Indian™ U.S.A.

Author(s): Joanne Barker

Source: *Wicazo Sa Review*, Spring, 2003, Vol. 18, No. 1 (Spring, 2003), pp. 25-79

Published by: University of Minnesota Press

Stable URL: http://www.jstor.com/stable/1409432

Indian™ *U.S.A.*

Joanne Barker

The Indian Arts and Crafts Act of 1990 (IACA) was immediately a part of ongoing legal contestations in the United States about American Indian and Alaskan Native[1] governance, the politics of indigenous identification, and histories of cultural appropriation and expropriation. Representatives Jon Kyl (R.-Ariz.) and Ben Nighthorse Campbell (D.-Colo.)[2] submitted the IACA in 1989, based on a 1935 act of the same name (Collier 1934; Schrader 1983), and after extensive revisions it was signed into law by President George H. W. Bush (Parsley 1993). The IACA was foremost a response to the growing competitiveness of the Indian "arts and crafts"[3] market within the United States, estimated to be worth close to $1 billion annually, and to ineffectual laws in regulating imports and appropriations said to undercut indigenous revenue guaranteed by the earlier statute (Parsley 1993, 489; Lund 1976, 1–6; Wallis 1993, 29).

The IACA's stated purpose is to protect American Indian and Alaskan Native artists and their patrons from the fraud and misrepresentation of imports and domestic appropriations. Accordingly, it extends the authority of the Indian Arts and Crafts Board, created under the 1935 act, "to promote the development of Indian arts and crafts, for improving the economic status of Native Americans," and provides that

> It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner

> that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or tribal organization, resident within the United States. (Public Law 101-644, secs. 103, 104)

The IACA requires that anyone who wants to display or sell their work as Indian-made must show the government-issued trademark, to be developed and distributed by the Board, in order to guarantee the authenticity and quality of the product (PL 101-644, sec. 102; Guest 1997, 135). Those defined as Indian by the statute, and accordingly qualified to receive the trademark, are enrolled members of federally recognized tribes. All members of unrecognized tribes are excluded, as well as those who fail to meet enrollment criteria, those who are unable to enroll (such as those who do not have proper documentation), those who are unable to gain "special artisan status," and those who refuse to enroll for political or other reasons.[4]

Penalties for violating the IACA's provisions are steep: $250,000 and five years in prison for the first offense by an individual and $1 million for the first offense by other than an individual. For subsequent violations, the fine is $1 million for an individual and $5 million for other than an individual. In November 2000, the Indian Arts and Crafts Enforcement Act was passed to extend the scope of penalties to include all gross profits accrued by defendants as well as to direct the Board to provide examples of products that may fall under the IACA's provisions (PL 106-497, sec. 1[A] amended). The IACA also includes civil penalties in the form of treble damages and attorneys' fees to be paid to a prevailing plaintiff, and assigns the task of investigating alleged violations to the Federal Bureau of Investigation (PL 101-644, sec. 104; Mikkanen 1991, 525).

In this essay, I analyze the definitions put forth by the IACA for determining who is an *Indian,* what is an *Indian tribe,* and what counts as an *Indian product.* I have selected the IACA and its definitions as a case study for understanding the cultural politics of identification, politics that emerge from and function to define the epistemological foundations of sovereignty for indigenous peoples. These politics are coded through the IACA's provisions for Indian membership, nationhood, and trade as represented by the very public assertions—by many indigenous government officials, lobbyists, artists, and art associations involved in the act's development and passage—that these provisions were a true affirmation of indigenous rights to sovereignty. As part of ongoing efforts by indigenous peoples in the United States to entrench their rights to sovereignty in federal law, the IACA becomes an important marker for understanding indigenous perspectives about membership, nationhood, and trade. Just who were the individual and collective actors involved in, implicated by, or otherwise mobilized to

interpret the IACA's significance during and subsequent to its passage and implementation? How do indigenous concepts of membership and belonging inform sovereignty as a category of law, political strategy, and cultural (self-)representation? What kinds of laws for regulating membership are being developed by indigenous nations, and what kinds of nationhoods do those laws presume and anticipate?

THE WORK OF IDENTIFICATION

> Sec. 309.2 (a) *Indian* as applied to an individual means a person who is a member of an Indian tribe or for purposes of this part is certified by an Indian tribe as a non-member Indian artisan. (Public Law 101-644, Indian Arts and Crafts Act)

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

Federal Identification Policies

Federal identification policies were first instituted during the administration of the General Allotment Act of 1887 (Bledsoe [1909] 1979; Carlson 1980; McDonnell 1991). The act was embedded within a discursive juncture of genetics, assimilation, and expansionism that informed its development, provisions, and implementation (Haraway 1996; Berkhofer 1979; Barker 1995). Identification policies were necessitated by the act's requirement that only members recognized by the tribes receive allotted parcels. Even more specifically, the policies were coded through blood as a criterion not only for protecting the idea of racial purity but also for anticipating the eventual dissolvement of the Indian so identified (Snipp 1989). The mitigation of the type of land titles to be issued through blood's coding of racial purity only further reified blood as a means of dispossession. This formula of racialization was caught up in ongoing social forces in the late nineteenth century

that were invested in protecting the political and economic privileges of "whiteness" over people of color and of men over women (Harris 1993; López 1996; Lipsitz 1998; Berger 1997).

Jack D. Forbes (Powhatan/Renape) points out that the use of blood quantum criteria for deciding the rights and privileges of citizenship within the United States dates back to a 1705 Virginia law that "made both a person of American race and a person of half-American race (a 'half-blood' in other words) as legally inferior persons" (Forbes 2000):

> Colony after colony and state after state followed Virginia's example in using blood quantum as a way of determining who could have the privileges accorded to white persons. For example, Alabama's code stated that "all negroes, mulattoes, Indians and all persons of mixed blood, to the third generation inclusive, though one ancestor of each generation may have been a white person, whether bond or free; shall be taken, and deemed incapable in law, to be witnesses . . . except for or against each other." North Carolina possessed a code that prohibited marriages between white persons and "an Indian, Negro, Mustee, or Mulatto . . . or any person of Mixed Blood to the Third Generation." Such laws meant that a part-Indian of one-eighth American ancestry and seven-eighth European ancestry would not have acquired sufficient European "blood" to be accorded the legal privileges of whiteness. The racist use of blood quantum continued without a break. In 1866 Virginia decreed that "Every person having one-fourth or more Negro blood shall be deemed a colored person, and every person not a colored person having one-fourth or more Indian blood shall be deemed an Indian." (Forbes 2001)

The provisions of the General Allotment Act, then, did not invent the use of blood, which had long since served the racist and sexist purposes of miscegenation, pro-slavery, and anti-Native ideologies and political agendas within colonial America for denying citizenship to nonwhites, justifying the exploitation of the labor and bodies of people of color, and subjugating women to male privilege.[5]

In terms of U.S. federal law's definition of what would qualify membership status in an American Indian tribe (Alaskan Native village was not a legal category until the 1971 Alaskan Native Claims Settlement Act), the invocation of blood quantum seems to have been initiated during the administrative processes of allotment policy.[6] Before this time, federal law had not given careful or sustained attention to the

question of establishing criteria for tribal membership, taking for granted racialized equations between blood, identity, and culture in determining who was and was not an Indian. (The assumptions most likely worked because of the intense anti-Indian sentiments within the United States that made it rare for people to claim to be Indian who were not [Berkhofer 1979; Williams 1990, *American Indian*]). Allotment served as an occasion for the articulation of tribal membership criteria via blood because of its mitigating utility in allocating access to Indian lands.

The General Allotment Act broke up communally owned reservations in severalty and issued single parcels of land to individuals who were determined to be members of the tribes (Otis 1973; Washburn 1975; Bledsoe [1909] 1979; Carlson 1980; McDonnell 1991; Harring 1994; Burton 1995; Carter 1999; LaVelle 1999). There was a 160-acre norm for determining the size of a parcel, but other factors were also taken into consideration, like the value of the land and the status of the individual with regard to age, marriage, and dependency. Consequently, parcels ranged in size from about forty to seven hundred acres (McDonnell 1991; Carlson 1980). Once the allotment process was completed for a given reservation, the "surplus" lands were opened up for sale. The overall result of allotment was the gross reduction of American Indian land tenure, the checkerboarding of tribal tenure and jurisdiction on and near reservation lands, and a complicated series of leases and inheritance titles that virtually nullified the kind of economic self-sufficiency for Indians that the act promised (McDonnell 1991; Harring 1994; Burton 1995; Carter 1999).[7]

Since only legally identified Indians could receive individual parcels, citizenship rolls were instituted to identify tribal members and administrate the issuance of land titles (patents). The rolls included the record of every known member of tribes selected for allotment by paternal and maternal blood degree, age, marriage status, and his or her number of dependents. Orphan status was also noted. Federal agents who administered the allotment process were directed to use this information, in addition to evaluations of the "competency" of individuals ascertained from interviews, to determine the actual size and location of the parcels and the type of titles to be issued (McDonnell 1991, 19–25). Those who were deemed "competent," usually meaning that the person spoke English and so allegedly understood the property taxes for which they would be made responsible on receiving land title and U.S. citizenship, received fee patents. Those who were deemed "incompetent," usually indicating that the person did not speak English or was an orphan or widow with dependents, received trust patents. Trust patents were held in trust for a period not to exceed twenty-five years by the Department of the Interior and until such time that the individuals proved themselves "competent" and so earned the rights and privileges of U.S. citizenship (McDonnell 1991, 87–102; Carlson 1980, 51).

In "Federal Indian Identification Policy," M. Annette Jaimes (Juaneño/Yaqui) writes that there was a 50 percent blood quantum requirement within the General Allotment Act and that everyone "identified as being those documentably of one-half or more Indian blood was entitled to receive title in fee of such a parcel; all others were simply disenfranchised altogether" (1992, 123; reprinted in Wunder 1999). However, there is no blood degree requirement mentioned within the act, and those registered with less than 50 percent blood most definitely received land parcels (Barker 1995; LaVelle 1999). It was not until the guidelines for competency reviews were established, and then within individual agreements signed with tribes in Indian Territory, that blood quantum was named directly as a criterion (Bledsoe [1909] 1979; Barker 1995, 2000; Carlson 1980; McDonnell 1991).

The issue for the various federal agents working to administer allotment, and for the Department of the Interior, was expediency. Overwhelmed by the number of applicants, the demands of interviewing and evaluating all members to determine their eligibility for enrollment and qualifications for managing private property ownership, as well as both regional and congressional pressure to hasten allotment and so statehood out of Indian territories, the agents came to rely on blood quantum and language to determine patent type (Bledsoe [1909] 1979, 868–94; McDonnell 1991, 87–102). Those enrolled with less than 50 percent Indian blood and who spoke English were taken to be assimilated enough into U.S. society that they no longer required federal guardianship and were issued full land title and U.S. citizenship; those enrolled with 50 percent or more Indian blood and who either did not speak English or English was their second language were assumed to be still too much tied to their tribal customs so that they were in need of federal protection and were issued trust patents (McDonnell 1991, 87–102; Carlson 1980, 51). Because the citizenship rolls did not record language, blood degree became a more expeditious means to accomplish the issuance of land titles (McDonnell 1991, 87–102; Carlson 1980, 51). The actual record of blood degree on the rolls was dependent on a myriad of factors, including everything from guesses made by federal agents based on racialized notions of identity or visual evaluations of physical features, to the false testimony of those who turned over the names of fellow tribal members to the agents for cash payments (Debo 1940; Perdue 1981).

The Burke Act of 1906 suspended trust patents in favor of issuing full titles in order to hasten allotment and, ironically, counter the paternalism indulged by the act's provisions for trust (McDonnell 1991, 61–62, 68–70, 88–89). However, the rolls and, in particular, the record of blood degree that they preserved had served already to institute federal identification policies as such. Despite evidence of extensive errors and omissions in the information recorded on the rolls and the fraudu-

lent admittance of nonindigenous people from around the country to the rolls, Congress consistently upheld their legal status. Through several court cases well into the 1930s, Congress ruled that the rolls were "conclusive evidence" of indigenous membership, solidifying all of the information on the rolls as legal proof of tribal identity (Bledsoe [1909] 1979, 75–76; Debo 1940, 90). Consequently, all of the problems with the production of the rolls were legally secured, as were the land titles and leases that had been issued on their basis.

The solidification of the rolls as legal proof of tribal identity by congressional ruling has facilitated the continued identification of tribal peoples by them and, more particularly, by blood. This has had consequences with regard to the politics of indigenous identification because of the ways that blood emerges from discourses of genetics, culture, and assimilation to code authenticity and rights. For instance, on verification of descent from an individual on the rolls and successful application to the Bureau of Indian Affairs (BIA), an indigenous person who is a member of a recognized American Indian tribe or Alaskan Native village is issued a Certificate of Degree of American Indian/Alaskan Native Blood on which paternal and maternal blood quantum and tribal/village affiliations are recorded.[8] The "pedigree slip," as it is often referred to, is the only federally issued form of proof of membership in a recognized American Indian tribe or Alaskan Native village. It is required to be shown by an individual on request in order for her or him to receive federally provided services or funding reserved for American Indians and Alaskan Natives.[9] For instance, if a person seeks care at an Indian Health Service's clinic or applies for aid through the Department of Education, she or he may be asked to present the certificate for verification of enrollment. In fact, the certificate is so widely accepted as proof of identity among indigenous people that individuals are often asked to show it to get into Indian-only events, to receive discounts at tribally owned businesses, or to gain access to tribally restricted areas.[10]

However, the normalization and widespread reliance on the certificate does not mean that there is consistency in how federal departments and agencies use it. Possession of a certificate does not guarantee anything beyond the fact that the various departments and agencies have control over the definitions of who counts as indigenous for purposes of allocating their services and moneys. For instance, under the Department of the Interior, the BIA currently recognizes about 565 American Indian tribes and Alaskan Native villages. But the Department of Health and Human Services includes an agency called the Administration for Native Americans, and their list includes about 100 more tribes than the BIA's because they also include those native to Puerto Rico, Hawaii, and other territories of the United States (Morningstar 1993, 3). This is typical of the differences between federal and state

departments and agencies, exaggerated further by the fact that each department or agency may define legitimate status in different ways. In other words, a person is not only required to possess the appropriate documentation but must also satisfy the respective department or agency's criteria. Some, for instance, enforce an exacting degree of blood and some require residency. In 1977, the *Final Report of the American Indian Policy Review Commission* noted that the BIA had over three hundred different definitions of Indian identity within their documents (Snipp 1989, 27; Morningstar 1993, 4).

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

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

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

irony—or perhaps a better word for it is hypocrisy—of the deployment of blood as a criterion of membership in the administration of allotment at the same time that the processes of administrating allotment were facilitating all kinds of fraud in the rolls that would result in hundreds if not thousands of nontribal people being granted membership. Racial purity, it would seem, is a difficult thing to legislate when confronted with the social forces of greed.

For instance, in the media hype surrounding the allotment of lands in what would become the state of Oklahoma in 1907, much was made about the wealth of the tribes and the imagined wilderness of undeveloped lands and untapped resources in the region (Debo 1940; Burton 1995; Carlson 1980; Carter 1999; Otis 1973; Washburn 1975). Attorneys and land speculators from all around the United States collected hundreds of thousands of dollars in retainer and investment fees from people who wanted to buy membership and so acquire land rights in the "wealthy" Oklahoma tribes (Debo 1940). In efforts to deal with the corruption, tribes provided for strict membership criteria within their respective agreements to allot (Bledsoe [1909] 1979). But despite their efforts, unknown numbers were able to secure membership and land titles through falsified documentation of descent (Debo 1940; Perdue 1981).

One of the worst instances of fraud with regard to membership was prosecuted in Oklahoma in the 1920s (Hogan 1998). The Osage were removed from their reservation lands in Kansas and forced to purchase lands in Oklahoma in 1872. They were able to stave off being selected for allotment because of the reputed barrenness of their lands until oil was discovered in 1897. Within a few short years, the Osage were collecting millions from the wells. In 1906, they negotiated a unique allotment agreement wherein they retained the mineral rights to their lands. Termed head rights, the shares were fixed at the 2,229 members that were then enrolled. All moneys from land leases and sales and from mineral extractions were to be distributed evenly between the 2,229 head rights; each head right also received 657 acres of land. Since the oil wells were producing very well by this time, each head right was receiving approximately $1 million annually, making the Osage the richest per capita people in the world (xiii).

Because the total number of head rights was fixed at 2,229, the only way for an individual to receive a share was by inheritance. The Osage's wealth and the initiation of the allotment process brought renewed violence against the Osage people (Hogan 1998). Many moved into the area and attempted to gain access to the tribe's resources through various kinds of fraud and theft, including everything from land purchases to grave robbing. However, because a direct share in tribal profits from mineral extraction could only be acquired by inheritance, the more insidious plans to defraud the Osage of their wealth

involved those men who attempted to marry into the tribe, kill their wives' families so that she would inherit their shares, and then kill their wives and children so that they would inherit all accrued head rights (Hogan 1990; Hogan 1998; Berger 1997).

The social forces of greed apparent in efforts to gain membership in tribes for the sole purpose of gaining access to resources shows up the political economy of indigenous identification (Gonzales 2001). In fact, as Vine Deloria Jr. (Lakota) notes, tribal membership has always been about the mitigation of resources as far as the federal government is concerned; it has never been about the mediation or affirmation of the multiple types of cultural beliefs, affiliations, and social responsibilities on which indigenous identities are based (Deloria 1999, 311–12). Therefore, the extensive fraud, errors, omissions, and illegalities surrounding tribal membership are only of concern to the United States when they undermine efforts to establish or maintain the power to govern indigenous peoples.

For example, in 1912, the Choctaw within Indian Territory had a reported cash balance from land sales of approximately $5.25 million and unsold property valued at $19.5 million. Members of Congress from Mississippi introduced a bill for the enrollment of the Mississippi Choctaw in order to secure for them shares in allotment and any subsequent cash distributions among the Choctaw in Indian Territory. Supposedly their efforts were on behalf of the Mississippi Choctaw, but the bill that they introduced was worded so that any "white" or "negro" who could prove even the remotest level of descent from a Choctaw ancestor could enroll. Investigations by a Choctaw attorney and a BIA agent found that attorneys and land speculators from around the country had secured thousands of contracts to acquire membership in the Mississippi Choctaw from people never recognized as members by either the Mississippi Choctaw or the Choctaw in Indian Territory. It wasn't until 1916 that the issue was settled. Through the Senate's annual appropriation bill, it was decided that the distribution of Choctaw assets would be only to those on the existing citizenship rolls. The proposed bill from Mississippi was defeated accordingly (Kappler 1904, 26–27; Debo 1940, 267–71; Bledsoe [1909] 1979, 11–39, 75–76).[11] However, one wonders if the Senate's decision would have even been occasioned had the push within the U.S. government toward allotment and so statehood out of Indian Territory had not been the ultimate objective.

The various social factors defined by greed for lands and resources do not challenge or deter the state's efforts to construct an indigenous person/people that it can govern. The state's power is not undermined by the efforts of those who want to undermine tribal land tenure or economic self-sufficiency. As Michel Foucault writes, the state works to maintain particular relations of power that disenfranchise and

dispossess its own citizens in order to maintain its authority to govern them (Foucault 1972, 1979; Ong 1995). The power of the state serves the interests of those who work to disenfranchise and dispossess indigenous peoples of their resources because those interests serve the state's objective to remain in power. The continued reliance of the state on the citizenship rolls and on blood degree criteria for determining tribal membership begs the question about how it is that they function so well at affirming state power that they continue to show up in policy and administrative procedures for arbitrating tribal rights and privileges.

The question was certainly posed again by Clinton-appointed Assistant Secretary of Indian Affairs Kevin Gover (Pawnee), who wanted to change the way that the BIA calculates blood degree on the certificate. Forbes explains:

> First, Indian ancestry is to be computed only from so-called federally-recognized tribes (in spite of the ambiguous status of some tribes at this time). The changes specifically limit "Indian blood" to ancestry from a federally-recognized tribe and define the latter as one listed in the federal register as a tribe recognized by the Secretary of the Interior. This means that one's degree of Indian blood cannot include American Indian or Eskimo-Inuit ancestry derived from a terminated tribe, from an administratively-deleted tribe, from a Canadian, Greenlandic, Mexican or other non-US group, or from any state-recognized tribe (as along the East Coast), or perhaps from any newly-recognized tribe. Thus a person who is one half Inuit from Alaska and one-half Inuit from Canada or Greenland can only be counted as one-half. (2001)

For Forbes, the implications of Gover's proposal affect the administration of treaty rights, which stipulate no blood criteria for qualifying their recognition or receipt but whose specific provisions may be decided, calculated, and provided on the basis of the total numbers of those enrolled. As Forbes suggests, the enforcement of stricter blood degree criteria, which would count only if documented with recognized tribes, would ultimately hurt the tribes through a kind of self-termination: fewer and fewer people would qualify for enrollment over time (Forbes 2000, 2001).

Blood's utility has percolated as well within the efforts of those U.S. politicians who want to undermine tribal recognition authority. For instance, Congressman Frank Wolf (R.-Virg.) forced a formal review of all recognition decisions made by the BIA during the close of Clinton's administration. He cited the allegedly too-lucid blood degrees

of tribal members to justify the need for reviewing not only the decisions but also the entire structure of recognition. His real aim, as was Slade Gorton's (R.-Oreg.), was to reverse the "sovereign immunity" of tribes from lawsuits and taxation (Wilkins 2002, 78–81).

In kind, anti-gaming Congressman Rob Simmons (R.) and Attorney General Richard Blumenthal (D.), both of Connecticut, have moved against the recognition applications of several tribes within the Northeast on the grounds that their members are using allegedly questionable blood degrees to gain access to legal immunity, tax breaks, and gaming privileges reserved to tribes as sovereign entities. Already, several tribes in the area have been affected, with recognition applications either suspended or reversed, including those for the Eastern Pequot, the Paucatuck Eastern Pequot, and the Nipmuc Nation ("Beware Blumenthal," 2001; Adams 2001). For Wolf, Simmons, and Blumenthal, the blood quantum of tribal members has figured their question about the legitimacy of tribal recognition, not only of the tribes in question but as a policy. Blood, it would seem, is useful for a range of political and economic interests aimed at undermining tribal rights to sovereignty as provided for by recognition policies.

Tribal Identification Policies

Tribal identification policies have carried the onerous burden of having to negotiate the multiple efforts by various political and economic forces—within and without the tribes—seeking to usurp the foundations of indigenous sovereignty and to control the terms of its exercise. Initially, these policies were formalized in agreements to allot during the administration of the General Allotment Act (Bledsoe [1909] 1979). Indigenous governments have also developed enrollment criteria in a myriad of other contexts, including those times when they have chosen to document their laws (such as the Iroquois Book of the Great Law), the constitutional processes established by the Indian Reorganization Act (IRA) of 1934 (Deloria and Lytle 1984), and in applications for reinstatement or acknowledgment of existing recognition status under the federal acknowledgment program initiated by the BIA in 1978 (regulations issued by the BIA established seven specific criteria that tribes had to meet in order to gain recognition status, including a roll of members based on criteria approved by the BIA [Wilkins 2002, 15]).

It would seem that in all of these rather diverse historical moments, membership criteria determined rights to property (lands, housing) and to shares in profits (from gaming and tourism to resource extraction and toxic storage) with immediate implications for corresponding rights to electoral participation and treaty-provided social services (health care, education). On what bases are these criteria founded? How do they register indigenous concepts of membership, affilia-

tion, and belonging? How do they respond to often incommensurate political and economic forces within and without the tribes—to those who seek to control the terms of sovereignty by having a say in the terms of citizenship? In what ways are the categories of membership invited, deflected, and ignored by those so (dis)membered? What kind of sovereignty do the categories presume and so reflect for the tribes themselves?

One of the most often cited and important cases on the issues confronting tribal governments with regard to membership is *Martinez v. Santa Clara Pueblo* of 1978 (Berger 1997; Ferguson 1993; A. Harris 1990; Laurence 1992; MacKinnon 1987; Resnik 1989, 1999; Rusco 1990; Williams 1990, "Gendered Checks and Balances"). The suit was filed under the Indian Civil Rights Act (ICRA) of 1968, which extended particular civil rights guarantees in the U.S. Bill of Rights to American Indians (Deloria and Lytle 1984; Pommersheim 1991/92) and stated that "No Indian tribe in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws." Martinez and her daughter claimed that a 1939 amendment to the tribe's constitution of 1935, establishing patrilineality as a criteria for membership, violated their civil rights on the basis of sexual discrimination.[12] They claimed that as Santa Clara Pueblo women they were not afforded the same rights within the tribe as male members and that, consequently, the 1939 amendment violated their civil rights as guaranteed by the ICRA.[13] The Supreme Court's decision, delivered by Justice Thurgood Marshall, affirmed the rights of the Santa Clara Pueblo to decide membership criteria on the basis that membership was an "internal tribal matter" of "self-government." It found that while the Supreme Court held a right to deliver on a habeas corpus petition, Congress had not given the jurisdiction to enforce the mandates of the ICRA to federal courts, relying instead on their mediation in tribal court. Accordingly, to infer federal civil jurisdiction over membership issues "would be to undermine the congressional purpose of preserving 'tribal sovereignty' and 'self-government'" (Resnik 1999).

The ruling was misleading. It did not provide the kind of acknowledgment of tribal customary law and jurisdiction that it promised. Even though the Court seemed to recognize that there was a great cultural "gulf" between Santa Clara and U.S. "traditions" that would inform perspectives about tribal membership and so the development of specific criteria for membership, a halfhearted nod to the obvious implications of the case for the nonindigenous feminist movements of the late seventies (MacKinnon 1987), the Court failed to acknowledge that the Pueblo were a traditionally matrilineal tribe in which one's identity, position, social responsibilities, and land tenure were determined on the basis of who one's mother was.[14] The Court completely neglected, therefore, to consider the conflicted nature of the council's

decision to pass the 1939 amendment in the first place and consequently failed to fully consider the rights of Santa Clara women in 1978 to a culturally informed resolution of the long-term effects of that decision on Santa Clara culture and politics.

When the IRA was passed in 1934, the Santa Clara Pueblo elected to reorganize their government and laws under its provisions, which qualified them for particular economic development benefits provided for by the act (Deloria and Lytle 1984). As Judith Resnik notes in "Multiple Sovereignties: Indian Tribes, States, and the Federal Government," the IRA promoted the development of restrictive membership criteria within the constitutions that it required of tribal governments, constitutions that had to be approved by the Department of the Interior (1999). The Department advocated for a strict formula in order to limit the total number of those who would qualify to receive benefits, rather than following tribal customary laws, which variously allowed for an extension of membership by marriage, adoption, and naturalization. In an Office of Indian Affairs memo dated November 18, 1935, the Department interpreted the IRA to provide benefits solely to those who had "actual tribal affiliation" or "possessing one-half degree or more Indian blood" (U.S. Department of the Interior, Circular No. 3123, quoted in Resnik (1999).

The Santa Clara 1935 constitution was far less restrictive than the Department of the Interior's 1935 formula (as was the case with many of the tribal constitutions then passed). It included "children of mixed marriages between members of the Santa Clara pueblo and non-members" as well as "persons naturalized as members of the pueblo" (*Constitution and Bylaws of the Pueblo of Santa Clara,* approved December 20, 1935). However, the Pueblo amended the criteria in 1939 to restrict membership to children either of two Santa Clara parents or "born of marriages between male members and non-members" (quoted by Marshall in *Martinez v. Santa Clara Pueblo* [1978]).

The 1939 amendment seems to be informed by the Pueblo's land rights struggles within New Mexico and pressure from the regional BIA office (Jenkins 1974); it was certainly embedded within the legacies of a colonial patriarchy that undermined tribal women's social and legal positions (Williams 1990, "Gendered Checks and Balances"; Berger 1997). Throughout the nineteenth century, federal courts had ruled that "white" husbands of tribal women could acquire their wives' property by virtue of entitlement, though they were not allowed to adopt tribal citizenship (Berger 1997, 54). Simultaneously, state courts were "creating a body of jurisprudence under which men, Indian or white, had almost no legal obligation to their Indian wives," allowing them to nullify marriages by abandonment or other claims to customary law (Berger 1997, 54–55). Thus, U.S. federal and state law facilitated a legal means for nontribal men to marry into the tribes, gain title to trib-

al lands, and evict or otherwise dispossess their wives and children from access to those lands (Hogan 1998).

The masculinization of tribal property rights, invested in maintaining a hierarchical Euro-American male privilege over tribal women, had long since impacted tribal socioeconomic structures in North America (see Leacock and Goodman 1976; Nicholas 1994; and Perdue 1999). In conjunction with adverse regional efforts by a powerful ranching class to usurp tribal territorial rights in New Mexico, the Santa Clara council was placed in the indefensible position of having to develop a criterion for membership that would dissuade such practices. The decision to neutralize their own matrilineal customary laws by establishing a patrilineal requirement could not have been easily reached. And yet, the criterion's failure to affirm Santa Clara Pueblo traditional perspectives regarding gender and membership raises important questions about just how deeply embedded the attitudes regarding male privilege had become within the tribe. Had discrimination against women become so naturalized?

The failure of the criterion to reflect matrilineality as a constitutive element of social relationships and political rights within the Pueblo was somewhat understandable in the context of the land rights struggles that defined the historical moment of 1939.[15] When the council refused to revisit the issue in the late 1970s at the request of Martinez and several other women at the Pueblo, the failure was politicized by the cultural legacies of discrimination against women that such a criterion facilitated. From what epistemological perspectives and political ideologies had the criterion emerged? What place did traditional beliefs about gender have within the structures and laws of the Santa Clara? What kind of "self-government" did such structures and laws constitute?

These complex social issues and extremely difficult questions percolate through the legal mire of contemporary tribal identification policies. With about 565 recognized American Indian tribes and Alaskan Native villages today, there are an equal number and combination of criteria for membership in place (remembering that there is a 25 percent blood quantum requirement for membership in an Alaskan village or corporation, provided for by the Alaskan Native Claims Settlement Act of 1971, and not to mention the multiplicity of perspectives and requirements among those without recognition, as well as the indigenous peoples of other U.S. territories such as Hawaii, Puerto Rico, Guam, and American Samoa). These criteria include multiple combinations of blood quantum, paternal or maternal descent, residency, birthplace, and descent from an individual on the citizenship or census rolls produced during allotment (Snipp 1989). For instance, the Onondaga and Seneca Nations of New York require that individuals have maternal descent. Papago tribal membership is determined

primarily by residency: "All children born to members who reside on the reservation automatically become members" (O'Brien 1989, 200). The Apache Tribe of Oklahoma's constitution provides for the satisfaction of one of three criteria "provided that they [the applicants] have not received land or money by virtue of being enrolled members of another tribe": (1) all direct descendants of persons who received an allotment as members under the Apache's agreement to allot; (2) all direct descendants by blood of allottees who are at least one-quarter degree Apache blood; (3) all individuals who are direct descendants by blood of allottees who possess at least one-eighth Indian blood counted as Apache blood for purposes of computing eligibility for membership (reprinted in Morningstar 1993, 83). As with the Apache, tribal criteria often include prohibitions against membership in dual tribes while also providing for naturalization by adoption or marriage or even a reconfiguration of "Indian blood" for the purposes of qualifying individuals for membership (O'Brien 1989, 200). Still others include a strict blood criterion, ranging from one-sixteenth to full (Snipp 1989, 362–65).

By the time that the IACA was passed in 1990, the politics of tribal identification policies had been inflected yet again through the implications of an emergent powerful gaming economy. The Indian Gaming Regulatory Act (IGRA) of 1988 facilitated a state-tribal contractual process for establishing gaming facilities on tribal lands that in the last decade has resulted in a transformation of many reservation economies (Mason 2000). This transformation has, in turn, attracted thousands of new applications for membership from people all across the country.[16] The perception is that most of these applications have been filed by people with no prior relationship to the tribes, and so no stakes in the things that tribal members care about. It is felt by most tribal members, especially those who live on reservations, that the applications are motivated solely by the promise of revenue shares. It is not an unfounded perception and is understandable, given what many tribes were confronted with during allotment (Perdue 1981). As a result of the influx of new applications, tribes have revisited their membership criteria. Several, such as the Pechanga Band of the Luiseño Nation in southern California, have called for moratoriums on new memberships until the issues can be more fully researched. Others, such as the Las Vegas Paiute, have amended their constitutions to further restrict qualifications for membership.

In July 1999, the Las Vegas Paiute council decided to disenroll fourteen of its fifty-four members. The decision was prompted by the attempt of one particular family within the tribe to enroll their stepchildren and other extended family members, who did not claim Paiute identity and had no cultural relationship with the Paiute except by marriage (the family had a reputation at the village for never partici-

pating in social activities, voting in tribal elections, and, since the invention of automatic deposit, being seen at the tribal offices). Their applications to enroll additional family members were politicized by the tribe's entrance into the second phase of a $170 million hotel-casino and golf resort development project. Just what did having Las Vegas Paiute membership mean? Was it nothing more than access to revenue shares? How would admittance of non-Paiutes impact the tribe over the long haul?

The tribe's 1970 constitution provided that those persons who qualify for membership status "shall include [those] with at least one-quarter degree Paiute Indian blood whose names appear on the official 1940 census . . . and descendants who possess at least one-quarter degree Paiute Indian blood" (quoted in Taliman 2000). In deciding to disenroll the fourteen, the council amended the constitution as follows: "The meaning of Paiute Indian blood has consistently meant ancestry derived from Southern Paiute Blood" (Southern distinguished from Northern Paiute; quoted in Taliman 2000). Therefore, those who qualified for membership were to be those of documented one-quarter Southern Paiute blood who were descendants of those whose names were on the 1940 census.

After amending the constitution, the council reviewed the tribe's records and retroactively applied the new criteria to all enrolled members. Those who were disenrolled included individuals who did not have adequate documentation in their files. Unfortunately, these included several individuals who were affiliated with the tribe, several who were active in the tribe's cultural life, and even a few who had served as chairpersons and council members in past years. The council issued letters informing them of their disenrollment and terminating both their shares in tribal revenues and ineligibility to live on tribal lands. The fourteen have sued the tribe for a decision that they feel is illegal. In February 2002, the appellate court remanded the case back to tribal court with instructions to review the 1940 census to determine if anyone was listed as "Southern Paiute" (Taliman 2002, 11). If not, then the court has directed that the tribe's criteria is unconstitutional and will force the tribe to re-enroll the fourteen. According to Valerie Taliman in "Termination by Bureaucracy: Membership Denials in This New Economic Era," no one on the 1940 census is so listed (11). The fourteen are awaiting the tribe's final decision (12).

As the Las Vegas Paiute council thinks through the civil case against them, similar difficulties confront the Pechanga Band of the Luiseña Indians near Temecula, California. As one of the wealthiest tribes in the United States, the Pechanga have been overwhelmed by an influx in new applications for membership. In 2000, they established a five-year moratorium on granting new membership so that the council and attorneys can take the needed time to fully discuss and

research the issues. This seems to be one of the more careful responses by a tribe to the situation that they confront as a result of gaming affluence. For certainly the long-term implications of revisiting membership policies in the immediacy of concerns over profits can only be surmised. Most likely, the U.S. Supreme Court's ruling in *Martinez v. Santa Clara Pueblo* (1978) will uphold the rights of the tribes to determine their own membership as an "internal tribal matter" of "self-government." It is much more difficult, however, to address the matters culturally, given how murky the political economy of "Indian" identity has become (Gonzales 2001).

Trade Marks

Artists and art associations were immediately implicated by the IACA's Indian. They were involved in all stages of the act's development and passage as well as within the public debates that followed over the IACA's significance. Within these debates, the visceral politics of identification, particularly as coded by blood, were key in mediating the terms of social relations between indigenous people involved and implicated in the debates. The political stakes in participating in these debates, and of having a say in what significance was going to be ascribed to the IACA, were marked in powerful ways by the indelible links between identification and recognition policies.

Artists and Organizations

In "Democracy, Inc.," painter Kay WalkingStick (Cherokee) begins with the story of her grandfather, Simon Ridge WalkingStick, a Cherokee lawyer in Tahlequeh, Oklahoma, who worked as an interpreter in the administration of allotment: "My grandfather took the job because he saw the inevitability of statehood and wanted to get his tribe the fairest shake possible. He wanted to ensure that those registrants who spoke only Cherokee knew exactly what they were signing" when they enrolled.[17] "Many Cherokee, however, didn't sign." They didn't sign for a myriad of reasons, including distrust of settlers and U.S. policy and in an attempt to retain some measure of self-respect against the "humiliation" of being "catalogued" (1991, 20). Despite these reasons, "the only way one can prove one is a Cherokee today is to produce the registration number of an ancestor and through such documentation be accepted as a tribal member. The children and grandchildren of those who did not register cannot prove they are Indian. . . . Now the numbering and registering have returned to haunt us" (20).

WalkingStick cites the IACA as the means through which the "haunting" has been carried forward. She argues that the proponents of

the law fail to address the problems of enrollment and the now baffling mire of criteria one must successfully navigate in order to be enrolled:

> To be a tribal member of the Salish of Montana, for example, one must have been born on the Salish reservation. In order to be a Hopi, one's mother must be a Hopi tribal member. This means that if your father is Hopi and your mother is Salish and you were born in Saint Louis, you cannot be a member of either tribe, even though you are a full-blooded Native American. (20–21)

While affirming the authority of tribes to decide their own requirements for membership, WalkingStick observes that many are without recognition status: "The net result is that many people who identify themselves as Indian are not recognized as such by the federal government." Besides, she writes, even today many indigenous people "reject the whole idea of formal tribal membership to the extent that they see it as a foreign, bureaucratic imposition alien to their own traditions of thought" (21).

WalkingStick responds to the IACA in the midst of controversies over a change in Cherokee enrollment policy. The Cherokee had required documentation of ancestry to a member on the rolls but without a blood degree requirement until the early 1990s. At that time, economic pressures led them to add a one-quarter blood degree requirement as a means of restricting the number of those qualifying for membership (Stiffarm and Lane 1992). For WalkingStick, the blood requirement blurs histories of federally determined dispossession and cultural genocide with Cherokee enrollment policies. This is the real cause of her "haunting"—that the Cherokee would forget the colonial realities of federal policy in efforts to control their own economic self-sufficiency. The sense of complicity with processes of colonialism is squared on the side of indigenous people betraying themselves with the tools of colonial power (a concern echoed by Forbes's criticism of Gover's proposal, which was supported by several eastern Oklahoma tribes [see Forbes 2001]).[18]

In a 1993 installation at the San Francisco Art Institute entitled *Nobody's Pet Indian,* multimedia artist Hulleah J. Tsinhnahjinnie (Diné/Seminole/Muskogee) included three replicated 40″ × 30″ photographed self-portraits with her enrollment number and bar codes printed across her face. Though they do not tell which tribe she is enrolled with or which enrollment criteria she satisfies, the number identifies her as meeting the enrollment criteria of at least one of the tribes from which she is "mixed" (Harlan 1993, 7). She collates the number with bar codes to call attention to the way that the commodification of the Indian in the very premise of Indian-made art instances the discrepancies

of such policies in practice. Instead of giving her the freedom to represent herself, the number and codes gag and label and market her as an Indian, constricting her to perform to federal definitions of Indianness as a specimen or as a testament of their authority to name her. With Indian identity as the true commodity of Indian-made art, federal authority is shown to be invested in selling its own commodified version as the truly authentic one against the heterogeneity of self-definitions among indigenous people that might contest that authority by refusing the-Indian-named to-be-named-as-Indian under its governance (Harlan 1993; P. Deloria 1998; Meyer and Royer 2001).

Across the bottom of the series, Tsinhnahjinnie places handwritten text that asks, "Would I have been a member of the Nighthawk, Snake Society / or would I have been a half-breed leading the whites to the full-bloods? / 111-390" (reprinted in Harlan 1993, 7). By replacing her name with her enrollment number, she reinforces her important criticism of the ways that federal policies catalog her as an artifact of their authority to name her, thereby blurring the discursive lines between federal (enrollment number) and cultural (museum catalog) practices of identification. Having been made into a commodifiable artifact, she asserts the need for the repatriation of the right to self-identify/represent herself as (other than) an Indian.

The question Tsinhnahjinnie asks references the historical moment in which federal identification policies were first instituted. The Nighthawk and Snake Societies were among several oppositional groups within Indian Territory that opposed allotment and statehood. These societies saw allotment policy as a direct violation of the treaties that they had signed agreeing to remove to the Territory and of the General Allotment Act that had provided for their exemption from being selected for allotment (Debo 1940; Perdue 1981; McDonnell 1991; Barker 2000).

In "Message Carriers: Native Photographic Messages," curator Theresa Harlan (Pueblo) writes, "Tsinhnahjinnie directs her rhetorical question to a native audience . . . confronting contemporary native artists with the pitting of 'Indian against Indian' by the US government" (Harlan 1993, 7). She contextualizes Tsinhnahjinnie's question with the testimony of Eufaula Harjo (Creek) before a Senate committee investigation of the Dawes Commission in 1906. Harjo was a leader of the Four Mother's Society, an anti-allotment and anti-statehood group that operated underground for years:

> After our country was divided they would send the half breeds around—the half breed Indians—they would go out and hunt for the names of the full-blood Indians without their consent, and they would take the names down and go and present them before the Dawes Commission, and these half breeds that brought these names before the

> Dawes Commission would go and take an oath over it. . . . These people would not know anything about it, but they would find a certificate sent to them at the postoffice. . . . When I went to the store one day the postmaster handed me this certificate, but he did not tell me what it was. I took it because I didn't know what it was, but when I found out what it was I returned the certificate back again to the Indian agent. The Indian people did not want these certificates, so they gathered up a whole lot of them and brought them to me and I took them to the Indian agent. The Indian people are still sending these certificates back again, for they don't want them. (Debo 1940, 57–58; quoted in part by Harlan 1993, 7).

Harlan argues that Tsinhnahjinnie wants to confront indigenous people for policing the boundaries of indigenous identity with federal regulations, seeing this as a denial of the historical consequences of such policies. Echoing WalkingStick, Harlan emphasizes Tsinhnahjinnie's suggestion that those who betrayed their families and communities during allotment are doing the same thing as those indigenous artists and art organizations who have supported the IACA (Harlan 1993, 7).

The location of blood in Tsinhnahjinnie's question makes things a little more ambiguous for me. I am particularly uneasy with the discursive slippage between the half-breed and the sellout, on the one hand, and the notion of the not-half-breed and the loyalist, on the other. Were not, in fact, the leaders of many of the resistance movements often "mixed-bloods"? As WalkingStick reminds us, didn't many traditional native speakers work as interpreters, agents, police, and military forces for the U.S. government? What kinds of histories do these bloodlines disguise?

Tsinhnahjinnie's question instances indeterminacies within indigenous communities over who is indigenous and, perhaps more important, on whose behalf the questions are to be settled in law. Resonating through these conversations are the politics of the "Indianness" of everything from dress to appearance to activities like powwows, gaming, rap, and other performances taken to be questionably consistent with what it means to be indigenous, not merely in some dominant ideological stereotype but for indigenous people themselves (P. Deloria 1998). Rayna Green (Cherokee) suggests that those who want to see warbonnets, buckskins, and moccasins are not only non-Indians who have fallen into Kevin Costner–proportioned stereotypes that romanticize the death of indigenous histories and cultures;[19] indigenous people are also uncomfortable with images of their history, culture, and identity that do not fit their ideas of who they are (Green 1988). This is not to pathologize indigenous understandings of themselves

but to suggest that the troubles with indigenous identity as measurable by blood are not just blood's potency in a non-Indian dominant ideology that reproduces stagnant ideas of what an indigenous person is and is not. The trouble with blood is its potency within indigenous communities to account for indigenous identity. Blood tales are Indian told.

These troubles are, perhaps, nowhere more pronounced than in the very public challenges of Jimmie Durham's Indianness (Bielski 1993; McMaster 1995). Durham was one of the founding directors of the International Indian Treaty Council, the first United Nations nongovernmental organization for indigenous people in North America. He is also a well-known multimedia artist who has exhibited internationally and won several awards for his work. But, following the passage of the IACA, Durham has had several installations canceled by galleries and museums afraid to display his work because he is not enrolled. Durham has refused to enroll with either the Cherokee or the BIA, believing enrollment policies to be, as WalkingStick puts it, "a foreign, bureaucratic imposition alien" to indigenous concepts of membership and belonging (1991, 21).

Despite the Cherokee council's affirmation of his membership, Durham has been repeatedly taken up, reworked, and spit out as hero, martyr, and fake for his political commitments and refusals to enroll for authentication's sake (Bielski 1993). In response, he issued the following remark:

> I hereby swear to the truth of the following statement: I am a full-blood contemporary artist, of the sub-group (or class) called sculptors. I am not an American Indian, nor have I ever seen or sworn loyalty to India. I am not a Native "American," nor do I feel that "America" has any right to either name me or un-name me. I have previously stated that I should be considered a mixed-blood: that is, I claim to be a male but in fact only one of my parents was male. (quoted in McMaster 1995, 74)

Indigenous art associations were instrumental in the IACA's development and passage and have been active lobbyists within its implementation. The Native American Art Alliance (NAAA), cofounded in 1984 by painters David Bradley (Minnesota Chippewa) and Dominic Arquero (Cochiti Pueblo), contests the rights of the unenrolled to display or sell their artwork as "made by Native Americans" (WalkingStick 1991, 21). They argue that

> they are outraged that artists who have Indian backgrounds but who have not enrolled in a tribe are reaping the financial benefits that should go to those who are en-

> rolled. "If you put two identical pieces next to each other and one is labeled Indian while the other is labeled non-Indian, the buyer will buy the one labeled Indian," Mr. Arquero said. "It's all a matter of dollars and cents; that is why these impostors want to call themselves Indian. But our motives are pure. We are only interested in the good of Indian culture." (Belkin 1988, A18)

The NAAA has made many accusations against prominent unenrolled indigenous artists, claiming that they misrepresent themselves in fraudulent terms when they represent themselves as indigenous while "real" indigenous artists

> are being "robbed" of the money consumers who want genuine Indian art are unwittingly spending on non-Indian-made products. . . . We can't tell people what to make and what not to make, and we can't say whether our art is better or theirs is better. . . . But we can say which artists are Indian and which are not. (LaFranchi 1988, 3)

Even before the passage of the IACA, the NAAA was able to get several installations of unenrolled artists closed as well as forcing galleries to publicize the enrollment status of artists that they premiered (WalkingStick 1991, 20–21). After passage of the IACA, the NAAA was also able to prevent the opening of an exhibition at Santa Fe's Center for Contemporary Art by Durham in July 1991 "on the grounds that Durham is not registered" and despite the fact that the Cherokee council and other Cherokee artists recognize Durham as a member (WalkingStick 1991, 21). Bradley is often quoted as challenging the validity of Durham's claims to indigenous identity because he is not enrolled with the Cherokee, citing the IACA as a means to flush out like "impostors" and make it impossible for them to represent themselves as indigenous against those who "really are" (Bielski 1993, 11).

Founded in 1974, the Indian Arts and Crafts Association was also an important advocate of the IACA. The association mirrors in policy and name what the Indian Arts and Crafts Board has been putting forth as a matter of law (while the two are not directly affiliated, their name and membership overlap). For individuals to be members of the association, they must present proof of enrollment in a tribe with federal or state recognition status. The association permits those who qualify to use its logo on their work as a guarantee of authenticity and quality.

Through its criteria and logo, the association carries out the intents of the IACA Board's regulations, expediting in practice what the board has been slow to accomplish legally (the government trademark and rules for its use are still not completed). Additionally, all of the

association's members, both commercial and individual, are included in directories that they supply to interested patrons and dealers. Commercial members, such as galleries and museums, are encouraged to display the association's logo in a prominent location in order to indicate the authenticity of the products that they sell and display as Indian-made.

On their Web site, the association provides guidelines for prospective buyers of "Native American Jewelry," called "Tips for Consumers." They begin by asking, "Is It Real? Is It Hand-Made? Is It Made by Native Artists?" The tips provide a checklist to ensure the authenticity and quality of the item being considered for purchase:

> *Appearance:* Is the jewelry well crafted? Are images clear, lines unwavering[?] . . . Is the artist's "hallmark" stamped on the jewelry? Many Indian artists use a hallmark to identify their work. The hallmark may be a symbol or a signature of the artist. . . . *Materials:* If jewelry is made of silver, is it marked "Sterling"? If turquoise or other opaque stones are used, is the stone natural or has it been altered to change the color or hardness of the stone? *Price:* Genuine handmade Indian jewelry is often expensive. Mechanically produced or imported products made with lower labor costs may cost considerably less. If the price seems too good to be true—it probably is!! *Source:* By law, any item sold as *Indian* or *Native American*-made, must be the creation of an individual who is a member of a state or federally recognized tribe or tribally certified as an Indian artisan. Ask the seller to certify that the item was Indian made. *Dealer:* Buy from an established dealer who will provide a guarantee of authenticity and who will be available later to respond to any questions or complaints you may have about your purchase. *Documentation:* Obtain a receipt that includes all pertinent information about the value of your purchase. (Indian Arts and Crafts Association, at www.iaca.com)

The association's tips do not explicitly invoke blood as a means of answering the question of authenticity and quality. However, as with the NAAA, there is an unquestioned reliance on U.S. recognition authorities in determining the legitimacy of indigenous membership against those who are merely of Indian "descent."

I do not want to be misunderstood as suggesting that there are not individuals within the Indian-made art market who fraudulently claim to be Indian for the sake of marketable advantage (Rose 1992; Meyer and Royer 2001). The consequences of such claims are felt by indigenous artists and their families who rely on the trade for economic

self-sufficiency, by indigenous communities who feel that their histories and cultures are misrepresented and distorted in such trade, and by those patrons who are defrauded of their money. Clearly there is a need for regulations and effective enforcement.

I am trying to suggest that there are serious troubles in assuming that federal identification and recognition policies are the just means through which to "weed out the riff-raff," especially considering the historical and cultural processes of colonialism through which those policies have been developed. Further, I think some tough questions need to be asked about the ideologies informing indigenous perspectives about membership and recognition. Why is it that those who are performing consumer fraud are so easily and transparently collapsed with those who are mixed, unenrolled, and/or are members of unrecognized tribes and villages? What social factors contribute to the assumption that the unenrolled/unrecognized are fraudulent? In the willingness to take these equations for granted, what histories and cultural realities are forgotten?

Recognition

> Sec. 309.2 (e) *Indian tribe* means (1) Any Indian tribe, band, nation, Alaska Native village, or any organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (2) Any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority. (Public Law 101-644, Indian Arts and Crafts Act)

The BIA is charged with administering the various trust services and benefits reserved by Congress to fulfill U.S. obligations to American Indian tribes and Alaskan Native villages. Currently, there are approximately 565 entities administered by the BIA, including about 335 American Indian tribes and approximately 230 Alaskan Native villages. (The Office of Hawaiian Affairs administers trust services and benefits to Native Hawaiians.)

For a myriad of historical reasons, it has been estimated that there are well over three hundred indigenous groups within U.S. territories that are without recognition status (O'Brien 1989, 90). Some of the many reasons for their not being recognized include the fact that individual groups never signed a treaty with the United States or their treaties were never ratified by Congress.

About one hundred of those currently unrecognized had their

trust relationship and all commensurate rights "terminated" under the provisions of the House Concurrent Resolution 108 of 1953 (Fixico 1986). The Termination Act, as it is called, attempted to release the U.S. government from its trust obligations by unilaterally suspending the recognition status of the specifically targeted tribes (Wilkins 1997, 166). Only thirty-seven of the terminated tribes have had their status restored by congressional ruling (GAO 2001).

In 1954, Public Law 280 was passed, establishing state juridical authorities over indigenous nations within California, Minnesota (except at the Red Lake Reservation), Nebraska, Oregon (except at the Warm Springs Reservation), and Wisconsin (except at the Menominee Reservation) (O'Brien 1989, 86, 90; Wilkins 1997, 166). Public Law 280 was "a unilateral repudiation of treaties" between the tribes and the United States, infringing on indigenous governments' juridical authorities in efforts to relieve the BIA of "costly law enforcement duties and to continue narrowing the scope of federal responsibilities to tribes" (Wilkins 1997, 167).

In 1971, the Alaskan Native Claims Settlement Act established the recognition of approximately 230 Alaskan Native villages as corporations. The BIA's trust responsibilities were extended to the 230 villages.

In 1978, the BIA established regulations for recognizing tribes. Referred to as the federal acknowledgment process (FAP), recognition can be extended to tribes who meet seven criteria: (1) they are identified by reliable external sources as a substantially continuous entity since 1900; (2) they have maintained themselves as a distinct, historically continuous community; (3) they have maintained political authority over their members from "historic times until the present"; (4) they have a governing document or statement describing their government operations and membership criteria; (5) current members are descendants of a historic or amalgamated tribe and have functioned as an autonomous political unit; (6) members are not members of an already recognized tribe; (7) the tribe has not been terminated by legislation (Wilkins 1997, 166–67; GAO 2001). In order to be considered, a tribe must submit a letter to the Branch of Acknowledgment and Research (BAR) within the BIA stating that they intend to apply for recognition, submit a petition with all supporting documents, undergo extensive review by a committee comprised of historians and anthropologists, await notice of consideration, await preliminary findings and recommendations, undergo public comment, and await final determination (NARF 2000). Appeals must be made within ninety days of the final determination. In 1994, 1997, and 2000, the regulations were revised to clarify the required documents needed to prove satisfaction of the criteria as well as the processing procedures and time lines for decisions.

Of the approximately 565 tribes and villages currently recog-

nized by the BIA, 92 percent were established tribal entities in the 1930s or villages in the 1970s. The remaining 8 percent or 47 tribes were individually recognized between 1960 and the present by either Congress (16) or the BIA (31). Of the 31 tribes recognized by the BIA since 1960, 14 were recognized through the FAP (of about 250 that applied), 10 through decisions before 1978, and 7 through decisions after the process was established or outside of the process (GAO 2001).

The result of these complex histories of recognition, termination, and administration is that hundreds of indigenous peoples within the United States are without legal standing as political entities. Compounding these histories with the effects of identification policies, it is impossible to surmise just how many groups and individuals have been disenfranchised from their legal status and rights as tribes and members.

In *Mixedblood Messages: Literature, Film, Family, Place,* Louis Owens (Choctaw/Cherokee) addresses the implications of these histories for indigenous people. While looking at family photos and noting the absence of his Cherokee grandmother from any known record, he wonders about the significance of what it means to have lived and survived such policies on the memories, histories, identities, and affiliations of indigenous people whose families crossed, erased, and lived beside the borders of indigenous/U.S. conflicts:

> Together these families embodied the "borderland" . . . and they did so unselfconsciously, purely, and out of human instinct and need. They were people simply surviving together—Indian and white—and they deserve to be honored rather than ridiculed despite the fact that they also stand as unwitting icons to both cultural atrophy for Indian people and the displacement of tribal nations from traditional homelands. It is as human beings who loved one another while crossing borders and erasing boundaries and, despite immeasurable odds, surviving that they deserve our recognition and utmost respect. (1998, 147–48)

For while the "mix" may be a historical signifier for cultural "disjuncture and loss," Owens insists that "mixedblood" is not a synonym for the "false presence" of indigenous culture and identity (149). Being "mixed" doesn't make you less indigenous; it registers histories of integration, change, and survival:

> It has struck me that those historical and social forces that lead to the radical displacement and fragmentation that marked my grandmother's life from her first breath to her last, as well as the lives of her children—especially that empty place where all records of her Cherokee mother

> should be—are emblematic of the kinds of radically disruptive forces that have confronted and dismembered Indian peoples and communities for several centuries. Many Indian people have been strong enough or fortunate enough to cling to family, community, clan, and tribe through this half millennium of deliberate, orchestrated, colonially and federally designed physical and cultural genocide. But a great many have not. (147)

What does it mean to reenact the dismemberment of indigenous cultures and identities in legislation directed against those who were not "strong enough or fortunate enough" to have survived the relentless onslaught of U.S. imperialism? What does it mean when indigenous people deploy the same categories and discourses of recognition and identification to settle questions over who is *Indian* and what is an *Indian tribe*?

Owens writes in opposition to other indigenous scholars who have dismissed mixed-blood issues as irrelevant to sovereignty politics. Elizabeth Cook-Lynn (Lakota) has openly accused "urban mixed-bloods" of working in collusion with dominant ideological perspectives and political agendas. Cook-Lynn asserts that the "writings of these intellectuals" that make "explicit and implicit accommodation to the colonialism of the West" has resulted in "an aesthetic that is pathetic or cynical, a tacit notion of the failure of tribal governments as Native institutions and of sovereignty as a concept, and an indigenous identity which focuses on individualism rather than First Nation ideology" (Cook-Lynn, quoted by Owens 1998, 155). Owens answers Cook-Lynn's remarks by criticizing her for "posturing" through the mantles of an undefined but clearly intended authentic "First Nation ideology" that appears to be based on a complete dismissal of the consequences of U.S. policies in dispossessing indigenous peoples of their lands, governments, and cultures. He argues that Cook-Lynn invokes "First Nation ideology" to denigrate the "urban mixed-blood" intellectual as though such an entity exists in contrast to some hyper-full-blood Indian, a reservation-based intellectual whose loyalties are squarely on the side of indigenous sovereignty—as though all indigenous people in urban areas are mixed, as though there are no mixed-bloods living on reservations, as though blood were the deciding factor of one's intellectualism and position with regard to sovereignty. For Owens, it is the confused and undefined "posturing" of authenticity that must forget the historical and cultural consequences of U.S. policies in constituting indigenous people's disenfranchisement in order to authorize itself as a real against which others can be discredited.

These contestations make up the discursive field in which the IACA's Indian tribe is configured. It is not simply the case, then, that recognition policies bear down on indigenous nations from some au-

thorial high of omnipotent power—i.e., the state abstracted from the social—manipulating indigenous people as pawns on a politically obscured checkerboard. Rather, the issue is how indigenous people construct and deploy the categories and terms of recognition (and identification) to articulate their concerns, strategies, and agendas.

Cook-Lynn, a well-known political activist, scholar, and editor of the *Wicazo Sa Review,* could be attempting to combat histories of appropriation within the academy by suggesting that those "doing" indigenous studies need to be active in supporting sovereignty struggles or they run the risk of being part of the problem by using indigenous people as topics for personal advancement (see Rose 1992). But what does it mean to denigrate "mixed-blood intellectuals" as the co-conspirators in processes of U.S. imperialism? Or rather, how is it that blood has become such an easy figuring device for loyalty and betrayal?

The IACA frames these questions according to recognition policies. To understand how tribes are answering them, you have to make some sense of the political mire that indigenous nations and government officials must navigate in order to maintain some semblance of their sovereign rights in relationship to one of the most powerful nation-states in the world. Those who lobbied and supported the IACA were certainly cognizant of this fact. They pursued a redrafting of the 1935 act in such a way as to give the ineffectual statute the substantive legal force that it needed to regulate fraud within the Indian-made art market while affirming tribal rights to decide membership criteria as a matter of self-government.

Senator Ben Nighthorse Campbell (R.-Colo.) was one of the cosponsors of the IACA. Campbell is an enrolled member of the Cheyenne Nation and a jeweler who has won several awards for his work. Suzan Shown Harjo was an early advocate of the IACA. Harjo is director of the Morning Star Institute, an important political rights lobby group in Washington, D.C., and an enrolled member of the Creek Nation. Harjo calls the IACA a piece of "consumer-protection legislation that imposed stiff penalties for persons or businesses falsely claiming or promoting artworks as Native products" (Harjo 1997, 59). In a 1997 interview with Campbell, she writes:

> The measure was opposed by artists who had masqueraded as Indians for years, and by their agents and promoters.[20] Campbell became their target and, oddly, was accused of "censorship." The law, which had nothing to do with censorship, was approved in 1989. It updated a 1936 act, bringing it in line with current tribal and federal laws and clarifying that only the Indian Nations could determine their citizenry. While it was supported overwhelmingly by Indian artists and throughout Indian Country, some who

had lost the battle later lobbied the Senate to repeal the law. When Campbell took his place in the Senate in 1993, he vowed to "block any attempt to repeal the Act." That put an end to any serious repeal effort. "In all the years since it was enacted, not a single tribe has complained about it," Campbell reports today. "Everyone says it's a good law—good for the Indian artists and good for the people who buy Indian arts." Dismissing the censorship charge with a laugh, he said, "The Supreme Court has spoken on this one. Only the tribes can say who the Indians are and then we even added a safety valve for the tribes to say who their 'artisans' are, to pick up anyone who's fallen through the cracks. Some people just don't like the idea that the tribes are in charge of enrollment, but that's the way it is." (59)

Campbell and Harjo maintain that the IACA affirms indigenous sovereignty by affirming the rights of tribes to decide their own membership requirements. They see this avowal as an important response to tribal government demands for recognition of their jurisdictional rights over their membership as one aspect of self-government. They explain that if individuals fail to meet their tribes' criteria for enrollment, they may still be certified as a special artisan of that tribe for the purposes of selling and displaying their work as Indian-made. Further, they contend, the regulations for the IACA's enforcement allow for an "exception where country of origin is enclosed," whereby penalties do not "apply to any art or craft for which the name of the foreign country of tribal ancestry is clearly disclosed in junction with marketing of the product." An individual may also be identified as "of Indian descent, Native American descent, or Tribe A descent" (*Rules and Regulations* 1996, Sec. 309.3). Harjo and Campbell conclude that accusations that the IACA promotes censorship are not an issue because only indigenous people of questionable claims to membership are excluded by the IACA's provisions (Harjo 1997, 59).

This assertion is simply wrong. Clearly, it is not only those with questionable claims to membership or group status that have been adversely affected by the enforcement of identification and recognition policies. Harjo and Campbell take for granted an entire series of relationships between membership, recognition, and authenticity that demands accountability for the effects of ongoing histories of cultural exchange and colonialism on indigenous communities.

Neither Harjo nor Campbell mentions the fact that no one to date has been granted the "special artisan status" that they see as protecting all of those who might otherwise fall through the proverbial cracks of tribal enrollment criteria (Harlan 1993). Neither do they dis-

cuss the political or cultural vagueness of the regulations regarding qualifying Indian identity by "foreign" or other "descent."

Furthermore, if approximately one-third of all American Indian tribes and Alaskan Native villages are without recognition status as a direct result of U.S. exercises of plenary power in nullifying or refusing the terms of treaties or unilaterally terminating or otherwise dissolving the sovereign rights of individual tribes, what does that say about the authority of federal recognition policies to determine who is and who is not an Indian tribe?

The consequences of denying histories of U.S. policies to determine who counts as Indian and what counts for an Indian tribe leave unanswered many questions regarding just what type of indigenous nation and citizen are envisioned by such circular affirmations of U.S. authorities to recognize, identify, and document—or not—indigenous membership, affiliation, and nationhood. Are there no other principles on which to base indigenous sovereignty and citizenship than those determined or affirmed by U.S. authority and documentation (Deloria 1974)? What kinds of effects have recognition policies had on tribal concepts and criteria of their own nationhood and citizenship (Alfred 1999)? Community recognition and participation, naturalization by other means than roll and blood, or other expressions and understandings of political status and cultural affiliation (Kauanui 1999) seem ignored or displaced or forgotten in favor of a status quo so out of step with indigenous people's criticisms of U.S. plenary power and paternalism as to be confusing at least.

When Harjo responded to allegations that the IACA merely reinforced federal discriminations against unenrolled citizens and unrecognized nations in an interview with *San Francisco Weekly* columnist Vince Bielski in 1993, she responded harshly: "People say it's the federal government defining who Indians are, but the law does not do that. The tribes decide who to recognize. The critics are just acting out their disaffection from society. Like Jimmie Durham. He's a coward. He's never proven he's a Cherokee" (Bielski 1993, 11). Coming from the director of a powerful lobby group, Harjo's retort is telling of the painful denials of the role of U.S. policies in the construction and maintenance of the "disaffection" between indigenous peoples (Owens 1998).

THE PRODUCT IN THE INDIAN

> Sec. 309.2 (d) *Indian product* means any art or craft product made by an Indian. (Public Law 101-644, Indian Arts and Crafts Act)

The IACA's *Indian* and *Indian tribe* are the precondition of the Indian-made art market. Without the accessibility and commodifiability of the

Indian and Indian tribe, there would be no product in the Indian. They determine the market's growth, stock, and celebrity. They also determine what is at stake in the exchange of all-things-Indian and the identification of the Indian-that-can-make-those-things.

For this section, however, I would like to get to the conclusion from a slightly different perspective. Yes, policies regarding indigenous membership and nationhood have been troubled and are troubling still. We have to think better about how to address these issues with the heterogeneity of our histories and cultures in mind. We can do better than the policies we have inherited. And so I would like to read the IAEA's *Indian product* italics differently than I have been reading the *Indian* italics and *Indian tribe* italics. I want to try to show that there is a culturally informed resolution within indigenous political theories for determining membership and recognition, one that is grounded in an ethics of relationship and responsibility, informed by genealogy (as a practice of recording people's relatedness and so social roles and responsibilities to one another and to place [see Alfred 1999; Barsh 1993; Kauanui 1999]). I believe that this is evident in the way that the *Indian product* is discursively linked to the politics of repatriation that has been a part of indigenous efforts to reclaim for themselves a sovereign place within the junctures of law and market. To analyze this link, I have to start over.

Origins

The IACA of 1990 was based on an act of the same name passed in 1935. John Collier, Commissioner of Indian Affairs, was instrumental in the act's passage. His efforts were guided by his conviction that the egregious effects of the General Allotment Act of 1887—poverty, unemployment, malnutrition, alcoholism, abuse, depression—were not to be amended by further removing indigenous peoples from their lands and cultures (Collier 1934). Rather, in seeming opposition to the objectives of assimilation then dominating federal Indian policy, Collier argued for indigenous economic self-sufficiency and cultural autonomy. His plans began with the IRA of 1934, which put an end to allotment and provided, in controversial ways, for tribes to reinvent themselves along the hierarchical lines of corporate chiefs and councils in order to facilitate their economic development (Deloria and Lytle 1984). In this context, Collier developed the IACA. He wanted to guarantee that tribal members had a marketable advantage in the Indian-made art market, so the IACA created the Indian Arts and Crafts Board to facilitate opportunities for American Indians to display and sell their crafts in various forums such as the World Fair as well as for their education in art schools (Schrader 1983). No one, however, was ever prosecuted under the provisions of the 1935 act, a contributing factor to the gross levels of fraud within the market today.

The Indian Arts and Crafts Board's 1989/90 report to Congress estimated that as much as 50 percent of "Indian-made" art in Santa Fe, the second-largest market in the United States, was either imported or the result of domestic appropriations. Given histories of dispossession, assimilation, and genocide, it was unconscionable to those on the board that non-Indians were appropriating and expropriating indigenous cultures, identities, and artifacts for their own economic benefit and without any direct legal consequence. In response, indigenous governments, lobbyists, and art organizations mobilized the legal precedence of the 1935 act for protecting Indian revenue to criticize the colonial processes of appropriation and expropriation within the market and to affirm Indian peoples' rights to (self-)represent, curate, and repatriate their histories, cultures, and identities as located within and signified by the remains of their ancestors, their cultural artifacts, and their knowledge systems. Simultaneously with the IACA, they secured the passage of the Native American Graves Protection and Repatriation Act (NAGPRA). In fact, many of the same officials, lobbyists, and art associations were involved in developing both acts. Together, the IACA and NAGPRA provided for the configuration of indigenous peoples as sovereign political bodies—individually and collectively—with juridical authority over their identity, culture, art, remains, and knowledge. This configuration has confronted histories of colonialism and cultural exploitation with internationally established rights to sovereignty and self-determination through an affirmation of indigenous cultural traditions regarding relatedness and responsibility. Genealogy, in particular, records cultural affiliations between people and the land and allows indigenous peoples to resituate the significance of human remains and cultural artifacts from the domains of academic freedom to indigenous epistemologies and worldviews.

The Authenticity Rush

In *Playing Indian*, Philip J. Deloria (Lakota) argues that as Indians variously engage and are engaged by the theaters of performance in which Indianness is played out, what it means to identify or be identified as an Indian is profoundly transformed.[21] In his chapter "Hobby Indians, Authenticity, and Race in Cold War America," he examines the consequences of these interactions by considering the sense of "detachment, alienation, and anomie" and the mythos of shared values, high living standards, strong nuclear families, and patriotism that characterized U.S. national identities of the Cold War period (1998, 130, 131). For him, the duality between these two discourses supported an ideology of racial difference that was grounded in equating biological determinism and cultural relativism (132, 134).

According to Deloria, there were two kinds of hobbyists. Object

hobbyists "favored the replication of old Indian artifacts and costumes," preferring a retreat into nostalgia and transcendence from a modern, impersonal society through Indian beliefs that they believed connected them to a more authentic, natural truth. People hobbyists "placed a premium on unmediated personal contact with native people" and thereby constructed an interior version of the "Indian Other" that could be fully incorporated, seeking redemption through transformative contact (135, 129): "If authentic Indian culture was, as [Alfred] Kroeber claimed, learned behavior, then individual non-Indians could also learn it, grasp hold of the authentic, and thus consolidate a unique personal identity" (140–41). This license to access, borrow, change, and own Indian beliefs, practices, and costumes for the sake of personal transformation was indulged by the hobbyists, whose very appropriations seemed legitimated by Indian people's participation at the social gatherings that they attended together. But, in the process, "the sense of exotic difference that lay at the heart of Indian authenticity grew increasingly tenuous," as the constructedness of that authenticity was highlighted by its malleability and accessibility (142). If anyone could play the Indian, who were the real Indians?

To reinvent the difference necessary to sustain the play, hobbyists found blood to be their ally. Blood's figuring of an impenetrable racial difference between Indians and hobbyists allowed the hobbyists to sustain their discrimination of authentic Indians and so disguise the privileges and consequences of their license to perform Indianness. But it also "proved a tricky concept to negotiate" (143).

> Was a so-called mixed-blood dance champion more or less authentic than a full-blood with less polished skills? If push came to shove, which one should be invited to the powwow? Culturalist criteria helped people hobbyists rank relative levels of Indian blood quantum. One such factor was place—did an Indian person live on or off the reservation? Another was attitude toward white society—traditionals, who favored the old ways, were better than progressives, who had made moves toward assimilation. As hobbyists imagined an accessible Indian culture, they also refigured racial difference around at least three variables—genetic quantum, geographical residence, and cultural attitude. The highest possible degree of authenticity inhered in the traditional, reservation-based full-blood. The least authentic figure was the progressive, urban, low-quantum mixed-blood—ironically, the figure often available to urban hobbyists. In the end, regardless of behavioral patterns, an Indian still had to be an Indian. (143)

The indeterminacies in blood's answer to the questions of authenticity marked the constructedness of the Indian on which the play depended. Blood's fold into cultural pluralism provided a measure of navigation through the mire of instabilities about what kinds of conventions authenticated Indianness, but it was a temporary and superficial means of resolving the contradictions that resulted.

For some Indian people, the social exchanges engendered by "Indian play offered often-conflicted forms of empowerment" (144–45). They found their opinions taken seriously and even sought after on questions of tradition, the use of materials, dance, and other issues of ceremonial dress and practice. In those exchanges, "non-Indians in effect ceded a degree of cultural power to Indians" that, despite the "control over the ability to give it away," had important "consequences for real Indians, who now exerted at least a small amount of true control over the exchange" (144–45). In the slippage, Indian people reinvented their identities and reclaimed their rights to determine and control the use of their cultural knowledge. As hobbyists' very activities depended on Indian people's willingness to share their knowledge and materials, Indian people empowered themselves as both laborers and mediators. This was encapsulated in the hobbyists' demand for and reliance on Indian-made handicrafts:

> If the hobby involved an escape from an industrial world to authentic handcraftsmanship and unmediated labor, that escape relied upon the establishment of a hobby economy in which racially defined Indians served as both laborers and market mediators. Hobby leaders clearly felt an obligation to promote Indian hiring at powwows and to support Indian craftspeople, especially against the threat posed by cheap foreign knockoffs. . . . It would seem, then, that good crafts consisted of Indian-made objects produced from native materials. The restricting of the market to such goods, authentic by standards of both blood and cultural production (although lacking the age and tradition required by object hobbyists), would benefit contemporary Indians, who were the only ones capable of creating such authentic products. (148)

The hobbyists emphasized cultural production and a "racial authenticity that could be attached to objects through economic exchange," endowing crafts with the "magical qualities of transmission." In so doing, they coerced Indian craftspeople "to make a material performance of their Indianness"—"one that visibly defined" and embodied Indian people's racial difference (149–50). But in the demands and the

exchanges, Indian people claimed a power of knowledge against the hobbyists, mobilizing the terms and conditions of the exchange to reclaim their rights to self-definition and cultural curatorship. As Indianness had come to embody a U.S. national identity founded on notions of personal freedom and liberty, Indian people overturned those same discourses to address their agendas for sovereignty and self-determination. Ironically, the very theaters of performance in which Indian people came as costumed artifacts of authenticity gave way as a platform from which Indians could demand the recognition of their unique rights and status as Indians.

Tensions like these percolated through the post–Cold War period, showing up in relations between American Indian people and the New Agers and counterculturalists who sought after a different but similar play at the Indian in answer to their own cultural and political anxieties (154–80). I would argue that these same tensions are still endemic to the Indian-made art market. It is not a coincidence that the market's inflated values since the 1970s have paralleled the growth of the New Age, environmental, and other alternative-based social movements informed by indigenous cultural beliefs and practices (Lund 1976, 1–6; Feest 1980, 12–14). The "growing interest in Indian spirituality and philosophy" for answering the problems and indicting the ills of U.S. society seems to be the historical condition in which the demand and extravagant prices for the Indian-made have been generated (Davis-Diaz 1993, 1D; Whitely 1993, 131).

As Deloria demonstrates, Indian-made art has made it possible, at least in part, not only to possess and own the Indian but to perform an Indianness that is personally and socially transformative. The contradictions within such practices form the foundation of a U.S. nationalism that has enacted a systematic dispossession and genocide of Indian people. Indians have mobilized these contradictions to assert their sovereign rights as nations over the terms of exchange in the Indian product and as citizens with rights to self-definition within the terms of trade. By doing so, Indians articulate their political agenda for the repatriation and curatorship of their cultures and identities, one that is firmly situated within an ethics of relationship and responsibility. Their various accommodations to the market become a means of opposing their governability as Indians "of a particular kind" by making the market serve their ends (Ong 1995, 1250). The intent of the Indian and Indian tribe may be to make Indian peoples governable as "nations within" (Deloria and Lytle 1984) and citizens beside, but the Indian product shows up the political and economic instabilities of power and knowledge through which Indian peoples have reclaimed themselves as sovereign actors in the political economy of indigeneity (Gonzales 2001).

Repatriation

Repatriation has been an effective means for American Indian tribes, Alaskan Native villages, and Native Hawaiians[22] to exercise their juridical rights as sovereign political entities within the trade in indigenous remains and artifacts, a market itself embedded within unconscionable histories of genocide, grave robbing, and theft (Messenger 1989; Mihesuah 2000; Dumont 2001, and in this issue). As Jack F. Trope and Walter R. Echo-Hawk (Pawnee) note, NAGPRA situated the political import of repatriation as a human rights matter for indigenous peoples (2000, 139). This had the effect of linking repatriation to international cultural property rights laws as a tenet of the rights of indigenous peoples to be recognized as legitimate governing bodies over their histories, cultures, and knowledge. In turn, this emphasized the diversity of indigenous perspectives on what a culturally informed ethics for the use of indigenous remains and artifacts ought to be as a matter of policy. It also established the legal importance of indigenous concepts of affiliation, situating the significance of human remains and artifacts in the meanings, histories, and identities of indigenous epistemologies of relatedness and responsibility through the practice of genealogy.

This is not to suggest that NAGPRA is a perfect piece of legislation, but it is a "historic, landmark" one (Trope and Echo-Hawk 2000, 123).[23] It resulted from decades of struggles by indigenous peoples to pass legislation providing for the protection of their rights to religious freedom and sacred sites against the demands of academic freedom (Deloria 1973; Vecsey 1993; Trope and Echo-Hawk 2000, 136–37). It was developed by a consortium of indigenous leaders, federal agents, scientists, and museum curators. Consequently, its provisions reflect a compromised agreement between these various actors. From each of their perspectives, the provisions are undoubtedly limited and/or incomplete.

However, the procedures for repatriation and the specific items covered under NAGPRA were meant to encourage a continuing dialogue between those implicated by its provisions (Trope and Echo-Hawk 2000, 140). To facilitate this dialogue, the act established a review committee with representatives from indigenous, scientific, and museum communities to address the enforcement of NAGPRA and mediate disputes. These procedures are a result of ongoing efforts by indigenous peoples to be recognized as legitimate representatives of sovereign nations in relations with the U.S. government and public institutions. They also resulted from the efforts of indigenous peoples to have their histories and cultural practices acknowledged as legally legitimate forms of lawmaking. By affirming indigenous perspectives about relatedness to and responsibility for human remains and cultural artifacts, as recorded within tribal genealogical and ceremonial practices, NAGPRA has forced social responsibility on a market and academic

history that have been complicit with the abject exploitation of indigenous peoples (Dumont 2001, and in this issue).

NAGPRA mandates the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony from federal agencies and museums, excluding the Smithsonian, which was covered under the National Museum of the American Indian Act of 1989, to the people from whom those items originated (DuBoff 1992, 9–14; Trope and Echo-Hawk 2000, 139–51). The items covered by the act include

- human remains: any physical remains of a body excluding hair strands, parts that are naturally shed, and any other body parts that were freely given by an individual prior to death;
- funerary objects: objects placed with the body during a death ceremony or made specifically for mortuary purposes (such as cremation urns);
- sacred objects: objects of ceremonial significance that are needed for traditional practices;
- objects of cultural patrimony: objects of such significance that they are considered inalienable (communally owned).

Federal agencies and museums are required to inventory all of these items with identified cultural affiliations in consultation with the NAGPRA Review Committee and implicated indigenous groups (McCoy 1996, 87–88; Trope and Echo-Hawk 2000, 141). When a specific group or individual is able to demonstrate their cultural affiliation to individual items on the inventories, and if they comply with all required application procedures (filing a notice of intent to repatriate and submitting appropriate documentation proving affiliation), the remains and objects are repatriated. If items are unaffiliated, the group or individual may file an intent to repatriate if they can document cultural affiliation. Cultural affiliation can be established with "geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion" (NAGPRA, Sec. 4[a]). In cases of dispute over affiliation, such as within the competing claims of descent and rights to study the Ancient One (Kennewick Man), the matter can be remanded to trial or mediated by the NAGPRA Review Committee (Thomas 2000).

Additionally, NAGPRA "restricts the trade of artifacts excavated from tribal or public lands" and limits access to burial and other sites of cultural significance (DuBoff 1992, 11). Any findings of unearthed human remains and cultural objects must be done with the express permission of the federal government, if on federal or public lands, or of the tribal government, if on reservation lands. So strict are NAGPRA's

provisions regarding "newly found" items that it allows tribes and legal descendants to call for the return of items even when permission to excavate was originally given (12). It further "bans the purchase or transfer for profit of human remains or cultural items by anyone without 'the right of possession,'" as established in written consent from the appropriate authority or legal descendant (DuBoff 1992, 12; Trope and Echo-Hawk 2000, 149).

There are some important exceptions within NAGPRA's provisions. The rights to repatriate only apply to those tribes and villages with recognition status, except for Native Hawaiians who were extended the legal rights to repatriate,[24] and so unfortunately has not been available to all unrecognized and unenrolled peoples. The problems of this are represented in the public testimonies presented at the May 2001 meeting of the NAGPRA Review Committee in Kelseyville, California. Several unrecognized California Indian people expressed their frustrations with being dependent on state legislation to address issues of repatriation within California since they do not qualify under NAGPRA (see May 2000).[25] Furthermore, NAGPRA is not applicable on private lands or with privately owned collections. This is an important limitation since innumerable items of cultural significance are owned by private collectors.

Despite these important exceptions, repatriation has marked the trade in Indian-made art and indigenous human remains with the political implications of international cultural property rights law and the importance of a culturally informed ethics with regard to trading and studying indigenous histories and cultures with remains and artifacts. This has had the effect of locking the significance of repatriation to the tenets of sovereignty and self-determination and so of configuring indigenous groups and individuals as sovereign political bodies with juridical authority to regulate trade in the implicated markets and to have a say in the kinds of studies performed with those items in hand.[26] Part of the consequence of this has been that military personnel, federal agencies and museums, archaeologists and anthropologists, and art traders are forced under NAGPRA to answer to histories of colonialism and to be mindful and respectful of the multiple historical and cultural perspectives of indigenous peoples with regard to what counts for affiliation and belonging. The first charges filed under the provisions of NAGPRA demonstrate how important this has been.

Ray Winnie was a hataali, a Diné (Navajo) ceremonial singer, who had curated twenty-two Yei B'Chei masks for more than twenty-five years. The masks are considered living deities. According to Diné tradition, a hataali passes on or loans the Yei B'Chei to another family or clan member who has studied the ceremonies. Winnie acquired the Yei B'Chei from another clan member, Hosteen Hataali Walker. When he died, Walker passed on the masks to Winnie, his apprentice. When

Winnie died in 1991, he left no provision for the disposition of the Yei B'Chei, and no immediate family or clan member requested their return (*United States v. Corrow [1996]*, background section).

Meanwhile, Richard Corrow, the owner of Artifacts Display Stands in Scottsdale, Arizona, had been participating in Diné culture as a self-defined "aficionado" (*United States v. Corrow* [1996], background section). Corrow traveled to Lukachukai, Arizona, on the Navajo reservation, on several occasions to visit Fannie Winnie, Winnie's eighty-one-year-old widow, and her family. During one of these visits, Fannie Winnie displayed some Diné screens and robes and Corrow inquired about the Yei B'Chei. On Corrow's third visit, in August 1993, the Winnie family revealed the Yei B'Chei and permitted Corrow to photograph them. Corrow told Fannie Winnie at this time that he wanted to buy them, suggesting that he planned to deliver the Yei B'Chei to a young Diné chanter in Utah. Although Corrow offered $5,000 for the masks and several other artifacts, he readily agreed to pay the family's asking price of $10,000. Corrow drafted a receipt, and Fannie Winnie, who doesn't speak English, placed her thumbprint on the document after her granddaughter translated it to her (*United States v. Corrow* [1996], background section).[27]

In November 1994, the East-West Trading Company in Santa Fe, New Mexico, contacted Corrow to tell him that a wealthy Chicago surgeon was interested in purchasing the Yei B'Chei. The purported buyer was actually James Tanner, a National Park Service ranger operating undercover on information that the East-West Trading Company conducted "questionable trading practices." When Tanner visited the business, its owners showed him photographs of seventeen of the twenty-two Yei B'Chei. In the photos, he noticed eagle and owl feathers in several of the other artifacts Corrow had purchased. After negotiations, Tanner agreed to a purchase price of $70,000 for the Yei B'Chei: $50,000 for Corrow and a $20,000 commission to the co-owners of East-West (*United States v. Corrow* [1996], background section).

On December 9, 1994, Corrow arrived at the Santa Fe airport carrying the goods that he had agreed to sell to Tanner. Worried that the East-West's owners had been alerted, Tanner notified the FBI. A search was conducted and the artifacts were found, including small cloth bundles, herbs, and mini–prayer sticks adorned with eagle feathers; Yei B'Chei dance aprons; five headdress pieces made of eagle and owl feathers; and the set of twenty-two Yei B'Chei. Corrow was charged on two counts, one for trafficking in Native American cultural items in violation of the provisions of NAGPRA and one for selling golden eagle, great horned owl, and buteoine hawk feathers protected by provisions of the Endangered Species Act of 1973 (*United States v. Corrow* [1996], background section).

In 1996, a federal grand jury in Albuquerque, New Mexico, found

Corrow guilty on both counts (McCoy 1996). The U.S. attorney contended during the trial that Corrow misrepresented to Fannie Winnie what he intended to do with the masks (88). Furthermore, the Navajo tribal council claimed a right to participate in any ruling affecting the trade in the traditional artifacts of the Diné people (*United States v. Corrow* [1996]). "Corrow's lawyer countered that while Corrow was being prosecuted for buying the Yei B'Chei masks, Fannie Winnie was not being prosecuted for selling them" (McCoy 1996, 87). He argued that the "bill of sale did not contain any provision requiring that the masks remain on the Navajo Reservation" (88). With the support of the Antique Tribal Art Dealers Association (ATADA), Corrow filed an appeal. The original verdicts were upheld by the Supreme Court on July 16, 1997.[28]

United States v. Corrow demonstrates the importance of the configuration of indigenous people as sovereign political entities in the trade and study of indigenous remains and artifacts. The Navajo tribal council's intervention in the case was facilitated by NAGPRA's affirmation of their juridical authority to have a say in how items of cultural significance are traded and used. The U.S. Supreme Court's affirmation of Navajo juridical rights over their remains and objects implicates the rights of other indigenous groups seeking to have control in the trade and study of their remains and artifacts. Given ongoing practices of cultural expropriation and appropriation (Whitt 1995), the misrepresentation or misunderstanding of indigenous histories and cultures in academic studies and New Age practices (Rose 1992), and the complicity of scientists with processes of colonization (Dumont 2001, and in this issue), it matters in consequential ways that indigenous peoples in the United States have emerged as sovereign political entities within the very junctures of law and market that have so systematically disenfranchised and dispossessed them of those very rights.

CONCLUSIONS

"Indian-Made"?

News from Indian Country columnists Mark Shaffer and Bill Donovan reported that five Hopi kachina non-Indian-owned but Diné-staffed factories had opened in the northwestern areas of New Mexico since 1990. The kachinas produced in the factories sell for about one-fifth the price of hand-carved kachinas, which retail for about $3,500 each (1994, 6). While it may take as much as a month for a Hopi carver to make one kachina, the factories can turn one out in two hours:

> As a result, Hopi craftsmen and tribal officials are in an uproar over what they call cultural robbery. The tribe is

> considering proposals to copyright or trademark Kachinas made by Hopi artisans. The problem is so widespread that even Gov. Fife Symington has a large, fake caching in his office, said Loris Minkler, a cultural expert for the Hopi Tribe. "It's unheard of for Hopis to make Diné rugs or Cocopah baskets or Acoma pottery," Minkler said. "There's just a certain line you don't cross. It's hard to imagine the same respect not coming from the other side." (6)

Duane Beyal, assistant to then Navajo president Peterson Zah, countered Minkler's statements by saying, "All the Dinés want to do is earn a living so they can put groceries on the table" (6).

> Beyal said the Hopis should complain to non-Native Americans who have set up the factories and [are] profiting through non-enforcement of the federal Indian Arts and Crafts Act. (6)

Helen Skredergard, then director of the Indian Arts and Crafts Association, said that the dolls should be labeled "non-authentic" (6).

So, what is Indian-made art anyway? Is it Indian-made if it is merely assembled, blessed, or sold by indigenous people? Is it enough if the emblems are tribally correct or culturally consistent (whatever those terms mean)? Can only Diné people make Diné art, or can a Hopi reproduce Diné art forms and still call it Indian? If the latter, does the promise for Indian-made art merely recycle a pan-Indian notion of what it means to be Indian—denationalized and deterritorialized? As the Diné make more and cheaper Hopi kachina dolls, it seems to me that the questions are about the legal, economic, and cultural contexts in which the answers are suggested and on whose behalf they are decided in law.

Indian (Un)Made

The commodified Indian embodying Indian-made art offers neither challenge nor impediment to the work of identification by roll, certificate, blood, or recognition. The Indian in the Indian-made coconstitutes the exclusions, authenticities, and entitlements of particular kinds of indigenous nations and citizens while simultaneously constituting indigenous people to live within those same relations and conditions of dispossession and empowerment. Some of the consequences of these processes are found in the continued disenfranchisement of those who have been unable to maintain, never qualified for, or refused to adopt enrollment or recognition status as initially provided for under U.S. federal and state policy and later developed within trib-

al policies. At the same time, indigenous governments have been able to mobilize an ethics of repatriation to affirm their sovereignty within a market that has been complicit with cultural appropriation and expropriation. As sovereigns, they are required to remember the heterogeneity of their histories and cultures in the further development of their laws.

Decolonization

> As the right to self-definition is a crucial and central part of sovereign self-determination, the issues of identity and identification are clearly part of the larger struggle for indigenous autonomy. Many Hawaiian activists raise critical questions about attempting to have the blood quantum rule changed prior to gaining Hawaiian sovereign political recognition because of the likely potential that doing so would undermine Hawaiian claims to self-governance. . . . Therefore, advocates of Hawaiian sovereignty have worked to develop their own initiatives for self-governance. In doing so, they must account for their constituency base. (Kauanui 1999)

At the Ninth Annual Region IX Tribal Environmental Conference in San Francisco in October 2001, there were many conversations in the hallways and dining rooms, in between sessions on water, air, and land protection policies, about the surge in new applications for tribal membership, particularly for the gaming tribes. (The Region IX office of the EPA covers Arizona, California, Hawaii, Nevada, and the Pacific Islands. According to the EPA's Web site, this area includes about 140 "tribal nations" [www.epa.gov/region09].) People deeply involved in the struggles of land, environmental, and cultural rights, and in the middle of being trained in how to protect those rights, were deeply embittered by the very thought that "these people" merely wanted to be Indian now that they could collect a monthly check. One woman from a Northern California Indian tribe commented, "I think they should make them come to the rez to pick up their checks." Her friend replied, "Yeah. At least make them come to the land that they're not even involved in protecting. Make them see it."

Absolutely. An ethics of relationship and responsibility ought to be figured into the development and implementation of indigenous criteria for membership, reflecting and concretizing the traditionally grounded cultural perspectives and social institutions of indigenous peoples. I think that there are two primary sources of reference that can be and have been used as models: the Draft Declaration on the Rights of Indigenous Peoples and indigenous (oral) histories. These

sources demonstrate the possibilities for inter-indigenous political relationships that operate outside the regime of nation-state laws to recognize and affirm the rights of all indigenous peoples to sovereignty and self-determination.

Drafted by an international consortium of indigenous leaders over a full decade, the Draft Declaration on the Rights of Indigenous Peoples includes tradition, custom, property, language, oral histories, philosophies, writing systems, educational systems, medicines, health practices, resources, and lands within the scope of its definition of what defines the rights of indigenous peoples (Venne 1998; Anaya 1996; Wilmer 1993). Each of these rights is understood to be indivisible and interdependent (Simpson 1997, 138). At the core of each is the principle of self-definition, the right of indigenous peoples to define, transform, and represent their political and cultural distinctiveness as a people and a member within:

> Indigenous people have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such (Article 8). Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right. (Article 9)[29]

If an individual is forbidden, restricted, or otherwise defined in such a way as to be denied her or his basic rights to self-definition, or if membership criteria are defined in such a way as to usurp a people's right to manage their own criteria, then it follows that the rights of the people to sovereignty and self-determination have been undermined. Enrollment criteria have been at the heart of sovereignty struggles for these very reasons. If identifying or marking indigeneity is to construct oneself as a member of a people with internationally recognized rights to sovereignty and self-determination, then it follows that the definition of the group is contingent on the kinds of affiliations and memberships imagined in acts of self-definition and in the claims, qualifications, enrollments, and eliminations by the people of particular kinds of individuals. The responsibility of indigenous governments today is to figure out how to develop membership requirements that recognize the rights of individuals to self-definition while they exercise their collective rights to define those requirements as sovereign governing entities. The principles on which to base this negotiation are located within indigenous (oral) histories.

J. Kehaulani Kauanui (Native Hawaiian) argues that Native iden-

tification and land rights are co-constitutive elements of indigenous rights to sovereignty and self-determination. In being accountable to histories of dispossession, she maintains that Hawaiian activists must figure a way out of blood's restrictive, colonial past by thinking hard about how to be responsible to its ongoing legacies in limiting access to Home Lands. In fact, she notes, almost twenty thousand Native Hawaiians remain on a waiting list to secure leases to homestead lands reserved for their use by the Hawaiian Homes Commission Act of 1920: "More than thirty thousand 'native Hawaiians' have died while waiting for their chance to become a Hawaiian Home Lands leaseholder. And fewer than five thousand 'native Hawaiians' are currently leaseholders, covering only a small area of these lands, mostly marginal in the first place" (1999, 137).

As an alternative to the colonial racism and sexism that percolate through deployments of blood quantum in deciding membership and entitlements, Kauanui argues that indigenous (oral) histories provide a much stronger frame of reference for strategizing the concretization of Native rights to sovereignty and self-determination:

> Hawaiian cultural definitions of who is Hawaiian tend to be the most inclusive because they take genealogy into account over blood quantum percentages. In other words, Hawaiians are more likely to go by genealogy over and above blood degree in order to decide who counts as Hawaiian. In Hawaiian contexts, genealogies connect people to one another, to place, and to landscape in the sense that they are about relatedness and kinship to the land. Hawaiian genealogical recitation practices also allow for flux in identity and identification, naming distinctive connections when and where appropriate; they are selective. (1999, 138)

Kauanui demonstrates that indigenous peoples' (oral) histories can provide indigenous leaders with the principles on which to base their own membership requirements. These principles are not all-inclusive but emphasize an ethics of individual and collective relationship and responsibility to both the nation and the land. Indigenous cultural perspectives and practices can be used by indigenous governments to develop politically responsible and historically informed agendas toward securing the means and abilities of indigenous peoples to exercise their rights to sovereignty and self-determination. The nation-state's alternative, of course, is to force membership criteria to answer to the immediate demands of fiscal and party politics that have tied questions of membership to issues of affordability, benefits, and discourses of entitlement that are themselves racialized and engendered

in such a way as to affirm state power and make indigenous peoples "governable" (Foucault 1972, 1979; Ong 1995). Certainly, the principles of relatedness and responsibility contained within indigenous (oral) histories—grounded in descendency, participation, community recognition, and accountability—are a stronger foundation on which to build indigenous autonomy than the state's mediocre provisions for identification and recognition.

NOTES

I would like to thank Louis Owens, Angela Davis, and Donna Haraway for their thoughtful comments and editorial suggestions on the many earlier drafts of this article that they read as a dissertation chapter. Thanks also to J. Kehaulani Kauanui and Alfreda Mitre for their reviews and support through the writing process. Wanishi.

1 During the formulation of the regulations, there was some discussion of extending the IACA's provisions to include Native Hawaiians, but it was decided that that would not be commensurate with the intents of the IACA.

2 Campbell was the only American Indian in the House at the time that the IACA was proposed; consequently, Kyl cosponsored the act with him. In 1992, Campbell was elected to the Senate, and in 1995 he became a Republican (Parsley 1993; Harjo 1997; Wilkins 2002, 80–82, 102, 171, 195).

3 Many have pointed out that "art" is not a category in the Native languages of North America, and even today is not "usually seen as something separable from the rest of daily life" by Native people (Feest 1980, 9). Further, "arts and crafts" suggests a distinction between high and low art, in function as well as quality. Both of these etymologies suggest trouble with the meaning of the phrase "arts and crafts" that is not easily avoided for its institutionalization.

4 An individual may be extended "special artisan status" or be identified for marketing purposes as "of Indian descent, Native American descent, or Tribe A descent," but may not be described as an unqualified Indian, Native American, or as having tribal/village membership (*Rules and Regulations* 1996, sec. 309.3).

5 Allotment policy in the United States parallels the passage of the Indian Act of 1868 in Canada and its amendment in 1876 that determined status in Indian bands by patrilineality. While patrilineality was not explicitly marked as a criterion of blood degree, it certainly functioned as a mechanism for exclusion, directly impacting Indian women and their mixed-blood children/descendents (J. Green 1988; Holmes 1987; Jamieson 1978; Krosenbrink-Gelissen 1991; McIvor 1995; Moss 1990; Nicholas 1994; Silman 1987).

6 For Native Hawaiians, allotment policy corresponds to the Hawaiian Homes Commission Act of 1920, which established a 50 percent blood degree requirement for eligibility to live on the 200,000 acres of lands reserved for use by Native Hawaiians (Kauanui 1999, 2002). Likewise, the Alaskan Native Claims Settlement Act of 1971 required 25 percent blood degree in order to enroll in a village and/or regional corporation and thereby qualify for receipt of lands, shares, and annuities provided for by the act.

7 There were incredible differences at both the regional and tribal level in how allotment policy was

carried out: some areas were targeted more strongly than others, some neighboring tribes were not selected at the same time or at all, and some reservations were not completely allotted (compare Allotment of Lands to Delaware Indians Act of 1904 and U.S. Bureau of Land Management 1991; E. Green 1923; Keller 1981). Therefore, any standardized description of allotment is inadequate to the task of indicating the great differences between regions and tribes for understanding the effects of allotment. For these reasons, studies of allotment tend to be weighted toward its ideological or political significance or specific regions and/or tribes, such as McDonnell's (1991) emphasis on the Plains or Debo's work on the "Five Civilized Tribes" (1940). It is beyond the scope of this essay to provide the kind of careful descriptive analysis of these important regional and tribal differences.

8 I have not been able to pinpoint the exact context or moment in which the certificate was first instituted, but it seems to have become normalized by the 1930s. It was known as the Certificate of Indian Blood until the passage of the 1971 Alaskan Native Claims Settlement Act, which created Alaskan Natives as a legal category commensurate in rights and status to American Indian tribes. Since then, it has been called the Certificate of Degree of American/Alaskan Native Blood.

9 Apparently, the certificate issued to Native Hawaiians is legally named a "pedigree slip" (personal conversation with J. Kehaulani Kauanui, assistant professor, American studies and anthropology, Wesleyan University).

10 These are the stories of "rural legends." I have known people who were asked for their certificate to get into Stomp Dances in Oklahoma, to get discounts at Indian arts and crafts stores in New Mexico, and to get into restricted reservation areas in Arizona. When the American Indian Movement started, there are stories that AIM members, for fear of spies, asked for the certificate before people were allowed into meetings. In response to criticisms of the ways that the request was reifying federal authority to name who was and was not Indian, the practice quickly stopped. However, there is a kind of irony to the request given that many AIM leaders refused to enroll for political reasons. See Hulleah J. Tsihnahjinnie's *NTV,* which includes a hilarious scene between two Indian women who won't even talk to each other until they see the certificate, and then embrace one another as "sisters."

11 See Theda Perdue's edited collection of testimonials from indigenous people who lived through the allotment period in Indian Territory in *Nations Remembered: An Oral History of the Five Civilized Tribes, 1865–1907* (1981).

12 According to Elmer R. Rusco, there are four tribal constitutions that discriminate membership on the basis of gender: the Cachil Dehe Band of Wintun Indians, the Hopi Tribe of Arizona, the Kiahlagee Tribal Town, and the Laguna Pueblo. The Crow Tribe and the Quapaw Tribe discriminate voting privileges on the basis of age and gender (1990, 284–85).

13 This is a similar argument to that made by Sandra Lovelace in her case against Canada that was arbitrated by the United Nations' Human Rights Committee, *Lovelace v. Canada* (Silman 1987).

14 Santa Clara traditions were litigated at trial, with opposing council presenting counterinterpretations of women's rights within the Pueblo (see Resnik 1989).

15 See *U.S. Statutes at Large* 43: 636–37, which created a special board in 1924 to adjudicate the land controversies in New Mexico (Prucha [1975] 2000, 218–19). See also Meyer (2001) and Jenkins (1974).

16 This issue also has to be put in the context of studies on the resurgence of self-identification of people of American Indian/Alaskan Native descent (Snipp 1989; Nagel 1996). There are incredibly layered meanings behind reading the influx of new applications for membership. Gaming politics provides a lens on merely one of them.

17 Enrollment took place in many different ways. For instance, there were Indian applications for allotment and the collection of names with and without the consent of those registered. But tribal governments also submitted their own citizenship rolls to federal agents working to administrate allotment in an attempt to prevent non-Indian claims to membership (Debo 1940; Perdue 1981).

18 bell hooks has addressed the problematics of using the master's tools to undo the master's power (1994, *Ain't I a Woman?*, and 1994, *Outlaw Culture*).

19 From personal notes of her lecture, "Native American Women's Music: A Lecture on Heartbeat," at the University of California, Santa Cruz, May 29, 1997.

20 Apparently in 1993, Senator Jeff Bingaman (I.-N.M.) introduced legislation that would have removed any form of regulation from "fine arts," such as painting and sculpture, under the IACA's provisions. The amendments to the act "would have focused more on crafts that are specific to particular tribes—such as Navajo rugs—to protect the artistic heritage of the tribes as well as legitimate craftsmen and the consumer" (Carrico 1993, 37). The bill was defeated.

21 Deloria's work is deeply indebted to Rayna Green's "The Tribe Called Wannabee: Playing Indian in America and Europe" (1988).

22 NAGPRA is one of 160 federal statutes that acknowledge Native Hawaiians as a political entity possessing commensurate rights to the protection of their trust relationship with Congress as American Indian tribes and Alaskan Native villages (see Kauanui 2002).

23 Of course, NAGPRA has origins in related state legislation that controls the trade, excavation, and study of indigenous remains and objects (Mihesuah 2000). I am trying to claim not that repatriation is altogether new to NAGPRA but that it functions in particular ways through NAGPRA to mark the political stakes of trade, excavation, and study of indigenous items by configuring indigenous people as sovereign political bodies.

24 For purposes of both the National Museum of the American Indian Act of 1989 (NMAIA) and NAGPRA, Native Hawaiians are extended corresponding legal authority to repatriate items as are federally recognized tribes and villages. The Native Hawaiian organization, Hui Malama I Na Kupuna O Hawai'i Nei (Group Caring for the Ancestors of Hawaii), and the Office of Hawaiian Affairs (OHA) are named within the NMAIA and NAGPRA as the Native Hawaiian organizations eligible to conduct repatriation of Native Hawaiian remains and objects and to participate in consultation relating to inadvertently discovered items on federal and Hawaiian Home Lands (those lands reserved for Native Hawaiians under the Hawaiian Homes Commission Act of 1920). For more informa-

tion, see Hui Malama I Na Kupuna O Hawai'i Nei's Web site at www.pixi.com/~huimalam.

25 The testimonies are available through the National Park Service at www.cr.nps.gov/nagpra.

26 Some excellent documentaries have represented the contestations between indigenous people and scientists over these issues, including Nicholas Nicastro's *Science or Sacrilege? Native Americans, Archaeology, and the Law* (1996), and Danielle Peck and Alex Seaborne's *Bones of Contention: Native American Archaeology* (1998).

27 The receipt read as follows: "Sold to Richard N. Corrow on this date for cash paid in full, all of the medicine bundles for yei be chai *[sic]* and fire dance including masks owned by Hosteen Ray Winnie of Lukachucki *[sic]*, AZ. Selling these medicine bundles or jish is the wife of the late Mr. Winnie, Fanny *[sic]*, and his granddaughter Rose, and his great granddaughter, Harriet, whose signatures are below. The selling price is in cash of $10,000. Received by below this date" (*United States v. Corrow* [1996], background section).

28 Parallel to these juridical debates are those silent/silenced participants, like Fannie Winnie. Scholarship to date has left Indian dealers and individuals who have sold to them as unaddressed actors within the market. What were her motives in selling the masks to Corrow? Why hadn't the Navajo tribal council laid claim to the masks before their sale, or why hadn't another family or clan member asked for their return?

29 The Draft Declaration on the Rights of Indigenous Peoples is included in several studies, including Simpson (1997) and Venne (1998). It can also be accessed on the United Nations Web site at www.un.org.

WORKS CITED

Adams, Jim. "Gover says 'Bring it on' to yet another BIA probe." *Indian Country Today* (August 1, 2001), at indiancountry.com.

Alfred, Gerald Taiaiake. *Power, Rights, Righteousness: An Indigenous Manifesto.* Toronto: Oxford University Press, 1999.

Anaya, S. James. *Indigenous Peoples in International Law.* New York: Oxford University Press, 1996.

Barker, Joanne. "'Indian-made': Sovereignty, Allotment, and Federal Identification Policies." History of Consciousness Department, University of California, Santa Cruz, 1995.

———. "'Indian-made': Sovereignty and the Work of Identification." Ph.D. diss., University of California, Santa Cruz. 2000.

Barker, Joanne, and Teresia Teaiwa. "Native InFormation." *Inscriptions* 7 (1994): 16–41. Special issue, "Women of Color in Collaboration and Conflict," ed. María Ochoa and Teresia Teaiwa.

Barsh, Russel Lawrence. "The Challenge of Indigenous Self-Determination." *University of Michigan Journal of Law Reform* 26 (1993): 277–312.

Belkin, Lisa. "Of Indian Roots, and Profits as Well." *New York Times*, September 29, 1988, A18.

Berger, Bethany Ruth. "After Pocahontas: Indian Women and the Law, 1830–1934." *American Indian Law Review* 21, no. 1 (1997): 1–62.

Berkhofer, Robert F., Jr. *The White Man's Indian: Images of the American Indian from Columbus to the Present.* New York: Vintage Books, 1979.

"Beware Blumenthal and BIA Recognition Reformers." Editorial, *Indian Country Today*, April 18, 2001. At indiancountry.com.

Bielski, Vince. "Trail of Blood." *San Francisco Weekly*, October 6, 1993, 11–13.

Bledsoe, Samuel Thomas. *Indian Land Laws*. New York: Arno Press, [1909] 1979.

Burton, Jeffrey. *Indian Territory and the United States, 1866–1906*. Norman: University of Okalahoma Press, 1995.

Carlson, Leonard A. *Indians, Bureaucrats, and the Land: The Dawes Act and the Decline of Indian Farming*. Connecticut: Greenwood Press, 1980.

Carrico, Patricia R. "Is It Indian Art? A 1990 Law Creates as Much Confusion as Clarity." *Washington Post*, May 28, 1993, 37.

Carter, Kent. *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893–1914*. Orem, Utah: Ancestry.com, 1999.

Clarke, Adele, and Theresa Montini. "The Many Faces of RU486: Tales of Situated Knowledges and Technological Contestations." *Science, Technology, and Human Values* 18, no.1 (winter 1993): 42–78.

Collier, John. *Memorandum, Hearings on H.R. 7902 before the House Committee on Indian Affairs*. 73rd Cong., 2d sess. U.S. Department of the Interior, Washington, D.C., 1934.

Cook-Lynn, Elizabeth. "American Indian Intellectualism and the New Indian Story." *American Indian Quarterly* 20, no. 1 (winter 1996): 57–76.

Davis, Floyd James. *Who Is Black? One Nation's Definition*. University Park: Pennsylvania State University Press, 1991.

Davis-Diaz, Pamela. "Looking for American Art?" *St. Petersburg Times*, June 26, 1993, 1D, 2D.

Debo, Angie. *And Still the Waters Run: The Betrayal of the Five Civilized Tribes*. Princeton, N.J.: Princeton University Press, 1940.

Deloria, Philip J. *Playing Indian*. New Haven, Conn.: Yale University Press, 1998.

Deloria, Vine, Jr. *God Is Red*. New York: Dell. 1973.

———. *Behind the Trail of Broken Treaties: An Indian Declaration of Independence*. Austin: University of Texas Press. 1974.

———. "Tribal Religions and Contemporary American Culture." In *Spirit and Reason: The Vine Deloria Jr. Reader*, ed. Barbara Deloria, Kristen Foehner, and Sam Scienta, 305–22. Golden, Colo.: Fulcrum, 1999.

Deloria, Vine, Jr., and Clifford Lytle. *The Nations Within: The Past and Future of American Indian Sovereignty*. New York: Pantheon, 1984.

DuBoff, Leonard D. "Protecting Native American Cultures." *Oregon State Bar Bulletin* (November 1992): 9–14.

Dumont, Clayton W. "Dead Family or Archeological Collections? On the Significance of Native Dead." Presentation at the "Race, Gender, Class: Third Annual Conference," New Orleans, Louisiana, October 18–20, 2001.

Feest, Christian F. *Native Arts of North America*. London: Thames and Hudson, 1980.

Ferguson, Christina D. "Martinez v. Santa Clara Pueblo: A Modern Day Lesson on Tribal Sovereignty." *Arkansas Law Review* 46, no. 1 (1993): 275–301.

Fixico, Donald L. *Termination and Relocation: Federal Indian Policy, 1945–1960*. Albuquerque: University of New Mexico Press, 1986.

Forbes, Jack. D. "Native Intelligence: Blood Quantum: A Relic of Racism and Termination." At www.cougar.ucdavis.edu/nas/faculty, and the People's Paths Web site at www.yvwiiusdinvnohii.net/Articles2000/JDForbes001126Blood.htm. 2000.

———. "Self-Determination Policy Proposed." In *Windspeaker,* Aboriginal Multi-Media Society Association. At www.ammsa.com/windspeaker/windguest.html. 2001.

Foucault, Michel. *Power/Knowledge: Selected Interviews & Other Writings.* New York: Pantheon Books, 1972.

———. *Discipline and Punish: The Birth of the Prison.* New York: Vintage, 1979.

Fujimura, Joan H. "Crafting Science: Standardized Packages, Boundary Objects, and 'Translation.'" In *Science as Practice and Culture,* ed. Andrew Pickering. 168–211. Chicago: University of Chicago Press, 1992.

GAO (General Accounting Office). "Indian Issues: Improvements Needed in Tribal Recognition Process." Report GAO-02-49. Washington, D.C.: GAO, October 2001.

Gonzales, Angela. "American Indian Identity Matters: The Political Economy of Identity and Ethnic Group Boundaries." Ph.D. diss., Harvard University, 2001.

Green, Elizabeth. *The Indians of Southern California and Land Allotment.* Long Beach, California: n.p., 1923.

Green, Joyce. "Sexual Equality and Indian Government: An Analysis of Bill C-31 Amendments to the Indian Act." *Native Studies Review* 1 (1985): 81–95.

Green, Rayna. "The Tribe Called Wannabee: Playing Indian in America and Europe." *Folklore* 99, no. 1 (1988): 30–55.

Guest, Richard A. "Intellectual Property Rights and Native American Tribes." *American Indian Law Review* 20, no. 1 (1997): 111–39.

Haraway, Donna J. "Universal Donors in a Vampire Culture: It's All in the Family: Biological Kinship Categories in the Twentieth-Century United States." In *Uncommon Ground: Rethinking the Human Place in Nature,* ed. William Cronon, 321–66. New York: Norton, 1996.

Harjo, Suzan Shown. "Senator Ben Nighthorse Campbell: A Colorado Cheyenne in the Corridors of Power." *Native Peoples: The Arts and Lifeways* (spring 1997): 58–62.

Harlan, Theresa. "Message Carriers: Native Photographic Messages." *Views* (winter 1993): 3–7.

Harring, Sidney L. *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century.* Cambridge: Cambridge University Press, 1994.

Harris, Angela. "Race and Essentialism in Feminist Legal Theory." *Stanford Law Review* (February 1990) 42, no. 3: 581–616.

Harris, Cheryl I. "Whiteness as Property." *Harvard Law Review* 106, no. 8 (June 1993): 1710–91.

Hogan, Lawrence J. *The Osage Indian Murders: The True Story of a Multiple Murder Plot to Acquire the Estates of Wealthy Osage Tribe Members.* Frederick, Md.: Amlex, 1998.

Hogan, Linda. 1990. *Mean Spirit.* New York: Random House.

Holmes, Joan. *Bill C-31, Equality or Disparity? The Effects of the New Indian Act on Native Women.* Ottawa: Canadian Advisory Council on the Status of Women, 1987.

hooks, bell. *Ain't I a Woman? Black Women and Feminism.* New York: Routledge, 1994.

———. *Outlaw Culture: Resisting Representations.* New York: Routledge, 1994.

Indian Arts and Crafts Board. *Rules and Regulations for the Enforcement of the Indian Arts and Crafts Act.* Washington, D.C.: Indian Arts and Crafts Board, 1996.

Jaimes, M. Annette. "Federal Indian Identification Policy." In *The State of Native America: Genocide, Colonization, and Resistance,* ed. M. Annette Jaimes, 123–38. Boston: South End Press, 1992.

Jamieson, Kathleen. *Indian Women and the Law in Canada: Citizens Minus.* Ottawa: Advisory Council on the Status of Women/Indian Rights for Indian Women, 1978.

Jenkins, Myra Ellen. *History of Laguna Pueblo Land Claims.* New York, Garland, 1974.

Kappler, Charles J., comp. and ed. *Indian Affairs, Laws, and Treaties: 1903–1929.* Vol. 4. Washington, D.C.: Government Printing Office, 1904.

Kauanui, J. Kehaulani. "'For Get' Hawaiian Entitlement: Configurations of Land, 'Blood,' and Americanization in the Hawaiian Homes Commission Act of 1920." *Social Text* 17, no. 2 (summer 1999): 123–44.

———. "The Politics of Blood and Sovereignty in *Rice v. Cayetano.*" *Political and Legal Anthropology Review* 25, no. 1 (2002): 110–28.

Keller, Mark. *The Chippewa Land of Keweenaw Bay: An Allotment History.* Baraga, Mich.: Keweenaw Bay Tribal Council, Keweenaw Bay Tribal Center, 1981.

Krosenbrink-Gelissen, Lilianne Ernestine. *Sexual Equality as an Aboriginal Right: The Native Women's Association of Canada and the Constitutional Process on Aboriginal Matters, 1982–1987.* Saarbrücken; Fort Lauderdale: Verlag Breitenbach, 1991.

LaFranchi, Howard. "Protecting the Integrity of Indian Art: Indian Artists Work to Strengthen Safeguards for Their Market." *Christian Science Monitor* 80, no. 217 (October 4, 1988): 3.

Laurence, Robert. 1992. "A Quincentennial Essay on *Martinez v. Santa Clara Pueblo.*" *Idaho Law Review* 28, no. 2: 307–47.

LaVelle, John P. "The General Allotment Act 'Eligibility' Hoax: Distortions of Law, Policy, and History in Derogation of Indian Tribes." *Wicazo Sa Review* 14, no. 1 (spring 1999): 251–302.

Leacock, Eleanor, and Jacqueline Goodman. "Montagnais Marriage and the Jesuits in the Seventeenth Century: Incidents from the Relations of Paul Le Jeune." *Western Canadian Journal of Anthropology* 6, no. 3 (1976): 77–91.

Lipsitz, George. *The Possessive Investment in Whiteness: How White People Profit from Identity Politics.* Philadelphia: Temple University Press, 1998.

Lomawaima, K. Tsianina. *They Called It Prairie Light: The Story of Chilocco Indian School.* Lincoln: University of Nebraska Press, 1994.

López, Ian F. Haney. *White by Law: The Legal Construction of Race.* New York: New York University Press, 1996.

Lund, Marsha. *Indian Jewelry: Fact and Fantasy.* Boulder, Colo.: Paladin Press, 1976.

MacKinnon, Catherine. *Feminism Unmodified: Discourses on Life and Law.* Cambridge: Harvard University Press, 1987.

Mason, W. Dale. *Indian Gaming: Tribal Sovereignty and American Politics.* Norman: University of Oklahoma Press, 2000.

May, James. "California: To Be Indian, or Not to Be." *Indian Country Today,* August 9, 2000. At indiancountry.com.

McCoy, Ron. "Legal Briefs." *American Indian Art Magazine* (winter 1996): 87–88.

McDonnell, Janet A. *The Dispossession of the American Indian, 1887–1934.* Bloomington: Indiana University Press, 1991.

McIvor, Sharon "Aboriginal Women's Rights as 'Existing Rights.'" *Canadian Woman Studies* 15 (spring/summer 1995): 4–8.

McMaster, Gerald R. "Borderzones: The 'Injun-uity' of Aesthetic Tricks." *Cultural Studies* 9, no. 1 (January 1995): 74–90.

Messenger, Phyllis Mauch, ed. *The Ethics of Collecting Cultural Property: Whose Property? Whose Culture?* Albuquerque: University of New Mexico Press, 1989.

Meyer, Carter Jones. "Saving the Pueblos: Commercialism and Indian Reform in the 1920s." In *Selling the*

Indian: Commercializing and Appropriating American Indian Cultures, ed. Carter Jones Meyer and Diana Royer. Tucson: University of Arizona Press, 2001.

Meyer, Carter Jones, and Royer, Diana, eds. *Selling the Indian: Commercializing and Appropriating American Indian Cultures*. Tucson: University of Arizona Press, 2001.

Mihesuah, Devon A., ed. *The Repatriation Reader: Who Owns American Indian Remains?* Lincoln: Bison Books, University of Nebraska Press, 2000.

Mikkanen, Arvo Q. 1991. "The Indian Arts and Crafts Act of 1990: An Outline of Major Provisions." In *Sovereignty Symposium IV: Circles of Sovereignty Conference Workbook*, 518–44. Oklahoma, 1991.

Morningstar, Heather. *How to Enroll in an Indian Tribe*. Denver: Arrowstar, 1993.

Moss, Wendy. "Indigenous Self-Government in Canada and Sexual Equality under the Indian Act: Resolving Conflicts between Collective and Individual Rights." *Queen's Law Journal* 15 (fall 1990): 279–305.

Nagel, Joane. *American Indian Ethnic Renewal: Red Power and the Resurgence and the Rise of Indian Activism*. Urbana: University of Illinois Press, 1996.

NARF (Native American Rights Fund). "The Federal Acknowledgement Process." At www.narf.org/pubs/justice/2000Fall/fall2000.htm. 2000.

Nicastro, Nicholas. *Science or Sacrilege? Native Americans, Archaeology, and the Law*. Dist. University of California Center for Media and Independent Learning, 1996. Documentary film.

Nicholas, Andrea Bear. "Colonialism and the Struggle for Liberation: The Experience of Maliseet Women." *University of New Brunswick Law Journal* 43 (1994): 223–39.

O'Brien, Sharon. *American Indian Tribal Governments*. Norman: University of Oklahoma Press, 1989.

Ong, Aihwa. "Making the Biopolitical Subject: Cambodian Immigrants, Refugee Medicine, and Cultural Citizenship in California." *Social Science Medicine* 40, no. 9 (1995): 1243–57.

Otis, D. S. *The Dawes Act and the Allotment of Indian Lands*. Norman: University of Oklahoma Press, 1973.

Owens, Louis. *Mixedblood Messages: Literature, Film, Family, Place*. Norman: University of Oklahoma Press, 1998.

Parsley, Jon Keith. "Regulation of Counterfeit Indian Arts and Crafts: An Analysis of the Indian Arts and Crafts Act of 1990." *American Indian Law Review* 18 (1993): 487–514.

Peck, Danielle, and Alex Seaborne. *Bones of Contention: Native American Archaeology*. BBC Production. Dist. Films for the Humanities, Princeton, N.J. 1998. Documentary film.

Perdue, Theda. *Nations Remembered: An Oral History of the Five Civilized Tribes, 1865–1907*. Westport, Conn.: Greenwood Press, 1981.

———. *Cherokee Women: Gender and Culture Change, 1700–1835*. Lincoln: University of Nebraska Press, 1999.

Peroff, Nicholas C. *Menominee Drums: Tribal Termination and Restoration, 1954–1974*. Norman: University of Oklahoma Press, 1982.

Pommersheim, Frank. "A Path Near the Clearing: An Essay on Constitutional Adjudication in Tribal Courts." *Gonzaga Law Review* 27 (1991/92): 393.

Prucha, Paul, ed. *Documents of United States Indian Policy*. Lincoln: University of Nebraska Press, [1975] 2000.

Resnik, Judith. "Dependent Sovereigns: Indian Tribes, States, and Federal Courts." *University of Chicago Law Review* 56 (1989): 671.

———. "Multiple Sovereignties: Indian Tribes, States, and the Federal Government." In *Judiacture: The Journal of the American Judiacture Society* 79, no. 3

(November/December 1999). At Tribal Court Clearinghouse Web site, www.tribal-institute.org/_articles/resnik_full.htm.

Rose, Wendy. "The Great Pretenders: Further Reflections on White Shamanism." *The State of Native America: Genocide, Colonization, and Resistance*, ed. M. Annette Jaimes, 403–22. Boston: South End Press, 1992.

Rusco, Elmer R. "Civil Liberties Guarantees under Tribal Law: A Survey of Civil Rights Provisions in Tribal Constitutions." *American Indian Law Review* 14 (1990): 269.

Schrader, Robert Fay. *The Indian Arts and Crafts Board: An Aspect of New Deal Indian Policy*. Albuquerque: University of New Mexico, 1983.

Shaffer, Mark, and Bill Donovan. "Manufacturing of Fake Kachinas Offend Hopi." *News from Indian Country*, February 1994, 6.

Silman, Janet. *Enough Is Enough: Aboriginal Women Speak Out*. Toronto: Women's Press, 1987.

Simpson, Tony. *Indigenous Heritage and Self Determination: The Cultural and Intellectual Property Rights of Indigenous Peoples on Behalf of the Forest Peoples Programme*. IWGIA Document No 86. Copenhagen: International Working Group for Indigenous Affairs, 1997.

Snipp, C. Matthew. *American Indians: The First of This Land*. New York: Russell Sage Foundation, 1989.

Stiffarm, Lenore A., with Phil Lane Jr. "The Demography of Native North America: A Question of Indian Survival." In *The State of Native America: Genocide, Colonization, and Resistance*, ed. M. Annette Jaimes, 23–54. Boston: South End Press, 1992.

Taliman, Valerie. "Disenrolled Paiutes Fight for Heritage." *Indian Country Today*, September 27, 2000. At indiancountry.com.

———. "Termination by Bureaucracy: Membership Denials in This New Economic Era. *Native Americas: Hemispheric Journal of Indigenous Issues* 19, no. 1–2 (spring/summer 2002): 8–17. Special issue, "Identity in the Crucible," ed. José Barreiro.

Thomas, Davis Hurst. *Skull Wars: Kennewick Man, Archaeology, and the Battle for Native American Identity*. New York: Basic Books, 2000.

Trask, Haunani-Kay. *From a Native Daughter: Colonialism and Sovereignty in Hawai'i*. Monroe, Me.: Common Courage Press, 1993.

Trope, Jack F., and Walter R. Echo-Hawk. "The Native American Graves Protection and Repatriation Act: Background and Legislative History." In *The Repatriation Reader: Who Owns American Indian Remains?* ed. Devon A. Mihesuah, 123–68. Lincoln: Bison Books, University of Nebraska Press, 2000.

Tsihnahjinnie, Hulleah J. *Nobody's Pet Indian*. Photocollage, San Francisco Art Institute, 1993. Reprinted in Bielski 1993 and Harlan 1993.

———. dir. *NTV*. Washington, D.C.: Smithsonian Institution, n.d.

U.S. Bureau of Land Management. *The Native Allotment Handbook*. [Anchorage, Alaska]: Bureau of Land Management, Alaska State Office, Division of Conveyance Management, 1991.

Vecsey, Christopher, ed. *Handbook of American Indian Religious Freedom*. New York: Crossroad, 1993.

Venne, Sharon Helen. *Our Elders Understand Our Rights: Evolving International Law regarding Indigenous Rights*. Penticton, British Columbia: Theytus Books, 1998.

WalkingStick, Kay. "Democracy, Inc.: Kay WalkingStick on Indian Law." *Artforum* 30 (November 1991): 20–21.

Wallis, Brian. "Indian Art Law Penalizes Native Artists." *Art in America* 81 (February 1993): 29.

Washburn, Wilcomb E. *The Assault on Indian Tribalism: The General Allotment Law*

(Dawes Act) of 1887. Philadelphia: Lippincott, 1975.

Whitely, Peter. "The End of Anthropology at Hopi?" *Journal of the Southwest* 35 (summer 1993): 125–57.

Whitt, Laurie Anne. "Cultural Imperialism and the Marketing of Native America." *American Indian Culture and Research Journal* 19, no. 3 (1995): 1–31.

Wilkins, David E. *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*. Austin: University of Texas Press, 1997.

———. *American Indian Politics and the American Political System*. Maryland: Rowman & Littlefield, 2002.

Williams, Robert A., Jr. *The American Indian in Western Legal Thought: The Discourses of Conquest*. New York: Oxford University Press, 1990.

———. "Gendered Checks and Balances: Understanding the Legacy of White Patriarchy in an American Indian Cultural Context." *Georgia Law Review* 24 (1990): 1019.

Wilmer, Franke. *The Indigenous Voice in World Politics*. Newbury Park: Sage, 1993.

Wunder, John R., ed. *Native American Sovereignty*. New York: Garland, 1999.