelei DeCora (Means)

much of the tribe's political and post-contact governmental history alludes to the enrollment practices of the time. The memorandum states:

> We note that the tribe in 1949 adopted a written constitution which apparently fairly included as members all persons enrolled on the official roll of the Hoopa Valley Tribe [based on Allotment Rolls] and all children of at least one-quarter Indian blood, born to such members.[203]

Using language that distinctly creates an "us vs. them" dichotomy (we [DoI] vs. the tribe [Hupa]), the responsibility of the mentioned constitution was created solely in the hands of the tribe, while evidence of federal influence has clearly been illuminated.

Further, "apparently fairly included" suggests that the Department of the Interior was extremely far removed from the constitution, unaware of formation of the tribe's constitution. This seems faulty as well, when it has been, and still is, written in the constitution that all changes to ordinances are "subject to the approval of the Secretary of Interior or his authorized representative."[204] This statement is to say that "one-quarter Indian blood" was established by the demands of the tribe, rightly rooted in the values and traditions of the entire tribe, though the intentions, motivations, and understandings of the 'tribal leaders' of this time are worthy of further investigation. Despite these factors, it was the federal government that approved these ordinances and upheld them as just and un-imposed.

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[203] "Rights of Indians In the Hoopa Valley Reservation, California." 00.000959. 65 I.D. 59. Memorandum submitted February 5, 1958. To: Commissioner of Indian Affairs, From: Deputy Solicitor. Pg. 4

[204] *Constitution and By Laws of the Hoopa Valley Tribe* See Article IV – Membership

Additionally, "fairly included" sufficed as a description for those tribal Indians already enrolled and recognized by both 'tribal leaders' and Indian agents. In the same memorandum submitted by Deputy Solicitor Edmund T. Fritz it is noted that, "The official membership roll approved October 1, 1949, contains the names of allottees"[205] who according to standards and procedures of the Dawes Act, were deemed eligible by the Indian Agents and Allotment Agents – all affiliated with the United States Federal Government and Bureau of Indian Affairs.

This list was compiled at a time when allocated land was scarce t not everyone eligible was going to be allotted a land parcel. To address this issue, the 1949 roll included "descendants" of the "allottees" and "unallotted residents of the twelve mile square area of Hoopa Valley who were eligible to receive allotments at the time the allotments were made."[206] It is safe to say that the referenced eligibility requirements were formulated and enforced by the Department of the Interior and not the tribal peoples. During this period of Allotment, tribal peoples did not have much political power for tribes were viewed as "wards in need of protection."[207] Cultural traditions and practices not aligning with Western ideals of civilization and government became the root cause of this needed "protection."

It has been said that, "the most potent weapon in the hands of the oppressor is the mind of the oppressed."[208] This held true, is to suggest that when what has

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[205] "Rights of Indians In the Hoopa Valley Reservation, California." 00.000959. 65 I.D. 59. Memorandum submitted February 5, 1958. To: Commissioner of Indian Affairs, From: Deputy Solicitor. Pg. 2
[206] Ibid.
[207] Wilkins, David E.. *American Indian Politics and the American Political System (Spectrum Series)*. 2 ed. Lanham: Rowman & Littlefield Publishers, Inc., 2006.
[208] Biko, Steve. *I Write What I Like: Selected Writings*. Chicago: University Of Chicago Press, 2002.

been imposed upon a people is internalized, true forms of self-determination are threatened, traditional values are compromised, and the on-going process of colonization is nearing the ultimate goal – complacency with past and current issues inflicted by the colonizer. For tribal peoples of developed nation-states, such as the United States, where we are continuing to survive and thrive, it seems that there are numerous instances where we may be ignorant of our own demise. Tribal enrollment and membership policies and practices are prime examples of this for we commonly that is perpetuate colonized oppression within our own homes, tribal offices, and societies, against our own peoples.

Every day, Indigenous Peoples are creating opportunities of resistance, celebrating their survival, and demonstrating their cultural pride as distinct nations. However, while such efforts of cultural promotion and tribal infusion are being undertaken, there are numerous aspects of our daily lives and operations that have gone untouched. Robert Odawi Porter, Onodowaga (Seneca) scholar has noted the process of "promoting the decolonization of Indian life and the restoration of true self-determination" to be known as the act of "indigenization."[209] In many communities across the country, and around the world, Indigenous nations are making moves to incorporate tribal values and practices in different aspects of tribal operations. From governance to resource management, from education to health care, native nations are finding great success that comes with this conscious process of 'indigenization.'

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[209] Porter, Robert Odawi. "The Decolonization of Indigenous Governance." In *For Indigenous Eyes Only: A Decolonization Handbook* (Sante fe: School Of American Research Press, 2005.) : 91.

The Hoopa Valley Tribe, its government, and affiliated entities have had many prideful accomplishments that can be attributed to this practice of indigenization, incorporating tribal values, practices, and traditions into the contemporary operations and endeavors of the tribe. Easily found in the arena of natural resource management and operations, as well as within programs like the Center for Hupa Language Culture and Education, there are many efforts undertaken by the tribe to incorporate Na:tini-xwe' Mixine:xwe,'[210] or traditional stewardship practices and protections utilized for the caretaking of the river, hills, animals, plants and trees we are responsible for as caretakers of our reservation lands and aboriginal territories.

Within the walls of the Hoopa Valley Tribal Offices and Neighborhood Facilities, the hub for tribal government, operations, and recreation, the process of indigenization exists as well. For example, the current structure of the tribal government attempts to correspond to representation of the different "Traditional Village Sites" located within the Hoopa Valley. It is proudly stated that, "the seven elected officials [of the Hoopa Valley Tribal Business Council] are representatives of the seven fields or districts that correspond to traditional village sites and make up the Hoopa Valley."[211] This effort to incorporate a form of representation, reflective of the traditional village sites that were and still are integral to our ceremonies, culture, and lifestyle, is an additional institutionalized component of 'indigenization' within my home community.

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[210] The language of the Hoopa Valley People
[211] Official Website of the Hoopa Valley Tribe "Government Structure" http://www.hoopa-nsn.gov/government/council.htm (accessed Feb 2010)

Indigenization is a process and must be capable of challenging the status quo, and exist in a state of constant reflection and reevaluation. It is quite obvious that there are many more efforts to be made in the arena of indigenizing the tribal government of the Hoopa Valley Tribe and many other Indigenous Nations as well. Tribal citizenship and enrollment are one of the most pressing and most difficult tasks, waiting to undergo the process of indigenization. The existing policies, procedures, and practices of my community's tribal membership, enrollment, and citizenship criteria and process has yet to be truly questioned, leaving a great deal of potential for the reflection and reevaluation process. The process of indigenization is possible and the potential for change is apparent.

The Present Political Practices & Potential for Change
- Na:Tinixw & Na:Tini-xwe' The Place & Its People, Post 1970's -

On June 21st, 1973, the Hoopa Valley Business Council, governing entity of the Hoopa Valley Tribe and the Hoopa Valley Reservation, adopted the *Hoopa Comprehensive Plan for the Hoopa Valley Indian Reservation*. The Tribal Chairman of the time issued a letter to the "members of the Hoopa Valley Tribe" thereafter explaining that the Plan included a "wide range of proposals for the improvement of human, physical and economic conditions on the reservation."[212] This forward thinking community plan attempted to outline progressive steps the tribe should take to further the growth and address the needs in three areas, (1) the People,

[212] *Hoopa Valley Indian Reservation Comprehensive Plan.* Hoopa Valley Business Council, Consultant Environmental Concern Inc, Spokane Washington. 1974

including aspects of cultural history, human resources, and tribal management; (2) Physical Development, addressing issues of housing, community facilities, and beautification; and finally (3) Economic Development, looking at potential programs and capital improvements.[213]

Throughout the comprehensive plan there are many plans, initiatives, and tribal goals, some that have been realized since its publishing, and others still in the process of being enacted and restructured. Indigenization was occurring during this time period and is evident amongst the pages of the plan and on the reservation as it stands today.[214] The first point found in the summary of the plan is the strong statement that seems to be the foundation of the plan, which alludes to its place in the hopes of the government of the time, as well as its supporting membership:

> The tribe is proud of its cultural heritage and even though they move into a modern future, they have written, 'We will never look so far forward that we forget the roots of our being and the wisdom of our elders.'[215]

Moving forward is inevitable and making changes are as well, yet it is obvious that as stated for the Hoopa Valley Tribe, as it may be for many other nations that, "the roots of being" are what must never be forgotten in order to maintain a strong Indigenous nation.

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[213] *Hoopa Valley Indian Reservation Comprehensive Plan.* Hoopa Valley Business Council, Consultant – Environmental Concern Inc, Spokane Washington. 1974 pg 0.101

[214] Ibid. 0.105 "Objectives - ... encourage the use of native architecture... new road signs should reflect Tribal heritage and design... promote tribal cultural activities... rename creeks, villages, and other physical sites to their original Hupa names... create an atmosphere in the community conducive to learning about the accomplishments of the Hupa people."

[215] *Ibid.* 0.102

However, in a constantly changing society, it is quite a grueling task to incorporate the "wisdom of our elders" in every applicable aspect of a tribal nation's operation. There are many instances of its easy incorporation. Yet, it seems to be a little more challenging in the arena of actual tribal governments, especially those with heavy histories of Bureau of Indian Affairs involvement and federal ideal imposition. Policies and tribal governing documents are reflective of this influence.

The longest standing western legal definition of a Hoopa Tribal member, as previously mentioned was that of an individual with one-quarter (1/4) Indian [Hupa] Blood. This can nearly be traced to the allotment eras of the Hoopa Valley Indian Reservation in the early 1900's. Yet, more alarming is the fact that the same one-quarter-blood quantum is a product of the phenomenon that was sweeping the country as Indigenous peoples were in need of definitive criteria. "Every person, not a colored person, having on-fourth or more of Indian blood" was essentially the primal ancestor of all Indigenous identity definitions in this country[216] and unfortunately has not evolved much as it appears in numerous tribal constitutions and enrollment ordinances. From 1949 to 2008 the membership of the Hoopa Valley Tribe consisted as:

> (a) All persons of Hoopa blood whose names appear on the official roll as of October 1, 1949… (b) All children, born to members of the Hoopa Valley Tribe, who are at least one-fourth (1/4) Indian blood.[217]

[216] Act of Feb. 27, 1866. Virginia Act 84 as cited in "A Legal History of Blood Quantum in Federal Indian Law to 1935" cited in Spruhan, "A Legal History of Blood Quantum"
[217] *Constitution and By Laws of the Hoopa Valley Tribe* Article IV – Membership as of Feb 2008

The roll of 1949 was directly linked to those names of Hupa Indians that were allotted land during the Allotment Period, ending on the Hoopa Indian Reservation around 1923. The blood-quantum measure of ¼ is reflective of its introduction, which dates as far back as an act issued in Virginia in the year 1866.

It is apparent that this definition did in fact become quite reflective of past United States legislation and was maintained as a very integral part of any Hupa Indian's identity, allowing for one to claim membership into the tribe, simply because of its lack of change or even question by those subject to it. Subject to only a few challenges, of the policy's soundness, this somewhat standard tribal member definition continued to hold true un-amended until the year 2008.

By way of a grass roots political campaigning and petition packing a special election was called, addressing Article IV of the *Constitution and By Laws of the Hoopa Valley Tribe.* Officially amended on March 4, 2008 created two changes to what had been strong standing for nearly 60 years. Instead of one-fourth blood-quantum (1/4), the change entailed a reduction to one-eighth (1/8) blood quantum and provided that:

> if a parent is not enrolled in the Hoopa Valley Tribe, calculation of degree or quantum of blood shall include Indian blood shall include Indian blood derived from that parent's direct lineal ancestor(s) as shown on the approved Roll of schedules of the Hoopa Valley Tribe.[218]

[218] *Constitution and By Laws of the Hoopa Valley Tribe* (Amended March 4, 2008) Article IV, Section 1 (b)

This provision, allowed for an entire overlooked generation to enroll as Hoopa Tribal members for the article previously discounted the blood of any person of Hupa heritage that was a non-member and consequentially did not meet the blood-quantum requirement of 1/4th. Although enrollment numbers were increasing, and a greater number of once ineligible people could now be enrolled and recognized as members of the Hoopa Valley tribe, the use of blood-quantum was still in affect and reflective of imposed historical policies earlier reviewed.

Additionally, the enrollment *process* remained nearly untouched. The current, and continual process for the Hoopa Valley Tribe has relied on four aspects of a complete "enrollment application" which includes a paper application, a complete family tree (to the best of an applicant's knowledge), and basic forms of identification such as birth certificates and social security card. Although the tracing of family lineage and descent exists in the process, blood and varying degrees of blood seem to be the emphasis upon the creation of the "base roll" in 1949. There is a series of steps that an applicant must take to not only identify and prove their relation to family members, alive and deceased, but also specifics above an beyond persons dates and place of birth and/or death – roll numbers and degree of Indian are required as well.

Applicants and their families can access this information, through the Tribal Enrollment Office and Tribal Archives, though both are only fully accessible when physically visited on the reservation. However, egardless of where one lives, or what one's involvement or knowledge of the community is or is not, there are procedures that must be followed by those wishing to be included on the official

tribal roll and therefore be acknowledged as a Hoopa Valley Tribal Member. Such procedures have been very particularly outlined and executed for quite some time. One facet, and which remains the most contentious and important of such procedures, is the process of formulating the "total degree" of Indian blood claimed.

The first tier of Indian blood to be identified is the "ancestor on base roll through whom enrollment rights are claimed" which not only provides that the applicant does in deed have a familial relationship to such individual but also provides an initial degree to begin the blood-quantum calculations of the applicant.[219] Further, it becomes this ancestor that justifies the applicant's claim to a degree of Indian blood attributed to the Hoopa Tribe, providing a link to the parent or parents who have Hoopa "blood." This initiates the numerical composition of fractioned identities and the formulas that constitute a tribal member and potential tribal member's blood-quantum associated with a particular tribe. In the case of the Hoopa Valley Tribe, it is stated that the degree or quantum of blood is to be determined by "adding one-half (1/2) the degree of Indian blood of each parent as shown on the approved Roll Schedules of the Hoopa Valley Tribe."[220] This becomes recognized as a formulaic answer in identifying one's eligibility for tribal enrollment and therefore defining whom a tribal person is or is not.

In practice, the formula for calculating one's blood quantum, according to this particular enrollment ordinance becomes *(father's degree of Indian blood)/2 + (mother's degree of Indian blood)/2 = child's total degree of Indian blood*. This

[219] Hoopa Valley Tribe, Application for Enrollment, accessed via http://www.hoopa-nsn.gov/downloads/downloads.htm March 2010
[220] *Constitution and By Laws of the Hoopa Valley Tribe* (Amended March 4, 2008) Article IV, Section 1 (b)

formula is also outlined and further justified as a common process that tribal peoples are subject to due to the incorporation of a "Chart for Calculating Quantum of Indian Blood" which is provided by the enrollment office and included in the enrollment application as a point of reference. Although this may better allow a person to trace, add, and find the amount of Indian blood they are able to claim - this is not the final step.

The only Indian blood permitted to count towards enrollment in the Hoopa Valley Tribe is that of Hupa blood, which reiterates the necessity of verifying tribal blood-quantums as they are stated on the official Roll of Schedules of the Hoopa Valley Tribe. Therefore it is more than likely that a child of mixed tribal ancestry will have one assigned degree of Indian blood that differs from the degree of Indian blood used for that particular child's tribal enrollment. Further, the amount of inter-tribal and inter-racial dating and marriage that occurs within the Indigenous American population further increases the chances of their children's' tribal Indian blood to be "thinner."[221]

Regardless of how or where an enrolled child is raised, should it be the role of the enrolled tribe to suggest or encourage a disregard for the other heritage of the child? Today in Section 4 of the *Title 9 Enrollment Ordinance of the Hoopa Valley Tribe*, it is stated that, "any applicant who is duly enrolled in or listed on a final termination roll of another federally recognized Indian tribe or band is ineligible for

[221] Yellow Bird, Michael. "Decolonizing Tribal Enrollment." In *For Indigenous Eyes Only: A Decolonization Handbook.* (Santa Fe: School Of American Research Press, 2005.) "Huge numbers of our people have, and keep on, marrying others outside our tribes and race. If this continues, the tribal blood of each generation will get thinner and thinner…"

enrollment."[222] This illuminates, the vast implications enrollment in one particular tribe may have on one's identity – limiting one's "official" place of belonging to one primary tribe, race, or ethnicity.

Additionally, it is not unheard of that many tribally mixed-blood children become ineligible for tribal enrollment in any one of their tribes simply because the quantified fractions do not meet the limiting standards of their tribal enrollment policies and procedures.[223] It is apparent that there are more than just a few social and cultural realities that current enrollment policies are not addressing. Therefore the continued system of sole blood-quantum based enrollment criteria is not a very viable policy to be enforced, no matter what the degree required.

The special election of 2008 merely reduced the amount of blood quantum from one-fourth (1/4) to one-eighth (1/8) blood quantum which is clearly not a drastic enough change to limit the oppression of such westernized standards of Indigenous identity. Solely arguing issues of "which quantum is better" allows an oppressive and dangerous policy to dictate who we are as individuals, families, communities, and tribes. Therefore, it seems that something much more must come into being, something that may have easily been instilled in our communities, cultures, and sense of being all along. Instead of debating about which blood-quantum is better for tribal citizenship policies, I would suggest that tribal leaders and communities begin to question the legitimacy of such concepts – period. The

[222] Title 9 Enrollment Ordinance of the Hoopa Valley Tribe, Section 4 Enrollment Eligibility & Evidence, 4.2 Ineligibility for Enrollment

[223] This has been the case in many smaller tribes who tend to marry out or within other tribes that are in close proximities with other tribal groups, for example the Hupa, Yurok, and Karuk have inter-married for years, establishing families that have tribal members of all three throughout.

elimination of pure blood-quantum usage in defining ordinances and by laws may be necessary.

During the special election and campaign period to petition the constitutional amendment, there was great controversy. In the valley, on the reservation and off, those greatly connected to tribal traditions and those just being introduced – this was an issue that affected everyone. Many racialized ideas began to take form. The extremes of the divide consisted of some fearing a lessened blood degree for "we can't be run by white people" while others proclaimed that "our numbers are too low and our old people are dying" fearing that if we remained defined by such a high degree of blood our tribe would go extinct. What is interesting is that both fear induced precautions and arguments for and against the ordinance adjustment were quite valid concerns. However, it is this same fear that prohibits people to reflect on the heart of the issue– that the method of the time does not meet our needs as an Indigenous nation fostering proud and prominent citizens.

Lowering a blood-quantum requirement would open up enrollment for more members to join. Beyond the shallow and racialized thought that this would directly lead to an influx of "white people" becoming the majority of the tribe, the fear is much deeper and is clearly more about "outsiders" in general. On the other hand, maintaining a relatively high blood-quantum such as one-fourth (and up) may very well lead to a people defining themselves "out of existence" acknowledging that to survive in a democratic society, there is in fact, power in numbers.

Both sides held quite concrete concerns and desires; yet, this specific two-sided argument, no matter how it was resolved, will be resurrected again and again

if the same *system* is upheld. No matter the blood-quantum approved and accepted at a certain time, chances are, the same questions and conversations we had around this special election would arise again when the next generation of our children and grandchildren are faced with similar issues. This method is not sustainable for a community, people, and most importantly a nation.

Something as westernized and one-dimensional as a blood-quantum system is in fact so far removed from a culture and society that prides itself on their indigenous traditions, heritage, and surviving practices, that it does not and frankly cannot have the capacity to regulate and cater to the needs of the people. Even the different issues of the rival parties have not been fully resolved, and potentially will never be if such practices, policies, and processes revolving around blood-quantum, one-dimensional, and short-sighted membership remain the focal point of Indigenous citizenship. There must be something better. Yet the search for and transition into indigenization, has been delayed because very few have been able to embody the process of realizing the harmful affects of such procedures consequentially unable to proceed with the necessary reevaluation.

Therefore, the process must begin from the beginning, where its introduction and purpose originated in these communities while moving forward to reflect on how things have come to be presently. Operating in a way that acknowledges "colonial histories and contemporary politics" allows for communities and leaders to realize the harmfulness, current problems, and implications such limitations have

had on their people.[224] This initializes the realization that a reevaluation must occur for the future of their people are dependent upon it. The entirety of this process becomes a period of evolution – reflecting, realizing, and eventually reevaluation of such practices and their place in tribal governments, documents, and communities allows for reclamation of Indigenous identity.

Decolonizing the definitions that have attempted to identify the tribal and individual aspects of indigeneity truly calls for an acknowledgement of the histories and transformations of such policies from their imposition to internalization. Although this process is not one that will or can happen over night and seems somewhat difficult to initiate, it is fortunately not an unobtainable goal. This strategy is very tangible for almost every native community that has fallen victim to the internalization of imposed Indigenous identification policies because the reevaluation process allows for tribes to reflect upon what has literally always been there – what it means to culturally, socially, and traditionally belong.

We must identify what has been imposed and move towards decolonizing our governments, minds, and communities, alleviating the damages historically done. Then we may overcome ourselves by dismantling what we have internalized as our own. What is ironic is that this may be our most difficult task at hand only because we must dig deep to reflect internally on the values, traditions, languages, and cultural/social practices we were once banned from teaching, learning, and

[224] Fiske, Jo-Anne. "Constitutionalizing the Space to be Aboriginal Women: The Indian Act and the Struggle for First Nations Citizenship." In *Aboriginal Self-Government in Canada: Current Trends and Issues* (3 ed. Sasatoon, Canada: Purich Pub., 2008.) : 309

practicing.[225] This allows us to truly exercise our ability and rights as self-determined nations and peoples with distinct, prospering Indigenous cultures.

Because the political definitions of Indigenous peoples and later tribal enrollment practices have been based on racial limitations and western ideals, Indigenous individuals of the past and present have become reduced to the blood degrees and enrollment numbers forced upon them. The introduction and maintenance of such tribal enrollment practices have remained central to tribal nationhood as they have and continue to be "intrinsically linked to entitlement to property and other material benefits" as well as the solidarity held by "the ethnic bonds that tribal members feel."[226]

However, to link these two powerful aspects of citizenship and nationhood together through the sole use of racial concepts of blood and degree of blood is to suggest and celebrate the belief that *blood,* is literally or symbolically [or both simultaneously] capable of transmitting the essential qualities of the group on its own.[227] This essentially is what is suggested in the current practices of the Hoopa Valley Tribe and other nations that uphold similar policies. Can the essence of being Na:TiniXwe', or of any other tribal peoples for that matter, be encapsulated and translated through blood measurements alone? It does not seem likely, and further, this merely continues the cycles of oppression that have plagued our communities for generations.

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[225] In reference to assimilation policies and government initiatives to suppress "savage" cultures, languages, and traditions, ie "kill the Indian, save the man"
[226] Meyer, Melissa L. "American Indian Blood Quantum Requirements: Blood is Thicker than Family" featured in Matsumoto, Valerie J. and Blake Allmendinger, ed. *Over the Edge: Remapping the American West* (Berkeley: University of California Press, 1999) 231
[227] Ibid.

Historian Patricia Nelson Limerick describes the detriment that easily come with the continued internalization of these imposed concepts.

> Set the blood quantum at one-quarter, hold to it as a rigid definition of Indians, let intermarriage proceed as it has for centuries, and eventually Indians will be defined out of existence. When that happens, the federal government will be freed of its persistent 'Indian problem.'"[228]

For the numerous tribes and Indigenous groups that have survived and defied all attempts of extermination, assimilation, and colonization, extinction has never been an option. However, the current realities are suggesting that we may very well be on the road of enrolling ourselves out of existence.[229] Would this not be the ultimate form of dismissal of our atrocious colonial histories and struggles to simply live and exist as Native peoples?

Our current tribal communities that are perpetuating this possibility are in fact the descendants of those ancestors that faced so much hardship to ensure our continued survival. Therefore it is necessary that tribal nations in the United States and around the world should not be upholding the policies of the colonizers that attempted to see our demise, but in fact embrace what it is our elders hoped for – that our nations would remain strong. We must start looking towards building and ultimately [re]building self-determined nations so that our cultures and traditions may be sustained as well.

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[228] Jaimes, M. Annette. "Federal Indian Identification Policy – A Usurpation of Indigenous Sovereignty in North America" *State of Native America: Genocide, Colonization, Resistance.* Pg 132 quoting Patricia Limerick

[229] Yellow Bird, "Decolonizing Tribal Enrollment"

It has said that, "insofar as the extended family is vital to individual well-being so is the nation."[230] It is easily apparent that both nation and family are interconnected in the case of Indigenous peoples, especially because much of the culture and traditions are transmitted through the generations of families – in many cases those families united by village and tribal systems. This has been the foundation of the Indigenous nation and therefore must become the foundation once again – [re]building the nation and empowering its citizenship.

[230] Friske, "Constitutionalizing the Space to be Aboriginal Women: The *Indian Act* and the Struggle for First Nations Citizenship," 332

Part Three
- CHANGING OUR POLITICAL LANDSCAPES -

-"Hoopa Valley Tribal Member" k'iwinya'nya:n a:de:ne -
"Hoopa Valley Tribal Member" Say It In Indian (Hupa Language)

It has been said that "the personal is political"[231] and in the case of creating real political change, this must be done on many levels. From acknowledging the federal impositions of what have become common concepts to the ideals and perspectives spoken around the kitchen table, the reevaluation, and reclamation process must occur for the change to be sustainable. This section will demonstrate the process of an individual, myself, my realizations through extensive research on the subject and its personal implications, and my view forward as I describe potential ways to redefine ourselves to reclaim our Indigenous nationhood. It is due time that we change our own political landscapes to better serve our personal, cultural, and social needs as Na:Tini-Xwe' people.

- The Personal and Political Processes of Change -

On October 13, 1989, a few weeks after my first birthday I became a recognized member of the Hoopa Valley Tribe. Enrollment rights claimed through my father and his Hupa Indian bloodline, I was a "direct lineal descendant of a member of the Hoopa tribe" as my father was subject to a similar process in the

[231] Commonly traced to the Women's Feminist Movement as a rally cry, the exact origin of the phrase is unidentifiable. I first heard this statement from mentor, artist, y profesora Cherrie Moraga

1950s. My paternal grandmother was categorized as 4/4s Hupa and my grandfather listed on the official roll schedule as having ½ Hupa Indian blood.

Upon my parents' submission of a family tree demonstrating my bloodline through the degrees of Indian blood inherited through my paternal family members I was then, and only then, eligible to be a member of the Hoopa Valley Tribe. All of my Hupa grandparents and great-grandparents listed unfortunately passed away before I was brought into this world. Nevertheless, throughout my upbringing I have seen a few pictures, heard some stories, know of some songs, held some of their traditional possessions that my dad is the caretaker of, and have learned of a few aspects of their places in our cultural histories. However, what I have been most acquainted with and most familiar with are the blood-quantums associated with their names and therefore identities – though I am not sure this is what they would have wanted to be known as.

The irony of this is that the fractioned identities of my close ancestors, and likewise the fractioned identities of other native peoples' grandparents and parents, have become common knowledge and possibly the most politically meaningful aspect of their relation to us of a younger generation – although this was not of my sole choice. The formulas we are subject to and the processes we must undergo to become enrolled tribal members foster this reality. Chances are, tribal archives, offices, and governments will have no record of my grandmother being a skilled basket weaver or my grandfather an amazing singer but it can be guaranteed that if my identity or anyone of my potential children's identities were questioned, the degrees of Indian blood-quantum, assigned to my grandparents, are readily

accessible and recorded many times over. What has become of our collective tribal values and its views of our peoples' worth and place?

Reflecting back on the time periods that our tribal constitutions, by-laws, and enrollment ordinances were created and upon whose approval are all quite reflective of the predicament we are in today. Based on all of the evidence and examples previously discussed in this paper it is no surprise to assume that the power and control imposed and exercised over Indigenous peoples in the United States and elsewhere as a result of colonization.[232] Robert Odawi Porter has relayed many aspects and reasons of decolonizing Indigenous governments and therefore their practices as well.

Such realizations include the fact that if a people are not unified by their government, it becomes less likely to survive as a distinct society. Further the freedom to determine one's own future is additionally important to a community's, cultural and political survival. Porter further says that because Europeans knew that destroying native governments were vital components of destroying Indigenous nationhood, much control and power over Indigenous governments are still in the hands of the colonizers. This is an indication that "decolonizing Indigenous government is thus essential to achieving the freedom necessary for Indigenous Peoples to survive."[233] Our governments' decolonization and reassessment of priorities, values, and methods used within our governments are imperative to our futures as distinct Indigenous nations, peoples, and cultures.

[232] Porter, "The Decolonization of Indigenous Governance," 87
[233] Ibid. 88

Although all of these things are true, it is most definitely one thing to realize that such changes are needed and an entirely different issue to see these changes through. Because outside federal influences have been intertwined in our governments and political practices for so long as native peoples of the United States it must be acknowledged that

> In many situations where the United States has taken control of a tribal government, it has been decades – and maybe more than a century – since the people themselves had control of their own government. As a result, the concept of being truly free may be foreign to them. It may even frighten them.[234]

Therefore, it is especially important that great patience and sensitivity be applied in making change and approaching change whether it occur in conversation or in public hearings, this fear is a reality. The fear has been demonstrated in the change from one-fourth to one-eighth blood-quantum criteria and will more than likely realize with any change made to such institutionalized practices.

However, I also believe that if change is to come from within it is more likely to be sustainable, especially if embraced and initiated and by the people most affected. The first step would therefore be to empower those people to not only rebuild their nations but remember what aspects of their being are most important and most applicable to their lives – essentially, the decolonization process allows for peoples to reflect and look back so that they move forward as a surviving and thriving nation.

[234] Porter, "The Decolonization of Indigenous Governance," 92

- *The Potential for Change* -

In 1973, the Hoopa Valley Tribal Business Council, the governing entity of the Hoopa Valley Tribe adopted a Comprehensive Plan that stated "we will never look so far forward that we forget the roots of our being and the wisdom of our elders."[235] Emphasizing the pride of the tribe's cultural heritage "the roots of our being" is where decolonization must start and end.

Indigenous peoples all over the world have a word or phrase that stands as what they call themselves. This title may have various translations and obviously means something different for each Indigenous nation, but the reality is that this word or phrase is not what they are commonly known as.[236] Misinterpretation, mistranslation, language distortion, and simple misunderstandings have occurred since the point of European contact. Yet, these misunderstandings have had major implications when viewed in the lens of their inappropriateness and erroneous applications in the lives of indigenous peoples and the mainstream cultures they are surrounded by.

It has been said that "language carries culture" and that culture carries "the entire body of values by which we come to perceive ourselves and our place in the world."[237] This close association between language and culture is significantly apparent in many Indigenous cultures. However due to the great success of assimilative policies and foreign imposition upon Indigenous governments it is an

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[235] 1973 Comprehensive Plan for the Hoopa Valley Indian Reservation
[236] For example the Hoopa Valley Tribe, also known as the Hupa (an English interpretation of a Yurok word) are known as Na:Tini-Xwe' by the people who are in fact "Hupa"
[237] Thiongo, Ngugi Wa. *Decolonising the Mind: The Politics of Language in African Literature (*Chicago: Heinemann, 1986.) 14

undeniable reality that many communities have resulted to English as a primary language.[238] One must question how such impositions and norms of English, a non-Indigenous language, have come to be and how they have influenced and continue to shape our sense of Indigenous self. Further, in numerous tribal governments and governing documents this sense of self has only been relayed, interpreted, and accepted in the definitions, language, rhetoric, and therefore concepts of English. What is lost in that translation and how has this use of language began to shape and influence our culture, sense of self, and nationhood? Foreign languages and concepts have been imposed upon Indigenous and tribal identities on almost every level of legal definition from federal to local/tribal.

Without citizens there is no nation and with no nation there are no citizens, they are in fact defined by each other. Many scholars agree that, "the materials out of which nations are formed are living" that is human beings that establish and maintain a "community of history and destiny."[239] In the case of Indigenous nations, these human beings share knowledge and cultures specific to place, ceremony, creation, language and tradition that are and have been unique to that particular Indigenous nation since time immemorial. Therefore, it seems that such a vital component of Indigenous nationhood, such as its citizenship, should be based in such specific aspects of their "roots of being."

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[238] However this use of English has not always been based on the choice of the Indigenous community, many were subject to historical assimilative forces. It should also be noted that there are some communities that have been quite successful in rejecting the imposition of the English language.

[239] *Nationalism and Ethnosymbolism: History, Culture and Ethnicity in the Formation of Nations*. (Edinburgh: Edinburgh University Press, 2006.) : 2 as said by Anthony D. Smith

Political theorist Will Kymlicka has additionally stated the commonly overlooked yet obvious fact that:

> After all, the Indigenous Peoples were originally self-governing, and had the balance of power been different, they could have maintained their independence. They only lost their self-government as a result of coercion and colonization…[240]

Even though, colonization has clearly taken its toll on the current states of our communities and governments in some form or another, decolonization must occur in our own minds, starting with the first step of questioning the legitimacy of colonization[241] and reasserting ourselves as Indigenous *nations*.

For many Indigenous nations, this is what we always have been and consequentially wish to continue being. Audra Simpson, who has reviewed issues of Citizenship in the First Nations community of Kahnawake in Canada believes that all matter, especially those regarding who is and is not an 'Indian' "must be re-centered in nationalist terms, as these are the terms that are their own."[242] Regardless of the great efforts settler colonial states have attempted to assimilate and annihilate national minorities, which includes Indigenous Peoples, the evidence of their survival and distinct identities have proved resilient.

> The character of national identity (for example, the heroes, myths, and traditional customs) can change quickly. But the

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[240] Kymlicka, Will. *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*. (New York: Oxford University Press, USA, 2001.) : 147

[241] Waziyatawin, and Michael Yellow Bird. "Beginning Decolonization." In *For Indigenous Eyes Only: A Decolonization Handbook (School of American Research Native America)*. Sante fe: School Of American Research Press, 2005.) : 3

[242] Simpson, Audra. "Paths Toward a Mohawk Nation: Narratives of Citizenship and Nationhood at Kahnawake." In *Political Theory and the Rights of Indigenous Peoples*. (New York: Cambridge University Press, 2000.) : *120*

> identity itself – the sense of being a distinct nation, with its own national culture – is much more stable.[243]

Therefore, for Indigenous peoples to assert and maintain themselves as a nation Indigenous governments and communities must shape their historical and contemporary experiences through the practices and procedures of 'being' a tribal citizen and 'having' rights as a citizen.[244] This is the way that the national identity of tribal nations will be maintained and sustained culturally, socially, and politically.

Many theorists of nationalism have concurred on the understanding that nations exist so long as their members share a feeling of common membership.[245] Nations depend on their citizens to sustain its nationhood, which is why Indigenous nationhood and citizenship are imperative to the well-being and survival of Indigenous peoples. Indigenous citizenship is vital to their ability to politically assert themselves as both the 'original' occupants of their respective homelands and as 'founding nations' within the recent colonial settler states of the New World.[246]

Further, Indigenous citizenship should be undertaken by Indigenous nations themselves who must acknowledge that their practices and procedures pertaining to citizenship are those that will ensure the continued existence of their nation. Therefore, citizenship to build nationhood must take into account that such efforts, as highlighted by the work *Nationalism and Ethnosymbolism: History, Culture, and Ethnicity in the Formation of Nations,*

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[243] Kymlicka, *Political theory and the Rights of Indigenous Peoples* , 224
[244] Simpson, *Political Theory & the Rights of Indigenous Peoples,* 127, "to maintain a sense of themselves as a nation, Kahnawakero:non shape their historical and contemporary experiences through discursive practice – a practice that uses the key tropes of 'being Indian' and having 'rights'"
[245] Ozkirimli, Umut. *Contemporary Debates on Nationalism: A Critical Engagement*. New York: Palgrave Macmillan, 2005.
[246] Elliot & Fleras, *Nations Within, 5*

> are (1)dealing with the existence and continuation of a shared awareness, of self-designated collective consciousness; and (2) the justification of that collective self-consciousness as being distinctive.[247]

In the case of Indigenous nation re-building, these two points are true, but specifically, the distinctiveness that exists for Indigenous nations are the unique tribal cultures, values, languages, and traditions that have continued to survive since time immemorial and influence our contemporary beliefs and beings.

A great opportunity is at hand for Indigenous nations; however, it is going to take a great deal of tribal specificity and creativity alike to be successful in such an endeavor. Moving beyond purely racialized concepts of Indigeneity will not only reaffirm our rights to self-determination as nations but also enhance our own cultural and social capital by instilling pride and power within our tribes because the roots of who we are will allude once again to who we will be and continue being.

- Changing the Political Practices of the Na:Tini-xwe' -

As set forth in the *Constitution and By Laws* of the Hoopa Valley Tribe, Article IV, the Membership statute, calls for the drafting and maintenance of an "Enrollment Ordinance." Today, Title 9, the "Enrollment Ordinance of the Hoopa Valley Tribe in California" states that the ordinance, "governing enrollment and membership in the Hoopa Valley Tribe" shall only be effective upon the approval of "the general

[247] *Nationalism and Ethnosymbolism: History, Culture and Ethnicity in the Formation of Nations*. (Edinburgh: Edinburgh University Press, 2006.) : 4

membership and by the Bureau of Indian Affairs."[248] There is no other ethnic group in the United States or possibly in the world, that are held to such standards of formal affiliation between themselves and/or with the federal government.[249] This is a system only set forth for American Indians,[250] a product of the previous policies imposed by the federal government over one hundred years ago. To this day, many tribal constitutions and ordinances are reflective of those policies and systems set in place to continue to control and oversee the government and lives of Indigenous peoples of the United States.

Similarly, the Hoopa Valley Tribe has many governing documents and ordinances that have very much continued to provide an opportunity for the hand of the Bureau of Indian Affairs, and therefore the Federal Government, to remain actively involved in all of the matters of what is self-celebrated as a "sovereign nation."[251] Further, regardless of tribal efforts to make moves of self-determination and nation building, the notion of "domestic-dependent nations" is still well and alive, especially from the perspective of the United States Federal Government. However, because of paramount cases of self-determination and tribal jurisdiction on matters of tribal citizenship,[252] tribes do in fact have a great deal of power and legal capacity to be creative and flexibility in their tribal enrollment practices and procedures.

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[248] *Enrollment Ordinance of the Hoopa Valley Tribe* (amended by special election on march 4, 2008)
[249] Meyer, "American Indian Blood Quantum Requirements: Blood is Thicker than Family" 231
[250] This is the politically correct term used by the Federal Government – which is unfortunately NOT aligned with my own choice of self-identification
[251] There is great talk of sovereignty across Indian Country but it is a matter of fact that all such claimants are simply "domestic-dependent nations" not recognized as fully sovereign nations
[252] see *Martinez v. Santa Clara Pueblo*

This is where the processes of reflection and action become unified in praxis. Paulo Freire has coined, "liberation is a praxis: the action and reflection of men and women upon their world in order to transform it."[253] Indigenous nations must therefore reflect, realize, and react in order to transform into the free cultural and social peoples they wish to be. We must remember that, "as Indigenous Peoples, we have the power, strength, and intelligence to develop culturally specific decolonization strategies relevant to our own communities"[254] for these are the roots of our being that have continued our survival as distinct Indigenous nations. We have every right to practice our rights of self-determination and therefore self-definition. We have the rights, abilities, and capacity to reclaim our roots of being.

Ngugi Wa Thiong'o explains in his work *Decolonising the Mind* that "values are the basis of a people's identity, their sense of particularity as members of the human race" and all of this is carried and transmitted through language.[255] He further elaborates that language as culture is additionally "central to a people's definition of themselves in relation to their natural and social environment, indeed in relation to the entire universe."[256]

However, in the case of the Hoopa Valley Tribe, and many others of the United States, tribal governing documents and ordinances lack the languages, and therefore concepts, of their ancestors, traditions, and cultural heritage. Through the process of colonization it has been realized that "to control a people's culture is to

[253] Freire, *Pedagogy of the Oppressed,* 79
[254] Waziyatawin and Michael Yellow Bird, "Beginning Decolonization," 3
[255] Thiong'o, *Decolonising the Mind,* 15
[256] Ibid.

control their tools of self-definition in relationship to others."[257] This undoubtedly exemplifies the reality that if language is culture and culture is essential to identity and self-definition, much damage has been inflicted upon Indigenous peoples because of the lack of tribal concepts and languages used today. For those who are able, concepts and values instilled in tribal languages may be a beneficial starting point.[258]

Indigenous decolonization scholars, Waziyatawin and Michael Yellow Bird have suggested that this path is not only feasible but also beneficial for Indigenous communities and governments.

> Conceptualizing these ideas within our own Indigenous lens is amore advanced decolonization activity. In drawing on your Indigenous language you are not only recovering Indigenous knowledge that is in jeopardy of being lost as a consequence of colonialism, you are also making that language relevant to contemporary times. Because the colonizers attempted to methodically eradicate our Indigenous languages, our efforts to recover the language are also a powerful form of resistance.[259]

Not only through this process of decolonizing our tribal citizenship practices are we able to move away from those imposed policies we were held subject to for so long, but we are also able to reinvigorate our nations with the cultural aspects and linguistic specificity we have all come so close to losing at one point or another.

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[257] Thiong'o, *Decolonising the Mind, 16*

[258] It must be realized and acknowledged that due to the varying levels of colonization and assimilation practices inflicted upon the numerous Indigenous nations of the United States and beyond, there are varying degrees of language preservation, conservation, and use in contemporary native communities.

[259] Waziyatawin and Michael Yellow Bird, "Beginning Decolonization" as featured in *For Indigenous Eyes Only,* 2

Additionally, our roots are easily traced back to our land and languages simultaneously.

For my people, the word Na:Tini-Xwe' is literally translated as "the people of where the trails return." Na:Tinixw is "the place where the trails return" which is essentially known as the Hoopa Valley today. Na:Tini-Xwe' is therefore the people of the Hoopa Valley, which is what we, the people of that particular place, have called ourselves for over 10,000 years. Today, and since the period of initial contact, Na:Tini-Xwe' have been called Hoopa which is a direct European mistranslation of the Yurok (a neighboring tribe) word hup'oola,' which was their word for the people of the Hoopa Valley, the Hupa Indians.[260]

Na:Tini-Xwe' is both what we once called ourselves and what we continue to call ourselves. However, its use is not as consistent as it once was simply because it has become so common to call ourselves Hupa and because we live in the town of Hoopa.[261] However, when one introduces themselves traditionally in Na:Tini-Xwe' Mixine:we:, the language of the Hupa/Hoopa people, one will acknowledge the place they come from by solely stating their tribal affiliation. Additionally stating one's village affiliations and potentially one's family members would commonly further enhance and clarify the introduction.

Encased in one word, there is so much that can be illuminated through basic syllable breakdowns and interpretations – in many languages words have the power

[260] Hupa is the common term used in reference to Na:Tini-Xwe' – the people
Hoopa is the common term used for Na:Tinixw – the place/ town of Hoopa/ Hoopa Valley Indian Res.
Hoopa Valley Tribe is the federally recognized political alias of the tribe, government, and membership, made up of Hupa Indians, who govern and have jurisdiction of the Hoopa Valley Indian Reservation.
[261] ie. The English Translations

to hold entire worldviews. The Hupa Language is one such language. The word and concepts entailed in Na:Tini-Xwe' alone can shed major light on the values, identities, and responsibilities of those who are considered "members of the Hoopa Valley Tribe" and potentially others that should be.

Explicitly we can identify that place and identity are intermittently linked - the people are clearly of the place. Further, the place is described as "where the trails return." This symbolizes two things. First, "where the trails return" references the floor of the Hoopa Valley, where the homes were located. Traditionally our permanent village sites were housed along the Trinity River where we oriented ourselves to the world.[262] Second, the notion of "return" acknowledges that we had to leave the valley at one point or another (for gathering, training, trading, etc) but it was our responsibility and prerogative to always return to it. These ideas of identity – place, return and responsibility – can all easily be associated with who a Na:Tini-Xwe' person was or was not. These same ideas of Na:TiniXwe' identity can also aid us in making these determinations of citizenship and belonging in the context of today.

However, Na:Tini-Xwe' is not incorporated into any tribal document of the Hoopa Valley Tribe.[263] Neither the word nor the concept, have been incorporated into the definition or documents correlated to the current Tribal Enrollment process. Today, a Hoopa Valley Tribal member is constituted as:

> (a) All persons of Hoopa Indian blood whose names appear on the official roll of the Hoopa Valley Tribe as of October 1949…

[262] Our cardinal directions are based on the river and hills that surround the river/valley floor ie. Up-river, down-river, across the river, up the hill, down the hill, over the hill CHECK & CITE
[263] At least to that of my knowledge, or that I have found to date…

> (b) All children, born to members of the Hoopa Valley Tribe, who are at least one-eighth (1/8) Indian blood…

Clearly no concepts or acknowledgements of Na:Tini-Xwe' are mentioned nor is any form of Na:Tini-Xwe' Mixine:xwe accounted for.

One must question, how the traditional concepts of Na:Tini-Xwe' have become so far removed from our current definitions of what it means to be a member of the Hoopa Valley Tribe? Looking forward and embracing the realities of the political landscapes we are currently existing within, there is no other solution than to attempt "overcoming these barriers" towards "the redevelopment our sovereignty."[264]

Sahnish/Hidatsa scholar, Michael Yellow Bird, has been a strong proponent of abandoning systems blood quantum criteria before we "enroll ourselves out of existence."[265] He advocates that tribes and Indigenous peoples move the focus away from amounts of blood and readjust the priorities of such practices.

> Adopt citizenship criteria that do not care whether our children or grandchildren are quarter, half, or full blood, but instead, that they are productive, happy, committed, contributing members of our nations, who will keep our languages alive, protect our homelands and resources, and maintain a tribal way of life based upon the teachings of our ancestors.[266]

Tribal enrollment should truly be a matter of what kind of citizens we wish to maintain and sustain our nations – looking beyond blood quantum and re-instating

[264] Waziyatawin, "Beginning Decolonization," 5
[265] Yellow Bird, "Decolonizing Tribal Enrolment," 180
[266] Ibid. 181

our true roots of being. This is my wish for the Hoopa Valley Tribe, it is time we move past imposed foreign concepts and reclaim what it means to be Na:Tini-Xwe' by celebrating it in our enrollment practices and procedures. It must start from within.

Freire has said, "a deepened consciousness of their situation leads people to apprehend that situation as an historical reality susceptible of transformation."[267] The reality that is in need of transformation is not only a reflection of the history that has lead to the present circumstances but also the present realities as well. We must address and work with matters and circumstances of the day. The fact that with Indigenous citizenship comes cultural, social, political, and economic implications is a reality.[268]

Each Indigenous community is quite diverse within itself. It is another reality that such citizens, and potential citizens, span many different walks of life, living in various locals, raised in different ways, carry different tribal knowledge sets, and have different levels of access to such knowledge, and many are of different mixtures of racial and tribal backgrounds. However, it is also a reality that the current and future people of the Hoopa Valley Tribe are united by a common ancestry, varying shades of social and cultural norms, and are connected to the Hoopa Valley in some way, shape or form. Further, it is also a reality that many currently enrolled tribal members are marrying and having children with non-tribal members. Most importantly however, is the fact that all of these realities can be built upon and enhanced in ways that will surely allow our nation to fully re-build.

[267] Freire, *Pedagogy of the Oppressed,* 85
[268] Goldberg, "Members Only?," 439

We are an extremely fortunate people but are known to take it for granted at times. Our aboriginal territories were of course downsized due to European settlement, but we have never been relocated, and remain in and have access our homelands of Na:Tinixw. Although our environments have changed, both from natural and man-made forces, we are still easily able to hunt, gather, and harvest many of the plants and animals our ancestors did. Against the odds of boarding schools, relocation efforts, extermination policies, and other atrocities, we are still blessed to have fluent speakers within our tribe and fortunate to have language programs within our schools and community. Similarly it is quite amazing that despite all of the efforts to eradicate our culture and traditional ways, we are still proud practitioners, still holding annually and bi-annually many of our ceremonies that were integral parts of our being and the being of the world.

These are aspects of Na:TiniXwe' that we, as Na:TiniXwe,' should and can be proud of. These are the things that we should foster, strive to protect, maintain, and build upon as we are so fortunate to live within the reality that we do. These are the reasons that our nation must be re-built upon pillars of protecting and sustaining who we are as Na:TiniXwe' – a nationhood maintained by proud and empowered Indigenous citizens who wish to better who we are, embrace where we come from, and remain strong. Although, I do not believe that all of these benefits of a strong nation will occur overnight, nor do I believe that decolonized Indigenous Citizenship can guarantee all of these alone – I do believe that this is a foundational component of the larger process of exercising our rights of true self-determination.

Rhetoric of Na:TiniXwe' nationhood, citizenship, and self-determination will aid in the establishment of a re-built Enrollment Ordinance that is grounded in the roots of our being – place, responsibility, and return, as vital components of our identity. With a simple reevaluation of the Hoopa Tribal Enrollment Ordinance, a rhetoric replacement strategy for the language used in the governing documents, and new concepts incorporated into the "application" process, the transformation of an internalized colonial procedure will to a nation building, citizen empowering tool will be initiated. To begin the discussion and demonstrate the potential that exists in re-building existing tribal documents the focus I will examine Sections 2 and 3 of the Tribal Enrollment Ordinance as well as the current "Application for Enrollment" forms.

Title 9, also known as the *Enrollment Ordinance,* has been established as having purpose "to be in the best interest of all members and potential members to clarify the procedures and evidence used by the Hoopa Valley Business Council and Enrollment Committee for determining enrollment and blood degree."[269] Article V of the current *Constitution and By Laws* calls for the establishment of the ordinance, which was initially approved by the Bureau of Indian Affairs in 1988, but amended by the special election of 2008. Defining diction in Section 2 of the Ordinance, it is clear that the Ordinance outlines and perpetuates the concept of constant explanation.

Section 2, entitled Definitions, attempts to clarify twelve key terms and concepts that are integral components of the Enrollment Ordinance. Very simple

[269] Title 9, Hoopa Valley Tribe Enrollment Ordinance, Section 1, pg 2

associated terms are explicated such as “Gender,” “Married,” “Parent,” and “Council” elaborating that the use of he/she are interchangeable, defining the state of legal matrimony, deeming natural/biological parents to be those that matter, and that the Business Council of the Hoopa Valley Tribe will be referenced throughout. To uphold the purpose of the Ordinance, to outline and clarify the procedures of the process, such definitions are necessary. However, many of the defined terms are somewhat limiting by themselves, as they set the tone of the entire document.

“Applicant” refers to “a person seeking to enroll in the Hoopa Valley Tribe,” which also includes the parent of a minor. The “Committee” references the Enrollment Committee that reviews the application before submitted to the Council for approval of enrollment. The term “Preponderance of Evidence” constitutes any evidence that “is superior in weight, importance, or strength, and that is more credible or convincing to the mind than the opposing evidence.” All three terms clearly emphasize the fact that the current enrollment procedures revolve around application, approval, and proof.

It seems that in a system such as this, there is much room for politics, which in small tribes commonly becomes family feuds. In addition to the procedures that are to be followed through the application process and corresponding forms there is much room for personal opinion and judgments to play in the process. “Evidence” suggests that something much be proven and therefore someone must judge its validity. Further, terms like “applicant” and “committee” also suggest a notion of competition, which in turn becomes true, as the current system set in place, is strongly based in the priorities of pools of gains and benefits.

Pressure is therefore placed on the process of tribal enrollment and those that are subject to it. Unfortunately stress and fear about the potential denial of, questioning of, or other obstacles may easily become the most prominent feelings about the process. Yet, this is the process that should initiate a sense of belonging not a sense of stress over staging an application and stating/re-stating one's evidence of entitlement. Although these have become common components of Indigenous American tribal enrollment practices, they do not seem to align with what should be deemed as Indigenous citizenship practices.

While there is no universal definition of citizenship, it has been commonly summed up by the basic rights of "participation and protection."[270] Additionally, other writers have come to understand the content of citizenship to be enveloped in both entitlements and obligations.[271] Yet the matter of who should be considered a citizen, and therefore entitled to rights or obligated loyalty to a particular nation, is forever a contentious issue. Boundaries clearly become a mode of "nationalist energy" and "political legitimation" as they are the "elemental means of separating people from one another" and the means of "producing personal and collective identity."[272] This brings us to the boundary markers and maintainers of the Hoopa Valley Tribal Ordinance.

Section 2.12 explicates that the "the term 'Roll' shall mean the list of living members of the Tribe, complied by the Committee from the official roll as of 1949

[270] Goldberg, "Members Only?" 438 see note # 3
[271] Oommen, T. K.. *Citizenship, Nationality and Ethnicity: Reconciling Competing Identities* (London: Polity Press, 1997) 228 see Dahrendorf 1994 and Mead 1986 for the debate between the two concepts of citizenship
[272] Simpson, *Political Theory & The Rights of Indigenous Peoples, 120*

and all subsequent resolutions of Council concerning the membership or enrollment of members."[273] The Base Roll and the additions to that roll have become the method of boundary maintenance. If one is not on such roll one is not of the nation. Similarly, the action of being placed on the roll is captured in the term "Enroll" which has come to mean "the lawful placement of a person's name upon the tribal roll." This occurs upon the approval of ones application and accurate evidence of eligibility. The boundaries become drawn around this list and the membership that is listed on it.

Unfortunately the drawn boundaries are not as adjustable as they may need to be or should be. This is a direct result of the incorporation of 'blood' concepts into the enrollment procedures. The terms "Hoopa Blood" and "Indian Blood" are stated to mean "the degree of blood stated on the Official Roll as of October 1, 1949 and in enrollment resolutions." It is also concretely stated that the "degree or quantum of blood is determined provided in the Constitution and By Laws and this Ordinance." This is to suggest that not only is the concept of 'blood' currently used, but also deeply institutionalized.

To clearly define and specifically emphasize "Hoopa Blood" and "Indian Blood" exclusively used in the highest governing documents of the Hoopa Valley Tribe is to suggest that it is as undisputable as a biological parent or the concept of marriage, previously defined. The legitimacy of its place in the Enrollment Ordinance has remained successfully unquestioned since its introduction. Yet its legitimacy must be reviewed. Is a certain amount of blood enough to justify one's

[273] Title 9, Section 2, Clause 12

inclusion within the boundary of the nation? Is a certain amount of blood enough to constitute one's entitlement to rights and protections as well as participation and obligation?

Today, a "tribal member" or "member" is defined as "any living person who is a duly enrolled member of the Hoopa Valley Tribe."[274] Section 3 of the Enrollment Ordinance further describes what membership is set forth as. Besides the mention of the official roll of 1949 the concept of 'blood' is quantified. Defining all of those, eligible for membership, who are not on the official of 1949, as "all children, born to members of the Hoopa Valley Tribe, who are at least one-eighth (1/8) Indian blood." This formula is then calculated by "adding one-half (1/2) the degree of Indian blood of each parent." It is quite questionable if this method of dividing and conquering Indian individuals through "computation"[275] of Indigenous descent is the most appropriate approach.

It has been said that an additional component that is vital to any constituted nation is its susceptibility to change and its ability to respond to changes that occur over time as well as changes that may occur "from one individual to another," essentially the circumstances of its citizens.[276] This sense of adaptation and survival is something that is inherent in Indigenous communities, and has been since periods of pre-contact. Oren Lyons, of the Onondaga Nation has explicated that today we must "depend on the genius of our own people, and on our abilities to meet the

[274] Title 9, Section 2, Clause 6
[275] Title 9, Section 5 – See Determination of Indian Blood, clause 5.1 – Computation and other methods of " proof" such as if child is born out of wedlock, and the blood-line of applicant is through that of the father, a blood test is required to prove that the child is biologically his – carrying his "Indian Blood"
[276] *Nationalism and Ethnosymbolism: History, Culture and Ethnicity in the Formation of Nations* 3

issues of the times."[277] If our times are consisting of an increase in inter-tribal and inter-racial marriages and many of those peoples are wanting to maintain some sort of connection to our tribal nation it seems that the method is not efficient or applicable to our situation. We must begin to reflect the realities of our people.

In terms of marking our boundaries as Indigenous nations and therefore maintaining a distinct population of cultural peoples, it is quite obvious that those "boundaries must be situated within the 'contemporary'."[278] Lyons continues this sentiment by establishing that our nations must be sustainable and forward thinking for "doing what's right and responsible means looking to the long road, not getting lost in the demands of the moment."[279]

It is quite easy to conform to the norms and issues of the immediate, especially when that was what was imposed on Native peoples and our tribal governments; yet this does not ensure the continuity of a strong nation. Simply adjusting the blood-quantum level is reacting to the immediate needs of the time, overlooking the overall needs of the people, and focusing in on the relatively few that would become enrolled with the change. The future beyond that one present generation was overlooked, which is only one component of who we are – we were and should continue to be a past, present, and future thinking people.

This is in fact the essence of Native nation "rebuilding" for "we've always been here; we're not newly built" finally recognizing the opportunities we have in front of us to fall back on the "instructions and on the principles of government

[277] *Rebuilding Native Nations,* "Foreword by Oren Lyons" vii
[278] Simpson, *Political Theory & The Rights of Indigenous Peoples, 120*
[279] *Rebuilding Native Nations,* "Foreword by Oren Lyons" viii

given to us by the old ones."[280] The late Vine Deloria Jr. noted that in our native communities "traditions die hard and innovation comes hard,"[281] however, I believe that when the two come together in the arena of our tribal governments they will succeed hard. Bringing our roots of being to the forefront of who we are "legally defined" as in our own constitutions and by-laws allows for great potential to exist as a strong sustaining Indigenous nation.

Anthony D. Smith explains that a nation is sustained by "members [who] cultivate common myths, memories, symbols and values."[282] In the case of indigenous nations it seems that these components could and should be incorporated into the definition of citizenship for many reasons. Increased sense of both self and belonging will increase pride, empowerment, and loyalty within the nation and its distinct culture can be celebrated and further sustained by its citizens.

> Loss of culture and control over life have in some instances led to chronic problems over personal identity, group integrity, and social solidarity.[283]

There is great potential in redefining and "indigenizing"[284] our citizenship practices for we may be able to alleviate some of these problems and strengthen all levels of our tribal identities.

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[280] *Rebuilding Native Nations,* "Foreword by Oren Lyons" viii
[281] Deloria, Vine. *Custer Died for Your Sins: An Indian Manifesto* (Norman: University of Oklahoma Press, 1988.) : 16
[282] *Nationalism and Ethnosymbolism: History, Culture and the Formation of Nations* : 3
[283] Elliot & Fleras, *Nations Within,* 5
[284] Porter, "Decolonizing Indigenous Governance," *For Indigenous Eyes Only:* 91
the process of "promoting the decolonization of Indian life and the restoration of true self-determination"

For the Hoopa Valley Tribe the traditional symbols, values, and common concepts potentially applicable to the process of reclaiming Indigenous citizenship practices are two part. Reaffirming concepts of nationhood and citizenship into the rhetoric of our by-laws and ordinances while also enhancing those concepts by unpacking *Na:Tini-Xwe'* in the context of potential responsibilities and criteria for boundary maintenance are components of a new tribally designed political landscape. By replacing certain limiting words and concepts from the sections of the documents previously discussed, would not only allow for the culture and nationhood of the Hoopa Valley Tribe to be reaffirmed, but would also become a significant start to a greater tribal government and community decolonization process.

Above all else, whether in our traditional language or not – we must embrace ourselves as the nation we wish to be. A standing nation has stand up citizens and therefore we should acknowledge and encourage and celebrate ourselves as such. For Indigenous nations it seems that membership is in fact citizenship and therefore citizenship is membership –they are interchangeable. However, the connotations of both words are not, and the theorists of the Indian Reorganization Act and other "membership" based policies were well aware of this.[285]

Citizenship allows one to believe that you are a citizen of a nation. Membership allows one to believe that you are simply a member of a tribe. Though Indigenous peoples know that being a "member" as we have known it, is not a simple matter, and is not something to be taken lightly, but to others this may not

[285] Goldberg, "Members Only?," 446

necessarily be the case. By utilizing the words and concepts of *citizenship*, and *citizen* as opposed to *membership* and member, a tribe is asserting that they are a nation. One is a citizen of the United States not a member.

The establishment of "enrolled member" was introduced through federal legislation, so it can also be readily assumed that this was applied with the intention of keeping tribes the within stationary status of "domestic dependents." But today, in our constant strides toward achieving self-government, we wish to be recognized as "nations within." Similarly, one does not enroll into a nation they become citizens.

In the work *Citizenship, Nationality, and Ethnicity*, it is proposed that "the notion of citizenship is meaningless without its anchorage" which is namely the state.[286] In the case of Indigenous nationhood and citizenship, the state is the tribe, and to "to dissociate citizenship from its very source – the state – is to render the notion irrelevant and meaningless."[287] Therefore, to uphold citizenship and its importance, it must have strong ties to its source, its anchor, whom in this case would be the tribe. Citizenship should be created, mandated, and initiated upon the terms of the people it applies to.

Rather than simply being applied to a "beneficiaries" list through the process of enrollment, it seems that citizenship should arrive with a deeper understanding of one's place within the source, establishing a relationship to the anchor, which could be met by both the tribe and their territories. T.K. Oomen, suggests that "we should think of a nation as a totality comprising all those who consider the nation as

[286] Oommen, T. K.. *Citizenship, Nationality and Ethnicity: Reconciling Competing Identities* (London: Polity Press, 1997): 224.
[287] Ibid. 228

their homeland" which allows for a relationship to the land and livelihood of that particular nation to maintain citizenship to this homeland.[288] However, a concept as simple as this is not the norm of tribal enrollment ordinances maintained today.

In the case of the Hoopa Valley Tribe, and more than likely other tribes with similar enrollment practices, a tribal member has become so closely affiliated with a particular blood-quantum criteria that *citizen* is necessary to sever that aspect of what it means to be a person of an Indigenous nation. In every nationhood system, citizenship usually comes with both entitlement and obligation; yet, it seems that for many tribal communities the focus has remained on the "benefits" available once enrolled.

This is a key example of how the mentality of addressing the short-term issues of the moment have been perpetuated and maintained in tribal communities. Blood-quantum criteria associated with one's entitlement to certain benefits has skewed the focus and foundation of current tribal enrollment practices. To shift the focus back to ideas of nationhood sustainability the idea of tribal citizenship must be rethought to embrace both ideas of entitlement and obligation in a culturally relevant manner.

Traditionally, our societies were very much built on ideas of community and reciprocity; however, the contemporary structures that were not tribally initiated yet commonly internalized have built our current governments to maintain a capitalistic and approach of competition based on goods and services. This is evidenced by the state of the numerous examples across the United States.

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[288] Oomen, *Citizenship, Nationality, and Ethnicity,* 228

> Development projects, programs, and policies in Indian Country too often have followed someone else's agendas and responded to non-Native initiatives. This has put Native Nations in a dependent and reactive, instead of self-determined and proactive, mode.[289]

Therefore Indigenous nations striving towards true self determination must address these "top-down imposed" strategies and policies by replacing them with the methods and means that "rise up out of Native communities themselves, tuned to local conditions, needs and values."[290]

Those that are currently enrolled tribal members of the Hoopa Valley Tribe, and others who are of Hupa descent, commonly identify themselves as *Na:Tini-Xwe.'* Traditionally and outside of the legal definitions instated in our governing documents, Na:Tini-Xwe,' and essentially all people that identify themselves as Hupa Indians, are essentially "people of the place where the trails return" as previously established. It seems that a concept so very culturally specific should be incorporated into one of the most definitive and austerely "Hupa" component of the governmental matters of Hoopa Valley Tribal Nation.

Today the enrollment procedures entailed within the by-laws and ordinances concerning "Tribal Membership" consists of a family tree and application form that requires the names of the individuals the applicant is claiming Hupa "blood" from, the signatures of the applicant's parents, and the quantum of "Indian blood" claimed.

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[289] *Rebuilding Native Nations: Strategies for Governance and Development*. (Tucson: University of Arizona Press, 2007). 11
[290] *Ibid.* 21

There is no self initiated "lifestyle clause,"[291] no "peer" or community review[292] of a person's belonging, no use of Na:Tini-Xwe' Mixine:xwe or acknowledgement of Na:Tini-Xwe, nor are any cultural values incorporated, besides that of familial ties, though even that can be trumped if a certain blood-quantum is not met.[293]

Before the Bureau of Indian Affairs, it was the cultural and social aspects of being Hupa that determined who was and was not Hupa, but it is clear that times have changed. This does not mean however, that those important aspects of our heritage need to be forgotten or dismissed, it simply puts our governments in a position to be innovators because the times have in fact changed, as have the circumstances, calling upon our people to adapt as we have for generations.

> The indigenous governments of long ago were developed to solve the problems of the times. The times have changed… the challenge for Native nations is to innovate: to develop governing institutions that still resonate with deeply held community principles and beliefs about authority, but that can meet contemporary needs.[294]

Looking back at our roots of being, transcending the imposed definitions and criteria of what it is to be "Indian" and acknowledging our contemporary needs is what I propose in not only the written procedures, but the actual practices and procedures the applicant is held accountable for.

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[291] As exists in current Australian legislation acknowledging the lifestyle one chooses to live, which is broad enough for self declaration of that lifestyle

[292] In the Hoopa Valley Tribe, this is attempted by the establishment of an elected Enrollment Committee; however, one on the committee cannot even begin to advocate for one's enrollment is the blood-quantum requirement is not met first. The idea of peer review is something that is being upheld in current Australian and New Zealand Indigenous policies (federal and Indigenous government initiated) by establishing the importance of one's self-declaration of Indigenous heritage, but also the acceptance and acknowledgement of the community accepting that person as a member.

[293] See "Tribe A" reference in Goldberg, "Member's Only?," 439-442 also Meyer, "Blood Is Thicker Than Family," 231-249

[294] *Rebuilding Native Nations,* 25

"Membership rules that rely exclusively on a specified degree of ancestry… are very difficult to justify" for many reasons, which includes the fact that such a concept as blood-quantum suggests that cultural traits are inherited biologically and only if a person carries a certain percentage of that particular racial make up.[295] Regardless, the nearing obsolete practice of blood-quantum enforcement upon enrollment criteria is upheld within the governing documents of the Hoopa Valley Tribe and others. However, blood should no longer be thicker than family.[296]

The strength of native families has undergone great attacks over time. From the separation of children from their families during boarding school times to the misunderstandings of what an "Indian family" may look like or not during the Indian Child Welfare battles many governmental forces have attempted to undermine this vital system of cultural survival.[297] By allowing blood-quantum and highly racialized ideas of what one's identity should or shouldn't be, allows for the strength and importance of family to be challenged yet again. The Hoopa Valley Tribe, as the policies currently stand, seems to question the capability of families to raise conscious, cultural, citizens, because the amount of blood a child has unfortunately becomes indicative of how they can relate to the community.

Today, the child of a tribal member isn't necessarily a member of the tribe because blood-quantum trumps all. This is to say that the tribe currently has the power to halt a child's inheritance of a family tribal land plot or the potential to legally be buried in a tribal cemetery. However, when the matter of a particular

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[295] Sebastien Grammond, *Identity Captured by Law: Membership in Canada's Indigenous Peoples and Linguistic Minorities*. (Montreal: McGill-Queen's University Press, 2009)*, 190*
[296] Meyer,"Blood Is Thicker Than Family"
[297] Painter-Thorne, "One Step Forward, Two Giant Steps Back,"

amount of blood-quantum is eliminated many of the children lost because of such limiting rules become eligible and have a greater understanding of themselves based upon their sense of belonging and relationship to others.

Family and ancestry are extremely relevant factors in the debates of tribal identity for "culture" after all, "is usually, but not exclusively, transmitted through the family."[298] If culture is something that a nation is sustained by, and of particular importance to an Indigenous nation, based on the simple fact that their unique culture is what distinguishes them as Indigenous, then a "proxy for culture" is needed, and potentially achieved through the replacement of blood-quantum for ancestry.[299] Blood-quantum tend to not only draw boundaries between tribal citizens and non-tribal citizens but also between families. There is no doubt that fractioned families cannot perpetuate cultures as strongly.

Further, in the case of the Hoopa Valley Tribe, family can easily be tied back to the definition of Na:Tini-Xwe.' Instead of simply researching tribal enrollment records for the blood-quantums associated with the roll numbers of our ancestors, why not identify their place of origin, their village affiliation, and other relevant aspects of what it means to be Na:Tini-Xwe.'

> Rules based on a cultural conception of identity are more likely to be compatible with equality, as they increase correspondence between legal status and actual identity.[300]

Because blood-quantum is an imposed concept that originated in colonial times, it is no surprise that the correlation between the current situations and realities of

[298] Grammond, *Identity Captured Through Law,* 190
[299] *Ibid.*
[300] Grammond, *Identity Captured Through Law,* 190

contemporary Na:Tini-Xwe' and the established policies that uphold blood based criteria are quite blurry. Although Indigenous definitions of identity were used to separate native peoples from their communal homelands, it is due time that our identities reunite to the lands we come from.

Very fortunate to still have access to many of our village sites as functioning ceremonial and social grounds for different tribal gatherings, it seems that our village sites are the places our families traditionally returned to, where the trails lead back to. Acknowledging and celebrating the village or village's of one's ancestors would truly allow our citizens to be conscious of who they are, potentially instilling a greater sense of self and tribal pride.

Not only would an applicant be able to enforce their ties as families, they would be able to acknowledge their own family histories that are associated with the particular village sites they came from, potentially adding a new layer of identity within the community. Our villages were in fact the basis of our current tribal districts that exist today and are represented within our tribal government structure.[301] Political realities and landscapes would become closer associated with the realities of Na:Tini-Xwe' identities, allowing for a true people and place relationship to be further established beyond, even the Hoopa Valley alone.

Because the use of these "districts" are already in place, and many of the sites are still functioning as traditional places for ceremonies and gatherings, it would not be difficult to undertake this minor alteration that would guarantee major implications. This would not only act as an ideal opportunity to establish a great

[301] Nelson, Byron. *Our Home Forever: a Hupa Tribal History*. (Hoopa, CA: Hupa Tribe, 1978).

sense of self and place, but this would also provide an easy opportunity to incorporate Na:Tini-Xwe' Mixine:xwe for every village site has a particular name and consequent meaning.

Although, not everyone has an extensive knowledge of the language, the simple yet profound decolonization practice of introducing yourself based on the specificities of your family, village, and people is something all Na:Tini-Xwe' people should now. Additionally, it is very fortunate that much of this knowledge is kept within the oral traditions as is, but there are additional resources available to those who may not have direct access to such personal histories. This is another viable solution to regulate one's identity, sense of self, and most importantly sense of what it means to be a citizen of the Na:Tini-Xwe.'

"The return" aspect of Na:Tini-Xwe' could further be perpetuated through a form of reciprocity that would further the idea of a cultural and community oriented citizen. It seems that for one to have a particular desire to return to a place, one would need to have some sort of established relationship - whether that be defined by family, friends, a particular place or site, a specific event, or tradition, the point is that people would come back for a reason. It was previously explicated that in some ways a nation becomes or is a homeland.[302] For many Indigenous communities they are the prime examples of such associations.

The Hoopa Valley Indian Reservation is merely twelve-square miles, and it cannot be expected that all of its members should live on the reservation simply because the land base cannot support such a requirement. Further, numerous

[302] Oomen, *Citizenship, Nationality, and Ethnicity*

peoples have chosen to leave for a specific reason and the autonomy of citizens should be respected. In other instances, there may have been historical implications for a family's relocation or level of connection to the reservation, but the fact is that a relationship can in fact be maintained if one wishes.

Currently, membership arrives with entitlements and eligibility for certain programs, services, and financial aids therefore as it is, the Hoopa Valley Tribe does in fact give a modest amount of benefits to its people. However, beyond voting and employment opportunities, there are no political or civic duties members are encouraged to pursue. Members are not mandated to do anything as members besides maintain the constitutional laws of the tribe. However, it seems that there may be great potential in perpetuating community conscious citizens through methods of requiring citizens to "return" to Na:Tinixw.

Although such a concept would be difficult to enforce and regulate, consider the benefits of people returning home to establish and maintain relationships with the land, the community, and the culture. Citizens would potentially become more connected to the nation, to the issues concerning the nation, and maintain a strong a sense of identity and cultural awareness. Whether achieved through service, through participation in community events and ceremonies, or residence/ extended stays; it seems that the concept of "return" required by members outside of the homeland boundaries would increase the "love and loyalty" our citizens had for our lands, communities, cultures, and nation.[303] Returning to Na:Tinixw could most definitely strengthen the relationships between the nation and its citizens.

[303] Yellow Bird, "Decolonizing Tribal Enrollment," *For Indigenous Eyes Only,* 180

Michael Yellow Bird has argued that "we are nations and have the right to require our people to fulfill citizenship criteria" which would be relevant and culturally specific. His proposals have included aspects of required service; level of knowledge and understanding of tribal culture, politics, and history; level of tribal language, writing and reading fluency; an oath of allegiance; and living by traditional codes of morality.[304] All seem like quite appealing aspects of Indigenous citizenship criteria; however, for the Hoopa Valley Tribe, the realities and circumstances may not quite align with all of his suggestions. This is not to dismiss the sentiments of each proposal, this is simply to realize that each tribe must assess the realities and tangible possibilities on their own to truly customize and design their own citizenship criteria.

Although much of Yellow Bird's provisions are based on knowledge and lifestyles, such suggestions may be worth considering for a few different reasons. First, as distinguished earlier, it is our culture that sustains our nations and is used as a boundary marker that justifies our rights and nation-state relationships as Indigenous peoples. Additionally, it is our culture that is most vital to our being. Language, traditions, stories, values, beliefs, ceremonial practices, place specific knowledge, are all aspects of what makes us distinctly Na:Tini-Xwe,' so it seems that in the best interest of the nation would be to encourage its citizens to continue preserving and practicing these components of identity.

Such a non-racial concept could also open up opportunities of naturalization and adoption if this were an avenue an Indigenous nation wishes to pursue.

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[304] Ibid., 180

However, this would also mean that some form of measure would be have to implemented to regulate who actually knew the vital cultural components of being Na:TIni-Xwe.' There are of course controversies of citizenship tests, whether it be for descendants, or anyone else, the reality is that someone would have to create the test and deem certain questions that would allow their knowledge of Na:Tini-Xwe.' Issues would then arise of who should have the right to decide what's on the test, how it is administered, and what kinds of options and resources are available for one to study for such a test. This is a concept and potential membership criteria that is worth further exploration.

Current debates have proven that there is much that has remained unsettled about how tribal enrollment procedures are implemented and the criteria used to determine "membership."[305] However, at the root of each quandary are the same concerns of regulating who is and is not Hupa – ensuring that those who are, are entitled to the associated limited benefits (social services, scholarships, etc) and rights (access to resources, political participation, etc) while establishing who should not and the distinct reasons they are ineligible. Much of these concerns are justified with cultural concerns of what is distinctly Hupa being overtaken by what is not; which is a legitimate concern no doubt.

However, it seems that criteria defined by blood-quantum not only limits the perpetuations of our culture through our families and children but also potentially undermines the growth of our nations. If the maintenance of our cultures are dependent on our citizens and our distinct cultures, the use of blood-quantum has

[305] Take for example the debates of the 2008 election. Over the years other debates have occurred in public tribal hearings, via editorial pieces listed in tribal newspapers, and in other private forums.

no place in our tribal constitutions, by-laws, and ordinances. As previously demonstrated there are other ways to establish and protect our peoples and places without being overly exclusive or vulnerable to exploitation – we simply need to be innovative as native nations.[306]

For the Hoopa Valley Tribe it seems that initiating the process by taking the standing policies and definitions that are already in existence and altering them to be more culturally specific and relevant could be quite beneficial and innovative as intended. Reflecting nationhood rhetoric, incorporating the use of Na:Tini-Xwe' Mixine:xwe where possible, and emphasizing the concepts of Na:Tini-Xwe' will begin to reinforce us as a legitimate nation while also empowering our peoples and citizens. Indigenous nations collectively have the ability from within to become unified by who we actually are, rather than divided by and conflicted by who we are not.

[306] *Rebuilding Native Nations: Strategies for Governance and Development*. (Tucson: University of Arizona Press, 2007), 25

Conclusion
- REFLECTING ON THE REALITIES -

- A Call To Action -

The entire process of reflecting, realizing, and reassessing the state of our current Indigenous identification policies and procedures must be approached with cultural and tribal specificity in each instance. However, exploring the broader origins, implications, and methods used by the federal governments of the colonial nation-states that we now have working relationships with, are vital to praxis of moving away from an oppressed state.[307] Concretely identifying the purposes and affects of such historic policies can truly begin to illuminate how they have continued to overbear on our own tribal practices. Once realized, especially in a way that demonstrates how such federal policies have specifically affecting a specific tribal community, it becomes explicitly apparent that such practices are obsolete and in many instances created to undermine our sense of Indigenous nationhood.

It seems that although such realizations could invoke brief states of hopelessness or defeat; but it must be celebrated that the very tools needed to create such changes within our own tribal communities are the tools and concepts we have depended on for generations. Indigenous nations are being faced with the very important and innovate task of decolonization. It is apparent that federal governments have attempted to have both explicit and covert strong holds over our tribal affairs but their intentions and detriments are starting to become exposed

[307] Freire, *Pedagogy of the Oppressed,*

slowly but surely. As Native nations, we must realize that instead of remaining in a "dependent and reactive" mode of "self-government" we must assert ourselves as "self-determined and proactive."[308] Just as Stephen Cornell and Joseph P. Kalt have stated in their article "Two Approaches to the Development of native Nations: One Works, the Other Doesn't," they clearly point out that:

> Native nations are better decisions makers about their own affairs, resources, and futures because they have the largest stake in the outcomes.[309]

As Indigenous nations we must embrace this fact and take proactive steps in the directions that are right for our tribes and peoples based on the needs and desires our of tribal communities.

There are upwards of over seven hundred Indigenous tribal groups within the United States. It is not far fetched to believe that many of these tribes can find both similarities and differences between themselves and the Hoopa Valley Tribe, the Na:Tini-Xwe,' of Northern California. Subject to many of the federally imposed policies that other tribal nations have, their case study can most definitely serve as a departure point for a discussion on the process of decolonizing Indigenous identification policies at there many stages of imposition and internalization. Although tribal values, circumstances, and traditional concepts will vary between each Indigenous nation, the concepts of language, traditional identification, and relationships of people and places may easily be translated as universal alternatives to the use of blood-quantum as the exclusive tribal citizenship criteria.

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[308] *Rebuilding Native Nations*, 11
[309] *Ibid.*, 21

Vital to our nationhood and sense of self-determination, we must move beyond what has been imposed – beyond blood-quantum. Although, we face obstacles beyond the internal debates of change, it is no longer an option to simply remain passive in maintaining our own tribal citizenship criteria, concepts, and practices. Federal pressures still very much exist[310] within the management of our affairs; yet to fully exercise our rights as self-determined peoples, we must establish for ourselves who we are and who we wish to be, putting pressures on the federal government to recognize our intentions and goals as Indigenous nations. Despite the foreseen obstacles tribes may face in their journey of decolonizing their current, western influenced, government and enrollment practices, there are many provisions that do allow tribes to act in a self-determined way. It is therefore the prerogative of tribes to move forward and exercise such rights and responsibilities as Indigenous nations.

We have seen that in other countries federal governments and nation-states have given a great deal of power to their Indigenous peoples over the definitions of who should and should not be counted as an Indigenous person. Although, the federal government has continued to implement their own definitions for federal programs and economic funding, their ability to do so is becoming increasingly contentious.[311] Similarly, the provisions of creating and maintaining tribal citizenship criteria have been placed fully in the hands of tribes as a right of self-

[310] see Goldberg, "Members Only?" for full discussion of reasons the tribal use of blood-quantum cannot be ruled out completely based on the contemporary behaviors of the federal government.
[311] see discussion of *1985 Zarr v. Barlow* in Elliott, Jean Leonard, and Augie Fleras. *The "Nations Within": Aboriginal-State Relations in Canada, the United States, and New Zealand*. (New York: Oxford University Press, USA, 1992.), 161

determination.[312] Tribes must exercise their rights to question and decolonize as they see fit while the protections are in place. Indigenous tribes should not fear pushing the limits of the status quo, as many of the policies placed upon us, were made to keep us complacent and comfortable with what we were given. There is clear evidence of their detriments so it is in fact best interest of the tribe to question the policies and procedures that are in place to evaluate their place in tribal societies.

Overcoming what has been imposed upon us, as well as what we have internalized, can truly culminate in the changing of our political landscapes. This must be initiated through the efforts of tribal governments, communities and leaders so that the political realities can become closer linked to the tribal, social, and cultural realities of the distinct Indigenous nations. The rights and tools to create change are already there, it is now in the hands of the people to utilize them so that we may move beyond blood-quantum and back to the roots of our being.

[312] see discussion of *1978 Santa Clara Pueblo v. Martinez* in Getches, David H., Charles F. Wilkinson, and Robert A. Williams. *Cases and Materials on Federal Indian Law (American Casebook Series)*. Eagan, MN: West, 2004.

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