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# Government Defining a People: The Structural Violence Embedded in the Federal Acknowledgement Process

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GOVERNMENT DEFINING A PEOPLE: THE STRUCTURAL VIOLENCE  
EMBEDDED IN THE FEDERAL ACKNOWLEDGMENT PROCESS

A Capstone Experience Manuscript

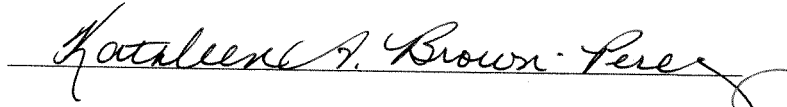
Presented by

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Completion Date:

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Kathleen A. Brown-Pérez, Commonwealth Honors College

## ABSTRACT

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Author: **Rebecca L. Reddish, Anthropology**

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## CHAPTER ONE

## INTRODUCTION

In this paper, I will prove the negative effects of the federal recognition process in regard to the seven mandatory criteria for federal recognition of American Indians. Furthermore, I will address the uneven and unjust handling of federal acknowledgement rulings by focusing on individual tribes' efforts to have a positive final decision. The federal recognition process exemplifies structural violence because it dictates which tribes benefit from federal programs and takes the unearned liberty of defining who is and who is not an American Indian, thus continuing to oppress and negatively impact the lives and livelihoods of American Indians and tribes.

The average length of time for a tribe to receive a final decision for federal recognition is 24 years, though often tribes can hang in a recognition limbo for even longer. Since 1978 and as of 2006, the BIA has made decisions on only 35 applications with an average of 1.3 per year despite the fact that almost 300 tribes have had intentions of petitioning (Matte 2006:202). In the case of the Little Shell Chippewa tribe, even after extensive research for over seven years and an initial favorable finding by the Branch of Acknowledgement and Research (BAR), additional research was demanded of them, requiring an additional five years of research. Many tribes seeking federal recognition are not financially stable enough to continue to perform and fund research for an extended amount of time and find the process of appeal exhausting of their resources.

### Definitions and Terminology

The term "Indian" and "tribe" can have a negative social construction of being the "noble savage," "red devil," or the "vanishing American," as well as having racial

connotations which might raise the questions of the extent to which the relationship the tribes have with the United States is based on race (Merline-McCulloch & Wilkins 1995:366). However, the term American Indian will be used throughout this paper for the reasons listed in Stephen Pevar's *The Rights of Indians and Tribes*. Pevar cites three reasons as to why "Indian" would be the most appropriate term one of which is that there seems to be a preference for the term "Indian" among native peoples. The term "Indian" is used in the titles of most organizations and groups such as the National Congress of American Indians and the American Indian Movement and lastly that most federal Indian laws and agencies use the term "Indian" (Pevar 2004: 1). Legally, a tribe is defined as being a "body of Indians of the same or similar race, united in a community under a leadership or government and inhabiting a particular though sometimes ill-defined territory" (Ford 1995:8). In addition, a tribe may "exist" for certain purposes and not for others depending on the context of the situation (Ford 1995:8). This definition does not indicate that a group of American Indians must be federally recognized to be deemed a tribe by non-governmental entities, thus there is a distinction between federal recognition and ethnic recognition.

The terms "federal recognition" and "federal acknowledgment" will be used interchangeably throughout this essay. The term "acknowledgment" connotes less the idea that a tribe is reliant on the federal government for confirming its identity and is used in some formal documents such as the Mandatory Seven Criteria for Acknowledgment. For that reason it might be preferred, but the term "recognition" is used by the Bureau of Indian Affairs frequently in other documents and is thus deemed equivalent in the same context as "acknowledgment."



The term “Indian Country” will be used in several instances throughout this essay and refers to all federal land that is set aside for the beneficial use of Indians. This is comprised of both land inside an Indian reservation as well as land outside the reservation that is set aside for the primary use of Indians (Pevar 2004:21) such as sacred lands and areas for fishing and hunting. In addition, states generally do not have jurisdiction over Indians within Indian Country (Pevar 2004:21).

In 1989, Congress passed the National Museum of the American Indian Act, which obligated the Smithsonian to go through the process of identifying and repatriating everything in their native collections (Pevar 2004:271). The Native American Graves Protection and Repatriation Act (hereafter NAGPRA) was passed shortly thereafter in 1990 and required that all federal agencies and institutions receiving federal funding take stock of all their artifacts related and belonging to Indian tribes, attempt to identify the tribe of origin, and then return those artifacts to that tribe (Pevar 2004:271). Essentially, this act gives American Indians the same rights and abilities of non-natives which was previously denied to them, and allows them to control their ancestral remains (Wilson 2009:406).

## CHAPTER TWO

## REVIEW OF THE LITERATURE

The federal acknowledgement process is important both as a historic issue and as a contemporary one and is essentially designed to force American Indians into operating within and accepting the dominant American culture. The criteria laid out for tribes to follow often do not coincide well with Indian traditions and are not uniformly applied to all tribes seeking federal recognition. This obligation not only to prove a tribe's identity as Indian, but also to do so in a manner that compromises the traditional life ways and often forces assimilation to the dominant American culture, exhibits structural violence and has negative effects both on the tribe themselves and the American Indian communities around them. According to James Parker Shield, the tribal chief of staff of the Little Shell Chippewa tribe, the process shows the problems that the lengthy recognition process can have for a tribe in his chapter on tribal nationalism. As far back as the 1950s, the Indian Claims Commission told the Chippewas that they would be able to bring a claim against the United States and pursue federal recognition. The Secretary of the Interior, however, continued to require additional work from the tribe before even putting the petition in place. Further consultations required further documentation and this continued for years. It wasn't until the year 2000 and after having to hire new researchers did the Interior finally issue a proposed favorable finding, though even this required five more years of documentation and research before the Interior would review the petition (Shield 2007:32). Ultimately, the Little Shell Chippewa did not receive federal recognition despite having dedicated years' worth of research and catered to the Interior's continual requests for information (Shield 2007:33).

Kenneth Parsons, who was awarded his Ph.D. in Philosophy from Michigan State University in 2004 and currently teaches Philosophy at SUNY-Monroe Community College in Rochester New York, addresses the issue of structural violence by adding onto the famous violence academic Johan Galtung's definition of the concept in order to make it more accessible and applicable to contemporary issues. People are exposed to structural violence when they are deprived of their ability to fight against the dominant culture or power. "The power structure [in the United States] is set up to benefit certain groups and disadvantage others" (Parsons 2007:175). As William W. Quinn Jr., who received his Ph.D. at the Arizona State University and his BA at the University of Arizona, so bluntly states, in the late 1800's when the question of what to do with tribes who were once treated as tribes but no longer were recognized as such, the prevailing idea of the period was that "all Indian tribes were inevitably to face extinction as such under the irreversible forces of 'civilization and progress' which, together, would bring a final solution to the 'Indian problem'" (Quinn 1990:347-8). The hope was, thus that, by forcing the Indian tribes into structures that they were unfamiliar with and unaccustomed to operating under, the dominant culture in the United States could stamp out the "underdog" in the situation.

Federal recognition is desirable for tribes for several reasons which mostly stem from the relationship constructed between the tribe and the federal government. In her paper on the MOWA Choctaws of South Alabama, Jacqueline Anderson Matte, a retired teacher with a master's degree in history and education from the University of Alabama at Birmingham and a B.S. from Samford University, discusses that federal recognition improves a tribe's potential to gain federal assistance in health care, housing, education

and business development. In addition, it provides a recognized legitimacy of the tribe's Indian identity (Matte 2006:168). David E. Wilkins, an assistant professor of political science at the University of Arizona in Tucson adds that political recognition, as it was seen after the 1870's, is a formal construction of a relationship connecting tribes and the federal government (Wilkins 1993:126) This construction outlines the responsibilities of the federal government created as a response to that established relationship such as the immunities and privileges of the tribes and the federal powers, limitations and obligations of the federal plenary power (Wilkins 1993:126).

An additional reason for a tribe to seek federal recognition has to do with the Native American Grave Protection and Repatriation Act (NAGPRA) and their relationship with federally recognized tribes versus non-recognized tribes. Diana Drake Wilson, who received her Ph.D. in cultural anthropology from UCLA in 1994 and is now the NAGRPA coordinator there, notes that remains that are culturally affiliated with American Indian groups that are not formally recognized by the BIA are deemed "unidentifiable remains" and are not returned to those tribes (Wilson 2009:408-9). This is an obvious injustice to those who, though they've struggled for a long time, cannot gain federal recognition and thus cannot regain what rightfully belongs to them (Wilson 2009:405).

Although the reasons listed above often provide enough incentive for a tribe to seek federal recognition regardless of the trials they have to endure, not all tribes care to seek federal recognition at all. Mark D. Myers, a third year J.D. candidate at Stanford Law School notes that the Cherokees of California did not petition for federal recognition. Some reasons might include previous state recognition, the unwillingness to

undergo the recognition process or the foresight to see that, were they to petition for federal recognition, they would not be able to satisfy one or more of the requirements and thus would simply waste time and resources (Myers 2001:275).

Christopher A. Ford, who received his associates, A.B, Ph.D., and J.D. from Shea & Gardner, Washington D.C., Harvard, Christ Church at Oxford University and Yale Law School, respectively, remarks upon the importance of treating Indians as political entities rather than racial groups and how, if the federal government deals politically with a group like an Indian tribe, then this allows for a *de facto* political recognition of that tribe. This political recognition can help to set a precedent for future attempts at gaining further federal recognition (Ford 1995:8). Ideally, this allows for federal recognition to be based on politics rather than on race, though as Anne Merline-McCulloch, a professor of political science at Columbia College in Columbia, South Carolina, argues in her article co-authored with David E. Wilkins that, though the United States deals with Indian governments in a political way because of sovereignty and not race (Merline-McCulloch and Wilkins 1995:364) the social constructions of what the Indian “race” should be and act like play into whether or not a group is deemed to be Indian enough for federal recognition (Merline-McCulloch and Wilkins 1995:369).

Several sources cite the results that being an unrecognized or terminated tribe can have on the overall well-being of its members. The American Indian Policy Review Commission, created in 1975, “found that the results of non-recognition were devastating for Indian Communities, leading frequently to total loss of land and deterioration of cohesive effect tribal governments and social organizations” (Matte 2006:193). In

addition, compared to federally recognized tribes, unrecognized tribes were generally poorer, less educated and prone to more health problems (Matte 2006:193).

Rachael Paschal, a professor at the Washington School of Law, uses Washington State to illustrate how, due to non-recognition, tribes can become landless as well as lose their rights to fish in the Puget Sound fisheries even on a subsistence basis. “In addition, the court’s decision [to not honor the fishing treaties of unrecognized tribes] prompted the BIA to cease providing services to these tribes. Thus, unrecognized tribes in Washington currently lack both land and access to treaty fisheries” (Paschal 1991:3). James Parker Shield describes his tribe’s history and suffering while seeking federal recognition and remarks that those Chippewas who were not found “eligible” to enroll in the Chippewa tribe and thus live on the newly formed Rocky Boy’s Reservation in extreme poverty (Shield 2007:30).

A study performed by David B. Oxendine, a professor in the School of Education at the University of North Carolina at Pembroke, and Rupert W. Nacoste from North Carolina State University, on Lumbee tribal members demonstrates the painful process that is federal recognition. They conclude by discussing the social stigma of being an American Indian and questions why one would willingly claim to be a member of such a group if they were not what they claimed to be. They add that, if the framework in which a group of people construct a social identity for themselves is denied, “perhaps the positive aspects of an identity with their group are denied as well” (Oxendine and Nacoste 2007:1622).

Simply examining the federal recognition criteria standing alone is not very illuminating. However, it is by examining individual tribes’ experiences with the federal

acknowledgement process and their struggles to meet the criteria in a manner sufficient for the federal government's standards, that an understanding of the violence imbued in this process can best be understood. As explained, there is great motivation for a tribe to seek federal recognition due in large part to the federal financial benefits, gained legal and political standing, as well as for a sense of validation (Wilkins 1993:132-134). This means that a tribe must, in order to gain federal recognition and benefit from federal programs, perform exhaustive research about their history as well as ensure that the resources they provide for their recognition bill are acceptable as proof to the federal government.

In a later publication than the one reference earlier, William W. Quinn Jr. addresses the creation of the criteria for recognition in a positive light. He claims that they bring a needed structure to the recognition process (Quinn 1992:68), and, though most sources and specific cases of petitions for federal recognition referenced here denote the restrictive and often unfair nature of the BIA's seven criteria for recognition, it is important to reference Quinn's views as well.

A tribe will often struggle with one specific criterion that conflicts with their research process or traditional methods and this struggle can frequently result in a rejection by the federal government of the tribe's petition for recognition. Because of the relatively large amount of research on the Lumbee Nation of Robeson County, North Carolina who have been seeking federal acknowledgement for over one hundred years (Wilkins 1993:128). The Lumbee Nation's struggles to prove to the federal government, as well as to other Indian tribes, that they are a single unified tribe with elements of "real" Indian culture such as a distinctive aboriginal language and a distinct tribal religion

(Wilkins 1993:140). This need to have members who are part of the same autonomous tribe conflicts with the fact that the Lumbee, the largest unrecognized tribe in the country (Wilkins 1993:125) identifies as six autonomous tribes under one tribal name.

In his article written with Anne Merline-McCulloch, Wilkins and McCulloch compare the Lumbee tribe's problems with obtaining federal acknowledgement with those of the Catawba tribe from of South Carolina. Where the Lumbee fail to present themselves as a cohesive tribe, the Catawba have success. Through outsiders' accordance of the tribe's legitimacy, sustained traditional art in the form of pottery and a relatively uniform religion throughout the community, the Catawba were able to present themselves as "Indian" enough to appease others' views of them (Wilkins and Merline-McCulloch 1995:381). Similarly, because the Catawba had been the victims of land complaints and injustice via the state of South Carolina and were relatively poor, the public saw the legitimacy for the benefits demanded by the tribe through federal recognition. The Lumbee were perceived to not have had the same type of negative history with the government as the Catawbas, and this hindered the tribes' claim for support (Wilkins and Merline-McCulloch 1995:382). Both these points highlight the importance of the perception of a tribe by the public as well as the fact that "constructs of 'Indian' can vary from person to person and from agency to agency" (Wilkins and Merline-McCulloch 1995: 384) which is counterintuitive to the idea of a federal law which is supposed to be equally applicable to everyone.

Jacqueline Anderson Matte addresses the failure for the "heritage" criterion to be accessible to tribes such as the MOWA Choctaws of Southern Alabama who, though they are required to provide evidence of genealogical connections to historic Indian tribe in a



manner fitting to Euro-American methods of recording, cannot possibly provide such evidence as their naming patterns, even after adopting European names, were not linear and often would not verify a lineage (Matte 2006:166). Even where government agents were involved in recording names, they often spelled them phonetically and thus the true names were lost and cannot be connected to Choctaws even twenty five years later (Matte 2006:166). The MOWA Choctaws, however, understand their own lineage and use oral accounts to validate them. Despite the presence of examples of written accounts that authenticate Choctaw oral accounts, the BIA will not accept them as reliable. Thus the MOWA Choctaw, if they wish to continue their struggle for federal acknowledgement are required to “abandon or modify traditional patterns of social organization in favor of other patterns” (Matte 2006:195) in order to prove that they are who they say they are.

Stephen A. Mrozowski, of the Fiske Center for Archaeological Research in the Department of Anthropology at the University of Massachusetts Boston, Holly Herbster, of the public Archaeology Laboratory in Pawtucket, Rhode Island, David Brown from the Department of History in the College of William and Mary in Williamsburg, Virginia, and Katherine L. Priddy from the Cultural Resources Inc in Fredericksburg, Virginia report on the Nipmuc Nation’s methods of seeing federal recognition through archaeology. The Nipmuc Nation, though originally successful in being federally recognized, had their recognition reversed due to their “inability...to demonstrate cultural continuity as a tribal entity” (Mrozowski et al. 2009:459). This article poses the idea that material culture could and should be used to help substantiate claims of indigenous peoples. For example, material culture found through archaeology at the Magunkaquog, Hassanamesit Woods and Cisco Homestead near the Nipmuc corroborate their claims to

continued inhabitation of the area as a native tribe (Mrozowski et al. 2009:459).

However, similar to the MOWA Choctaw, the nature of the Nipmuc's substantiating claims does not fit with the federal government's accepted forms of evidence.

In the case of the Houma Indians of Louisiana, as shown in the article by, N. Bruce Duthu, a professor of law at Vermont Law School and visiting associate professor in Native American Studies at Dartmouth College, the federal government has recognized that the Houma have been identifiably American Indian since 1900 and yet they do not meet the other criteria needed to be officially federally recognized (Duthu 1997:432). The Houma's situation illustrates how the federal government, though they may not officially recognize a tribe, cannot truly take away the history and the identification of the members of the tribe. "Tribes like the Houma do not cease being 'Indian' as a result of this [federal recognition] process. All that happens is that the federal government, exercising its self-ordained sovereign prerogative, chooses not to recognize the group" (Duthu 1997:436).

As discussed before, a common necessity for successful federal recognition is a positive appearance as an Indian community. Though it seems as though this would apply mostly to federal officials who are the ones making decisions about recognition, many sources examine the regards that other federally recognized tribes have for those seeking acknowledgement. In the case of the Lumbee Nation, the size of the tribe greatly affects others' opposition of their gaining federal recognition. Non-Lumbee indigenous groups opposed the recognition bill introduced to Congress in the 1980s because they were afraid that they would be group with the Lumbee Nation and thus never be able to seek recognition on their own (Wilkins 1993:125). Recognized tribes such as the Mississippi

Choctaws saw the Lumbee as a “tri-racial isolate” with an emphasis on African ancestry and thus didn’t consider them to be truly Indian (Wilkins 1993:141).

Tribes that are federally recognized often feel threatened by tribes who have the intention to seek federal recognition or who are in the process of obtaining it. Newly identified Indian people and tribes often identify themselves under names of already sovereign people such as the Cherokee Nation. As Circe Sturm, an employee of the University of Oklahoma, details, in the 1980’s, the Cherokee Nation and the Eastern Band of Cherokee Indians in North Carolina began to take notice of the growing trend of Indian groups identifying as Cherokee and opposed this trend due to a fear that such claims would undermine their rights as a sovereign tribe (Sturm 2007:230-1).

The uneven interpretation of the criteria for federal acknowledgement can cause a lot of strife in the American Indian community where, as Rosemary Sweeney, who obtained her Ph.D. from the University of Washington School of Law, remarks on the fact that a lack of evidence is not enough to rule that events and interactions never took place, especially when gaining evidence of such would be nearly impossible (Sweeney 2001/2002:231). So what kind of steps can be and should be taken in order to fix the obvious faults in the federal acknowledgement process? Philip P. Frickley, a professor at the University of California at Berkeley suggests the seemingly idealist idea of making a constitutional amendment. However, he also suggests a study commission that would look at the issues of the process and recommend reforms to the system (Frickey 2005:489). He acknowledges as well that “any jurisgenerative process would require a serious commitment from the tribes, the federal branches, and the states to engage in the process with equal concern and respect” (Frickey 2005:489). Erich W. Steinman, a

professor at Reid College, views the law and Indian tribes' interactions with the law as a way to create social change. With increased awareness of how laws can be used to support tribal sovereignty and power, indigenous peoples can use these laws to help change the policies set up by the federal government (Steinman 2005: 761).

## CHAPTER THREE

## EXPLANATION OF CURRENT METHODOLOGY AND GOALS

Research Methods

This research paper concentrates on the issues surrounding the federal acknowledgment process of American Indians and does so primarily by examining the struggles of individual American Indian tribes seeking to gain federal recognition. The research focuses on these accounts in scholarly literature such as peer reviewed journal articles and topical books, which are often compilations of several authors' works on a single subject or issue and how that subject or issue affects different tribes. Through the use of library databases and citation maps on those databases, I was able to obtain peer reviewed journal articles that addressed similar problems and thus gain insight from a variety of perspectives. Past courses in the Anthropology department at the University of Massachusetts Amherst proved useful owing to the information acquired from such experiences as well as the access to relevant sources.

Personal critical analysis was useful in identifying the structural violence of the seven mandatory criteria and their favoring of Euro-American ideals. This analysis led to a connection with individual tribes' issues with gaining federal acknowledgment which lies at the core of this research project.

Purposes and Scope of the Paper

The American Indian Policy Review Commission, which was founded in 1975, determined that the results of non-recognition were extremely detrimental to a tribe financially, governmentally, socially and in many cases, dissolved what cohesiveness existed within the tribe prior to the ruling (Matte 2006:193). By examining the flaws of

the federal recognition process, this paper will seek to illuminate negative effects of the process and will conclude with suggestions for further research about how the vertical power structure of the United States might be circumvented and what would result from this structural modification.

## CHAPTER FOUR

## BACKGROUND

What is Federal Recognition?

The term “federal recognition” was coined in 1934 under the Indian Reorganization Act (Wilkins 1993:137) and, according to the Bureau of Indian Affairs (BIA), federal recognition establishes a government-to-government relationship between a tribe and the federal government and it thus appoints that tribe “with the responsibilities, powers, limitations, and obligations attached to that designation” (Bureau of Indian Affairs 2010). Federally recognized tribes are eligible for services and benefits from the government as well as gain a limited tribal sovereignty. They are thus guaranteed that any decisions that would somehow impact the tribe are made with their participation and their consent (Bureau of Indian Affairs 2010). “Federal Acknowledgment is a prerequisite to the protection, services, and benefits of the federal government available to Indian tribes by virtue of their status as a tribe” (Ford 1995:1) and thus forms a political relationship between the United States and the tribe (Wilkins 1993:126). Essentially, the federal recognition process defines who is and who is not considered to be an American Indian and is based, in part, on a tribe’s externally and internally built social identities (Merline-McCullugh and Wilkins 1995:362).

The process to gain federal acknowledgment involves extensive administrative obstacles. A tribe is required to file a letter of intent with the Department of the Interior to achieve tribal status. In addition they must create and submit a formal petition with evidence to support their legitimacy in accordance with the seven mandatory criteria for federal acknowledgment. Lastly there is an administrative notice and comment period

(Ford 1995:2). During this process, the BIA returns to the tribe its findings which includes four sections, “a Summary of Criteria and Evidence, a Genealogical Report, an Anthropological Report, and a Historical Report” which, in the case of positive findings will average around 245 pages and will take several years to complete (Sweeney 2001/2002:210). If necessary, an appeals process for a negative ruling can further lengthen the administrative process which, though designed to only take a tribe two years to complete, in reality, keeps them in an endless loop of research and expenditure, which often completely exhausts a tribes’ resources (Matte 2006:202).

The seven mandatory criteria for federal recognition, as presented by the BIA and detailed in 25 C.F.R. Part 83.7, are as follows:

- (a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.
- (b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.
- (c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.
- (d) A copy of the group’s present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.
- (e) The petitioner’s membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.
- (f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe.



(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. [25 CFR, Part 83.7]

These criteria have been the basis of much strife in American Indian communities because of their specificity and their construction with the consideration of Euro-American ideals, which will be discussed later in this paper. Critiques of the criteria claim that “the Federal acknowledgment process is confused, unfair, and riddled with inconsistencies. Much of the confusion is due to the insistence that Indian communities meet criteria which, if it had been applied in the past, would have disqualified the vast majority of presently recognized Indian groups” (Matte 2006:168).

In contrast, some view these criteria, created first in 1978 and later, after much call for it, revised in 1994, as a sorely needed introduction of structure to the federal recognition process which had been an “anomalous and ambiguous corpus of federal Indian law” (Quinn 1992:68).

Some of the revisions made in 1994 make it easier for tribes to satisfy the criteria. For example, in the unrevised version, a tribe had to prove that it was a distinct Indian entity “since historic times,” but it was later modified to “since 1900.” Also, rather than having a land requirement, a tribe must show that they have a distinct community, which is broader than the previous geographic constraint (Merline-McCulloch and Wilkins 1995:363). However, issues with the criteria are still prevalent regardless of the most recent changes.

#### What is Tribal Sovereignty?

Because tribes are recognized to have been self-governing before European colonization of the Americas, they have the right to intrinsic sovereign authority over

their own affairs. This means that states, in theory, should not be able to enforce their own laws within Indian Country. In addition, a sovereign power has the right to self-government, self-definition, self-determination, and self-education (Wilkins and Lomawaima 2001:249). Despite lacking the “political safeguards” of statehood, federally recognized tribes actually have a higher status, even though it may not be immediately evident (Wilkins 1993:142). The concept of sovereignty is a straightforward one in theory because its original definition confers on a nation absolute power over its own people and actions in regards to other nations (Deloria 1996:118). However due to its fluid definition over time, it is very complicated in practice.

Tribes, states, and the United States are bound together by a complex web of overlapping jurisdictions, contested boundaries, reciprocal obligations, unilateral power plays, greed, generosity, self-interest, common goals, competition, cooperation, occasional hideous violence, and occasionally glorious celebration.

[Wilkins and Lomawaima 2001:249]

Due in part to the aforementioned conflicts, the extent of tribal sovereignty has been a point of contention between the tribes and opposing factions.

In fact, this right to tribal sovereignty has been altered over the years and even though tribes still can exercise their inherent tribal governance and sovereignty, the Congress possesses the power to modify the amount of power the tribes have over their land and members (Pevar 2004:86-87) which is due to the fact that Congress has plenary, or complete, power over Indian affairs (Pevar 2004:59). Chief Justice John Marshall laid the theoretical groundwork for federal Indian law and the doctrine of tribal sovereignty (Ford 1995:2). According to his rulings, federally recognized American Indian tribes are

considered domestic dependants of the United States and thus have a relationship akin to a “ward and his guardian” (Quinn 1992:68; Wilkins 1993:141). Though Congress has this plenary power over Indian governments, it is not an absolute power to the extent that Indian nations still have sovereign powers, and in the sense that Congressional power is limited by the United States Constitution (Kickingbird et al. 1996:17).

Because federal recognition is essentially acknowledging the presence of another *governing* body inside the United States, the relationship between tribes and the federal government is strictly a political one rather than a racial one. Thus, any intergovernmental relations between the federal government and the tribes avoid any laws against racial inequality by treating the Indians as political entities and can therefore escape constitutional scrutiny (Ford 1995:6). For example, the BIA took the initiative to hire more American Indians from federally acknowledged tribes and was able to escape accusations of racial favoring because the newly appointed BIA members were viewed as political entities (Ford 1995:6).

#### The Termination Era and its Effects

In the name of the tribes’ best interest, the Hoover Commission, issued in 1949, advocated the assimilation of American Indians into dominant, Euro-American society (Pevar 2004:11). In August of 1953, Congress adopted the House Concurrent Resolution 108 which obligated Congress to the termination policy. Later that year, Congress passed Public Law 280 which turned the tribal governments’ jurisdiction in five states over to the state courts (Walch 1983:1185). The Termination Era refers to when Congress ended the federal-tribal trust relationship with 109 tribes. One of the main goals of the Termination Era was to eliminate Indian reservations and thus allowed the states to have

control over Indian affairs such as taxation on Indian land which was no longer held under federal trust. In addition, federal programs such as health care and education would no longer be offered to terminated tribes (Wilkinson and Biggs 1977:141). Beginning in 1954, Congress passed individual termination acts which ended the tribal sovereignty and dissolved the federal recognition of almost 110 tribes in eight different states (Walch 1983:1186), 13,263 individuals, and had an accrued loss of 1.3 million acres of tribal lands (Cobb and Fowler 2007:xv).

Terminations of tribes immediately showed negative effects. Reservations of terminated tribes were sold either wholly or in part, which gave rise to a need for relocation of American Indians to other parts of the country. Education levels and quality decreased and many Indians were unable to acquire jobs off their former reservations either because they were ill-equipped to do so or because of racial discrimination. No longer eligible for tribal resources, they had difficulty paying the state income, property and sales taxes now imposed upon them. In addition to the financial instability and land loss, terminated Indians suffered from a loss of community because of the disbanding of their tribal governments (Walch 1983:1189-1190).

The termination era ended in 1968 under the presidency of Lyndon B. Johnson who stated that “[the federal government] must affirm the rights of the first Americans to remain Indians while exercising their rights as Americans. [They] must affirm their rights to freedom of choice and self-determination” (Pevar 2004:12). This started a new era of federal Indian policy but, despite the fact that Congress recognized the termination era as a failure and their support of self-determination, they have never created a comprehensive repeal of termination. Some tribes who were terminated during that time have appealed

their termination and gained federal recognition, but there are still many who have never regained their relationship with the federal government (Walch 1983:1192) and some who have even had their attempts to do so hindered by the fact that they had been terminated. Tribes such as the Wyandotte, Peoria, Ottawa, and Modoc tribes of Oklahoma have had their federal recognition restored after termination but did not have their reservations restored to them, thus not affording them the tribal jurisdiction and authority they had before termination (Walch 1983:1193).

Despite the obvious setbacks of the termination era, some tribes, such as the Choctaw Nation in Oklahoma saw it as an opportunity to escape the power that the federal government had previously exerted over them (Kidwell 2007:127). Though they struggled to subsist on cotton and corn farming and lived mostly in poverty, loss of federal recognition, to them, did not mean a loss of identity. Preservation of language, communities, and cultural practices kept the Choctaw alive as a tribe. They didn't require the validation of the federal government in order to prove their identity to themselves (Kidwell 2007:127).

#### What are Cultural and Structural Violence?

When examining violence, it is important to acknowledge and understand the interconnectedness of different types of violence which includes direct violence, structural violence, and cultural violence. Cultural violence embodies the different aspects of culture such as religion, ideology, language, science, and art which can be used in order to justify and normalize direct and structural violence committed against others (Galtung 1990:291). Thus, when one studies violence they must look both at the use of

violence as well as the legitimization of that violence and the underlying reasons for them (Galtung 1990:291).

There are several elements that a dominant culture embodies in order to subject violence on another group of people. Power is exerted when a group of people act together for a common goal. Authority can be invested either individually or in offices and demands a certain amount of respect for the office itself. Violence is distinguished by how it is implemented and relies on the acquisition of power and authority (Arendt 2004: 239).

Structural violence works on a deeper level than the physicality of violence, or direct violence. It thrives on the disparities between groups of people who have unequal access to resources, be they physical resources for survival such as food, or more intangible ideas such as power and the opportunities for cultural expression. Violence can be seen as depriving others of basic needs which can be classified into four different types. Each type has a negation that is the outcome of that deprivation. These include “*survival needs* (negation: death, mortality); *well-being needs* (negation: misery, morbidity); *identity meaning needs* (negation: alienation); and *freedom needs* (negation: repression)” (Galtung 1990:292). It is therefore important to consider that indirect harm can be the result of violence rather than simply the direct harm, and it is this result that is often the most pertinent to structural violence (Parsons 2007:174).

Because of the natures of cultural and structural violence, they often coincide with one another in practice, but should be not confused for one. This conflation of cultural and structural violence often is based on the fact that poverty, a common effect of structural violence, is regularly associated with certain cultures and thus it is concluded

that the violence against an impoverished cultural group is a result of cultural violence. However, the mistake in this is that, by ruling in favor of cultural violence, one might miss the structures that are playing a role in the situation (Farmer 2004:287).

Frequently cultural violence is implemented due to a structural or socioeconomic difference which allows the dominant culture to oppress the disadvantaged traditional cultures such as those of indigenous peoples. This disparity creates a vertical structure of power which is the root of violence of repression (Galtung 1996:94). “Those individuals who are forced into particular situations where their choices are predetermined for them by a structure not of their own choosing are the objects of structural violence” (Parsons 2007:175). This manifests itself clearly in the case where the federal government has control over the legal identity of American Indian tribes.

#### Benefits of Federal Acknowledgment

There are numerous reasons why a tribe would seek federal acknowledgment, many of which are a result of the fact that it is a “formal act that establishes a political relationship between a tribe and the United States” (Wilkins 1993:126). Federal recognition enhances a tribe’s prospective of assistance in health care and housing as well as educational aid and business development. In addition, it gives a formal legitimacy to the tribe. For example, Cherokee anthropologist Robert K. Thomas remarked on the Lumbee tribe as searching for validation. “Many would like some official agency to not only validate them as Indians, but to validate them as descendants of a historic Indian group” (Wilkins 1993:134). However, this idea of gaining a formal legitimacy as dictated by the federal government might not be an appetizing idea for all tribes. The Lumbee

specifically are searching for this validation due to certain issues in their attempts to gain federal recognition which will be detailed later in this paper.

Politically, a federally recognized tribe would gain a limited sovereignty over its own territory and people and thus establish and maintain its own separate government. This would ensure jurisdictional authority over those areas in which the tribal government has been granted such power. Similarly, tribes would gain some protections from state and local infringement on their land (Wilkins 1993:132). Federally acknowledged tribes gain access to services such as medical and dental aid, educational funds and support, housing, and eligibility for certain loans. In some cases, such as with the Lumbee, tribes may be eligible for legal or financial aid but are not able to acquire funds until Congress appropriates it to them (Wilkins 1993:132).

A tribe might seek federal acknowledgment in part because it would make them eligible for repatriation of artifacts and ancestral remains belonging to their tribe that are currently housed in museums and research institutions. NAGPRA is written so that only federally acknowledged tribes can regain that which has been taken from them without their consent. This includes ancestral remains as well as artifacts of cultural patrimony, and sacred artifacts such as those buried with ancestors as offerings (Wilson 2009:405). Contrary to the Euro-American common idea that bones are merely the nameless vestiges of a living person and thus useful chiefly as scientific and archaeological tools, many American Indians place importance on the bones themselves and consider them to be contiguous with the spirits of their ancestors and the land regardless of when they ceased to be *living* souls (Wilson 2009:407).



However NAGPRA applies only to those tribes who are federally recognized as Indian groups. In other words, the tribe must be eligible for special programs and services offered by the federal government in concurrence with their status as Indians (Wilson 2009:409). Tribes are required to be both federally recognized to be eligible for NAGPRA and ethnographically recognized in order to determine cultural affiliation with artifacts. Thus non-recognized groups of American Indians are not able to make claims on cultural objects or remains regardless of whether or not they can prove a connection to the object with their peoples. The importance of repatriation to American Indian tribes can act as a great incentive for a tribe to seek federal recognition.

Though the benefits of being deemed a federally recognized Indian tribe may make it seem as though petitioning for acknowledgment would be the aim of all peoples who self-identify as American Indians often tribes, such as the Cherokees of California, will choose not to endure the process at all for several reasons. A tribe might already have previous state recognition which would make the attainment of *federal* recognition illogical as they are already receiving certain benefits provided by the state. Others might choose not to begin the research and work for the federal acknowledgment process because they recognize that they would be unable to satisfy all the stipulations put forth in the seven criteria and would thus be wasting their time and exhausting much if not all of their valuable resources. Some are simply unwilling to go through the extremely trying recognition process (Myers 2001:275).

## CHAPTER FIVE

## TRIBAL EXPERIENCES WITH FEDERAL ACKNOWLEDGMENT

All tribes are required to research their own histories and provide evidence that they fulfill the seven mandatory criteria for federal acknowledgment regardless of their histories or backgrounds. Because of the great diversity of American Indian tribes, it is impractical for one set of criteria to have to apply to all groups. The presentation of the criteria and the Euro-American ideals that they are based upon often causes a lot of conflict and controversy for tribes who are unable or unwilling to conform their cultures in order to fit the demands of the federal government.

The Lumbee Nation of Robeson County

The Lumbee tribe resides in southeast North Carolina in Robeson County, which is the largest county in the state. Robeson County is unique in that it is tri-racial with a 26.2% black, 42.8% white and 20.5% American Indian population (Wilkins 1993:123). In 1956, during the Termination Era, Congress terminated the Lumbee and, unlike some other tribes, have not regained their federal recognition despite ardent efforts ever since (Wilkins 1993:129). They remain the largest unrecognized tribe in the country, with membership numbering around 39,000 ( (Wilkins 1993:125). The Lumbee Nation has a number of factors that are preventing their acknowledgment.

Before the 1880's, the Lumbee did not have a formal relationship with the state as they had previously attempted to avoid contact with colonial America but, in 1885, their "invisible" status in the state became detrimental to the tribe. With the construction of separate "white" and "black" schools, the American Indians in the area did not have anywhere to send their children ( (Wilkins 1993:130). Consequently, a law was enacted

acknowledging the Lumbee as Indians under the name “the Croatan Indians of Robeson County” but this did not set up any political framework other than to give the tribe rights of educational control over their own people. In the 1950s, the Lumbee campaigned for a name change as their previously recognized name referenced the Cherokee in the area with whom they did not associate themselves. In 1953, they successfully adopted the geographic name “Lumbee Indians of North Carolina” after the Lumber River due to the fact that they were comprised of several tribes of people. The Lumbee were then treated like Euro-American citizens as opposed to black citizens, but were not quite recognized as Indians in that they were not allowed self-governance, nor were they given any governmental immunities (Wilkins 1993:131).

One of the main reasons why the Lumbee have not secured federal acknowledgment has to do with both internal and external confusion over the identity of the tribe itself. Some believe the Lumbee to be a blending of three tribes, namely the Hatteras, the Saponi, and the Cheraw. The Lumbee represent themselves as six autonomous tribes and, because of this *mélange*, are often said to lack tribal elements of “real Indians” such as a distinctive aboriginal language and a distinctive tribal religion (Wilkins 1993:140).

Even other recognized tribes, such as the Mississippi Choctaws oppose the Lumbee’s recognition because they view them simply as a “tri-racial isolate” rather than a single, cohesive tribe (Wilkins 1993:141). Due to the nature of Robeson County, the Lumbee have a blending of Euro-American and African American history with their own and thus do not seem “Indian” to outsiders. They also lack treaties with colonial states or federal powers which weakens their argument that they were politically recognized in the

past. This lack of treaties also means that the Lumbee are perceived as not having suffered from *broken* treaties with the federal government and this, paired with the size of the tribe, make them lose any sympathy they might have been able to garner from non-Indians and western tribes (Merline-McCulloch and Wilkins 1995:382). They also never inhabited a reservation and thus cannot prove their territorial dimensions (Merline-McCulloch and Wilkins 1995:381).

In 1970, one of the separate tribes who had previously identified with the Lumbee splintered off to form the Eastern Carolina Tuscarora Organization, seemingly supporting the idea that the Lumbee were not a single unified tribe (Wilkins 1993:125). This simultaneously works against the Lumbee's petition for federal recognition because, in several instances, the seven criteria call for the tribe to be an autonomous unit and for the members to not belong to any other federally recognized tribe. There is a great importance placed on the way a tribe portrays themselves and the Lumbee do not conform to the Anglo ideal of a "tribe" being a tight-knit and cohesive unit that shares a common identity.

The Lumbee have sought federal acknowledgment during three periods, two of which were during times in which tribes were being destabilized. One was from the 1880s to 1924 when tribes were being allotted land and funds in order to force assimilation into Euro-American society. With the passing of the Indian Reorganization Act, the Lumbee once again petitioned for federal recognition but there was confusion over which type of tribe they identified with: Cherokee, Sioux or Cheraw (Wilkins 1993:137) and thus the federal government took issue with their identity. During the 1950s, as discussed earlier, they were legally terminated, resulting in urbanization. Their

third time seeking federal recognition began during the Regan administration and continued under Bush's presidency during which there were severe cutbacks in federal expenditures for tribes (Wilkins 1993:135).

Because the Lumbee are the largest unrecognized tribe in the United States, one of the main reasons for their continued issues with federal acknowledgment lies in the financial burden they would pose on the federal government were they to be recognized. The Bureau of Indian Affairs asserts that the Lumbee would receive from \$30 to \$100 million per year were they to be recognized and that the federal government would be incapable of supporting them (Wilkins 1993:139). The Lumbee were already receiving some funds from the state of North Carolina and were originally declined by the BIA in 1888 because they were deemed not to need the federal funds allotted for tribal use which were already spread thin (Merline-McCulloch and Wilkins 1995:378).

From an administrative and legislative point of view, the Lumbee's most recent petition for federal acknowledgment is operated through the Office of Federal Acknowledgment which was established by the BIA in 1978 to establish an administrative process for non-federally recognized tribes to apply for federal recognition (Wilkins 1993:139). Some argue that the OFA was inconsistent in its rulings. However, others consider it more appropriate than petitioning the BIA itself due to the fact that, during the administrative process, the BIA will attempt to oppose the tribe, but then must establish a trust relationship with them if they are eventually approved (Wilkins 1993:126). Unfortunately, the uneven rulings of the BAR do often reflect the public opinion of tribes and the constructs of "Indianness" can vary from person to person and

from agency to agency as can be seen when comparing the Lumbee's struggle for acknowledgment versus that of the Catawba (Merline-McCulloch and Wilkins 1995:384).

### The Catawba Tribe of South Carolina

The Catawba tribe is unique in this chapter in that they did eventually have a positive ruling for federal acknowledgement and are the only American Indian group I will discuss that successfully did so. The Catawba tribe's history of petition helps to demonstrate the idea that federal recognition depends in part on the tribe's externally and internally constructed social identities. In a study to determine predictive behavior for certain types of federal policies in federal recognition petitioning, researchers Anne Schneider and Helen Ingram found that there were four types of constructed tribes that would predict their acceptance for federal recognition.

The first is that of a tribe that exhibits positive social construction and considerable power over their own resources. This type of tribe is deemed "advantaged." The second type is that which is negatively constructed, but has the power to affect policy makers and they are called "contenders." Thirdly, a tribe can be positively constructed but lack the power necessary to influence political policies. This type is called "dependent." Lastly, a tribe that is negatively constructed *and* lacks power is deemed "deviant." It was found during this study that the two types of tribes that were positively constructed, that is the "advantaged" and the "dependant" tribes were the ones most likely to secure federal acknowledgment (Merline-McCulloch and Wilkins 1995:362). The Catawba tribe represents the "dependant" type of tribe as they cemented their identity not only amongst themselves but represented themselves as a cohesive tribe tied

to traditional ways and a mostly uniform religion despite the fact that they lacked the resources and power to support themselves.

The Catawba tribe established a relationship with King George in 1763 when he gave them land in South Carolina under the Treaty of Augusta in the hopes of gaining their support for the British in the Revolutionary War. This early treaty remains the basis of their federal recognition claims today. However, in 1782 the intrusions of non-Indians on their land incited the Catawbas to petition Congress to support their land claims. Congress decided that the British rule would then defer to the state of South Carolina (Merline-McCulloch and Wilkins 1995:371). The Catawba suffered a great misfortune in that they ceded their land from the Treaty of Augusta in exchange for \$5,000 and 300 acres of land in North Carolina on the Cherokee reservation. The state of South Carolina, however, never got permission from North Carolina to give the Catawbas this land, causing them to return home to South Carolina landless, homeless, and poor. The Catawbas were then given a mere 630 acres of land near their “Old Reservation” in 1943 which the State of South Carolina agreed to turn over to the federal government to ensure the sole usage by the Catawbas. In addition, the state admitted the Catawbas to public schools (Merrell 1989:96).

During a brief period between 1943 and 1962, the Catawbas were granted 3,434 acres of farmland in South Carolina for a federal reservation, adopted a constitution, and established a federal trust relationship. Shortly after the BIA and South Carolina proposed termination of the Catawbas in 1958, their trust was dissolved and the reservation was divided and distributed to tribal members of which there were 631 enrolled at the time (Merline-McCulloch and Wilkins 1995:374). In 1994, the Catawba

Indian Tribe of South Carolina Land Claims Settlement Act was signed which restored the trust relationship, provided federal acknowledgement, made them eligible for federal benefits, provided \$50 million over five years in five trust funds , gave them ten years to expand and improve the reservation lands, and recognized tribal jurisdiction. Certain stipulations were made which include the fact that the membership would be based upon the tribal role established in 1961, South Carolina would have criminal jurisdiction on the reservation and that they would be exempt from the Indian Gaming Regulatory Act (Merline-McCulloch 1995:375).

Though the Catawbas' story is one of eventual success, it is important to pay close attention to the struggles they had to endure in order to gain federal recognition. That is not to say that the Catawba were subject any less to the structural violence of the federal recognition process, but just that their situation afforded them better leverage with which to deal with the requirements. The Catawbas can be used as a comparison point for tribes such as the Lumbee who were not subject to historically recorded suffering at the magnitude of the Catawbas and, in part because of this, are finding it difficult now to gain the sympathy and support of both Indian tribes and non-Indians.

The Catawba not only can attain sympathy for their public land complaints and injustices, but the ordeal is well-documented, thus cements their legitimacy for benefits (Merline-McCulloch and Wilkins 1995:382). Where the Lumbee failed, the Catawba successfully gained outsiders' accord of the tribe's legitimacy. They demonstrated a strong traditional culture through the art of pottery making and though they do not all practice their traditional religion, an outstanding 95% of the current population is unified in practicing Mormonism which demonstrates a strong social cohesion (Merline-



McCulloch and Wilkins 1995:381). Additionally, the Catawba were poor and only had 630 acres of land at the time of petition which provided them leverage for acknowledgment and a cash settlement (Merline-McCulloch and Wilkins 1995:382).

#### The MOWA Choctaws of South Alabama

The MOWA Choctaws of South Alabama gained their name “MOWA” after the geographic location of the tribe which straddles Mobile and Washington counties. The MOWA Choctaw have a history of inappropriate racial classifications imposed on them. For instance, they were referred to as “mulatto” or “colored” by reporting governmental authorities even though there is no history of African American heritage. Essentially the MOWA Choctaw were reclassified as people of color and ceased to exist as Indian to the dominant society in the area (Matte 2006:181). In the 1880’s, Senator McRae suggested calling them “Cajuns” simply because they look like Cajuns and they were counted as such in the census and for tax purposes (Matte 2006:182). These misconceptions about heritage often lead to identity issues which gave rise to other problems when the MOWA Choctaw petitioned for federal recognition.

The MOWA Choctaw have a turbulent history of interaction with the federal government. Andrew Jackson tried to move the tribe west of the Mississippi. Most of them stayed behind causing them to become landless. The MOWA Choctaw joined refugee Choctaws from the Creek war in the swamps of Alabama and lived very poorly selling what little they could in Mobile County. Several more failed attempts were made to move the MOWA Choctaws west and throughout these incidences, there was a great deal of fragmentation within the tribe as small groups of people accepted the removal (Matte 1006:176).

Identity and heritage are the main obstacles that the MOWA Choctaw have struggled with when seeking federal acknowledgment. One of the criteria requires a tribe to provide an unbroken genealogical paper trail that connects the current tribal members to earlier generations. However, the MOWA Choctaw have several problems with this specific criterion. Firstly, the naming practices of the MOWA Choctaw are not equivalent to European practices which pass on a family name from generation to generation. The MOWA Choctaw, even after adopting European names, never adopted this pattern that would verify their lineage. Rather, they would often switch the surname and the first name between generations which was too unconventional to satisfactorily provide a lineage for the federal government (Matte 2006:166). Moreover, nineteenth century government agents recorded original MOWA Choctaw names phonetically and without the English counterparts attached rendering them unidentifiable as connected with Choctaws even five years later in the 1830 census, much less in later censuses (Matte 2006:166).

Not only were the naming practices of the MOWA Choctaw unconventional in relation to the Euro-American ideas of lineages, the recording of their heritage was equally unacceptable to the federal government who showed a reluctance to accept “oral transmission” of family lineage instead of written documents (Matte 2006:168). Despite examples of written accounts validating events and people in Choctaw oral accounts, the BIA still refused to accept them as reliable sources for proving their heritage (Matte 2006:174).

Another adversity the MOWA Choctaw have faced in their pursuit of federal acknowledgment involves their identity as “Indian.” Because of the identity issues

mentioned above, the federal government has not considered the tribe to be legitimately Indian, which is required by the first of the seven criteria for acknowledgment (25 CFR Part 83.7). The tribe has located several instances of federal documentation of the legitimacy of the tribe including a document in the federal records with a list of MOWA Choctaw ancestors just after the 1830 Indian Removal Act. Two instances of documentation acknowledge the refugees from the Creek War including a document from the US Navy from 1819 and an 1824 document confirming the continued presence of said refugees in the Mobile area before the 1830 Treaty of Dancing Rabbit Creek. Documented correspondence from 1832 to 1860 between the local and federal officials discusses the MOWA Choctaw's loss of land. Lastly, in 1852, a letter from the mayor of Mobile County referred to the unfair treatment of the removal of the MOWA Choctaw (Matte 2006:176).

Interviews of elder MOWA Choctaws regarding heritage were corroborated by local cemeteries in regards to births and deaths of tribal ancestors, and the findings were submitted to the BAR in 1987 (Matte 2006:169). Although the BAR acknowledged the continued habitation of the MOWA Choctaw of the Mobile/Washington area and the lineage as determined by Indian traditional oral histories, the final ruling determined that the MOWA ancestors from the mid to late nineteenth century were not documented in agreement with the BAR guidelines by non-Indian records (Matte 2006:198) such as United State government-generated documents of genealogy (Matte 2006:199). Thus the MOWA Choctaw did not satisfactorily fulfill the criteria to gain federal recognition.

The MOWA Choctaw exhibit quite clearly the fact that decisions regarding federal acknowledgment are based upon the characteristics, constructed by the Euro-

American society, which would be necessary for the legitimacy of an Indian tribe (Matte 2006:195). The federal recognition process obliges tribes to abandon or modify their traditional practices and patterns of social organization, in the case of the MOWA Choctaw, their naming practices and oral traditions, in exchange for those valued by the dominant culture surrounding them (Matte 2006:195) in order to prove they are who they say they are.

#### The Nipmuc Tribal Nation of Massachusetts

In 2002, the Nipmuc Tribal Nation of Massachusetts had their original preliminary positive findings reversed because the evidence of continued occupation of the land and “cultural continuity as a tribal entity” (Mrozowski et al. 2009:459) did not satisfy the Office of Federal Acknowledgment (OFA) requirements. However, archaeology being done at three Nipmuc sites strongly suggests use as community gathering sites for the Nipmuc people (Mrozowski et al. 2009:459).

One of the most difficult criteria for a tribe to fulfill to the OFA’s satisfaction is the requirement that they demonstrate the political and cultural continuity of their tribal nation. The OFA has become more stringent in their requirements for documentary evidence in the sense that the “historic veracity” of the documents are taken into question. Also, oral tradition and archaeological evidence are being questioned and compared to other forms of documentation (Mrozowski et al. 2009:432). In the case of the Nipmuc Tribal Nation, there are ambiguities over the location and period of occupation of Magunkaquog. Magunkaquog was one of the “Praying Indian” missionary communities located across current day Hopkinton and Ashfield, Massachusetts in aboriginal lands of the Nipmuc Tribal Nation (Mrozowski et al. 2009:436).

A deep-seated contempt for the native community of Magunkaquog can be interpreted from the colonial documents describing the occupants of the missionary community. Documents such as these, despite their biases toward the native community help to verify the presence of the Nipmuc. However, there is also the tendency for this acceptance of colonial documentation to strengthen the idea that the colonial records are the “correct” form of recording history, thus information that was not recorded in this fashion cannot be corroborated and must therefore be false (Mrozowski et al. 2009:435). There is no documentation, after the Magunkaquog land was sold to Harvard in 1715, that the Nipmuc abandoned the land, but because there is also nothing to affirm that the native peoples stayed in Magunkaquog either, there is deemed to be insufficient evidence for continued inhabitation (Mrozowski et al. 2009:442-443).

The oral traditions of the Nipmuc tribe and the archaeological record at Magunkaquog provide evidence of a strong continued native presence at the site. Archaeologists uncovered a hearth site as well as a foundation of a building which both dated to the nineteenth century (Mrozowski et al. 2009:446). The foundation was especially telling because it was built on the uneven slope of a hill which was a native practice in the region that allowed for farming on the flatter hillcrest (Mrozowski et al. 2009:446). Though the majority of material culture found at the site was made in Britain or Europe and far out-numbered the native artifacts, the previously documented assimilation of the Nipmuc people into Euro-American lifestyles would mean that they were using European objects as much as were the colonists themselves (Mrozowski et al. 2009:454). At nearby Natick and Punkapoag, native burials involved artifacts of the same

caliber and type as those found at Magunkaquog and would thus suggest that European goods became important and influential in native societies (Mrozowski et al. 2009:454).

An especially significant group of artifacts recovered from the Magunkaquog site included gunflints. The gunflints from the site were analyzed by a lithics specialist, Barbara Luedtke, who noted the retouched flakes made around the edges of each of the recovered flints which are characteristic of native manufacture and maintenance techniques (Mrozowski et al. 2009:454).

Such archaeological evidence discussed above indicates that Magunkaquog was inhabited roughly between 1660 and 1750. Such dates indicate that native occupation exceeded the date when the land was sold to Harvard. The Nipmuc Nation is still pursuing federal acknowledgment, yet the restrictive acceptance of documentation and evidence from tribes does not hold the tribe's materiality in the same esteem as colonial documents that are often biased and rife with omissions (Mrozowski et al. 2009: 459).

## CHAPTER SIX

## RESULTS OF NON-RECOGNITION

The American Indian Policy Review Commission (AIPRC), in comparing federally recognized tribes and unrecognized tribes found that those lacking federal recognition were generally poorer, were less educated, and were prone to more health problems. Additionally, they were often landless or living on very small tribal holdings in caste-like groups simply because they are not Euro-American (Matte 2006:193). In other words, non-recognized tribes are often separated from the rest of society because of social and racial reasons.

The Little Shell Chippewa of North Dakota, which was fighting for federal recognition even before the formal process for acknowledgment was created by the Congress, were landless as a result of its non-recognition. Even though, in 1896, Congress ordered their removal to Canada along with other landless Indians, many Little Shell Chippewa had moved back to the Montana area by that winter and were living outside of established communities (Shield 2007:30). The Little Shell Chippewa, along with landless Cree Indians, were given a very small reservation in 1916, though only a portion of the Chippewa were enrolled and thus allowed to live on the reservation. The rest of the Little Shell Chippewa who were left off the reservation “continued to live in shantytowns, digging in garbage dumps, and eating refuse from slaughterhouses” (Shield 2007:30).

Essentially, denying federal recognition from a tribe not only denies their identity but also removes their rights and makes them nonexistent in the future of Indian policy. Land becomes a very important issue for tribes as unrecognized tribes are not given

reservation land under federal trust and thus are often completely landless. For example, in California, eighteen tribes ceded their traditional lands as a part of treaties made between 1851 and 1852. However, the treaties were not ratified and Congress terminated 41 tribes in 1958, diminishing their chances of ever seeing the land they were promised to be relocated to (Paschal 1991:3). Since then, Congress has restored 36 tribes have been restored to recognition status while four tribes gained recognition status by merging with other petitioners, but there are still a number of tribes seeking federal recognition and compensation for the land they lost (Paschal 1991:3; Fleming 2010:1-7).

In Washington, nine landless tribes are struggling with petitioning for federal recognition and five of these tribes have recently lost fishing rights because of their unrecognized status. After 1981, Congress made it impossible for five of the Western Washington tribes to legally participate in fishing in Puget Sound even if only for subsistence. Not only were these tribes denied fishing rights, but the BIA stopped providing them with services (Paschal 1991:3). Consequently, these unrecognized tribes are landless, unable to support themselves, and unable to gain support from an institution that is designed to do just that.

As was discussed earlier in this paper, one of the incentives for gaining federal recognition is the confirmation by an authority of the identity of the group. If a tribe would benefit from the affirmation of their identity as Indian, then it would logically follow that the denial of that identity would be detrimental to them. If the framework in which a group of people construct a social identity for themselves is denied, then “perhaps the positive aspects of an identity with their group are denied as well” (Oxendine and Nacoste 2007:1622). As a group of people who are subject to a validation



of their identities, the federal recognition process does play a significant role in what it means to be an American Indian (Oxendine and Nacoste 2007:1622).

Fortunately, not all native peoples believe that the federal government has so much power over them. “Tribes like the [United] Houma [Nation of Louisiana] do not cease being ‘Indian’ as a result of this [federal recognition] process. All that happens is that the federal government, exercising its self-ordained sovereign prerogative, chooses not to recognize the group” (Duthu 1997:436).

## CHAPTER SEVEN

## FROM THE PERSPECTIVE OF FEDERALLY RECOGNIZED TRIBES

There is a common worry amongst already federally recognized tribes that, if more tribes were to gain federal acknowledgment, federal resources would be spread too thin and that they would naturally be negatively affected. In the case of the Lumbee, there are several reasons why other tribes oppose their petition for federal recognition. One of the main concerns is that, being such a large tribe, the Lumbee would require a large amount of federal fiscal aid which would then reduce the amount of money available to other tribes in the area. The Mississippi Choctaws are opposed to the Lumbee Nation's federal recognition because they view the tribe as a "tri-racial isolate" with an emphasis on their African ancestry due to the nature of Robeson County (Wilkins 1993:141). This would make the Lumbee seem as though they are not Indian enough to be identified as and benefit from the title of American Indian. Not only are previously recognized tribes worried about the Lumbee gaining acknowledgment, but other indigenous groups in the area seeking recognition were afraid that, given the size of the Lumbee, they would be associated with the larger tribe and thus never be able to gain recognition as a separate entity (Wilkins 1993:125).

Other federally recognized tribes, like the Mississippi Choctaw, are protective of their title as an American Indian tribe and worry about the acceptance of tribes without stringent research as to their historicity. Recently there has been a growing trend of Indian groups identifying as Cherokee descendants. "As might be expected, the two tribes were concerned not so much with individual claims of Cherokee identity but with those groups asserting a collective, tribal status that might somehow undermine their own

rights to sovereignty” (Sturm 2007:230-231). The Lumbee’s petition has been staunchly opposed by the Eastern Band of Cherokee partly because the former had falsely been called Cherokee and despite the change of the tribe’s name and the lack of connection to the Cherokee tribe, some members still identify as such (Merline-McCulloch and Wilkins 1995:377).

Not only are previously federally recognized tribes vocal about their concerns about newly acknowledged tribes, they sometimes actively contribute to opposing them. Successful gaming tribes who might feel as though new tribes would impinge upon their profits and their sovereignty can use resources generated from their tribal gaming in order to hinder another tribe’s success such as the Alabama Poarch Creeks and the Mississippi Choctaws who oppose the federal acknowledgment of the MOWA Choctaw (Merline-McCulloch and Wilkins 1995:197). They fear that their gambling revenue might see setbacks were the MOWA Choctaw to open their own casino upon successful federal recognition (Merline-McCulloch and Wilkins 1995:202).

## CHAPTER EIGHT

THE HIDDEN AGENDA OF FEDERAL RECOGNITION AND VIOLENCE OF THE  
SEVEN CRITERIA

Ultimately, the seven criteria and the policies upheld by the Bureau of Indian Affairs were not made to last and thus were not made well. Essentially, it was thought that the “Indian Problem,” in other words, the existence of American Indians, would solve itself. American Indians would become extinct over time as “civilization and progress” overtook them (Quinn 1990:348).

Policies made toward American Indian tribes in the eighteenth century became increasingly racialized and the idea of the inevitable native extinction led to biased readings of documentation and evidence. An example of such can be seen with the use of colonial documents from Magunkaquoog determining that the native population did not continue its existence there. This assertion can be justified with the assumed disappearance of American Indians in the area. For the non-recognition of American Indian tribes acts as an administrative extinction of tribes and eventually, the temporary policies of the BIA would become obsolete as federally recognized tribes died out as well in culture and in being (Quinn 1990:348).

The idea of a dominant federal government defining cultures and people is problematic in and of itself. Additionally, the obligation of American Indian people to conform their traditions to Euro-American ideals in order to be accepted by their government is a further injustice. The federal recognition criteria are designed mainly to adhere to the aboriginal image of existing western tribes and it becomes nearly impossible for eastern tribes to satisfy that image (Merline-McCulloch and Wilkins

1995:363). The homogenization of the term “Indian” as a single culture ultimately makes it difficult for American Indian tribes who do not exhibit the qualities of that “ideal” culture to be recognized as Indian.

The public’s opinion of tribes plays a large role in the federal government’s judgment of a tribe’s “Indianness” and the cohesiveness of a tribe under a single traditional identity. This can be working in a tribe’s favor, as with the Catawba tribe in South Carolina. Conversely, this importance of the public opinion can have negative effects as demonstrated by the negative regards of the Lumbee Nation by not only neighboring Euro-American communities, but other American Indians. A tribe is pressured, thus to fit the model identity of an American Indian as set forth by stereotypes.

The seven mandatory criteria for federal acknowledgment are set up in a way that is not conducive to a successful petition of federal recognition and require difficult, if not sometimes impossible, feats of research and documentation from prospective tribes. “A lack of evidence on things such as social interactions among members as much as a hundred years ago is interpreted to mean that no interactions took place” (Sweeney 2001/2002: 231) regardless of the fact that such information might be unfeasible to obtain. Sometimes the criteria become impossible for a tribe to fulfill because the conditions set down require difficult to acquire resources (Merline-McCulloch and Wilkins 1995:363).

As demonstrated earlier, traditional practices can conflict with the Euro-American ideas of what constitutes sufficient research and documentation. In the case of the MOWA Choctaw, the necessity, as outlined specifically by the fifth criterion, for written genealogical records has proved to be a serious setback to their petition for

acknowledgment. Similarly, the Lumbee, as a conglomeration of historically separate ethnic groups, is unable to sufficiently demonstrate that they are a “single autonomous political entity” (25 CFR Part 83.7) despite the fact that they currently self-identify as a singular tribe under the same name.

## CHAPTER NINE

## CONCLUSIONS AND RECOMMENDATIONS

Not being federally recognized does not mean that a tribe's members are not ethnically American Indian unless there is a congressional statement expressly saying so. Congress has the power to decide when and to what extent it will recognize a tribe (Ford 1995:8) and this power puts American Indian tribes at the mercy of the Congress' decisions. However, tribes are not "passive recipients of power driven policymakers" (Merline-McCulloch and Wilkins 1995:383) and have been taking steps in order to gain control over their own identity and perceptions of themselves despite policies that might seek to oppress them and deny them rights as American citizens and as American Indians. Increased understanding and ability to utilize the law to their advantage has helped American Indian groups advocate for social change (Steinman 2005:761).

The likelihood of a constitutional amendment being implemented to change the interpretation of federal Indian policy is not great, which would indicate that other means of reform are necessary. One such reform would manifest through increased attention to American Indian activism and self-empowerment. The American Indian Movement (AIM), which began in earnest during the 1970s, demonstrates what people believe to be the quintessential form of activism for American Indians (Cobb and Fowler 2007:x). However, this focus on the AIM tends to overshadow the current struggles of American Indian activists who are becoming more of a force to be reckoned with in legal battles and environmental issues. Native communities with the resources have embraced the power that activism can have over federal decision making (Cobb and Fowler 2007:x)

and have immersed themselves in changing policies by means of education and vocalization.

Self-empowerment of a repressed group can create more opportunities for a horizontal power structure as opposed to the vertical one currently in place. This type of power structure would lessen the structural violence embedded in the system and create more of an even governmental playing field (Galtung 1996:94). By gaining better press and media attention on the struggles of American Indians not only during the federal acknowledgment process but also in their other interactions with the federal government, tribes might be able to draw attention to the violence committed against them as a result of their socio-economic position and the structure resulting from the dominant society's power over their affairs. However, in order for a group to be self-empowered, there is a certain necessity for resources which, in some American Indian communities and especially those of non-federally recognized tribes, poses a problem.

Because tribes are seen as domestic dependents, the federal government needs to take a greater interest and a greater responsibility for the well-being of American Indians, recognized or not. It is impractical and impossible to pigeon-hole all tribes in the contiguous United States through the use of the seven criteria. "The Justices themselves have sometimes acknowledged that they cannot effectively deal with the questions of federal Indian law" (Frickey 2005:489).

One proposed solution would involve a study commission whose job it would be to review the current issues federal Indian policies from different perspectives and then suggest reforms. This would involve great amounts of cooperation and commitment on the parts of the tribes, the federal government and the states in order for there to be any



consensus and success which, however, may be an idealistic goal as well, but perhaps a more realistic one than a constitutional amendment (Frickey 2005:489).

It is difficult to suggest solutions for this problem without sounding like an idealist, but the situation calls desperately for change. In order for there to be a change in the way that the federal government handles Indian policy, there needs to be reform to the way that American Indians are treated. Perhaps a reformation and reestablishment of treaties would help ameliorate the relationship between tribes and the federal government. Even the honoring of past treaties might help to create a friendlier atmosphere and engender greater respect for past promises and present dealings. However, it is impossible to call for reform when there is little attention being called to the fact that the current policies are ineffective and an examination of these policies and their effects on American Indians would need to be a first step in such a reformation.

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