\*\*\* BIA

1. The BIA is emblematic of the federal government’s trust responsibility – bypassing the BIA allows the US to back away from this commitment.

McCarthy 04, Robert McCarthy, “The Bureau of Indian Affairs and the Federal Trust Obligation to American Indians,” J.D. University of Montana (1988), B.A. Carroll College (1976), member State Bars of Montana, Idaho, Oregon, Washington, Oklahoma. Mr. McCarthy has been associated with Indian legal services programs in each of these states, and directed Indian law clinical education programs at the University of Idaho College of Law and University of Washington Law School. Mr. McCarthy currently serves as Field Solicitor for the United States Department of the Interior in Palm Springs, California, where he is an adjunct professor at the Desert College of Law, *BYU Journal of Public Law*, vol. 19,

http://www.law2.byu.edu/jpl/papers/v19n1\_Robert\_McCarthy.pdf

Others might argue that Indian tribes view the BIA as their main advocate, however weak, within the federal bureaucracy, in part because BIA personnel are largely drawn from tribal ranks, thanks to Indian preference in BIA hiring.31 The long-time Director of the American Indian Law Center recently expressed his own ambivalence about the notion that “if you attack the Bureau of Indian Affairs, you are attacking Indians.”32 Perhaps the main reason that tribal advocates continue to defend the BIA in the face of persistent attack, however, is that the BIA has become emblematic of the federal government’s commitment to tribal sovereignty and the individual well-being of Native Americans. This commitment, combined with the obligation to manage Indian lands and funds, is commonly referred to as the federal trust responsibility to Indians. Although rooted in the United States Constitution, the trust responsibility has been developed and defined through a series of opinions by the United States Supreme Court, and exercised primarily by the BIA. Threats to the continued existence of the BIA naturally arouse concern that the United States may be backing away from this commitment.

1. Trust responsibility is essential to tribal sovereignty – US has treaty obligation – turns colonialism.

AIPC 05, American Indian Policy Center, 11-1-2005, “Fundamental Principles of Tribal Sovereignty,” http://www.americanindianpolicycenter.org/research/st98fund.html (ED)

Trust responsibility is integral to the principle of tribal sovereignty. It derives from negotiations with Indian tribes that bound the United States to do the following: Represent the best interest of the tribes, Protect the safety and well-being of tribal members, and Fulfill its treaty obligations and commitments. The foundation of this unique relationship is one of trust: the Indians trust the United States to fulfill the promises which were given in exchange for their land. The federal government's obligation to honor this trust relationship and to fulfill its treaty commitments is known as its trust responsibility (Pevar 1992, 26). The American Indian Policy Review Commission in 1977 explained the trust obligation in the following way: The scope of the trust responsibility extends beyond real or personal property which is held in trust. The United States has the obligation to provide services, and to take other appropriate actions necessary to protect tribal self-government. The doctrine may also include a duty to provide a level of services equal to those services provided by the states to their citizens [e.g., educational, social, and medical]. These conclusions flow from the basic notion that the trust responsibility is a general obligation which is not limited to specific provision in treaties, executive orders, or statutes; once the trust has been assumed, administrative action is governed by the same high duty which is imposed on a private trustee [emphasis added]. Despite clear sovereignty of Indian tribes, and trust responsibility obligations of the U.S. government, historic relations between Indians and U.S. governments have been filled with continuous attempts to erode sovereignty. As noted above, this has taken many forms including attempts at assimilation and termination of Indian tribes and people.

\*\*\* Blood Quantums bad

### BQ bad

Blood quantums ensure statistical extermination- The legal process, over time, defines Native Americans out of existence

Jaimes, 92 **(M. Annette, Lecturer in American Indian Studies with CSERA, The State of Native America: genocide, colonization, and resistance. JSTOR)**

<The eventual outcome of federal blood-quantum policies can be described as little other than genocidal in their final implications. As historian Patricia Nelson Limerick recently summarized the process: “Set the blood quantum at one-quarter, hold to it as a rigid definition of Indians, let intermarriage proceed as it had for centuries, and eventually Indians will be defined out of existence. When that happens, the federal government will be freed of its persistent ‘Indian problem.’” Already, this conclusion receives considerable validation in the experience of the Indians of California, such as the Juaneno. Pursuant to the “Pit River Consolidated Land Settlement” of the 1970s, in which the government purported to “compensate” many of the small California bands for lands expropriated during the course of non-Indian “settlement” in that state (at less than 50 cents per acre), the Juaneno and a number of other “Mission Indians” were simply declared to be “extinct.” This policy was pursued despite the fact that substantial numbers of such Indians were known to exist, and that the government was at the time issuing settlement checks to them. The tribal rolls were simply ordered closed to any new additions, despite the fact that many of the people involved were still bearing children, and their population might well have been expanding. It was even suggested in some instances that children born after an arbitrary cut-off date should be identified as “Hispanic” or “Mexican” in order that they benefit from federal and state services to minority groups. When attempting to come to grips with the issues raised by such federal policies, the recently “dissolved”Californiagroups, as well as a number of previously unrecognized ones such as the Gay Head Wampanoags (long described as extinct), confronted a Catch-22 situation worthy of Joseph Heller. This rested in the federal criteria for recognition of Indian existence to the present day: 1. An Indian is a member of any federally recognized Indian Tribe. To be federally recognized, an Indian Tribe must be comprised of Indians. 2. To gain federal recognition, an Indian Tribe must have a land base. To secure a land base, an Indian Tribe must be federally recognized. As Shoshone activist Josephine C. Mills put it in 1964, “There is no longer any need to shoot down Indians in order to take away their rights and land (or to wipe them out)…legislation is sufficient to do the trick legally.” The notion of genocidal implications in all this receives firm reinforcement from the increasing federal propensity to utilize residual land bases as dumping grounds for many of the more virulently toxic by-products of its advanced technology and industry. By the early ‘70s, this practice had become so pronounced that the Four Corners and Black Hills regions, two of the more heavily populated locales (by Indians) in the country, had been semi-officially designated “National Sacrifice Areas” in the interests of projected U.S. energy development. This, in turn, provoked Russell Means to observe that such a move would turn the Lakota, Navajo, Laguna, and other native nations in to “national sacrifice peoples.”> 132-133

Blood quantums deny agency and continue colonial domination.

Jaimes, 92 **(M. Annette, Lecturer in American Indian Studies with CSERA, The State of Native America: genocide, colonization, and resistance. JSTOR)**

<The history of the U.S. imposition of its standards of identification upon American Indians is particularly ugly. Its cost to Indians has involved millions of acres of land, the water by which to make much of this land agriculturally useful, control over vast mineral resources that might have afforded them a comfortable standard of living, and the ability to form themselves into viable and meaningful political blocks at any level. Worse, it has played a prominent role in bringing about their generalized psychic disempowerment; if one is not allowed even to determine for one’s self, or within one’s peer group, the answer to the all-important question “Who am I?,” what possible personal power can one feel s/he possesses? The negative impact, both physically and psychologically, of this process upon succeeding generations of Native Americans in the United States is simply incalculable**.** The blood-quantum mechanism most typically used by the federal government to assign identification to individuals over the years is as racist as any conceivable policy. It has brought about the systematic marginalization and eventual exclusion of many more Indians from their own cultural/national designation that it has retained. This is all the more apparent when one considers that, while one-quarter degree of blood has been the norm used to define Indian-ness, the quantum has varied from time to time and place to place; one-half blood was the standard utilized in the case of the Mississippi Choctaws and adopted in the Wheeler-Howard Act; one sixty-fourth was utilized in establishing the Santee rolls in Nebraska. It is hardly unnatural, under the circumstances, that federal policy has set off a ridiculous game of one-upmanship in Indian Country: “I’m more Indian than you” and “You aren’t Indian enough to say (or do, or think) that” have become common assertions during the second half of the 20th century.The restriction of federal entitlement funds to cover only the relatively few Indians who meet quantum requirements, essentially a cost-cutting policy at its inception, has served to exacerbate tensions over identity issue among Indians. It has established a scenario in which it has been perceived as profitable for one Indian to cancel the identity of his/her neighbor as means of receiving her/his entitlement. Thus, a bitter divisiveness has been built into Indian communities and national policies, sufficient to preclude our achieving the internal unity necessary to offer any serious challenge to the status quo. At every turn, U.S. practice vis-à-vis American Indians is indicative of an advanced and extremely successful system of colonialism.>135-136

This legal structure reduces individuals to a commodity in the eyes of the state.

Million 2K

(Dian Million, Women of All red Nations, Social Justic, Policing the Rez: Keeping No Peace in Indian Country, 9/22/2k)

How could Western law prevail as it moved into lands where other orders so clearly existed? Willing to break its own treaties even before the ink dried and to unilaterally impose case decisions tried in its own courts to every Native nation, the U.S. worked out its own definition of "Indian." Indian powers and limitations have been constructed, deconstructed, and negotiated over the length of the nation- state's existence; "Indian law" is now the trace and the living performance of this history. Every treaty that empowered American Indian peoples has become a site for state litigation. In doing so, the state reduced over 500 polities, with their respective governing arrangements and cultural-economic relations, to the cat- egory "Indian." in short, the construction of the federal "Indian" negates the inherent sovereignty of the Nee Mee Poo, Dineh, Xwlemi, the Swinomish, etc. Most reservations and their inhabitants were purposefully isolated or excluded from the industrial centers and rural economies where other racialized peoples were used as cheap labor. Subsistence economies were largely destroyed, leaving peoples destitute and barred from economic development on their former lands. The worth of Native peoples to the U.S. was not their potential as laborers, but resided in their land and its "resources." To counter and "police" existing sovereignties inside its "body," the U.S. reserved to itself the right to recognize who and what was "Indian" and how land would be transferred from Indian ownership. The original contractor, "Indian" is the subject of the constitution of U.S. legal hegemony. Late 19th-century science effectively employed eugenics discourses to create, refine, and define the subject of "Indian." As critical analyst Alix Casteel remarked, "quantification assists commodification because it is much simpler to place a price on a particular quantity than on a particular quality." Using notions of "race," the state quantified this relationship, placing it over any Native-defined social identity by enforcing a determination of "blood-quantum" as a legal definition of "Indian-ness." Identification of "biologically" marked individuals as objects of an "Indian" discourse was a double-edged sword. Native peoples who wished to remain in their communities or be identified as cultural peoples were required to register their "blood" with the federal bureaucracy to continue their claims to land or resource ownership. Failure to do so meant one relinquished any rights. The Dawes era (the late 1880s) witnessed the creation of a mechanism to measure the capability to own real property (allotments) by blood-quantum. Jurisdiction over quantified Native individuals thus concerns a relationship between property, the aboriginal land base of the United States, and the nation- state's legitimacy. Despite federal recognition of Native peoples as groups (treaty- signing entities), state courts moved to recognize blood as a condition of an individual's ability to alienate newly individualized lands (LaDuke, 1991). Another example is the eugenics-based relationship extended to Hawaiians, whose history with the U.S. differed somewhat. Organized as a state (a monar- chy), the Hawaiians were invaded by U.S. military forces in 1893. In pursuit of economic interests, American merchants "constituted" themselves as a provi- sional government and then invited the U.S. to seize Hawaiian lands. J. Khaulani Kauanui (2000) reconstructs the way in which the Hawaiian Homes Act imposed a blood-quantum rather than kinship or a descent test (race versus relationship) for inclusion in a category of land ownership reserved for indigenous Hawaiians. Individuals who could "prove" they were subjects, or the descendents of subjects, of the Hawaiian monarchy were positioned as a racialized minority rather than as cultural sovereigns whose government had been overthrown and their lands illegally seized. Drawing upon Omi and Winant's concept of a racial project, Kauanui marks this constitution and formation of a eugenics-based politics as "simultaneously an interpretation, representation, or explanation of racial dy- namics, as an effort to reorganize and redistribute resources along particular racial lines." Ironically, the Supreme Court's February 2000 decision, Rice vs. Cayetano, denied these same racialized and robbed peoples control over the only organiza- tion (OHA) setup to manage and maintain their remaining lands and income. The decision, based on an interpretation of the Fifteenth Amendment, accused OHA of racial discrimination for excluding whites as a category from voting for trustees.

The blood quantum regime is rooted in a history of virulent notions of racial purity. We do not presume to say that the racism embodied in the blood quantum is somehow unique, but rather that our affirmative functions as a site in which a specific racist practice can be meaningfully challenged.

Ray, 6 **(S. Alan Senior Vice Provost and Affiliate Associate Professor of Political Science, Philosophy, and Justice Studies, University of New Hampshire, Spring, 2006, “**NATIVE **AMERICAN IDENTITY AND THE CHALLENGE OF KENNEWICK MAN”, Temple Law Review)**

Garroutte writes, "In their modern American construction ... biological definitions of [Indian] identity assume the centrality of an individual's genetic relationship to other tribal members": [n174](https://www-lexisnexis-com.proxy.lib.utk.edu:2050/us/lnacademic/frame.do?reloadEntirePage=true&rand=1267222203920&returnToKey=20_T8672889305&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.401116.23978296993#n174) Degree of blood is calculated, with reference to biological definitions, on the basis of the immediacy of one's genetic relationship to those whose bloodlines are (supposedly) unmixed. As in the case with legal definitions, the initial calculation for most tribes' biological definitions begins with a base roll, a listing of tribal membership and blood quanta in some particular year. These base rolls make possible very elaborate [i.e., fractionated] definitions of identity. [n175](https://www-lexisnexis-com.proxy.lib.utk.edu:2050/us/lnacademic/frame.do?reloadEntirePage=true&rand=1267222203920&returnToKey=20_T8672889305&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.401116.23978296993#n175) On this measure of identity, to be an Indian is to be genetically descended from other tribal members, and the closer an individual is to having four-fourths tribal blood quantum, the closer one is to establishing him or herself as a "pure" Indian.  [\*117]  Conversely, the more fractionated one's quantum of tribal blood, the less authentically "Indian" one is. [n176](https://www-lexisnexis-com.proxy.lib.utk.edu:2050/us/lnacademic/frame.do?reloadEntirePage=true&rand=1267222203920&returnToKey=20_T8672889305&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.401116.23978296993#n176)The genealogy of race in America, however, demonstrates that the identification of blood purity and Indian authenticity is part of a much larger story centered on the construction of American national identity. [n177](https://www-lexisnexis-com.proxy.lib.utk.edu:2050/us/lnacademic/frame.do?reloadEntirePage=true&rand=1267222203920&returnToKey=20_T8672889305&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.401116.23978296993#n177) Anthropologist Circe Sturm argues that the construction of blood quanta is a proxy for racial authenticity and the valuing of racial authenticity itself originated not in Native American communities, but among colonial-era Euro-Americans, whose "notions of blood purity were associated with honor and legitimacy." [n178](https://www-lexisnexis-com.proxy.lib.utk.edu:2050/us/lnacademic/frame.do?reloadEntirePage=true&rand=1267222203920&returnToKey=20_T8672889305&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.401116.23978296993#n178) Moreover, ideological justifications that "logically integrated notions of territoriality, biological purity, cultural homogeneity, and status stratification" led to the aggressive deployment of American nationalism in the nineteenth century. [n179](https://www-lexisnexis-com.proxy.lib.utk.edu:2050/us/lnacademic/frame.do?reloadEntirePage=true&rand=1267222203920&returnToKey=20_T8672889305&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.401116.23978296993#n179)Faced with elimination of their traditional lands and cultures, elements of some tribes, such as the Cherokee, strategically emulated the increasingly dominant Western culture in their tribal institutions and rhetoric, inventing federal-style systems of government and law, [n180](https://www-lexisnexis-com.proxy.lib.utk.edu:2050/us/lnacademic/frame.do?reloadEntirePage=true&rand=1267222203920&returnToKey=20_T8672889305&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.401116.23978296993#n180) and adopting their own rhetoric of blood purity, authenticity, and racial superiority. [n181](https://www-lexisnexis-com.proxy.lib.utk.edu:2050/us/lnacademic/frame.do?reloadEntirePage=true&rand=1267222203920&returnToKey=20_T8672889305&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.401116.23978296993#n181) The work of postcolonial theorist Homi Bhabha offers resources for understanding this phenomenon. Bhabha has argued that the identities of "colonist" and "colonized" are not pregiven, but are established through the negotiation of cultural difference occurring at the precise points where each group encounters the other. "Terms of cultural engagement, whether antagonistic or affiliative, are produced performatively ... . The social articulation of difference, from the minority [\*118]  perspective, is a complex, on-going negotiation that seeks to authorize cultural hybridities that emerge in moments of historical transformation.”

This focus on the purity of blood as a means of exclusion turns persons into targets for violent extermination. We should speak out against this extermination and the way in which this regime can actively order our perception of the world.

Scales, 1 **(**Judy Trent Scales, B.A., Oberlin College, 1962, M.A., Middlebury College, 1967, J.D., Northwestern University, 1973, Human Rights Quarterly,“Racial Purity Laws in the United States and Nazi Germany: The Targeting Process”, Project Muse)

The words and analyses are now such a familiar part of US vocabulary and thought processes that people do not even think about what they are reading or hearing or saying. The sports section in a newspaper mentions a “full-blooded Native American” golf player; the book review section describes a “mulatto artist who is systematically butchering blacks.”284 People read that President Clinton’s favorite writer, “the son of a Jewish mother and an African-American father,” is a “black mystery writer.”285 We do not even blink because we all know the enduring rule of racial purity in this country: one can only be “white” if both parents are white. Thus, the language and underlying concepts of “race” endure— “mulism,” blood quantum, and the importance of protecting the purity of white blood. They are firmly embedded in our language and in our minds, where they order the universe and the way we understand our place within it, where they show us how we should think about ourselves, and how we should treat others in our everyday acts. And what is so stunning is that the government has done such a good job that “race” seems normal, seems natural, seems . . . well, biological, and no one ever thinks that the state had anything to do with it. No one even knows that the state has used the concept of “race” as a way to create a target. Miller says that once a state “targets a group of ordinary people for exclusion from everyday life,” the destruction process is underway.286 He also says that the annihilation that took place in the Third Reich could take place “in any country holding the values of Western civilization. Not only could happen, but will happen” if that state does not have the will to abandon the process.287 This article has shown that the United States has targeted African-Americans in the same way that Nazi Germany targeted Jews. Unfortunately, it has not been able to show that the United States has the will to abandon the destruction process now underway.

### Tribal Membership = Best Option

Tribal membership is the best way to undo the damage of legal racialization – alternatives recreate the same problems

Gross 10

Ariela J. Gross, Law and History Professor, USC, 3/10, Southern California Law Review, 83 S. Cal. L. Rev. 495, lexis

Villazor, however, unlike a historian, worries about the question, What should Indian tribes and other indigenous groups do? If we were starting from scratch, writing ideal rules in a utopian state, we might well prefer other forms of belonging to those that depend on fractions of "blood." Yet as Carole Goldberg points out, most Indian tribes and other native communities do define their citizens by some form of descent. n28 [\*506] (And sovereignty is all about the right to do so!) In Descent into Race, Goldberg makes the very important point that Morton v. Mancari, properly understood, does not require Indians to forswear all ancestry-based citizenship requirements in order to be treated as sovereign nations or tribes. n29 Indeed, if we truly want to undo the damage done by the legal racialization of Indian nations in the early twentieth century, the best federal Indian policy we can implement is one that recognizes Indian nations' sovereignty, regardless of whether aspects of Indian identity appear to have elements in common with other "racial" or "minority" groups. As Goldberg cogently points out, "race" has never, in U.S. law or society, been based only on "blood," but at least as much on "cultural performance." Thus, the alternatives that Gould and others suggest to blood quantum requirements, all based on some form of cultural performance such as participation in community rituals or speaking the Indian language, would involve courts in precisely the sorts of judgments of "acting Indian" that were so problematic in generations of racial identity trials beginning in the early republic. n30

Most other federal laws use tribal membership

Gover 08

Kirsty Gover, Senior Lecturer, Melbourne Law School, 08/09, American Indian Law Review, 33 Am. Indian L. Rev. 243, lexis

Tribal membership rules constitute the "self" that is to "self-govern", by defining the class of persons entitled to share in tribal resources and participate in tribal politics. Increasingly, tribal membership rules also define the class of persons who are the ultimate beneficiaries of United States federal Indian policy. In the modern era of "self-determination," federal agencies increasingly require tribal membership in eligibility criteria for Indian programs. n1 Federal legislative references to Indians now almost exclusively define Indians as members of federally recognized tribes. n2 It matters, then, how tribes govern membership. Notwithstanding that tribal membership increasingly determines federal Indianness, and that federal Indianness is the cornerstone of the entire field of federal Indian law, surprisingly little is known about how tribes select their members and why they choose some criteria over others. In the discussion that follows, changes in tribal membership criteria are examined over time in order to explain the growing [\*245] tribal preference for descent rules, the legal origins of such rules, their functions, and the degree to which they are reinforced by current federal Indian policy.

### AT: Tribal Membership = Exclusive

An exclusionary definition is inevitable because of scarce resources

Beckenhauer 03

Eric Beckenhauer, JD Candidate, Stanford Law School, 10/03, Stanford Law Review, 56 Stan. L. Rev. 161, lexis

As a practical matter, how the term "Indian" is defined would be of little importance did it not implicate the allocation of federal and tribal resources. Were the availability of funding based solely on cultural self-identification, the demand for that funding would surely exceed the available supply; therein lies the tension between the cultural and legal definitions of the term "Indian." Although a loose definition that allows for self-identification may theoretically be ideal, the scarcity of federal resources precludes such an approach. Thus, although exclusionary definitions - including those with a biological basis - may fall short of the cultural ideal, some type of exclusionary definition is necessary to effectively allocate limited federal funds.n61

The BIA will step in to prevent discriminatory membership criteria

Williamson 04

Terrion L. Williamson, JD, U. Illinois, Fall 04, Michigan Journal of Race & Law, 10 Mich. J. Race & L. 233, lexis

In Seminole Nation v. Norton, the Tenth Circuit held that, "where [an Indian tribe] will not protect the Constitutional rights of its minority members, the BIA has the responsibility, and indeed, the duty, to intervene and attempt to protect those rights through appropriate remedies." n276 The government needs to fulfill this duty on behalf of the Cherokee Freedmen. It should respond as it did for the Seminole Freedmen n277 by refusing to recognize the Cherokee election that excluded the Cherokee Freedmen from participation. Based on Norton, courts would uphold such action.

The court will override ridiculous membership rules

Painter-Thorne 10

Suzianne D. Painter-Thorne, Law Professor, Mercer, Spring 10, Lewis & Clark Law Review, 14 Lewis & Clark L. Rev. 311, lexis

In 2004, U.S. District Court Judge Lawrence Karlton blasted the concept of tribal sovereign immunity in the face of a legal challenge to the Table Mountain Rancheria's refusal to admit four members to its tribe. n1 According to the court, the tribe would have no existence but for a court ordering that it be recognized by the United States. n2 Thus, it was "bizarre" to suggest that the court had no role in adjudicating a membership dispute. n3 While the court nonetheless concluded that it lacked subject matter jurisdiction, it warned that if American Indian tribes did not appear to act in good faith, a court would eventually decide otherwise and permit federal involvement in tribal membership decisions. n4

### AT: Tribal BQ

Tribal blood quantum rules are genealogic instead of racial – they’re a way of asserting tribal sovereignty

Gover 08

Kirsty Gover, Senior Lecturer, Melbourne Law School, 08/09, American Indian Law Review, 33 Am. Indian L. Rev. 243, lexis

Given these constraints, blood-quantum rules have considerable appeal. The concept of blood quantum is controversial because it is a concept that originates with the federal government and has been used historically to identify Indians as members of a pan-tribal racial class. The up-take of blood-quantum rules in new constitutions is a puzzle that many commentators may find troubling given the association of blood quantum with race and racial discrimination. However, as pointed out above, tribes understandably seek to avail themselves of blood quantum as a pre-existing, well-documented administrative device that conveniently concurs with federal expectations of tribal continuity and political cohesiveness. Importantly, though, in their use of blood quantum, tribes also transform the concept from a racial to a genealogic measure. They borrow concepts of Indianness and Indian blood quantum from federal policy but increasingly use these to construct and define a tribe-specific genealogic structure. The increased use of tribal blood and lineal descent rules indicates that a form of "retribalization" is underway. Tribal communities are acting to extricate themselves from the pan-Indian category used by the federal government and to reassert themselves as self- [\*299] contained, self-governing polities. The emergence of new forms of "genealogic" tribalism affirm the sui generis qualities of tribes, as neither racial communities, nor classically liberal polities. As part of their efforts to cope with the changes wrought by federal policy and shifts in Indian demography, tribes are evolving a tribe-specific concept of tribalism, given effect through the formal processes of tribal constitutionalism. [\*300]

Most tribes don’t exclusively rely on ancestry – they also include tribal adoption

Gover 10

Kirsty Gover, Senior Lecturer in Law, Melbourne Law School, Summer 10, Law and Social Inquiry, 35 Law & Soc. Inquiry 689, lexis

Just as the descent principle is qualified and modified by tribes, it can also be supplemented. Further evidence of the malleability of descent rules is apparent in the tribal practice of admitting nondescendants. A majority of tribes in the study (57 percent) allow persons to be incorporated into the tribe in accordance with discretionary criteria, in a special executive action often known as a tribal adoption. Adoptees are usually nondescendants who have political or familial ties to the tribal community. The following criteria are used in tribal constitutions: indigeneity (including indigenous ancestry but also political affiliations such as Indian status), residency, marriage to a tribal member, legal adoption by a tribal member, cultural competency, and capacity to contribute to the welfare of the tribe. Here I outline the approaches taken by tribes in each of the states in the study in order to show that, for the majority of tribes in the study, descent rules are not exhaustive. Members are also selected on the basis of their mutable characteristics. Three-quarters of US tribes in the study make provision for tribal adoptions. n39 Only a few expressly prohibit them (see the Constitution and By-Laws of the Agua Caliente Band of Mission Indians California 1957). Criteria used include requirements that adoptees be Indian, that they have a minimum Indian blood quantum, that they are descendants of a tribal member (albeit with insufficient tribal blood to otherwise qualify), or that they are the spouse or adopted child of a tribal member. A few tribes specify that prospective adoptees must possess certain personal traits (such as loyalty and good character) or demonstrate an ability to contribute to the community (see Constitution and By-Laws for the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community California 1941, Article 11(2)), and several specify that adoptions may only take place when the tribe has sufficient resources (see Constitution and By-Laws for the Kashia Band of Pomo Indians of the Stewarts Point Rancheria 1936, Article 2(2)). [\*711] Similarly, 70 percent of Canadian First Nations in the study allow the discretionary enrollment of persons with requisite sociocultural knowledge, familial ties, ancestral connections, skills, and resources. While Canadian tribes predominantly use parental enrollment rules, about half (111 First Nations) also enroll some descendants without enrolled parents, if they can show that they are sufficiently compatible with the tribal community. For instance, codes often assign "automatic" membership to persons who have two enrolled parents, and allow the adoption of persons with only one enrolled parent, provided they meet additional criteria. Most frequently tribal decision makers assess a descendant applicant's "knowledge of or familiarity with the customs or language of the Band" (see the Membership Code of Serpent River Band of Objibway 1987, section 17.) n40 Some also require the council to consider, for example, whether an applicant is "self-sufficient," "of good character," capable of "making a contribution to the band," "employed," or "will work if work is available" (see Membership Code of the Little Black River Band n.d, section 6(c)). Residency rules specifying that the applicant must be resident or have the "intent to reside" on the reserve are also common. Significantly, almost half of First Nations codes specifically provide for the enrollment of nondescendants who are indigenous. In so doing, they recruit from outside the descent class but from within the indigenous class, acknowledging a person's connection to other indigenous communities. The eligible class variously includes members of other First Nations, Indians or persons of Indian descent, Aboriginals or persons of Aboriginal descent, or members of other pantribal groupings. Significantly, nearly one in four codes allows the discretionary enrollment of former members of other First Nations, a continuation of the practice of "Band transfers" allowed by the Indian Act. As discussed below, some tribes use concepts of indigeneity other than those promulgated by the federal government.

Tribal ancestry requirements reflect sacred indigenous tradition rather than racism or colonialism

Ray 07

S. Alan Ray, Political Science Professor, University of New Hampshire, Spring 07, Michigan Journal of Race & Law, 12 Mich. J. Race & L. 387

Legal scholar Angela Riley writes, "Indian tribes reflect the most intimate associations in the human experience: they are, by definition, families. Indian tribes are bound by bloodlines, clan identifiers, and kinship. Ancestry or descent often constitutes the dominant factor in determining whether one belongs to an Indian tribe." n285 Carole Goldberg observes, "biological relationship has always formed some part, often a significant part, of tribal belonging." n286 Garroutte notes that for some Native Americans, such as author Scott Momaday, the relationship to one's ancestors can only be expressed as a "memory in the blood," a heritable "racial memory" that flows from one generation to the next. n287 Rather than reject such expressions out of hand as fragments of colonialist racial hegemony, Garroutte finds that when understood in the context of traditional authorities (elders' statements and sacred stories), claims such as Momaday's do not exhibit the characteristics of nineteenth-century race science, but show "a sacred logic to which notions of genealogical distance [\*454] and blood quantum are foreign and even irrelevant." n288 Garroutte invites us to consider the possibility of indigenous (sacred) and non-indigenous (colonialist) essentialisms, and to embrace the former as legitimate modes of establishing Native American kinship and thus identity. n289

Tribal blood quantum rules represent a form of cultural hybridity – they strategically emulate Western culture to resist colonialism

Ray 06

S. Alan Ray, Professor of Political Science, Philosophy, and Justice Studies, U. of New Hampshire, Spring 06, Temple Law Review, 79 Temp. L. Rev. 89, lexis

Faced with elimination of their traditional lands and cultures, elements of some tribes, such as the Cherokee, strategically emulated the increasingly dominant Western culture in their tribal institutions and rhetoric, inventing federal-style systems of government and law, n180 and adopting their own rhetoric of blood purity, authenticity, and racial superiority. n181 The work of postcolonial theorist Homi Bhabha offers resources for understanding this phenomenon. Bhabha has argued that the identities of "colonist" and "colonized" are not pregiven, but are established through the negotiation of cultural difference occurring at the precise points where each group encounters the other. "Terms of cultural engagement, whether antagonistic or affiliative, are produced performatively ... . The social articulation of difference, from the minority [\*118] perspective, is a complex, on-going negotiation that seeks to authorize cultural hybridities that emerge in moments of historical transformation." n182 Hybridities, in the words of theorist Benita Parry, are those moments "when the scenario written by colonialism is given a performance by the native that estranges and undermines the colonialist script." n183 In Bhabha's terms, the Cherokee adoption of Western-style government, laws, and the rhetoric of race and blood purity in the early nineteenth century represents a negotiation to authorize cultural hybridities. Cherokees who chose to engage with the people and culture of the new Republic, rather than voluntarily move west from their aboriginal lands (the Old Settlers) n184 or remain and try and pursue traditional lives apart from white settlers and their governments, established hybridic cultural identities that simultaneously resisted and reinforced the construction of the emerging American national identity. For example, cultural hybridity in the first half of the nineteenth century resulted in bicultural Cherokee leaders, who, according to historian Andrew Denson, "could effectively communicate the anti-removal position to non-Indians while supporting the arguments of those whites who already opposed the policy. The bicultural Cherokees' very presence as delegates in Washington could disrupt removal advocates' picture of Indians, with its emphasis on Indian decline and the failure of the civilizing mission." n185 Another example of Cherokee hybridity in the period prior to Removal (1838-39) is the Cherokee Nation's 1827 Constitution - a thoroughly Western form of self-government that nevertheless enshrined communal ownership of land by the tribe. n186 As Denson states, "These laws [placing land ownership in the tribe with rights of use by tribal members] were meant to help the tribe ward off property-hungry Southerners, but they also preserved a very old conception of the land as a shared resource, the foundation of the people's collective existence." n187 The Cherokee's adoption of the rhetoric of blood purity in this period, therefore, represents but one element of a complex negotiation of hybridity with the colonizing powers around and upon them.

Tribal blood quantum rules avoid the colonial Indian/non-Indian dichotomy

Gover 08

Kirsty Gover, Senior Lecturer, Melbourne Law School, 08/09, American Indian Law Review, 33 Am. Indian L. Rev. 243, lexis

The difference between tribal and Indian blood quantum is normatively significant. At first glance, the increase in the use of blood rules might suggest that tribes have converged on the federal category of Indian blood in the absence of any legal obligation to do so. A standard liberal theoretical explanation would suggest that given the opportunity to choose, tribes opt to perpetuate the racial categories imposed on them by a hegemonic colonial power. However, a closer analysis reveals that in the majority of cases, tribes are not simply replicating the federal category of Indian blood, but instead are refashioning it as a genealogic measure. This is achieved by using the concept of tribal blood, in which only tribe-specific descent is relevant, or using Indian blood in tandem with lineal descent, in which case Indian blood serves to qualify a tribe-specific descent-rule. n22 Tribal blood quantum does not rest on an Indian/non-Indian dichotomy, but rather serves as a device for counting the number of a person's tribal ancestors. The genealogic shift in tribal membership reduces the relevance of Indian blood derived from other tribes and so leans against the colonial concept of an undifferentiated Indian population organized into tribal communities. This article suggests that while tribes continue to deploy measures of race that are strongly encouraged by federal policy, they increasingly refashion and refine these measures to give effect to concepts that have a meaning endogenous to tribes.

Tribal blood quantum rules are genealogical rather than racial

Gover 08

Kirsty Gover, Senior Lecturer, Melbourne Law School, 08/09, American Indian Law Review, 33 Am. Indian L. Rev. 243, lexis

To provide traction on these issues, this article draws on an empirical study of 322 current and historic tribal constitutions. n11 These represent 245 [\*247] federally recognized tribes in the lower forty-eight states, or about seventy percent of the 334 tribes qualified to be included in the study. n12 The study reveals striking changes in the types of membership rules chosen by tribes since modern constitution-writing began in the mid-1930s. Tribes are increasingly likely to use lineal descent and blood-quantum rules after 1970, in place of the parental- enrollment or residency rules that were dominant in constitutions adopted in the 1930s. n13 Tribes are also more likely to include in their constitutions rules prohibiting multiple membership and less likely to expressly allow the incorporation of persons into the tribe via tribal adoption. The study reveals important differences in the way "blood quantum" is defined and used by tribal governments and the federal government respectively. Tribes increasingly use tribe- specific measures of blood quantum, in contrast to the pan-tribal concept of Indian blood quantum used in federal policy. Together, these changes suggest that tribes are becoming more "genealogical" in their approach to membership governance, favoring tribe-specific descent rules over pan-tribal or racial measures. This article shows how tribes have altered their membership governance to maintain and repair continuity during shifts in federal Indian policy and tribal demography.

\*\*\* Block grant CP answers

There are different kinds of road on native lands, including the roads owned by the BIA

FHWA 12 Federal Highway Administration, Department of Transportation 2012 "IRR Program update"

<http://flh.fhwa.dot.gov/programs/irr/documents/fy-2012-program-update.pdf>

National Tribal Transportation Facility Inventory

A comprehensive national inventory of tribal transportation facilities that are eligible for assistance under the tribal transportation program. Includes facilities that:

were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;

Are owned by an Indian tribal government;

Are owned by the Bureau of Indian Affairs;

were constructed or reconstructed with funds from the Highway Account of the Transportation Trust Fund under the Indian reservation roads program since 1983;

#### Road owners are responsible for the roads they own – so BIA takes care of BIA roads, not the Native Americans

Echo Hawk 10 LARRY J. ECHO HAWK, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR 10-15-10 Hearings, Sen Com on Indian Affirs EXAMINING TRIBAL TRANSPORTATION IN INDIAN COUNTRY http://www.gpo.gov/fdsys/pkg/CHRG-111shrg65034/pdf/CHRG-111shrg65034.pdf

Road Maintenance in the BIA¶ The BIA currently implements both the Department of Transportation’s Highway¶ Trust Fund-funded IRR program as well as the Department of the Interior’s (DOI)¶ funded Road Maintenance Program. The DOI’s Road Maintenance Program has traditionally¶ been the responsibility of the agency owning the road. Of the 126,000¶ miles roads in the IRR Program, the BIA has responsibility for 28,000 miles of roads designated as BIA system roads. The BIA receives Tribal Priority Allocation (TPA) funding annually for the administration of the road maintenance program for those roads. Further, approximately 30 percent of tribes with BIA system roads within¶ their reservation boundaries currently operate the road maintenance program under¶ a P.L. 93–638 self-determination contract or agreement. And of the 28,000 BIA road¶ miles, approximately 20,500 miles are unpaved roads. Therefore, over 73 percent of¶ the BIA roads are unpaved, and are, thus, considered ‘‘inadequate’’ from the perspective¶ of the Level of Service index used to assess roads and bridges in the BIA¶ road system.

BIA is not fulfilling its responsibility with BIA roads – roads crucial to Native America

BIA 12 US Dept of Interior, Bureau of Indian Affairs, Division of Transportation 2012 Mission Statement

http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm

The Division of Transportation oversees the road maintenance and road construction programs for the Indian Reservation Roads in Indian Country. Transportation related activities are provided directly and through contracts, grants, and compacts to American Indian and Alaska Natives. Programs within Transportation include:

Operation and Maintenance of Bureau of Indian Affairs (BIA) roads;

Indian Reservation Roads (IRR) Program; and

Programs administered through the Federal Highway Administration which are specifically related to IIRs.

Operation and Maintenance

Under the operation and maintenance of BIA roads, transportation facilities located on Indian Reservations and within tribal communities. The roads maintenance program funds are administered at the BIA Region offices for the maintenance of roads identified as part of the BIA roads system. The BIA road system is part of the Indian Reservation Roads system. As public roads, BIA roads and bridges serve as major access for tribal communities through which services are provided or delivered to tribal members and the general public. As public roads, BIA roads are public corridors through which much of the services (educational, medical, commercial and recreation) are provided. In addition, Indian Reservation Roads also provide access to Indian communities, trust and fee lands. As a public authority, the BIA assumes the responsibility for the maintenance and improvement of BIA roads and bridges. The broad definition of BIA roads includes all transportation related facilities used in surface transportation (roads, bridges, ferry terminal, ferry boats, trails, boardwalks, primitive roads and administrative roads to BIA agency offices).

Road maintenance activities are delineated into the following functions:

1) Road maintenance;

2) Routine maintenance;

3) Bridge Maintenance;

4) Snow and Ice Removal;

5) Emergency Maintenance;

6) Ferry boat operation; and

7) Program management. Ferry boat operation is limited to a facility located in the Northwest Region in the state of Washington.

Road maintenance for the BIA is defined as the preservation of the roadway template and related structures in the as-built condition. It does not consider new construction, improvement or reconstruction as an eligible activity. It is the policy of the BIA Maintenance Program to preserve, repair, and restore the BIA system of roadways and transportation facilities in accordance with Federal, State, Tribal, and Local laws, as applicable. The BIA is mandated to maintain roads, and transportation facilities constructed with Highway Trust Funds.

Many of these roads are in failing to fair condition and are not built to any adequate design standard and have safety deficiencies. In FY 2007, approximately 4,100 miles or 15% were considered in acceptable condition based on the BIA Service Level Index condition assessment criteria. The remaining roads, 23,000 miles, were unacceptable. Many of these roads were never planned or designed for vehicular traffic, but are used exclusively as such today.

The number of miles currently identified as BIA roads is approximately 28,000 miles and 930 bridges. Included in this inventory are other appurtenances such as roadway signs, protective devices, guide posts, various drainage structures, fencing and one ferry boat system.

### EXTENSION CARDS

#### Roads have various owners – the BIA, tribes, states

NCAI 12 National Congress of American Indians 2-15-12 "Transportation" <http://www.ncai.org/resources/ncai-publications/indian-country-budget-request/fy2013/FY2013_Budget_Transportation.pdf>

Surface transportation in Indian Country involves¶ thousands of miles of roads, bridges, and highways, and connects and serves both tribal and non-tribal communities. Millions of Americans and eight billion¶ vehicles travel reservation roads annually. Despite¶ being the principal transportation system for all residents of and visitors to tribal communities, reservation roads are still the most underdeveloped road network in the nation. Currently, there are over 140,000 miles of Indian reservation roads with multiple owners, including the Bureau of Indian Affairs, American Indian tribes, states, and counties. Construction of transportation systems that allow for safe travel and promote economic expansion will help strengthen tribal communities, while also making valuable contributions¶ to much of the surrounding rural America. Maintenance and enhancement of transportation¶ infrastructure is critical to economic development, job creation, and improving living conditions for individuals and families throughout Indian Country.

#### BIA roads are distinct from tribal roads and state roads

BIA 05 BIA –Western Regional Office Division of Transportation 2005 "Indian Reservation Roads Program Overview"

http://www.aztribaltransportation.com/atspt/PDF/Indian-Reservation-Roads-Program.pdf

IRR SYSTEM ROADS

• BIA (DOT) Roads

• Tribal Roads

• State Highway System Roads

• County & Township Roads

• Other BIA Branch Roads (includes Forestry &

Facilities Management)

• Other Federal Agency Roads

#### The federal government (BIA) is responsible for BIA roads

Stevens 80 Justice Stevens 6-37-80 SUPREME COURT OF THE UNITED STATES 448 U.S. 136 White Mountain Apache Tribe v. Bracker No. 78-1177 Argued: January 14, 1980 --- Decided: June 27, 1980 http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0448\_0136\_ZD.html#448\_US\_136fn2/6

Although Pinetop represents that its use of the Arizona state highways within the reservation is extremely limited, it does not dispute its tax liability for such use. On the other hand, in this Court, the State expressly conceded that its assessments were improper under state law to the extent that they applied to operations on either private logging roads [[n3]](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0448_0136_ZD.html" \l "448_US_136fn2/3) [p155] or tribal roads. [[n4]](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0448_0136_ZD.html" \l "448_US_136fn2/4) If it is conceded that the State may tax Pinetop's use of public roads maintained by the State and may not tax the use of tribal or private roads, the question that arises is whether the public roads maintained by the [p156] Bureau of Indian Affairs are more akin to the former or to the latter. It appears that the BIA roads are like the state highways, insofar as they are open to use by the general public. [[n5]](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0448_0136_ZD.html" \l "448_US_136fn2/5) On the other hand, it also appears that they were constructed [p157] and maintained by the Federal Government, and are policed by federal and tribal officers. [[n6]](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0448_0136_ZD.html" \l "448_US_136fn2/6)

**Owner of the road is responsible for maintaining the road**

**BIA** 10-21-**04** Coding Guide and Instructions for IRR Inventory

http://www.bia.gov/cs/groups/public/documents/text/idc-001946.pdf

FIELD 14, Ownership

Enter the code that identifies the entity that owns the ROW and is responsible for the maintenance of the section of road being inventoried. Code

1. BIA including offices in the BIA

2 Tribe

3 State

#### About half the roads are BIA roads

Campbell 2K Mr. Campbell, from the Committee on Indian Affairs , September 11, 2000 AMENDING THE INDIAN RESERVATION ROADS PROGRAM http://www.gpo.gov/fdsys/pkg/CRPT-106srpt406/html/CRPT-106srpt406.htm

Over 66% of the IRR system is unimproved earth and gravel ¶ while approximately 26% \6\ of the IRR bridges are deficient. ¶ Approximately 50,000 miles of roads serve Indian reservations ¶ and lands. Of these BIA roads comprise 23,000 miles, and ¶ Federal, State and local public roads comprise some 25,600 ¶ miles.

Michael Black, Director, Bureau of Indian Affairs 1-20-12

<http://www.bia.gov/cs/groups/xraca/documents/text/idc016006.pdf>

Title: Policy to Establish and Implement a Sign Assessment or Management Method to Maintain Minimum Levels of Retrorefleetivity on BIA Roads

1. Purpose

The Bureau of Indian Affairs (BIA) is responsible for managing an adequate and safe BIA road and bridge inventory system for the Indian reservations, Indian lands and communities in the United States of America. The purpose of this policy is to establish a method to comply with new standards in the Manual on Uniform Traffic Control Device: (MUTCD), 2009 edition, regarding new minimum levels of traffic sign retroreflectivity. Retroreflectivity is a term used to describe how light is reflected off a surface and returned to its original source ("retro"-reflector). Traffic sign sheeting materials use technology with small glass beads or prismatic reflectors that allow light from vehicle headlights to be reflected to the vehicle and the driver's eyes, thus making the sign appea more bright and visible to the driver.

2. Scope

The Indian Reservation Road (IRR) inventory is comprised of approximately 145,000 miles of public roads that provide access to or are located within Indian reservations, lands, communities and Alaska Native villages. These public roads are the responsibilit) of public authorities (23 USC 101(a) Definitions) with jurisdiction over their various roads. The BIA road system is a subset of the IRR and is approximately 29,000 miles of existing roads. This policy applies to all BIA-owned transportation facilities. While tribally-owned transportation facilities are not bound by this policy, it is recommended that those tribes that own transportation facilities adopt this policy or implement a similar policy independently. Because of the nature of the regulation (23 CFR 655 Subpart F), the requirements for maintaining minimum levels of retroflectivity shall be included in all scopes of works for contracts for program activities associated with road maintenance, construction and reconstruction of BIA roads and bridges.

<http://www.ttap.mtu.edu/library/TransportationServingNative.pdf>

There are two categories of Indian reservation roads (IRR).

The first category (BIA System) consists of approximately 24,000 miles of public roads that are owned and maintained by the BIA. These roads are referred to as BIA System roads. Within the Indian reservations, lands, communities, and villages, the BIA System roads accommodate most of the local transportation needs of tribal members and others. The BIA Road System is unique among Federal roads, in providing services to a substantial residential population and access to the nation's most scenic areas. In this, they more resemble State and comity systems than the systems of other Federal agencies.

The second category (Non-BIA) consists of about 32,000 miles of Tribal, State, county and other local roads. These roads provide the primary access to Indian Reservations or serve within reservations or Indian lands. These roads have been identified by the tribes and made a part of the IRR System.

### INDIAN

"Indian" is accepted and widely used

TallBear 01 Kimberly TallBear is a Senior Researcher with the International Institute for Indigenous Resource Management 20-22 FEBRUARY 2001 RACIALISING TRIBAL IDENTITY AND THE IMPLICATIONS FOR POLITICAL AND CULTURAL DEVELOPMENT http://www.iiirm.org/publications/Articles%20Reports%20Papers/Race%20and%20Identity/racial.pdf

While there is criticism of the term “Indian” to denote tribal peoples in the United States and Canada, in my

experience, this is a pervasive and acceptable term in predominantly Indian communities—whether they be reservation

or urban.

"Indian" is preferred because it is more accurate than "Native American"

Arizona Edventures 12 (Webpage to educate peope about Arizona) "Top Ten: Indian Reservations"

<http://www.arizonaedventures.com/things-to-see-do/arizona-top-ten/indian-reservations/>

Did You Know…? The term “Native American” may be politically correct; however, most Indians actually prefer the term “American Indian,” because anyone born in America is technically a native American. Many Indian organizations – including the American Indian Movement, National Museum of the American Indian, and National Congress of American Indians – use the term “American Indian” in their titles.

#### Columbus did not think he was in India

Giago 7 Tim Giago, an Oglala Lakota, was born, raised and educated on the Pine Ridge Reservation in South Dakota. He was a Nieman Fellow at Harvard in the Class of 1991 and founder of The Lakota Times and Indian Country Today newspapers. He founded and was the first president of the Native American Journalists Association. October 8, 2007 The Name "Indian" and Political Correctness <http://www.huffingtonpost.com/tim-giago/the-name-indian-and-polit_1_b_67593.html>

I am a firm believer that most historians are wrong when they credit Christopher Columbus for coining the word "Indian" because he thought he was landing his ships in India. In 1492 there was no country known as India. Instead that country was called Hindustan. I think that is closer to the truth that the Spanish padre that sailed with Columbus was so impressed with the innocence of the Natives he observed that he called them Los Ninos in Dios. My spelling may be wrong on the Spanish words, but the description by the padre means something like "Children of God."

After many years of usage the word Indios emerged and to this day the indigenous people of South and Central America are called Indios. I am told that as the word wound its way North it evolved into "Indian." Of course some will say that there was a place called the East Indies in 1492 and Columbus may have thought he was headed for that region.

### INDIAN RESERVATION

#### "Reservation" means land guaranteed for residence

US EEOC 88 US Equal Employment Opportunity Commission 5-16-88 Policy Statement on Indian Preference Under Title VII. http://www.eeoc.gov/policy/docs/indian\_preference.html#\_ftn4

Before examining statutory use of the term outside the context of Title VII, we consider its ordinary meaning:

The term "Indian reservation" originally had meant any land reserved from an Indian cession to the federal government regardless of the form of tenure. During the 1850's, the modern meaning of Indian reservation emerged, referring to land set aside under federal protection for the residence of Tribal Indians, regardless of origin. (4)

"Reservation" is legally established land

ITA 06 Information Technology Associates, 2006 US Census Glossary http://www.allcountries.org/uscensus/glossary.html

American Indian Reservation **-** federal. The U.S. Census Bureau contacts representatives of American Indian tribal governments to identify the Areas with boundaries established by treaty, statute, and/or executive or court order recognized by the federal government as territory in which American Indian tribes have primary governmental authorityboundaries. The Bureau of Indian Affairs (BIA) maintains a list of federally recognized tribal governments.

Another definition

US EEOC 88 US Equal Employment Opportunity Commission 5-16-88 Policy Statement on Indian Preference Under Title VII. http://www.eeoc.gov/policy/docs/indian\_preference.html#\_ftn4

“Reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].