The Process and The People: Federal Recognition in California, Native American Identity, and the San Luis Rey Band of Mission Indians

By

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Abstract

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The United States maintains an artificial hierarchy amongst Native American tribes by acknowledging, or recognizing, some tribes' inherent tribal sovereignty over others. Tribes are considered federally recognized or unrecognized not because of intrinsic differences, but rather the history of their interactions with the government. Without a federally recognized sovereign status unrecognized tribes are often landless, are denied protections from federal laws designed to aid Native people and tribal nations, are unable access to federal resources for education or health services, and are limited in their ability to practice self-determination. Unrecognized tribes and tribal members are also subject to intangible difficulties from skeptics who question cultural authenticity and suggest ethnic fraud. California has the most unrecognized tribes in the country and the most that have taken steps to pursue federal recognition through the Federal Acknowledgment Process, a system using seven criteria to acknowledge tribal sovereignty that is administered by the Office of Federal Acknowledgment within the Department of the Interior.

The Process and The People analyzes the politics and history of federal recognition in California and its connection to contemporary Native identity. This study provides critical context on the origins of federal acknowledgment and the Federal Acknowledgment Process within a broader lineage of colonial laws and policies that bear on Native American identity. Focusing explicitly on federal acknowledgment in California, it traces the settler colonial history of the state and its connection to the current crisis of federal recognition across Native California. *The Process and The People* also includes a case study of the San Luis Rey Band of Mission Indians, the only unrecognized tribe in San Diego County. As part of a larger movement of unrecognized tribes in California seeking recognition, the case of the San Luis Rey Band exemplifies the issues of recognition in the state while highlighting the tribe's unique history within the broader recognition landscape. Through the experience of the San Luis Rey Band, *The Process and The People* contends that the tribe's engagement with the Federal Acknowledgment Process is part of a longer history of tribal interaction with the federal government. The case illustrates to what extent tribes can use the Federal Acknowledgment Process for their own political and social purposes, how unrecognized tribes enact self-determination and tribal sovereignty, and what understandings of community identity underpin the pursuit for federal recognition.

For the San Luis Rey Band of Mission Indians

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Introduction

It was Tuesday September 20, 2016 at about 5:15 PM when I sat on a bench in front of the National Archives building in Washington DC after a day of research on Mission Indians. As I scrolled through social media on my phone to pass the time before my ride arrived, I saw a post a colleague shared that caught my attention. The headline read, "Smithsonian National Museum of the American Indian's Historic Unveiling of Gold Rush Era Treaty Held Secret by U.S. Senate Leading to Ethnic Cleansing of American Indian Nations in California." I followed the link to a press release from the National Museum of the American Indian (NMAI) that announced the museum was hosting an unveiling to the general public, for the first time ever, of one of the eighteen treaties negotiated between California Indian Nations and the United States from 1851-52. The unveiling would take place Thursday, September 22, 2016 from 9:30-10:30 AM. Excitement ran through me as I realized that was less than two days away. I continued to read the document for more details. I read this sentence: "The Treaty of Temecula is one of 18 treaties negotiated between the United States and American Indian Nations in California and submitted to the United States Senate on June 1, 1852 by President Millard Fillmore."[1] My heart skipped a beat: the NMAI was going to unveil the treaty on which a Captain from my tribe, the San Luis Rey Band of Mission Indians, was a signatory.

I knew I had to attend the unveiling. I also knew it must be more than pure coincidence that I happened to be in Washington DC at the same time the unveiling was to take place. The press release said there would be tribal representatives from four nations affected by the treaty present to offer remarks. I immediately called my mom to tell her about the event and to ask whether she had heard about it through any Tribal Council communications. She confirmed that no one from my tribe was made aware that the unveiling was going to take place. Ironically, Captain Pedro Kawawish of the San Luis Rey Village was the first to sign the treaty and the San Luis Rey Band of Mission Indians may be the tribe most negatively impacted by the Treaty of Temecula's non-ratification. My mom cried over the phone as she confirmed what I thought: it was no coincidence that I was in Washington DC at the same time as the treaty unveiling. "Olivia," she said, "you have to be there. You have to see it. You need to represent San Luis Rey because no one else will."

I had no idea if I could even attend the unveiling ceremony because I tried, unsuccessfully, to contact the NMAI about the logistics of the event. Regardless, I arrived at the NMAI the morning of September 22nd. I walked around the deserted sidewalks in front of the building for a few minutes until I saw some people enter the glass doors. I followed. When I entered the foyer a woman, assuming I was a tourist, asked how she could help me as she informed me the museum wasn't quite open yet. I confidently said, "I'm here for the treaty event." She took out a binder with a list of the tribal attendees and asked which tribe I was from. I said the San Luis Rey Band of Mission Indians, but she was unable to locate the tribe on the list. I told her San Luis Rey was the first to sign the treaty, so she decided to take me

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[1] Smithsonian National Museum of the American Indian, "Smithsonian National Museum of the American Indian's Historic Unveiling of Gold Rush Era Treaty Held Secret by U.S. Senate Leading to Ethnic Cleansing of American Indian Nations in California," news release, September 19, 2016, 2016, http://www.prnewswire.com/news-releases/smithsonian-national-museum-of-the-american-indians-historic-unveiling-of-gold-rush-era-treaty-held-secret-by-us-senate-leading-to-ethnic-cleansing-of-american-indian-nations-in-california-300330602.html.

just outside the exhibit hall where the treaty was going to be displayed to the public as part of the Nation to Nation exhibit. She informed me that the members of the invited tribal delegations were viewing the treaty before it was brought up to the exhibit space.

After a period of waiting, the woman told me I should wait in a room set aside for guests and members of the invited tribal delegations. As the tribal delegations returned to the room, the treaty was being installed in the exhibit. Once the exhibit was complete, everyone in the waiting room was instructed to head to the exhibit hall. We entered the exhibit hall, and a light shined down on the treaty display case in the dimly lit space. We all gathered around the treaty, which looked small in size compared to the glass case in which it was resting. The Director of the NMAI, Kevin Gover, said opening remarks before offering the floor to the representatives from the Pechanga Band of Luiseño Indians, the Agua Caliente Band of Cahuilla Indians, the San Manuel Band of Mission Indians, and the Ramona Band of Cahuilla to speak about the treaty and its significance.

It was powerful to hear the tribal leaders and representatives speak about treaty making in California and the impact of non-ratification for California tribes. Chairman Mark Macarro of the Pechanga Band of Luiseño Indians recollected his experiences talking to other tribal people over the years, and how they insisted that "Mission Indians" were not really like other Indians because Mission Indians did not have treaties with the U.S. As Chairman Macarro spoke, the display of the Treaty of Temecula, negotiated within Pechanga's tribal territory, was a physical reminder that the California Indian experience was just as valid as any Native American experience in the United States. I was overwhelmed by emotion as I listened to the speakers and thought about the significance of the unveiling. It was hard to believe that it was the first time one of the eighteen unratified treaties from California was on display to the public because non-ratification impacted California Indian people in so many ways. But even as I felt a sense of pride for my California Indian identity, I could not help but feel a profound sorrow.

I was humbled to be part of the unveiling experience, but I was saddened that no one informed my tribe about the event. A feeling that I was out of place, or did not belong, followed me as I stood in the exhibit hall surrounded by the delegations of other tribes. As a symbol of tribal sovereignty for California tribes, the treaty was a glaring reminder that the U.S. government does not currently consider my tribe to be a sovereign nation. The other tribes, however, all are. I looked at the treaty and there was Pedro Kawawish's x-mark next to the x-marks of the other tribal Captains of Luiseño, Cahuilla, and Serrano descent. And there I was, 164 years later, standing alongside the very same people.

My experience at the Treaty of Temecula unveiling is a fitting start to *The Process and The People* because it is illustrative of the complexity and contradictions that characterize unrecognized tribal status in California. The non-ratification of the eighteen California treaties, a key moment in California Indian history discussed in more detail in Chapter Two, set the tone for the U.S. government's uneven treatment of California Indian people and tribes. Even though the U.S. government participated in treaty negotiations with the San Luis Rey Village from the San Luis Rey Mission in 1852, the San Luis Rey Band is today an unrecognized tribe. How did this divergence in legal status occur? How is the history of the San Luis Rey Band connected to the band's decision to petition for federal recognition in the 1980s? And how does this history influence a uniquely San Luis Rey identity? The process of petitioning for federal recognition brings to the fore questions and complexities about the history of Native California and the federal government, the politics of Native American identity, and the

problems with the Federal Acknowledgment Process. *The Process and The People* contends that the San Luis Rey Band's involvement is connected to a larger movement of unrecognized tribes across California to gain federal acknowledgement of their status as tribes, and in so doing to widen the possibilities for self-government and to secure their claims to traditional territories.

At the same time, in undergoing the Federal Acknowledgement Process, tribes confront the enduring power of the federal government, including its ability to define indigenous identities on its own terms. This power places the Federal Acknowledgement Process in a long lineage of colonial policies and practices that are designed to establish the authority of the federal government over Native communities. The story of the San Luis Rey Band, then, presents a series of interrelated questions at the center of *The Process and The People*: Why do tribes petition for federal acknowledgement? What histories bear on this process, and how does the situation of Native California differ from those of other tribal communities in the U.S.? What understandings of identity underpin the Federal Acknowledgement Process, and how do they relate to the San Luis Rey Band's own conceptions of community identity? Given the embeddedness of federal acknowledgement in colonial policies and relationships, to what extent can tribes use the Federal Acknowledgment Process for their own political and social purposes?

Federal Recognition Historical Context and Complexity

The passage of the Indian Reorganization Act (IRA) in 1934 explicitly distinguished tribes and individuals as federally recognized, thus cementing the concept of unrecognized tribes in federal policy.[2] Before the IRA "recognition" was generally understood in either a cognitive or jurisdictional sense.[3] A cognitive sense means that government officials know or understand that a group of Indians is a tribe. Jurisdictional understanding, on the other hand, signals the formal recognition of tribal sovereignty and the unique relationship between tribes and the federal government. Because of the distinction made in the IRA, it has been described as the key moment when all branches of government began using an exclusively jurisdictional sense of the term recognition.[4] The IRA stated it would serve "all persons of Indian descent who are members

[2] The Indian Reorganization Act (IRA) was passed in 1934 in response to a disastrous land allotment policy known as the Dawes Act (1887) that led to the dispossession of over 90 million acres of Indian land. The IRA ended allotment and ushered in a new era of federal-tribal relations that aimed to stabilize tribal governments, to provide Native peoples with college educations and technical training, to allow tribes to organize as business corporations, and to facilitate a variety of other purposes. The effects of the IRA, however, facilitated the exploitation of resources on Indian land and imposed a Western model of governance (that of a corporate board) on Native societies. Adoption of its provisions was largely forced, and the implications of the IRA have played a pivotal role in defining federally approved models of governance into the contemporary.

[3] William W. Quinn Jr., "Federal Acknowledgment of American Indian Tribes: The Historical Development of a Legal Concept," *The American Journal of Legal History* 34, no. 4 (1990).

[4] Ibid.

of any recognized tribe now under federal jurisdiction, and all persons who are descendants of such members […] residing within the boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood."[5] Native Studies scholar Brian Klopotek explains, "The wording [in the IRA] created a problem for bureaucrats in the Office of Indian Affairs, since they took it to mean they had to decide who was or should be under federal jurisdiction and just how to make that determination."[6] The IRA prompted the Office of Indian Affairs staff to find procedures to determine recognized status. Departmental officials eventually used definitions for a tribe created in the 1901 court case *Montoya v. The United States* that were refined by Felix Cohen, the well-known federal Indian law specialist who worked on the IRA.[7] The "Cohen Criteria" used one or more of five considerations, or criteria, that Cohen found were used within the body of Indian case law to decide whether an Indian group was a tribe or band.[8] The criteria, as explained by Cohen, were:

> (1) That the group has had treaty relations with the United States.
> (2) That the group has been denominated a tribe by act of Congress or Executive Order.
> (3) That the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe.
> (4) That the group has been treated as a tribe or band by other Indian tribes.
> (5) That the group has exercised political authority over its members, through a tribal council or other governmental forms.
>
> Other factors considered, though not conclusive, are the existence of special appropriation items for the group and the social solidarity of the group.
>
> Ethnological and historical considerations, although not conclusive, are entitled to great weight in determining the questions of tribal existence.[9]

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[5] U.S. Congress, "Indian Reorganization Act," (Washington: Government Printing Office, 1934).

[6] Brian Klopotek, *Recognition Odysseys: Indigeneity, Race, and Federal Tribal Recognition Policy in Three Louisiana Communities* (Durham, NC: Duke University Press, 2011), 19.

The Office of Indian Affairs was renamed the Bureau of Indian Affairs in 1947.

[7] Mark Edwin Miller, *Forgotten Tribes: Unrecognized Indians and the Federal Acknowledgment Process* (Lincoln, NE: University of Nebraska Press, 2004).

[8] Sara-Larus Tolley, *Quest for Tribal Acknowledgment: California's Honey Lake Maidus* (Norman, OK: University of Oklahoma, 2006), 61.

[9] Felix S. Cohen, *Handbook of Federal Indian Law* (Washington DC: United States Government Printing Office, 1945), 271.

The Office of Indian Affairs' utilization of the "Cohen Criteria," as a result of the wording in the IRA, underscores both the impact of the legislation as well as its role in shaping the contemporary Federal Acknowledgment Process.

In the 1960s and 1970s, Native American activists and organizations denounced the U.S. government's negative treatment of tribal rights and sovereignty after an era of federal Termination policy that extinguished approximately 110 tribes' recognized sovereignty and led to almost immediate negative impacts for terminated tribes.[10] One major concern voiced by the pro-sovereignty movement was the unevenness of tribal acknowledgment.[11] With only the "Cohen Criteria" to determine tribal recognition, many tribes were recognized ad hoc based on prior interactions with the government by means of treaty making, Congressional legislation, or the establishment of reservations. After several discussions, meetings, and special commissions with tribal peoples, the Bureau of Indian Affairs (BIA) established the Federal Acknowledgment Process in 1978 to standardize the identification of tribal groups as sovereign nations.

Today, the Federal Acknowledgment Process is administered by the Office of Federal Acknowledgment, an entity separate from the BIA but still under the Department of the Interior and the Assistant Secretary—Indian Affairs, and utilizes seven criteria to determine if a tribe has maintained its government and community over time. Formally called *Procedures for Federal Acknowledgment of Indian Tribes*, the seven criteria require a petitioning tribe to prove it has been identified as an American Indian entity on a substantially continuous basis since 1900, that it comprises a distinct community and demonstrates that it has existed as a distinct community from 1900 to the present, and that it has maintained political authority or influence over its members as an autonomous entity from 1900 to the present. The petitioning tribe must provide a current copy of its governing document, including its membership criteria. The petitioner must also provide documentation that proves the tribe's membership consists of individuals who descend from a historical Indian tribe and that the petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe. Lastly, the petitioning tribe and its members cannot be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.[12] Petitioning tribes must meet all seven criteria before a positive proposed finding can be made by the Office of Federal Acknowledgment and then given to the Assistant Secretary—Indian Affairs (AS-IA) for a final determination. If all seven criteria cannot be met, then the Office of Federal Acknowledgment issues a negative proposed finding. Before the AS-IA can make the final determination based on the negative recommendation, petitioners have the opportunity to challenge the proposed finding through a hearing before an independent judge in the Office of Hearings and Appeals. The levels of contestation that arise in the Federal Acknowledgment Process have made the process unavoidably adversarial.

Though the criteria have changed slightly since 1978, the criteria were modified once in

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[10] Michael C. Walch, "Terminating the Indian Termination Policy," *Stanford Law Review* 35, no. 6 (1983).

[11] Klopotek.

[12] Office of Federal Acknowledgment, "Federal Acknowledgment of American Indian Tribes," *The Federal Register* 80, no. 126 (2015).

1994 and most recently in 2015, the overall thrust of the regulation has remained.[13] In theory, the Federal Acknowledgment Process is supposed to be an objective and rigorous way to determine the validity of tribal claims to sovereignty. However, the criteria have been consistently criticized over the years by tribes, Indigenous rights associations, academics, and government officials. Critics have characterized the Federal Acknowledgment Process as inconsistent and biased because it is portrayed as an objective process, but it relies heavily on anthropological and historical information while placing less value on oral history and Native perspectives. In practice, the process of petitioning has proven to be excruciatingly slow, time-intensive, and expensive. Not only has the process itself been scrutinized, but the Office of Federal Acknowledgment staff has also been considered unqualified and charged with possessing too much power. One scholar has even likened the process to "administrative genocide" because of the power the staff in the Office of Federal Acknowledgment have in making these high-stakes decisions.[14] Since 1978, the Office of Federal Acknowledgment has determined 51 cases; there have been 18 tribes acknowledged and 33 denied.[15] The process presents particular difficulties for tribes in certain geographic contexts, which is often based on the historical interaction (or lack thereof) between the US and tribes. For example, only one tribe in California has ever been recognized through the Federal Acknowledgment Process: the Death Valley Timbisha Shoshone Tribe was acknowledged in 1983.

To be a federally acknowledged, or federally recognized, tribe is a paramount issue because the status indicates that the United States acknowledges, or recognizes, tribal sovereignty. A recognized tribal sovereignty means that tribes have a government-to-government relationship with the United States, they can enact the rights and responsibilities of tribal nationhood such as maintaining and exercising jurisdiction over reservation lands, they are eligible for services and programs administered by federal agencies like the BIA or the Indian Health Service, and they are guaranteed certain rights and protections based on federal laws.[16]

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[13] Most notably, the 2015 changes to the Federal Acknowledgment Process modified language in the criteria that have made it particularly hard for tribes to prove. Criteria b and c, for instance, used to require that petitioning tribes provide evidence to show that they comprise a distinct community and have maintained political influence since "historical times until the present." Proving that type of continuity from as early as the 1700s in some cases made it excruciatingly difficult for many tribes to provide enough documentation to meet the demands of the Federal Acknowledgment Process. The 2015 updates have replaced from "historical times until the present" with "1900 to the present" for criteria b and c to address the longstanding critique of that particular phrasing.

[14] William A. Starna, "Public Ethnohistory and Native-American Communities: History or Administrative Genocide?," *Radical History Review* 53 (1992).

[15] Office of Federal Acknowledgment, "Decided Cases: Petitions Resolved by Doi," http://www.bia.gov/WhoWeAre/AS-IA/OFA/DecidedCases/index.htm. The Office of Federal Acknowledgment used to be called the Branch of Acknowledgment Research (BAR).

[16] Most resources designated for Native American peoples through the BIA usually require either membership in a federally recognized tribe or proof of ¼ Native American blood quantum, established through a Certificate Degree of Indian Blood. A California Indian who

Unrecognized tribes, on the other hand, are not guaranteed the same rights and protections that facilitate tribal governance, self-determination, economic development, and general tribal welfare. As a result, over 350 unrecognized tribal groups across the nation have taken steps to pursue federal acknowledgment through the Federal Acknowledgment Process.

On a broader scale, tribal recognition has been characterized as a human rights issue in line with the goals of the United Nations Declaration on the Rights of Indigenous Peoples. As a matter of human rights with international relevance, scholars have proclaimed that tribal pursuits for federal recognition should be understood "not as efforts to take power from states or to imitate state-based legal systems but as contexts in which unrecognized tribal nations and communities envision, define, and defend their human rights."[17] Similarly, Brian Klopotek contends that "[i]n the struggle for indigenous survival and well-being, tribes seeking federal recognition are engaging in an inherently anticolonial and antiracist act. They hope that recognition will promote economic development, give them access to better education and health care, make the tribal unit a resource for its members, gain a land base, end speculation about their tribal legitimacy, and ultimately help the people survive as a tribe."[18] Federal recognition remains one of the most pressing issues across Native North America because it influences Native peoples' lives in ways that are fundamentally personal at the same time that it provides tribes with an elevated political status. Legal definitions of Native identity have been pervasive at the federal, tribal, and personal level, and membership in a federally recognized tribe has served as one way to legally establish collective and individual rights.

Unrecognized tribes on the East Coast and in the South have been the focus of most scholarly work on federal acknowledgment while the status of recognition in the West remains understudied, with California remaining on the periphery within this nascent body of scholarship. This is surprising given that California is home to the most unrecognized tribes in the country, with the Office of Federal Acknowledgment reporting that eighty-one tribal groups have initiated steps towards attaining federal recognition through the Federal Acknowledgment Process—a number almost quadruple that of any other state in the nation. Placing California Indians at the center of the federal recognition debate underscores the effects of unrecognized status on tribes that contend with the impacts of unratified treaties, the politics of tribal gaming, inter/intratribal tensions, and perceptions of racial authenticity. The matters in which recognition become contested share similarities across the different regions of the United States, but focusing on the complexities of recognition in California provides insight into the histories of Spanish and Mexican colonization in the state, the U.S. federal government's historical uneven treatment of California Indian tribes and people, the legacy of state and federally funded genocide, and the denial of treaty ratification. All of these factors make it difficult, if not impossible, for California tribes to meet criteria for federal acknowledgment. Moreover, these difficulties are compounded by the historical and contemporary realities of colonization, in environmental and cultural terms,

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cannot meet these two requirements, but is listed on or can prove descendancy to someone listed on the California Judgment Fund Rolls, is eligible to receive medical attention from Indian Health Services.

[17] Amy E. Den Ouden and Jean M. O'Brien, eds., *Recognition, Sovereignty Struggles, & Indigenous Rights in the United States: A Sourcebook* (Chapel Hill, NC: University of North Carolina Press, 2013), 13.

[18] Klopotek, 39.

of tribes throughout the state.

As mentioned before, only one California tribe has been recognized through the Federal Acknowledgment Process since 1978. Three tribes were denied and dozens of others are in various stages of petitioning. Several tribes have pursued alternate routes to recognition while others have decided to stop petitioning altogether. In part because petitioning is an extremely time-consuming, bureaucratic process that requires intensive amounts of research and writing to submit a document the Office of Federal Acknowledgment can assess. The Federal Acknowledgment Process also presents particular difficulties for unrecognized California tribes. From a pre-contact society of unparalleled environmental and cultural diversity composed of small autonomous polities, to the destructive forces of Spanish missionization and a state and federally funded genocide, California Indians' unique history is often incompatible with criteria for federal acknowledgment. When unrecognized tribes in California are challenged to prove political and community continuity through the Federal Acknowledgment Process, they are hindered in their campaigns for federal recognition because of the ways in which over two centuries of colonial laws and practices negatively impacted California Indian lifeways and tribal governing systems.

While the Federal Acknowledgment Process and its associated bureaucracy are problematic on a number of levels, unrecognized tribes consistently engage with the process regardless. This is so because at the heart of campaigns for federal recognition is the formal acknowledgment of tribal sovereignty, or the right to self-government. A recognized sovereignty provides tribes with a government-to-government relationship with the U.S. and entitles tribes to the legal obligation of the federal government maintained through the federal Indian trust responsibility. According to the BIA, the trust responsibility "…entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and federally recognized tribes."[19] With the two key aspects of federal recognition—the acknowledgment of tribal sovereignty and the obligations of the federal Indian trust doctrine—comes greater access to federal funding, grants, and educational assistance from the BIA and other federal institutions. Moreover, federally recognized tribes have enforceable power and are able to exercise jurisdiction over their own land. Recognition also gives tribes more enforceable power to have ancestors' remains repatriated through federal statutes like the Native American Graves Protection and Repatriation Act, to have control over the welfare of tribal youth through the Indian Child Welfare Act, or to legally acquire and use eagle feathers central to traditional religious and cultural practices.

There are also important subjective and affective dimensions involved for members of recognized or unrecognized tribes. There can be an elevated sense of cultural identity and pride that stems from federally recognized status. This is not because Native people from unrecognized tribes think they are "less Indian" than others; rather, it is about not having to prove one's Native identity and legitimacy on a persistent basis. Members of unrecognized tribes often think that securing federal recognition will provide a sense of justice after decades of federal oversight.[20]

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[19] Bureau of Indian Affairs, "Frequently Asked Questions," http://www.bia.gov/FAQs/index.htm.

[20] Claudia K. Jurmain and William McCawley, *O, My Ancestor: Recognition and Renewal for the Gabrielino-Tongva People of the Los Angeles Area* (Berkeley, CA: Heyday Books, 2009); Ouden and O'Brien; Tolley.

However, unrecognized tribes are still frequently met with skepticism from the general public, tribal citizens of federally recognized tribes, and government authorities who question cultural authenticity, tribal or personal identity, and sometimes suggest ethnic fraud. Chief Caleen Sisk of the Winnenum Wintu tribe in California has said, "The label of 'unrecognized' dehumanizes our tribes and puts us in a 'less than' category even though many of us […] have a well-documented history as a tribe […]. Every step we take to try to support and revitalize our traditions, preserve our language, and practice our culture is blocked by this label."[21] Arlinda Locklear, a member of the Lumbee Tribe and an expert in federal Indian law, argues that unrecognized tribes have "'second-class status in Indian Country'" and are "'vulnerable to the not-so-tender mercies of local and state authorities.'"[22] Members of the San Luis Rey Band of Mission Indians revealed, "When I state which tribe I am from people often say where are you from? Are you recognized? […] It makes me feel like our tribe is not looked upon from other [N]atives[,]" and, "I have never been accepted as being Native due to not being recognized."[23] Identity politics for unrecognized tribes have also intensified over the years, as anti-casino sentiment has grown among the general public. To that end, unrecognized tribes are often portrayed as illegitimate or inauthentic Native American peoples who are trying to make a profit or access federal resources reserved for the "real" Indians.[24]

Since many people generally do not understand the complexity of recognition, especially for tribes in California, a federally recognized tribal status can have the ability to let outsiders know that a given tribe is viewed in the same light as other recognized tribes, thus having the same rights, responsibilities, and power. The downside to federal acknowledgment is that once recognized, a tribe falls under the jurisdiction of the federal government and is subject to the plenary, or absolute, power of Congress. Most unrecognized tribes have weighed their options, and they usually feel that the pros of recognition outweigh the cons.[25] How federal recognition

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[21] Winnenum Wintu, "Winnenum Wintu Chief Caleen Sisk to Report on Racial Discrimination of Federal Tribal Recognition at the United Nations in Geneva," news release, 2014, http://www.winnememwintu.us/2014/07/31/winnemem-wintu-chief-caleen-sisk-to-report-on-racial-discrimination-of-federal-tribal-recognition-at-the-united-nations-in-geneva/.

[22] Gabriel Furshong, "Some "Unrecognized" Tribes Still Waiting after 130 Years," *Yes! Magazine* (2016), http://www.yesmagazine.org/people-power/some-unrecognized-tribes-still-waiting-after-130-years-20161219.

[23] Responses to questionnaire by anonymous members of the San Luis Rey Band of Mission Indians.

[24] James Clifford, "Identity in Mashpee," in *The Predicament of Culture: Twentieth Century Ethnography, Literature, and Art* (Cambridge, MA: Harvard University Press, 1988); Renee Ann Cramer, *Cash, Color, and Colonialism: The Politics of Tribal Acknowledgment* (Norman, OK: University of Oklahoma Press, 2005); Eva Marie Garroutte, *Real Indians: Identity and the Survival of Native America* (Berkeley, CA: University of California Press, 2003).

[25] Miller; Tolley.

influences peoples' lives cannot be understated, and it is critical to understand why unrecognized tribes go through the available channels to gain federal acknowledgment for their tribal communities. The San Luis Rey Band's engagement with the Federal Acknowledgment Process is a case that illustrates not only why tribes petition for federal recognition, but also to what extent tribes can use the Federal Acknowledgment Process for their own political and social purposes.

The San Luis Rey Band of Mission Indians Case Study

The San Luis Rey Band of Mission Indians is the only unrecognized tribe from San Diego County and the only unrecognized band of Luiseño Indians. Centrally located near the northern San Diego County city of Oceanside, the San Luis Rey Band has called the San Luis Rey Valley and surrounding area—including the cities of Vista, Carlsbad, San Marcos, Escondido, the unincorporated cities of Bonsal, Valley Center, Fallbrook, and portions of what is now the Camp Pendleton military base—their home since time immemorial. The San Luis Rey Band is one of seven Luiseño bands, and the other six federally recognized bands are: Pechanga, Pala, Rincon, Soboba, La Jolla, and Pauma. Prior to colonization, Luiseño people lived in settled and autonomous villages throughout what is now northern San Diego County and part of Riverside County. The names "Luiseño" and "San Luis Rey" come from the experience of Spanish missionization, but Luiseño people also use names like '*ataaxum*, which means "the people," and *payomkowishum*, "the people of the west." The name Luiseño is also a language group identifier for Takic-speaking peoples associated with the San Luis Rey Mission.[26] Pre-contact, the San Luis Rey Band had village sites near the present day location of the San Luis Rey Mission and surrounding areas up the coast towards San Juan Capistrano and down to the Agua Hedionda Creek and Batiquitos Lagoon near the present border of Carlsbad and Encinitas.[27] Today, the tribe still claims these areas as part of its traditional tribal territory, though no official reservation lands exist. Portions of the tribal territory are part of the urbanized and desirable coastal landscape in San Diego County. Other parts of the territory are rural with some development. Most of the approximately 500 members of the tribe reside in these areas today. Others live in the greater San Diego County vicinity and primarily throughout California. Some members live in other states across the nation, and a few internationally, but the large majority remains in the traditional tribal territory.

The San Luis Rey Band's involvement with the Federal Acknowledgement Process is a story that has largely remained untold, and there has been little to no scholarly attention given to the tribe's political history or participation with the process for acknowledgment. As part of a larger movement of unrecognized tribes in California seeking recognition, the case of the San Luis Rey Band exemplifies the issues of recognition in the state while highlighting the tribe's

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[26] Luiseño language is part of the Cupan group of the Takic subfamily of the larger Uto-Aztecan language family. See Hyde (1971), Bean and Shipek (1978), and Hyde and Elliott (1994) for more information on Luiseño language.

[27] Lowell John Bean and Florence C. Shipek, "Luiseño," in *Handbook of North American Indians: California* (Washington D.C.: Smithsonian Institution, 1978).

unique history within the broader recognition landscape. The effects of unrecognized status are also made clearer in the San Luis Rey Band case as it is the only unrecognized band of Luiseños. Petitioning for federal acknowledgment gives the San Luis Rey Band the opportunity to bring families together for a unified purpose, to resist and refuse their legal status, and to assert their social identity and political authority. S. James Anaya explains that indigenous peoples, "[…] have employed a number of strategies, including those that enlist the law and legal process of the world beyond their communities" when defending their lands, communities, and legal traditions.[28] This is precisely how many unrecognized tribes, including the San Luis Rey Band, engage the Federal Acknowledgment Process. *The Process and The People* provides the first in-depth analysis of the San Luis Rey Band's history in Southern California, the tribe's federal recognition petitioning process, and the complexity of the band's unrecognized tribal status.

Federal Acknowledgment, The Politics of Identity, and Native California

The Process and The People addresses conceptual issues around Native American identity and how it has been both expressed and controlled, primarily through federal acknowledgment policy. Central questions include: How has colonialism reshaped Native American identities? What are the social and legal processes that create Native American identities? What are the stakes in claiming a Native American identity? And how do Native American tribal communities both internalize and resist government definitions of what it means to be Native American?

Mark Miller's *Forgotten Tribes: Unrecognized Indians and the Federal Acknowledgement Process*, the first book-length study of tribal acknowledgement and its impact on unrecognized communities, argues that by seeking to apply a single model of tribal identity to all tribes despite their differences, the Federal Acknowledgment Process largely continues precedents established in the Dawes Act and the Indian Reorganization Act. Bruce Ganville Miller's *Invisible Indigenes: The Politics of Non-Recognition* uses the experience of federal recognition in the U.S. as a starting point for analyzing the politics of recognition in a global comparative context. Other works by Brian Klopotek and Sara-Larus Tolley echo this argument by exploring contemporary Native identity in Louisiana and California. *Recognition Odysseys*, Klopotek's study of the complex relationship between federal acknowledgement policy and tribal identities foregrounds the ways that federal acknowledgment has influenced social, economic, cultural, and political change in three tribes from Louisiana. Klopotek demonstrates how tribal involvement with the Federal Acknowledgment Process is not only complex, but how powerful a federally approved Indian identity actually is—with all of the material, political, and legal benefits at stake in the definitional authority.[29] Klopotek also places federal acknowledgment in a broader perspective that does not diminish its importance, but figures it as one indigenous struggle in a lineage of many. In the California context, Tolley's *Quest for Tribal Acknowledgment: California's Honey Lake Maidus* is the only book-length academic study that focuses exclusively on one California tribe's involvement with the Federal Acknowledgment Process. *Quest* provides an in-depth look at one northeastern California tribe's struggle to create a documented petition for the process, the inter/intratribal politics that arose, and how the Honey Lake Maidus' lack of acknowledgment limits the

[28] S. James Anaya, "Indigenous Law and Its Contribution to Global Pluralism," *Indigenous Law Journal* 6 (2007): 4.

[29] Klopotek.

tribe's ability to provide resources for its membership.

Real Indians by Eva Marie Garoutte is a perceptive study of methods used to define "Indianess" in the United States. It aims to illuminate changes in ways U.S. society conceptualizes issues related to race and the norms of racialization. Through an analysis of law, blood, culture, and self-identification, Garroutte shows the implications of racial definitions for Native American peoples and contributes to the body of literature addressing Native American identity through her analyses of these categories as paradoxical—with each contradicting the others while maintaining constrictive meanings. Her study and others like Jaimes' *The State of Native America,* Sturm's *Blood Politics*, and Kauanui's *Hawaiian Blood* present how ideas of race and blood quantum manifest in contemporary identity conflicts throughout the United States. Their inquiries speak to multiple contexts of a racialized, biological form of Indian identity. These works reveal the historical, legal, and societal consequences and controversies that emerge when a reliance on blood delineates who can be considered an Indian, and who cannot.

It may be more apparent to see the ways that tribes and tribal peoples have incorporated ideas like blood quantum, U.S. law and policy, race, and gender into tribal norms. But much of the literature that addresses Native identity points to the ways that Native peoples work within a constrained situation to resist the overbearing influences of the federal government and westernized society. The predicament that tribes currently find themselves in characterizes the contradictions plaguing contemporary tribal politics. All of this bears a complex relation to sovereignty because while conforming to traditional understandings of identity is a form of sovereignty, failure to conform to federal norms may diminish the ability to enact sovereignty in other ways. These works and others analyze how Native-centered conceptions of identity both internalize and resist outside ideas and ways of defining Native Americans at an individual and tribal scale.

The second conceptual issue at the center of *The Process and The People* is the place of Native California within federal acknowledgment policy. Questions considered include: What is unique about the Native Californian experience? How does the history of Spanish, Russian, Mexican, and U.S. colonialism influence contemporary Native Californian tribes and peoples? How have Native Californians been active participants in shaping their histories? And how can scholars today rewrite and rethink Native California in a way that accounts for the calamitous past? Foundational to understanding federal recognition in California is the "Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416" by the Advisory Council on California Issues (1997). This is a groundbreaking document because it represents the first time Native Californians were invited to speak about their problems directly to Congress.The report and recommendations highlight a history of federal neglect towards Native California and how that makes the Native Californian experience unique from other parts of the country with regards to federal acknowledgement, termination, education, healthcare, economic development, cultural preservation, and management of natural resources. This document is vital to arguments about why federal recognition is a crucial issue in California that warrants further investigation on how an unacknowledged status impacts tribal communities.

James Rawls' (1984) book *Indians of California: The Changing Image* analyzes the dynamics of white attitudes towards California Indians and how these views were manipulated for Anglo-American needs during the nineteenth century. Placing his analysis on the settlers instead of Native peoples, Rawls masterfully shows that the ways Native Californians were treated—through victimization, genocidal violence, state and federal refusal to ratify treaties, and slave-like labor conditions—was largely planned by settlers who needed justification for their appropriations of land and resources. Florence Shipek's work on Southern California Indian land

tenure and Mission Indian land claims is critical for contextualizing the San Luis Rey Band in Southern California and San Diego County. Her dissertation, *A Strategy for Change: The Luiseño of Southern California*, for example, is a detailed analysis of Luiseño maintenance and modification of socio-cultural practices after impacts of Spanish, Mexican, and U.S. colonization that figures into my scrutiny of the situation in Southern California for Luiseño peoples specifically.

Texts by Kent Lightfoot (2005, 2013), Lee Panich (2013), and Les Field (1999, 2003) take up the issue of federal recognition in California specifically while also implicating legacies of colonialism, including conventional anthropological studies of tribes in California, as a source of contemporary problems surrounding recognition in the state. *Indians, Missionaries, and Merchants* by Lightfoot (2005) seeks to uncover why some tribes in California are federally acknowledged and others are not through the use of historical texts, Native narratives, and archaeological fieldwork. Lightfoot analyzes the difference in colonial encounters between Native Californians with Russian merchants at Colony Ross and with Spanish missionaries along the California coast. Lightfoot contends that the variation in colonial ideals among the Russians and the Spanish has influenced why tribes associated with Russian colonial merchants are today federally acknowledged while those impacted by Spanish missionization are generally not.[30]

The Process and The People utilizes a combination of oral history and in-depth interviews as the primary sources of information, supplemented by archival materials, questionnaire responses, and secondary sources. This work draws on twenty oral interviews with tribal members. Tribal members who have been instrumental to the petitioning process from the 1980s until the present, current and former Tribal Council members, and general enrolled members not directly involved in the political proceedings of the tribe agreed to participate. Most of the tribe's general membership of approximately 500 people is not directly involved with the in-depth work that goes into petitioning for acknowledgment, and I chose a mix of interviewees to show this range within the community. The interviews were one to two hours in length and I asked the anonymous respondents a series of questions about San Luis Rey tribal history, their perspectives on how and why San Luis Rey became involved with the Federal Acknowledgment Process, their commitment to securing federal recognition, their understandings of the process in general, how they view themselves as Native peoples, and what they think about their own membership in an unrecognized tribe. I also created a questionnaire for tribal members to answer if they chose to supplement the interviews. Similarly to questions asked in the interviews, the questionnaire asked a series of questions to gauge perspectives on personal Native identity, understandings of San Luis Rey's campaign for federal recognition, and for opinions on whether federal recognition matters.

The archival materials analyzed for *The Process and The People* are from a range of archival sources. Documents and collections vital to the history and contemporary status of the San Luis Rey Band were found at the National Archives and Records Administration at Riverside and Washington DC, the Kumeyaay Community College, the A.K. Smiley Public Library, and the Special Collections Library at UC Davis. This research would not have been possible without access to the San Luis Rey "tribal archive." The tribal archive consists of various documents, photos, and correspondences kept by the Tribal Council and individual tribal members over the years. Most of these documents are unpublished and inaccessible to non-tribal

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[30] Kent G. Lightfoot, *Indians, Missionaries, and Merchants: The Legacy of Colonial Encounters on the California Frontiers* (Berkeley, CA: University of California Press, 2005).

members. Items like tribal meeting minutes and notes, written correspondence to and from the Tribal Council, personal photos, and documents made for the tribe by lawyers and anthropologists are invaluable to this project. The remainder of the information that I draw on comes from secondary materials and previous scholarship. These sources provide broader context for the national, state, and regional history that is foundational for understanding San Luis Rey's struggle to attain federal acknowledgment and how a San Luis Rey identity is shaped, contested, and defined as a result.

At its core, *The Process and The People* emerges from my connection and obligation to my tribal community. As the daughter of a Tribal Council member, I grew up hyperaware of tribal politics and the importance of preserving a unique San Luis Rey tribal identity through stories and family. Tribal Council meetings took place every Monday at the dining room table in my childhood home, and as a young girl, my cousins and I thought about the possibility of being leaders in the tribe one day. I also grew up with the understanding that the San Luis Rey Band was the only unrecognized band of Luiseño Indians and that seeking federal recognition was an ongoing tribal initiative. The San Luis Rey Band began petitioning for federal recognition before I was born, and unlike older generations, I was raised in a tribal community shaped by the language and political impact of contemporary federal acknowledgment policy. My background and involvement with my tribe throughout my youth eventually led me to pursue graduate school with the purpose of producing scholarship relevant and useful to the San Luis Rey Band. Since a top priority in the community has been securing federal recognition, and since there is a lack of resources available to the tribe, it was my intent to use my educational pursuits to help with the petitioning process as well as to document a more recent tribal history.

I am well positioned to recount the story of the San Luis Rey Band because I have access to people, materials, and histories that are largely unavailable to others outside of the tribal community. Indeed, I took into account the needs of the tribal community, the politics of petitioning for federal acknowledgment, and contemporary articulations of identity throughout this project. In effect, *The Process and The People* renewed energy for the San Luis Rey Band's federal recognition campaign. Key correspondences between the Office of Federal Acknowledgment and the San Luis Rey Band, as well as the Department of the Interior's revision of the Federal Acknowledgment Process regulations in July 2015, were also central to reenergizing the federal recognition quest. My familiarity with federal acknowledgment policy as a result of the research undertaken for *The Process and The People* led to my participation in a number of tribal events and initiatives: presenting at both Tribal and General Council meetings, reviving and co-editing a tribal newsletter, consulting with tribal members on conducting archival research, attending meetings with the tribe's lawyer, and attending meetings and co-writing documents concerning changes to the Federal Acknowledgment Process. The collaboration that occurred during *The Process and The People* is ongoing and will extend into future projects including the creation of a Tribal Council appointed federal recognition committee and a strategic plan for completing a revised and updated federal recognition petition.

Despite the centrality of the tribal community to this project, it is still important to acknowledge that there is a long and problematic history between Native American peoples and academic research. As Linda Tuhiwai-Smith states in her seminal work, *Decolonizing Methodologies*, "[…] research is not an innocent or academic exercise, but an activity that has

something at stake and that occurs in a set of political and social conditions."[31] Though I employ anthropological methods, my positionality as a member of the San Luis Rey Band of Mission Indians and my training as a Native American Studies scholar counter the colonial origins of anthropology as a discipline. I am privileged because I have had the opportunity to be educated through the university system. The tribe's willingness to participate in my project precisely because I am a university-educated member of the tribe enables the knowledge produced and recounted by my *The Process and The People* to remain community-centered. Instead of labeling my work through the paradigm of "insider/outsider" or "native/non-native," I emphasize the quality of the relations I have with the people I am trying to represent.[32] I am not "othering," objectifying, or exploiting the tribal community. Instead, I bring the voices, perspectives, and dilemmas of a modern tribal community to the fore with purpose.

Organization of *The Process and The People*

Chapter One provides in-depth critical context on the origins and limitations of tribal sovereignty and federal acknowledgment, the Federal Acknowledgment Process, and how it impacts conceptions of Native American identity. This chapter asks the questions: What does it mean for a tribe to be "federally acknowledged" and what are the political, material, and immaterial realities of this status? How is the Federal Acknowledgment Process part of a broader lineage of colonial laws and policies that define Native American identity? And, what are the implications of the federal government wielding the power to grant or withhold status?

Whereas Chapter One focuses on federal acknowledgement on the national level, Chapter Two discusses federal acknowledgment in California. The chapter asks: Why is it especially difficult and complex for unrecognized tribes in California to become federally recognized? How does the colonial history of California impact the landscape of federal recognition in the state? And, in what ways does this particular history bear on unrecognized tribes' campaigns for federal recognition through the Federal Acknowledgement Process? To answer these questions, the chapter provides an analysis of the current state of federal recognition in California, synthesizes the literature on recognition in California to extend analyses offered in previous studies, and discusses why the Federal Acknowledgment Process criteria are often incompatible with the historical and contemporary realities of California's unrecognized tribal experiences.

Chapter Three transitions to the San Luis Rey case study and focuses on the ways in which quests for federal recognition are deeply rooted in history. This chapter analyzes San Luis Rey's petitioning process through an investigation of the historical context that led to the band's decision to petition. Questions asked by this chapter include: Why do tribes petition for federal acknowledgement? What histories bear on this process, and how does the situation of Native California, and Southern California in particular, influence the tribe's petitioning process? How and why did the San Luis Rey Band pursue the Federal Acknowledgment Process? Why is the San Luis Rey Band the only unrecognized tribe in San Diego County?

Building on the historical framework set forth in the previous chapter, Chapter Four

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[31] Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (New York, NY: Zed Books Ltd., 1999), 5.

[32] Kirin Narayan, "How Native Is a "Native" Anthropologist?," *American Anthropologist* 95, no. 3 (1993).

provides an account of the impetus to pursue federal recognition and a heretofore untold history of the San Luis Rey Band's engagement with the Federal Acknowledgement Process since the 1980s. Original interviews, questionnaire responses from tribal members, and materials from multiple archives, including the private collections of various San Luis Rey tribal members, inform this chapter. By analyzing the San Luis Rey Band's petitioning process from the early 1980s to the present, this chapter builds on the previous chapter to show how the band's participation with the Federal Acknowledgment Process is part of a longer effort towards tribal self-determination and an affirmation of inherent tribal sovereignty.

The Conclusion offers a discussion of the ways in which the San Luis Rey Band works through and outside their legal status to enact sovereignty, maintain cultural integrity, and practice self-determination. The Conclusion centers the creation of the San Luis Rey Band's annual intertribal pow wow. The pow wow is important to the tribe, and it serves multiple purposes for the community. The pow wow illustrates how unrecognized tribes continue to function as tribal governments and communities despite legal status.

Chapter 1 | The Road to Recognition: Traversing the Role of Native American Identity and Tribal Sovereignty in Federal Acknowledgment Policy

Introduction

The federal acknowledgment of Native American tribal nations is one of the most critical issues facing Native peoples today in the United States. Also known as federal recognition, federal acknowledgment means that the federal government officially recognizes a tribe's inherent sovereignty. Federal acknowledgment policy sustains an arbitrary hierarchy among tribes and Native people, while also perpetuating a legacy of U.S. control over definitions of tribal nationhood and Native identity. The effects of federal acknowledgment shape Native peoples' lived experiences as they come to structure identity for members of unrecognized tribes. Exploring contemporary Native American identity is critical because it has been controlled, contested, and defined by the U.S. government for over two centuries so that governmental definitions of "Indianness" have become naturalized. Contests over definitions of Native American identity have material consequences because they are at the center of claims to political sovereignty, resources, and land. Consequently, the definition of Indian identity has been at the center of U.S. legal and social policies towards Native American tribes and peoples since the origins of the country. Federal acknowledgment policy is part of this broader history, so that struggles for land and sovereignty—the core issues in Native politics—have always been bound up with questions of Native identity.

Despite the significance of federal acknowledgement policy, there have been few academic studies that analyze the connection between contemporary Native identity and federal acknowledgment policy, the ways in which federally recognized status deeply affects Native people's understandings of their own identities, and how tribally specific understandings of community identity complicate Native American Studies' reliance on the sovereign tribal-federal relationship. Foregrounding the divergences in how identity is conceived, articulated, and enacted in tribal contexts directly challenges the power of the government to define "Indianness" and exposes the political stakes in federal definitions of tribal identity. To understand the ongoing effects of colonial control that impact Native American identity—racially and politically—in the 21st century, it is crucial to examine how contemporary Native peoples conceptualize their identities in relation to federal acknowledgment policy.

Most tribes gained federally recognized status on an ad hoc basis resulting from past interactions with the government. For example, the presence of ratified treaties, Congressional legislation, or the establishment of reservations serve as clear indicators of the government's acknowledgment of a tribe as both a political entity and a racialized group of people. Federal recognition gives tribes the power to have a government-to-government relationship with the U.S., to enact the rights and responsibilities of tribal nationhood such as maintaining and exercising jurisdiction over trust lands, and to be eligible for services and programs administered through the federal trust doctrine and by agencies like the Bureau of Indian Affairs (BIA) or the Indian Health Service. Non-federally acknowledged tribes, or unrecognized tribes, are not considered sovereign nations with a government-to-government relationship with the U.S. As a result, over 350 tribes across the nation are seeking federal acknowledgment through the Office of Federal Acknowledgement's administrative Federal Acknowledgment Process (FAP), which assesses eligibility through seven mandatory criteria.

This chapter provides in-depth critical context on the origins and limitations of tribal

sovereignty and federal acknowledgment policy, the FAP, and how this legal status is tied to Native American identity. Questions guiding this chapter are: What does it mean for a tribe to be "federally acknowledged" and what are the implications, material and otherwise, of this status? How is the FAP part of a broader lineage of colonial laws and policies that define Native American identity? And, what are the implications of the fact that the federal government wields the power to grant or withhold status?

The Realities of Recognition

Federally recognized status for Native American tribes and Alaska Native tribal entities has specific meanings. According to the Department of the Interior, federal recognition:

> (a) Is a prerequisite to the protection, services, and benefits of the Federal Government available to those that qualify as Indian tribes and possess a government-to-government relationship with the United States;
>
> (b) Means the tribe is entitled to the immunities and privileges available to other federally recognized Indian tribes;
>
> (c) Means the tribe has the responsibilities, powers, limitations, and obligations of other federally recognized Indian tribes; and
>
> (d) Subjects the Indian tribe to the same authority of Congress and the United States as other federally recognized Indian tribes.[33]

At the core of this list is the premise that federally recognized tribes possess inherent sovereignty that is recognized by the United States. Tribal sovereignty, or the right to self-government, is the most fundamental concept in the tribal-federal relationship. Tribal sovereignty is considered inherent because of the powers and governing practices tribes had prior to Euro-American colonization. Felix S. Cohen, writing in the *Handbook of Federal Indian Law*, explains, "Perhaps the most basic principle of all Indian law […] is the principle that those *powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty that has never been extinguished* [emphasis in original]."[34] The principles of inherent tribal sovereignty can be found in the ruling made by the Supreme Court in the case *Worcester v. Georgia* in 1832. The *Worcester* case was one of three influential decisions made by the Marshall Court known as the "Marshall Trilogy" that provide the foundation of federal Indian law. Cohen, quoting the opinion of the Court in *Worcester* made by Chief Justice John Marshall, underscores the thinking behind inherent tribal sovereignty: "The Indian nations had always been considered as distinct, independent, political communities, and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self-government—by associating

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[33] Acknowledgment, "Federal Acknowledgment of American Indian Tribes," 37888.

[34] Cohen, 122.

with a stronger, and taking its protection."[35] Chief Justice John Marshall's statement is problematic for the ways it figures Native nations as weak and inferior to the U.S., and the same could not have been said fifty years earlier, when alliances of tribes, for example, played a crucial role in the Revolutionary War.[36] However, the language of *Worcester* is in line with previous Supreme Court rulings under Marshall. Only one year earlier in 1831 Marshall's Court in *Cherokee Nation v. Georgia* ruled tribes to be "domestic dependent nations" with a relationship to the U.S. that mirrored that of a "ward to its guardian" where the President of the U.S. is considered Native peoples' "Great Father."[37] The principles of inherent tribal sovereignty set in these cases have remained integral to the contemporary relationship between tribes, states, and the federal government. Moreover, the presence of sovereignty represents a political-juridical identity that distinguishes Indigenous peoples from other marginalized communities in the U.S.

Unrecognized tribes also possess inherent tribal sovereignty, but the key distinction is that their sovereignty is not recognized, or acknowledged, by the federal government. A whole body of federal Indian law and policy is triggered by federally recognized status, which is one reason why unrecognized tribes seek federal recognition at all. With a recognized sovereignty comes the legal obligations of the federal government expressed in the federal Indian trust responsibility in which the U.S., "…'has charged itself with the moral obligations of the highest responsibility and trust' towards Indian tribes" and has a, "…legally enforceable fiduciary obligation to […] protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages."[38] Federally recognized status also enables tribes to have land taken into trust by the federal government, and that land is then immune from state taxation.

The various resources federally recognized tribes are able to access, like education, housing, land, federal grants, and healthcare, are in most cases unavailable for unrecognized tribes. In many cases unrecognized tribes are impoverished and lacking support and are thus limited in their ability to practice self-determination. As a result, they are often unable to establish powerful modes of governance that support tribal justice systems, economic development, cultural resource management, and educational programs. Unrecognized tribes are also treated differently by city, county, and state governments, various professional organizations, and institutions like museums and universities. This is particularly detrimental because unrecognized tribes are unable to protect tribal cultural resources or the livelihood of Native children through the use of legislation like the Native American Graves Protection and Repatriation Act or the Indian Child Welfare Act. Unrecognized tribes and their members are at

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[35] Ibid., 123.

[36] Roger L. Nichols, *American Indians in U.S. History* (Norman, OK: University of Oklahoma Press, 2003).

[37] *Cherokee Nation V. Georgia*, 30 U.S. 1 (1831). For an in-depth discussion of racist and derogatory ideas towards Native Americans in the U.S. legal system, see Robert A. Williams, *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America* (Minneapolis, MN: University of Minnesota Press, 2005).

[38] Affairs.

a disadvantage compared to their federally recognized counterparts without many of these guaranteed protections. There are several reasons for tribes to seek recognition, which I will detail in subsequent chapters, but the quest for tribal sovereignty is at the center of the movement for federal recognition because of its integral role to tribal-federal relationships.

The legal meanings and history behind tribal sovereignty are important to understand, but the concept of sovereignty, though originally non-Native, has come to be something very special and even considered sacred to some tribes and tribal people.[39] David E. Wilkins and Heidi Kiiwetinepinesiik Stark have defined tribal sovereignty as, "The spiritual, moral, and dynamic cultural force within a given tribal community empowering the group toward political, economic, and, most important, cultural integrity, and toward maturity in the group's relationships with its own members, with other peoples and their governments, and with the environment."[40] After WWII, sovereignty came to be a highly valuable term for indigenous scholars and social movement activists.[41] It was particularly important because it represented opposition towards racist ideas of Indian tribes and peoples as beneficiaries and wards of the government during the Assimilation period.[42] However, tribal sovereignty continues to be conflated with the federal-tribal government-to-government relationship, particularly in Native American Studies scholarship, and tends to obscure indigenous forms of governance and the experiences of unrecognized tribes. The reliance on the government-to-government model is no doubt important, but in the context of federal recognition it serves the interests of the federal government rather than unrecognized tribes by privileging some tribes' sovereignty over others.

There are presently 567 federally recognized Native American tribes and Alaska Native

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[39] Some Indigenous scholars and activists have critiqued the concept of sovereignty as an unviable political objective because it is a product of Western legal thought that is not indigenous to the peoples of North America. See Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Don Mills, ON: Oxford University Press, 2009) and Vine Deloria, Jr. and Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (Austin, TX: University of Texas Press,1998).

[40] David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Indian Political System*, Third ed. (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2011), 312-13.

[41] Joanne Barker, ed. *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (Lincoln, NB: University of Nebraska Press, 2005).

[42] The Assimilation period, from the 1880s to the 1920s, is characterized by various laws and policies implemented by the U.S. government meant to bring Native American peoples into the broader U.S. public. For example, the General Allotment Act of 1887 was supposed to make Native peoples farmers and private landowners. Boarding schools were established as a way to separate youth from their tribal communities and cultural identity. For a more in-depth study on Assimilation, see Frederick E. Hoxie (1984) *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920*.

tribal entities, with 109 of those located in California.[43] The exact number of unrecognized tribes, however, is harder to quantify. This is in part because an "unrecognized" designation can refer to three different types of tribes. The terms used to describe tribes without federal recognition, such as "unrecognized," "non-federally recognized," "unacknowledged," etc., are referencing tribes that have been terminated, tribes that are state recognized, or tribes that have never had any form of formalized government-to-government relationship with the U.S. Each of these designations has different political meanings, and the ways these tribes experience lack of federal recognition varies. Terminated tribes are usually noted as "terminated," but they share similarities with unrecognized tribes and non-federally recognized state recognized tribes because they have no formal relationship with the federal government and are barred from the same resources as federally non-recognized tribes mentioned previously. One major difference with regard to pursuing federal recognition is terminated tribes' inability to pursue sovereign status through the FAP because one of the seven criteria states, "Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship."[44] This work focuses specifically on tribes in California that have never had an explicit relationship with the federal government, and will refer to terminated tribes as such to mark the differences among those designations.

Federally recognized status can be conferred in three separate ways: by an act of Congress, through the official FAP administered by the Office of Federal Acknowledgment, or by judicial ruling. Terminated tribes, for example, had their federally recognized status formally taken away by the U.S. government after Congress passed House Concurrent Resolution 108 on August 1, 1953. Approximately 110 tribes and bands in eight states were terminated through various termination acts as a result.[45] The California Rancheria Act of 1958 initiated the termination of forty-one California tribes and Rancherias. This led to confusion, the severing of the trust relationship, denial of sovereign authority, the rejection of access to federal programs and services, and the imposition of state jurisdiction, to name but a few unfortunate effects. As a result, from the 1970s to present day, California tribes have actively, and in many cases successfully, sought restoration of their federally acknowledged status through Congress or the courts. The landmark litigation in *Tillie Hardwick, et al. v. the United States, et al.* affirmed that, "… all termination in California was illegally promulgated and executed," and seventeen tribes were restored through the court case.[46] However, several terminated tribes are still seeking restoration of sovereignty to this day. Unlike terminated tribes that have had their federal recognition restored by Congress, it is rarer for an unrecognized tribe to become federally

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[43] Bureau of Indian Affairs, "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs " *The Federal Register* 81, no. 86 (2016).

[44] Office of Federal Acknowledgment, "Federal Acknowledgment of American Indian Tribes," ibid.80, no. 126 (2015): 37891.

[45] Walch.

[46] Allogan Slagle, "Unfinished Justice: Completing the Restoration and Acknowledgement of California Indian Tribes," *American Indian Quarterly* 13, no. 4 (1989): 333.

recognized through Congressional legislation, though it has been a successful route for some tribes.[47] Since the advent of the FAP in 1978, most tribes go through the Office of Federal Acknowledgment's method for acknowledging tribal sovereignty.[48]

History and Development of the Federal Acknowledgment Process

The passage of the Indian Reorganization Act (IRA) in 1934 was the first time the United States made a clear statement that distinguished tribes as federally recognized or not. Before the IRA "recognition" was generally understood in either a cognitive or jurisdictional sense.[49] A cognitive sense means that government officials know or understand that a group of Indians is a tribe. Jurisdictional understanding, on the other hand, signals the formal recognition of tribal sovereignty and the unique relationship between tribes and the federal government. Because of the distinction made in the policy, all branches of government began using an exclusively jurisdictional sense of the term recognition in the IRA.[50] In the 1960s and 1970s, Native American activists and organizations denounced the U.S. government's negative treatment of tribal rights and sovereignty, and one major concern iterated during this time was the unevenness of tribal acknowledgment since there was no official way for the BIA to decide which tribes were federally recognized or not. Without a system in place, tribes were recognized informally and this was usually based on prior interactions with the government. Brian Klopotek has described a "federal recognition movement" that began with regional efforts by various unrecognized tribes before the creation of the FAP.[51] The regional efforts made by tribes across the country eventually catalyzed in the 1960s when both recognized and unrecognized tribes reasserted their sovereignty at the local and national scales in response to the destruction wrought by termination and relocation in the 1950s. The 1960s were especially crucial because it was not until then that, "… federally nonrecgonized tribes began to consider themselves an interest group on a national level and to work together on shared issues of nonrecognition."[52] The American Indian Chicago Conference in 1961 was one of the main meetings where over five hundred Native American people, including about twenty from nonrecognized tribes, produced the "Declaration of Indian Purpose" and developed key connections that placed recognition within a

[47] For an in-depth look at one tribe's experience with gaining legislative recognition, see Miller.

[48] The FAP was originally administered through the Branch of Acknowledgment Research in the BIA. In July 2003, the Department of the Interior, through the Office of Federal Acknowledgment within the Office of the Assistant Secretary—Indian Affairs, carries out the FAP and associated research.

[49] Jr.

[50] Ibid.

[51] Klopotek, 23.

[52] Ibid.

broader historical context.[53]

Other Native American activists and Indigenous rights groups in the 1960s and 1970s also denounced the U.S. government's unevenness of tribal acknowledgment that left some tribes federally recognized while others remained on the margins. The American Indian Policy Review Commission (AIPRC), which was created in 1973 after a call to reconsider federal Indian law and policy in response to the armed occupation of Wounded Knee, created eleven task forces to complete the undertaking. Task Force 10 was in charge of detailing the issues faced by unrecognized tribes, and the AIPRC's 1977 final report offered recommendations to institute standards for judging whether or not tribes can have a government-to-government relationship with the U.S. while also supporting the recognition of all tribes.[54] The AIPRC and Task Force 10 had high hopes for their recommendations, so much so that they hoped "… the words 'nonfederally recognized' and federally 'unrecognized' shall no longer be applied to Indian people."[55] Around the same time the AIPRC was formed, the Passamaquoddy and Penobscots of Maine brought suit against the federal government claiming that most of Maine was illegally transferred through a treaty between the tribes and the state in 1794, and the lawyer in the *Passamaquoddy* case used the Non-Intercourse Act of 1790, an act that prohibited states from purchasing lands from Native peoples without consent from the federal government, to prove the treaty with Maine was void. The lawyers for the defense argued that the Non-Intercourse Act did not apply because the Passamaquoddy and Penobscots were unrecognized tribes. To the surprise of many, the District Court ruled in favor of the tribes and stated that, "…Congress had intended the 1790 law to apply to *all tribes*, regardless of their recognized status at the time of the transaction [emphasis in original]."[56] The significance of *Passamaquoddy* at that time added to national conversations about non-federally recognized tribes and made it clear that unrecognized tribes still had land rights under federal law. Taken together, the various meetings, court cases, and events highlighted the undeniable presence of nonrecognized tribes in the country and pushed federal officials to make changes. As a direct result of these discussions, meetings, and special commissions with tribal peoples, the BIA established the FAP in 1978 as a standardized way of identifying tribal groups as sovereign nations.

Today, the FAP is administered through the Department of the Interior (DOI) by the Office of Federal Acknowledgment (OFA) within the Office of the Secretary—Indian Affairs and utilizes seven criteria to determine whether or not a tribe has maintained its government and community over time. It is supposed to be an objective and rigorous way to determine tribal claims to sovereignty; however, tribes, Indigenous rights associations, academics, government officials, and others have criticized the FAP for years. Critics have characterized the FAP as an inconsistent, biased, and arbitrary process that is excruciatingly slow, time-intensive, and expensive. One scholar has even likened the process to "administrative genocide."[57] Through the

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[53] Ibid.

[54] American Indian Policy Review Commission, "Final Report," (Washington D.C.1977).

[55] Ibid., 480.

[56] Miller, 36.

[57] Starna.

formation of the FAP, originally the Branch of Acknowledgment Research within the BIA, and now the OFA within the Office of the Assistant Secretary—Indian Affairs, has become arbiter of the title "federally recognized" that represents status and power within Indian Country. The difficulty tribes encounter as they struggle to meet the mandatory criteria has prompted revisions: the criteria have changed twice since 1978, once in 1994 and again in 2015, largely due to public outcry. The 2015 FAP criteria, in abbreviated form, are:

> (a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.
>
> (b) The petitioner comprises a distinct community and demonstrates that it existed as a community from 1900 to the present.
>
> (c) The petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 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 that combined and functioned as a single autonomous political entity.
>
> (f) The petitioner's membership is comprised principally of persons who are not members of any federally recognized Indian tribe.
>
> (g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.[58]

The 2015 changes to the FAP did modify some of the language in the criteria that was particularly hard for tribes to prove. Criteria b and c, for instance, used to require that petitioning tribes provide evidence to show that they comprise a distinct community and have maintained political influence since "historical times until the present." Proving that type of continuity from as early as the 1700s in some cases made it excruciatingly difficult for many tribes to provide enough documentation to meet the demands of the FAP. The 2015 updates have replaced from "historical times until the present" with "1900 to the present" for criteria b and c to address the longstanding critique of that particular phrasing.

The intent of the FAP to recognize tribal sovereignty has not changed from one version of the FAP to the next, regardless of modifications to dates or added transparency within the bureaucracy. The FAP still holds tribes to a single model of tribal nationhood and places the burden of proof on tribes to detail their autonomy and continuity. Mark E. Miller has pointed out

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[58] Acknowledgment, "Federal Acknowledgment of American Indian Tribes," 37889-91.

that federal recognition is contested "[…] precisely because it involves definitions of what constitutes an Indian tribe, who can lay claim to being an Indian, and what factors should be paramount to the process of identifying Indian tribes."[59] In every petition submitted through the FAP outside evaluators are tasked with finding the answers to these vexed indicators of tribal legitimacy. To gain federal recognition through the FAP, petitioning tribes must meet all seven criteria before a positive proposed finding can be made by the OFA and then given to the Assistant Secretary of Indian Affairs (AS-IA) for a final determination. If all seven criteria cannot be met, then a negative proposed finding is issued by the OFA. Before the AS-IA can make the final determination based on OFA's negative recommendation, petitioners have the opportunity to challenge the proposed finding through a hearing before an independent judge in the Office of Hearings and Appeals.

The requirements of the FAP are considered flawed for primarily relying on outside observers, like anthropologists, historians, and genealogists, for evidence of Indian authenticity and political authority. Certain kinds of evidence, like oral history, that are fundamental to most tribes' understandings of community identity and history of political influence, are not as highly valued as forms of supportive evidence for recognition petitions. Not only is the administrative process extremely time consuming and expensive because it requires vast amounts of research, the preparation of a document hundreds or sometimes thousands of pages in length, and employs historians and legal advisors who assist in the creation of a documented petition. The actual number of active petitions under consideration varies at any given time due to the procedures involved with reviewing the lengthy documents and associated research materials. Since 1978, there have been fifty-one determined cases; eighteen tribes acknowledged and thirty-three denied.[60]

Federal Acknowledgement and Identity: Context and Complexity

Deborah Miranda, member of the Ohlone/Costanoan-Esselen Nation of California, asserts, "My own identity as 'Indian' stares straight into the mouth of extinction. Who am I, if I'm not part of a recognized tribe?"[61] Equating membership in a non-federally recognized tribe with extinction reiterates colonial narratives of vanishing Indians and places control of Indian identity into the hands of the federal government. Miranda's struggle and questioning of her own identity exemplifies the power of governmental definitions of "Indianness" and the need to investigate the insidious ways that federal recognition policy influences Native American life. Governmental policies that exert control over Native American peoples and tribes are not new. There is a long history of federal laws and policies that aim to define Native American identity in ways that limit Native claims to land political power. For example, Patrick Wolfe has explained the processes and structures of settler colonialism that figure African American racial identity to

[59] Miller, 3.

[60] Affairs.

[61] Deborah A. Miranda, *Bad Indians: A Tribal Memoir* (Berkeley, CA: Heyday Books, 2013), 136.

be associated with labor, while Native Americans are equated with land.[62] Comparing the two modes by which the United States government has historically racialized African Americans and Native Americans, through the "one drop rule" and blood quantum, renders visible the colonial logic of federal policies and the connection of identity to rights to land and political power. By the logic of hypodescent or the "one drop rule," the smallest fraction of "African blood" would indicate a person's racial categorization, and provide an ever-expanding force of enslaved laborers. On the other hand, blood quantum policies measure "Native American blood" to diminish claims to land by linking blood to cultural authenticity and racial purity. In other words, having more "Native blood" indicates a closer connection to an authentic past, whereas less "Native blood" is a marker of illegitimacy.[63] The logic of blood quantum serves the settler colonial imperative of access to territory through the perceived disappearance of "real" Native Americans with rights to their ancestral lands and sovereign political power.

Federal acknowledgment policy in the late 20th and early 21st centuries has distinct connections to the 1887 General Allotment, or Dawes, Act and the 1934 Indian Reorganization Act. The General Allotment Act was a key policy in the effort to assimilate Native Americans into the broader U.S. society. Frederick E. Hoxie explains that, "The nations would make Native Americans the same offer it extended to other groups: membership in society in exchange for adaptation to existing cultural standards."[64] The ideology behind the General Allotment Act resembles ideas of tribal and individual conformity that is expected by the FAP criteria. Though this conformity is meant to resemble other U.S. approved tribal governments, which are largely based on non-Native styles of governance, the imperative of assimilation remains, if only in the background. The Indian Reorganization Act reinforced the uniformity promoted by assimilationist ideals by imposing non-Native governing models for tribes to adopt. Again, the methods of the FAP are apparent in these earlier policies and they continue to shape the lives of Native American peoples in unrecognized tribes. In what follows, I provide more contextualization on the General Allotment Act and the Indian Reorganization Act as predecessors to the FAP of the contemporary.

The General Allotment Act caused the loss of two-thirds of all reservations lands, or about 90 million of acres of land. It was touted as a path towards "civilization" and compelled Native peoples to become farmers and owners of private property in an attempt at assimilation. The act called for the allotment of reservation lands to documentable Indians with one-half or more degree of Indian blood, and was the first time blood was used in federal Indian policy as a criterion of identity. In most cases, those who met the blood requirement were each allotted land parcels of 160, 80, or 40 acres in fee simple, and also became U.S. citizens in the process. All other Native peoples who did not meet the blood requirement were ineligible for allotments. As a result, the "surplus" land was divided and made available for non-Native use, possession, and settlement. In effect, the General Allotment Act was able to dramatically diminish Native

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[62] Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006).

[63] Garroutte.

[64] Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Cambridge: Cambridge University Press, 1989), 34.

American population size. Reducing the amount of land owned by Native American peoples across the country, and using blood quantum as the vehicle to do so, the federal government decreased its economic and in many cases treaty-guaranteed trust responsibilities to tens of thousands of Native peoples while enabling non-Native control and settlement of land. It was believed that non-Natives living amongst Native peoples would, "[…] expedite their acquisition of white attitudes and behavior."[65]

The impact of allotment had drastic effects for the status of tribal land holdings, tribal power, and definitions of Native identity. Former Commissioner of Indian Affairs John Collier disclosed the vastness of land dispossession that resulted from allotment: "[B]etween 1887 and 1934, the aggregate Indian land base within the United States was 'legally' reduced from about 138 million acres to about 48 million."[66] Tribes lost over ninety percent of their territory and the aftermath still plagues tribes to this day. Allotment left many reservations in a checkerboard pattern where some pieces of land right next to each other can have Native, non-Native, state, or federal ownership. The jurisdictional problems associated with ownership of allotted lands have resulted in an increase in crime by non-Natives on Native land because tribal courts are unable to prosecute non-Natives, and Native American women have been particularly vulnerable to domestic violence and sexual assault perpetrated by non-Native men in these situations.[67]

Moreover, the General Allotment Act, in conjunction with other assimilationist policies like boarding schools, worked in the government's favor by attempting to erase a distinct Native identity. Dramatically diminishing the number of individuals who legally counted as tribal people with rightful claims to land furthered the government's power to define and control Native identity requirements. Shifting the basis of Native identity away from community belonging and ownership to one based on individual private property undermined tribal social structures and imposed non-Native epistemologies that continue to permeate tribal governments and communities. Community belonging as a criterion of Native American identity has been a necessity for tribes to maintain a collective identity over time. Within Native America, tribes have been responsible for creating, maintaining, and understanding the meaning of a Native American identity. Tribal membership/citizenship often plays a definitive role in fostering community-based notions of a Native identity. Guarding tribal boundaries by means of non-Native constructs like blood quantum that were introduced in devastating policies like the General Allotment Act, tribal nations have been pressured to conform to prescribed ideas of what it means to be a Native American tribe or person.

The General Allotment Act was also a key U.S. policy that solidified nineteenth-century racial ideologies about Native Americans. During that time, scientists and anthropologists had competing theories about race, and many believed phenotype and blood to be the arbiter of racial identity, purity, and authenticity. Physical anthropologists traveled the country measuring the

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[65] Wilkins and Stark, 127.

[66] Congress.

[67] Amnesty International, "Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence," (New York: Amnesty International Publications, 2007). The 1978 Supreme Court case *Oliphant v. Suquamish* ruled that tribal courts do not have inherent criminal jurisdiction to try and to punish non-Indians who commit crimes on tribal lands.

limbs and facial features of Native Americans in an effort to typify physical characteristics.[68] The connection between appearance and amount of "Indian blood" held blood to be synonymous with culture and meant that cultural and social characteristics were seen as being passed down through blood. The more Indian blood a person had, then the more "authentic" one was perceived to be. Conversely, less blood connoted a dilution of cultural connection. For example, someone considered a "half-blood" was expected to act "half-civilized," or partially assimilated and partially "traditional."[69] Using this formula, people who were racially mixed were marginalized within both U.S. and tribal societies. These effects of blood quantum are problematic because they facilitate a process of defining Native peoples out of existence. If each subsequent generation of Native children born to multiracial parents is considered to have less and less Native blood, then it is only a matter of time before the general populous subsumes all Native people.[70] If there were no connection to "Indianness" through blood ancestry, the complete diminishment of sovereign status and trust responsibility of the U.S. government to tribal people would follow. There are also many Native American peoples who have "Indian blood" from various tribes, but because of blood quantum requirements, they cannot meet the enrollment requirements of any. This situation once again diminishes tribal membership and serves the interest of the government by limiting *who* can be indigenous with rightful claims to land and political power.

The federal government enacted other assimilationist laws and policies meant to diminish Native American claims to land, sovereignty, and identity through the 1920s. In the midst of the Great Depression, Commissioner of Indian Affairs John Collier was tasked with finding a way to end the devastation of the General Allotment Act and other socio-legal policies aimed at assimilating Native Americans. Working with a team of lawyers, including the well-known federal Indian law expert Felix S. Cohen, and seeking comments from a series of tribal delegations, Collier's administration introduced the IRA to Congress in early 1934.[71] The IRA legislation passed in June 1934, and effectively ended the allotment of reservation lands and aimed to decentralize the power of the BIA and place it within local reservation governments instead. The "Indian New Deal" ushered in a new era of federal-tribal relations, and was meant to stabilize tribal governments, provide Native peoples with college education and technical training, allow tribes to organize as business corporations, in addition to many other purposes.[72] The effects of the IRA, however, facilitated the exploitation of resources on Indian land and

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[68] David L. Beaulieu, "Curly Hair and Big Feet: Physical Anthropology and the Implementation of Allotment on the White Earth Chippewa Reservation," *American Indian Quarterly* 8, no. 4 (1984).

[69] Garroutte, 42.

[70] M. Annette Jaimes, ed. *The State of Native America: Genocide, Colonization, and Resistance* (Cambridge, MA: South End Press, 1999).

[71] Vine Deloria Jr. and Clifford M. Lytle, *American Indians, American Justice* (Austin, TX: University of Texas Press, 1983).

[72] Wilkins and Stark.

imposed a Western model of governance (that of a corporate board) on Native societies. Adoption of its provisions was largely forced, and the implications of the IRA have played a pivotal role in defining federally approved models of governance into the contemporary.

The language of the IRA, for instance, is paramount for understanding how federal acknowledgment policy has developed into what it is today. A major stipulation in the act required tribes that accepted IRA provisions to adopt federally approved constitutions and bylaws that created a form of governance based largely on corporate models—not incidentally, since the IRA facilitated resource exploitation on Native land. This meant that many culturally relevant ways of defining tribal belonging and modes of governance eroded in the face of American democracy. "Traditional Indians of almost every tribe strongly objected to this method of organizing and criticized the IRA as simply another means of imposing white institutions on the tribes," reveals Vine Deloria, Jr. and Clifford M. Lytle.[73] Despite these kinds of objections many tribes ultimately modeled their constitutions after the U.S. government's, and subsequent governing documents have contributed to an internalization of westernized systems of legal and political control in tribal contexts.

As mentioned before, it was not until the passage of the IRA that the United States made a clear statement distinguishing tribes as federally recognized or not. Before the IRA, "recognition" was generally understood in either a cognitive or jurisdictional sense.[74] A cognitive sense means that government officials know or understand that a group of Indians is a tribe. Jurisdictional understanding, on the other hand, is a formal recognition of tribal sovereignty and the unique relationship between tribes and the federal government. The IRA has been described as the key moment when all branches of government began using an exclusively jurisdictional sense of recognition.[75] Only Indians, who were defined as members of "recognized" tribes, descendants of recognized tribes living on a reservation in 1934, and other persons of one-half or more Indian blood, qualified to organize tribal governments and constitutions under the IRA.[76] Struggling to decide which Indian peoples and communities were eligible since no set criteria or requirements for determining tribal status was formalized at that time, the BIA used the "Cohen Criteria" to make difficult decisions. The "Cohen Criteria," named for Felix S. Cohen, built on definitions of tribes established in *Montoya v. The United States* (1901), and noted that government appropriations to tribes, or other historical or ethnological factors could add to definitions of a tribe.[77] Cohen explains the criteria:

> The considerations, which singly or jointly, have been particularly relied upon in

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[73] Deloria Jr. and Lytle, 15.

[74] Jr.

[75] Ibid.

[76] U.S. Congress, *Indian Reorganization Act, June 18, 1934*, Washington D.C.: GPO, 1934, https://research.archives.gov/id/7873515. "Eskimos and other aboriginal peoples of Alaska" were considered Indians under the IRA as well.

[77] Jr., 358.

reaching the conclusion that a group constitutes a "tribe" or "band" have been:

(6) That the group has had treaty relations with the United States.
(7) That the group has been denominated a tribe by act of Congress or Executive Order.
(8) That the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe.
(9) That the group has been treated as a tribe or band by other Indian tribes.
(10) That the group has exercised political authority over its members, through a tribal council or other governmental forms.

Other factors considered, though not conclusive, are the existence of special appropriation items for the group and the social solidarity of the group.

Ethnological and historical considerations, although not conclusive, are entitled to great weight in determining the questions of tribal existence.[78]

What is important about the use of the "Cohen Criteria" during the IRA is that it set the practical and ideological foundation for the standardized criteria of the FAP.

All tribes, federally recognized and unrecognized, have made choices about their self-government practices, and they often integrate their own ideologies with those of the federal government in their governing documents. Yet, unrecognized tribes feel the need to adopt constitutions and governing structures that reflect the preferences of the U.S.[79] The critique made by "traditional Indians" of the IRA highlighted by Deloria, Jr. and Lylte above parallels criticisms that continue to surround the FAP. Part of the FAP criteria requires tribes to submit copies of their governing documents, including their membership criteria, for analysis by the OFA. While the style of government promoted by the IRA has become naturalized in many tribal settings, there is still a push for tribal governments to be "recognizable" through models familiar to the U.S.

Mark E. Miller has noted that during the IRA era, "Interior Department lawyers stated that tribes had to have an unbroken existence in order to be recognized […]. Federal lawyers thus promoted the legal fiction that all presently existing tribes had had a continuous existence since time immemorial. To be recognized a tribe not only had to exist in the present but also had to have always existed."[80] The existence of confederated tribes, for example, resulted not from decisions made by tribes, but by the federal government. The Confederated Tribes of Grand Ronde in Oregon is a community of twenty-seven different tribes that share a reservation but are federally recognized as a group, not individually. Grand Ronde's situation points to the complexity of tribal realities because it does not necessarily fit a static model of what a tribe is, how tribes are composed, who can be tribal members, and under what circumstances for a certain

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[78] Cohen, 271.

[79] Anonymous members of the San Luis Rey Band of Mission Indians in discussion with the author, March 2015.

[80] Miller, 29.

amount of time.

Both the General Allotment Act and the IRA were ostensibly enacted with the benefit and well-being of Native American peoples in mind. The colonial logic being the civilization and assimilation of "vanishing" Native American peoples through the pursuit of agriculture in the General Allotment Act and through federally approved modes of governance by the imposition of the IRA. However, both of these policies had cynical sides that continue to structure many Native American peoples' lives. As mentioned before the checkerboard pattern left throughout Indian Country has created a jurisdictional nightmare that makes Native women targets of violence by non-Natives. Allotment lands today have also proven to be underdeveloped and unviable to either lease or use for any kind of economic development.[81] The IRA continues to structure tribal governments and governing documents in ways that are not always aligned with cultural, or traditional, understandings of political authority. In some cases, the IRA replaced aspects of traditional governance that had been maintained which only led to further internal tribal conflicts.[82] Like the General Allotment Act and the IRA, federal acknowledgment policy is inextricably connected to the lived realities of tribes and individual Native Americans today. The need for a set of definitions of tribal composition came from a practical need during the implementation of the IRA. Yet, a definition of a tribe also comes to stand in for what the definition of a tribe is not. If unrecognized tribes today are missing part of the definition, then those good intentions become materially and emotionally relevant.

Laying claim to land and identity is of utmost importance to Indigenous peoples the world over. It is especially crucial for Native peoples in the United States not only because of the ways in which settler colonialism operates through the dispossession of land, but also because claiming a racialized and politicized Native American identity reveals how land and power are uniquely tied to definitions of indigeneity and sovereignty. Because of this, Native identity remains controversial and contested into the contemporary, and the FAP is one way that contests over tribal legitimacy endure within the United States. Using federal recognition through the FAP as a lens for viewing Native identity exposes just how powerful a federally approved Indian identity actually is—with all of the material, political, social, and legal benefits at stake in the definitional authority. The FAP acts as a gatekeeper, and has the power to both limit and control tribal authority and Native identity. Reliance on outside evaluators to judge unrecognized tribes' political, governmental structures, while also scrutinizing genealogical claims to a racial community identity, expressly links conceptions of Native identity to the FAP.

Making the Decision to Petition

While scholars, Indigenous rights organizations, activists, and others have denounced the FAP regulations, so too have the OFA's overall procedures for making final determinations and the excessive amount of time and money it takes for tribes to complete a documented petition. Many unrecognized tribes struggle to find resources and aid while petitioning, which only draws out the process even further. Critiques of federal recognition point out that if it is considered the pinnacle of "success" for contemporary tribes, then it only serves to reaffirm the hegemonic framework of privileging the structures of the dominant colonial society that sovereignty is

[81] Wilkins and Stark.

[82] Ibid.

accepted within. There are tribal groups that do not seek federal recognition because they see it as a continuation of a racial and colonial project that places boundaries on their identities, traditional governing practices, and ability to maintain their autonomy. The popular conception is that federal acknowledgment bestows a kind of greater quality to those "worthy" of the status. However, this narrative renders invisible the many recognized tribes that continue to live similarly, and often in destitute conditions, to the ways they had lived before they gained a "legitimate" sovereign status.[83]

The fact remains, though, that unrecognized tribes overwhelmingly pursue federal recognition. In fact, over 350 tribes have taken steps to become federally recognized through the FAP alone. There are several reasons tribes decide to petition, and each tribe's unique history and culture plays a part in the decision-making process. Some of the main reasons include access to legal and socio-political rights and resources that have been reserved for Native American people and tribes, to have reservation lands and jurisdiction over them, to attain justice by righting historical wrongs like the taking of land and life, to affirm a tribal identity and history, or to gain protections offered by federal laws such as the Native American Graves Protection and Repatriation Act or the Indian Child Welfare Act. These are practical needs and wants that often outweigh what may be considered negative aspects of federal recognition, such as being subject to the plenary power of Congress. Tribes weigh their options, but for most there are few others choices comparable to federal recognition that would provide the resources and power necessary to meet the needs of contemporary tribes and tribal people. If tribes do make the choice to pursue federal recognition, by way of the FAP or Congress, they become the subjects of intense scrutiny by the public, other tribes, government officials, various advocacy groups, the media, and other observers. A very common reaction made by these various interested parties usually involves questions about casino gaming.

The focus on casinos does more harm than good for unrecognized tribes that already find themselves in a constrained situation. Anti-Indian and anti-casino rhetoric in the media and made by prominent political figures serves to obscure the ways in which tribal sovereignty is grounded in history, while it also deflects questions about the ongoing relationship between tribes, states, and the federal government. Again, sovereignty represents a political-juridical identity that distinguishes Indigenous peoples from other marginalized communities in the U.S. Within federal recognition debates that center casinos, however, sovereignty becomes diluted by assimilationist ideas of beneficiary status. This in turn conflates sovereignty with "benefits" and "special rights" that are inaccessible to non-Natives and racializes Native Americans as just another "minority" group. At stake is the degradation of what inherent tribal sovereignty represents for tribal nationhood. What Joanne Barker considers the "rearticulation of sovereignty," or the ways that sovereignty is invoked in various historical, social, and political situations, provides a way of viewing the FAP in the context of casino cynicism.[84] The FAP is a rearticulation of sovereignty that has emerged with a political agenda and perspective that judges sovereign tribal status through seven mandatory criteria. Though these criteria call for the detailed representation of the federal-tribal relationship throughout history, critics of federal recognition ignore this aspect and change the conversation from one of historical relationships to

[83] Klopotek.

[84] Barker.

one mired in material benefits. Additionally, unrecognized tribes' authenticity and tribal identity have come under question as a result of casino gaming. Unrecognized tribes and tribal members have been accused of falsifying their Indian identities to make a profit. This has been an especially prevalent issue for unrecognized tribes in the Northeast and in the South. Tribes in New England have been subjected to what some scholars have termed the "Connecticut Effect" that has had an increasingly negative impact on tribes seeking federal recognition, as well as federally recognized tribes that operate casinos in the region.[85]

In addition to the controversies spurred by casino gaming, unrecognized tribes also experience accusations of cultural and racial inauthenticity. Recognizing tribes as sovereign governments through what is supposed to be an impartial process distances the logic of the FAP from racialized notions of Native American identity and culture that constitute essentialism in anthropological discourse.[86] However, ideas about race and cultural authenticity are at the core of most recognition decisions.[87] Renee Ann Cramer has discussed how racial identity affected the Mowa Choctaws and their quest for federal recognition.[88] The presence of African American ancestry within the tribe stirred public suspicions that they are not "real" Indians; therefore, they should not have the privileges of federal acknowledgement. Underscored in this situation is the reality that federal acknowledgment guidelines are inconsistent with the actual histories of many Indigenous communities, including those that involve racial mixing. The Poarch Band of Creek Indians, on the other hand, has more Euro-American heritage than the Mowa. This has enabled them, in Cramer's view, to attain federal recognition. There are fewer stigmas around Native people who look white or stereotypically Native American rather than black, and this has profoundly impacted the racial politics of federal recognition processes. These histories – including race mixing – are the consequences of colonialism and enslavement. Thus, the FAP defines Indian identity in ways that make it impossible for tribes to meet the standards precisely because of the actions of the federal government itself.

A notorious example of the ways in which notions of cultural authenticity defined by the federal government has created a standard that most tribes cannot meet is the case of the Mashpee Wampanoag in Massachusetts. James Clifford's widely read essay "Identity in Mashpee" focuses on the monumental court case that arose after the Mashpee Wampanoag Tribal Council, Inc. sued the federal government for violating the Non-Intercourse Act of 1790.[89] The Mashpee argued for 16,000 acres to be given back to them because Congress had not approved the transfer of land in accordance with the Non-Intercourse Act. What is important about the trial, especially for understanding the complexity of Native American identity, is that

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[85] Ouden and O'Brien, 2-4.

[86] Les W. Field, "Complicities and Collaborations: Anthropologists and the "Unacknowledged Tribes" of California," *Current Anthropology* 40, no. 2 (1999).

[87] Joanne Barker, *Native Acts: Law, Recognition, and Cultural Authenticity* (Durham, NC: Duke University Press, 2011).

[88] Cramer.

[89] Clifford.

the jury was not deciding whether or not Congress violated the Act; rather, the point of the proceedings was to determine if the Mashpee were actually an Indian tribe. Considering race, territory, community, and leadership, the jurors were tasked with judging whether the Mashpee were a tribe on six different dates in the past, and if the tribe in the town of Mashpee (where they resided) existed continuously during the specified historical period. Clifford discusses the social and collective meanings of identity that were central to the Mashpee trial. He describes how the use of dominant images within the courtroom represented the Mashpee as vanishing or as inauthentic as a result of racial mixing. Clifford's account of the trial stresses that:

> The Mashpee were a borderline case. In the course of their peculiar litigation certain underlying structures governing the recognition of identity and difference became visible. Looked at one way, they were Indian; seen another way, they were not. Powerful ways of looking thus became inescapably problematic. The trial was less a search for the facts of Mashpee Indian culture and history than it was an experiment in translation, part of a long historical conflict and negotiation of "Indian" and "American" identities.[90]

The Mashpee are just one of several tribal communities that have been depicted as illegitimate, in this case because of intermarriage with non-Indians, a decrease in number of Massachusett speakers, and the elusiveness of tribal governing institutions. The root of these markers of inauthenticity, however, all point back to the destructive effects of settler colonialism and federal policies on Native American peoples: intermarriage as a consequence of histories of slavery and colonialism, language loss as a result of assimilative tactics such as boarding schools, and the use of non-tribal notions of governance to define authenticity.

An important distinction that Clifford makes is that there was consensus that the Mashpee were descendants of Native American peoples, but the point of conflict was over their status as a tribe with sovereign authority and rights. This distinction is highly significant within current recognition debates because the criteria are not meant to acknowledge whether or not petitioning tribes represent a Native American race; instead, the criteria are supposed to acknowledge a Native American *tribe* with political authority over its tribal membership. In other words, a group of people who identify racially or culturally as Native American is not enough for the government to recognize inherent tribal sovereignty because of sovereignty's connection to governmental authority. Clifford's piece and the case of the Mashpee still resonates in contemporary struggles for recognition because controversies over defining "Indian tribes" will never cease to exist in a settler colonial society that can only rightfully exist in the absence of tribes and tribal claims to land. The Mashpee case raises questions about individual versus social or collective identity and legal definitions of tribes versus community-centered understandings of tribal composition. The challenges that remain hinge on whether legal categorization is suited to distinguish tribal existence, as is done with the FAP today, and if such an approach will ever account for the complex histories of colonialism across Native America.

State Recognition: An Important but Limited Alternative

Although federal recognition remains highly sought after, it is not the only option for tribes seeking some source of official outside acknowledgment. Several tribes that are

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[90] Ibid., 184.

unrecognized by the federal government are recognized by the state in which they are located. State recognition is a highly understudied area of the U.S. federalist system, and there are few scholarly works that provide in-depth analyses of state recognition processes, state-recognized tribes, or the implications that arise from states' ability to recognize tribes. K. Alexa Koenig's and Jonathan Stein's surveys of state recognition and the implications of state recognition on Indian gaming are critical interventions.[91] State recognition is politically and historically important despite its difference from federal recognition. Koening and Stein argue that state recognition is an important option for tribes because:

> State recognition can facilitate communication between state and tribal governments, encourage diversity in state institutions, enable the provision of state services to underserved populations, and increase tourism. State recognition can also support tribes' rights and provide certain benefits in their relations with state and federal governments as well as clarify which tribes are exempt from the purview of legislation that explicitly excludes 'Indians.'[92]

The federal government has also legitimized state recognition by allowing state-recognized tribes to access certain funding and resources based on the legal status. In California, there are currently two tribes recognized by the state. Some unrecognized tribes and tribal members in California believe they are state-recognized because they frequently interact with the Native American Heritage Commission, a commission that deals primarily with cultural resource issues, laws, and consultations throughout the state. Despite the misconception, the Juaneño Band of Mission Indians and the Gabrielino-Tongva Tribe are the only official state-recognized tribes in California.[93]

There are currently twenty-one states that have some kind of process for recognizing tribes. Each of the twenty-one states uses one of four methods to do so. The first is "state law recognition" and it is the most formal way for a state to recognize a tribe. It does so by enacting a new state law that recognizes a tribe. The law can establish a government-to-government relationship between the state and the tribe, or it can indicate a lesser political relationship. Twelve states have used this form of recognition for at least one state-recognized Indian tribe. "Administrative recognition" is another method for state recognition that is very similar to the

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[91] See Koenig and Stein "Lost in the Shuffle: State-Recognized Tribes and the Tribal Gaming Industry" (2006); "Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes Across the United States" (2008); "State Recognition of American Indian Tribes: A Survey of State-Recognized Tribes and State Recognition Processes" (2013).

[92] K. Alexa Koenig and Jonathan Stein, "State Recognition of American Indian Tribes: A Survey of State-Recognized Tribes and State Recognition Processes," in *Recognition, Sovereignty Struggles, & Indigenous Rights in the United States: A Sourcebook* ed. Amy E. Den Ouden and Jean M. O'Brien (Chapel Hill: The University of North Carolina Press, 2013), 116.

[93] Though the Gabrielino-Tongva Tribe is state recognized, there are other unrecognized groups of Gabrieleños. The Gabrieleño Band of Mission Indians (Kizh Nation), for example, is one of the other tribal communities.

federal administrative recognition process managed by the OFA. The pitfalls of this type of recognition are that it is so similar to the federal model that tribes may get caught up in yet another convoluted process that leads to a status with fewer rights. The third method is "legislative recognition" and this happens when a joint or concurrent resolution by one or both houses of the state legislature creates an official relationship with an Indian tribe. Six states have employed this method of state recognition, but, "In most cases it is questionable whether legislative recognition possesses the force of law and therefore carries any legal rights for tribes."[94] Lastly, "executive recognition" occurs after a gubernatorial proclamation or executive order from the state's top executive official. This is the weakest form of state recognition and like "legislative recognition" it usually does not possess the force of law. What is most crucial about understanding state recognition is that it is a by-product of the inherent flexibility within the U.S. federalist system. Although not perfect, there is some room for unrecognized tribes and states to embrace forms of governance that address the local needs and conditions of tribal communities.

State recognition can also serve other purposes for unrecognized tribes that are unlikely to have their petitions for federal recognition resolved in the near future. In some cases, state recognition can help a tribe secure federal recognition. The Shinnecock nation of New York became the 565th federally recognized tribe in October 2010 after over three decades of struggle with the BIA and the DOI. After suing the DOI, "a federal judge declared the Shinnecock nation recognized based on overwhelming evidence of their long-standing presence within and recognition by the State of New York."[95] The Shinnecock nation's enduring relationship with New York was strengthened by the fact that the tribe had a reservation. Most non-federally recognized tribes do not have reservations, but some state-recognized tribes, like the Shinnecock and several state-recognized tribes in Virginia, do have reservation lands. Unlike reservations for federally recognized tribes, state reservations are not subject to the same federal laws, jurisdictions, tax exemptions, and administration. A state-recognized tribe with a reservation likely has a more developed relationship with the state in which it is located, and the associated documentation could strengthen a petition for federal recognition. Moreover, a state reservation provides a land-base that facilitates community cohesion in a way that is not as common for other non-federally recognized tribes that have no land or central place for tribal members to gather or for tribal governance to occur. For FAP criteria that stress the crucial importance of community continuity the advantage of state recognition and a state reservation are immense.

Though state recognition can be advantageous, it is ultimately a limited alternative to federal recognition. State recognition does not acknowledge a government-to-government relationship with the U.S., nor does it allow for federal sovereign immunity or immunity from state laws. State recognition also does not guarantee protections from federal laws like the Indian Child Welfare Act, nor does it assure resources for healthcare, housing, education, or economic development from the federal government or other agencies. State-recognized tribes:

> […] are viewed as having only those rights recognized by that state's laws, legislative resolutions, administrative regulations, and other documents that collectively help to

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[94] Koenig and Stein, 132.

[95] Ibid., 117.

> clarify and define the relationship. They may range from powers of self-government analogous to that of a municipality, such as the right to operate a police force, to exemptions from paying state and local taxes, to merely offering official acknowledgment of a tribe's long-standing presence within a state.[96]

Critics of state recognition also point out that it must be understood within the historical context of state-tribal relationships since states have long been opponents to tribal sovereignty. For these reasons, non-federally recognized tribes and many state-recognized tribes still seek federal recognition.

Conclusion

Unrecognized tribes in California are hyperaware of the mechanisms at work in the FAP, but have remained on the margins of broader discussions regarding federal recognition across the country. The status of unofficial tribal sovereignty among California tribes offers a way for understanding the colonial implications of federal recognition in the United States. There are currently more unrecognized tribes in California than elsewhere in the country. Of these tribes, an overwhelming majority has pursued recognition through the FAP. The OFA has most recently reported that eighty-one California tribes have taken steps to commence the FAP since 1978.[97] One of these tribes, a band of Luiseños from Northern San Diego County known as the San Luis Rey Band of Mission Indians, has been immersed in the process for over thirty years. Every unrecognized tribe that pursues the FAP has its own unique history, but the San Luis Rey Band provides a case to understand the mechanisms of federal acknowledgement in California. Before delving into the particularities of the San Luis Rey Band's history and experience with the FAP, the next chapter will focus specifically on the complexities of federal recognition in California more broadly.

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[96] Ibid., 122.

[97] Office of Federal Acknowledgment, "Number of Petitions by State as of November 2013," (Department of the Interior, 2013).

Chapter Two | The California Conundrum: Native California and the Status of Federal Acknowledgment

Introduction

In 2014, Caleen Sisk, Chief and Spiritual Leader of the Winnenum Wintu in California, was chosen as one of five indigenous leaders from North America to present at the United Nations' 85th Session of the Committee on the Elimination of Racial Discrimination in Geneva, Sweden. In her remarks, she spoke about the discrimination unrecognized tribes in the United States face because of their legal classification. In a press release about her participation in the session Sisk said, "The label of 'unrecognized' dehumanizes our tribes and puts us in a 'less than' category even though many of us, including the Winnenum, have a well-documented history as a tribe…Every step we take to try to support and revitalize our traditions, preserve our language, and practice our culture is blocked by this label."[98] Her tribe also submitted a shadow report to the United Nations prior to her visit outlining Winnenum Wintu history, the ways in which the U.S. government has interfered with the tribe's cultural and spiritual practices, and how the tribe's lack of federal recognition limits recourse to enact rights reserved for Native Americans under U.S. law.[99] Sisk's involvement at the United Nations underscores both the importance and problems of tribal recognition by an external government. Indeed, Sisk's call to the international community draws attention to the politics of recognition that other Indigenous peoples and scholars of Indigenous and non-Indigenous heritage have also noted on the global scale.[100] The public presence Sisk has maintained, from the United Nations to her advocacy and activism around environmental and cultural rights for her tribe, brings much needed political visibility to the status of recognition for California tribes and to the particular struggles unrecognized California Indians face on a daily basis.

Though Chief Caleen Sisk's remarks and her tribe's actions are often specific to the Winnenum Wintu, she and her tribe express a sentiment about federal recognition that resonates broadly with other unrecognized California tribes. Unrecognized tribes in California are often hindered in their quests for recognition of inherent sovereignty. California Indians' unique history and the criteria for federal acknowledgment are at times incompatible when tribes are challenged to prove political and community continuity after over two centuries of colonial laws and practices that negatively impacted Native peoples' life ways and tribal governing systems.

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[98] Wintu.

[99] Winnenum Wintu Tribe, "Shadow Report," (2013).

[100] Glen S. Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory*, no. 6 (2007); Bruce Granville Miller, *Invisible Indigenes: The Politics of Nonrecognition* (Lincoln, NB: University of Nebraska Press, 2003); Elizabeth Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham, NC: Duke University Press, 2002); Glen S. Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis, MN: University of Minnesota Press, 2014); Bonita Lawrence, *Fractured Homeland: Federal Recognition and Algonquin Identity in Ontario* (Vancouver, B.C.: University of British Columbia Press, 2012).

The histories of Spanish and Mexican colonization in the state, the U.S. federal government's historical uneven treatment of California Indian tribes and people, the legacy of state and federally funded genocide, and the denial of treaty ratification make it difficult, if not impossible, for California tribes to meet criteria for federal acknowledgment. These difficulties are compounded by the historical and contemporary realities of colonization, in environmental and cultural terms, of tribes throughout the state. Whereas Chapter One focused on the history and framework of federal acknowledgment policy on the national scale, this chapter centers federal recognition in California. The chapter asks: Why is it especially difficult and complex for unrecognized tribes in California to become federally recognized? How does the colonial history of California impact the landscape of federal recognition in the state? And, in what ways does this particular history bear on unrecognized tribes' campaigns for federal recognition through the Federal Acknowledgement Process (FAP)? To answer these questions, the chapter provides an analysis of the current state of federal recognition in California, synthesizes the literature on recognition in California to extend analyses offered in previous studies, and discusses why the FAP criteria are often incompatible with the historical and contemporary realities of California's unrecognized tribal experiences.

The State of Recognition in California

In California, there are more unrecognized tribes, and more unrecognized tribes seeking federal recognition through the FAP, than in any other state. The Office of Federal Acknowledgment's (OFA) last published report on recognition data stated that eighty-one tribal groups from California had taken the first step towards pursuing the FAP by submitting a Letter of Intent to Petition.[101] Not all of the eighty-one tribal groups are currently active in the petitioning process, and the list includes tribes that have gained federal recognition through other channels since they initiated the petitioning process. For example, a tribe listed as "The Federated Coast Miwok" is now known as the Federated Indians of Graton Rancheria and their federal recognition was restored through an act of Congress in 2000. Since the creation of the FAP in 1978, there has only been one tribe from California recognized through the process: the Death Valley Timbisha Shoshone Tribe was acknowledged in 1982 and the tribe's acknowledgment was effective on January 3, 1983. The early date of the Death Valley Timbisha Shoshone Tribe's acknowledgment is significant in the context of recognition in California because it was not only one of the first recognition decisions in the country, but it was also prior to the federal legalization of tribal gaming. The opposition to federal recognition was not the same as it is today, in large part because of tribal gaming, and the evidence required of tribes has increased over the years. Moreover, the tribe's unique history sets it apart from the majority of other unrecognized tribes in California. In 1933, the Death Valley Timbisha Shoshone tribe's homelands were subsumed in the Death Valley National Monument. The tribe had an ongoing relationship with the National Park Service as a result and an ongoing engagement with the federal government over the tribe's homeland was well documented.[102] This type of sustained interaction and documentation is usually lacking for unrecognized tribes that find it difficult to prove political and social continuity without it.

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[101] Acknowledgment, "Number of Petitions by State as of November 2013."

[102] Miller.

To date, four California tribes have been denied federal recognition through the FAP: the Muwekma Ohlone Tribe of San Francisco Bay (#111, 2001), the Juaneño Band of Mission Indians (#084A and #084B, 2011), and the Tolowa Nation (#085, 2013). The Juaneño Band of Mission Indians, petitioners #084A and #084B, represent two separate tribal groups. The third Juaneño petitioner, #084C, has yet to receive a final determination from the OFA. During the petitioning process the Juaneño Band of Mission Indians, originally just petitioner #084, split into three separate tribal groups that are sometimes called "factions" or "splinter groups." Though often interpreted as divisiveness or the product of family politics, the "splintering" of unrecognized California tribes can be interpreted as similar to pre-contact forms of social organization. This will be discussed in more detail in the next section of this chapter. A negative final determination from the Assistant Secretary—Indian Affairs is not necessarily the end of a petitioning tribe's interaction with the FAP. A tribe that receives a negative final determination can go through an appeals process. On February 18, 2016, the Tolowa Nation filed a request for reconsideration of its negative determination with the Interior Board of Indian Appeals. Dozens of other unrecognized tribes involved in petitioning are waiting on the OFA or making slow progress on their petition research. Others have ceased petitioning altogether. In conversation with Chairman Val Lopez of the Amah Mutsun Tribal Band, he explained that his tribe abandoned the FAP after dozens of meetings with OFA that left him and his community uncertain and skeptical of the longevity of the petitioning process. The bureaucratic element to the FAP has always been a cause for frustration among petitioning tribes. It is understandable why some tribes forfeit the FAP after decades of little-to-no progress to focus on other tribal initiatives that are more immediate or have cultural significance. For example, the Amah Mutsun Tribal Band has been very active in land restoration projects that include the creation of the Amah Mutsun Land Trust.[103] The land trust seeks to revive traditional landscape management practices through educational and collaborative initiatives between tribal members, various organizations, and universities in central California.

Not all of the tribal groups that submitted a Letter of Intent represent historical California tribes. A few California-based descendant organizations composed of Choctaw, Chiricahua Apache, and Lumbee people initiated the FAP, but only two such organizations obtained a final determination by the Assistant Secretary of Indian Affairs. The "Kaweah Indian Nation" and "The United Lumbee Nation of North Carolina and America" were not recommended for federal acknowledgment because they were not historical Indian tribes and a non-Native man created the groups in the 1970s and 1980s. For example, the proposed finding issued by BIA staff recommended against acknowledgment of the Kaweah Indian Nation because:

> The Kaweah Indian Nation, Inc. is a recently formed organization which did not exist prior to 1980. The organization was formed under the leadership of a non-Indian, Malcolm L. Webber, as the result of the breakup of a similar organization, the United Lumbee Nation, Inc. The KIN is primarily an urban Indian interest group in Porterville, California, which has no relation to the aboriginal Kaweah Indians and did not evolve from a tribal entity which existed on a substantially continuous basis from historical times until the present.

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[103] Amah Mutsun Tribal Band, "Land Trust," http://amahmutsun.org/land-trust; Mary Ellen Hannibal, "Rekindling the Old Ways: The Amah Mutsun and the Recovery of Traditional Ecological Knowledge," http://baynature.org/article/rekindling-old-ways/.

> The KIN has no characteristics of an Indian tribe which has maintained tribal relations from historical times. No evidence was submitted by the petitioner or found by the staff which indicates the organization ever had a political existence prior to or after its founding in 1980.
>
> The present membership of the KIN is composed of individuals who claim Indian ancestry but none of whom claim Kaweah or Yokuts ancestry. Its present activities consist primarily of civil activities directed toward urban Indian causes; genealogy of members; and Indian history and culture projects.[104]

Some critics of federal acknowledgment vilify the process because of the possibility for descendant organizations to become federally recognized, but that has never happened in the history of the FAP. The amount of evidence required to prove continuous existence as a tribal government and distinct community would be impossible for a descendant organization to provide, and as the California example shows, the OFA can distinguish the descendant organizations from other types of tribal groups.

The OFA's reports on tribes seeking federal recognition through the FAP are not reliable. The reports include outdated information and include any tribe that initiated the FAP—whether or not the tribe later pursued other routes to recognition. Terminated tribes and state recognized tribes, in addition to tribes that have never had any sort of official external legal recognition, can also be considered "unrecognized" because they lack acknowledgment of their tribal sovereignty by the federal government. Given these classifications, it is difficult to quantify the exact number of unrecognized tribes in California contemporarily.

The vexed status of federal recognition in California has been a concern for unrecognized tribes and allies for decades. In 1989, Allogan Slagle, Cherokee lawyer and advocate for unrecognized tribes in California, called for the creation of "[…] legislation which addresses the needs of most California candidates for acknowledgment or untermination by clarifying the terms and means of defining cultural and political existence, and by shifting the burden to the U.S. to disprove a petitioner's existence […]."[105] Many reports, special commissions, individuals, and tribes have tried for decades to urge the BIA or Congress to create something that can account for California's distinctive history within the contiguous United States. Since the 1980s, some pieces of legislation to restore terminated California tribes, such as the Auburn Indian Restoration Act (1994) and the Graton Rancheria Restoration Act (2000), were enacted. Despite these successes, Slagle's calls to the federal government remain relevant today as no California-specific modifications have ever been made to the FAP.

Another group, the Advisory Council on California Indian Policy, also made significant recommendations to Congress to create a California-specific solution to the problems with the

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[104] Acting Deputy Assistant Secretary-- Indian Affairs, "Recommendation and Summary of Evidence for Proposed Finding against Federal Acknowledgment of the Kaweah Indian Nation, Inc., Pursuant to 25 Cfr 83," (Washington DC: United States Department of the Interior, 1984).

[105] Slagle, 332.

FAP for unrecognized California tribes. The Advisory Council was created pursuant to the "Advisory Council on California Indian Policy Act of 1992," and it was composed of Native Californian peoples from federally recognized, unrecognized, and terminated tribes.[106] The Advisory Council was an important entity because it represented the first time California Indians were to report directly to Congress about the issues most important to them. The Advisory Council on California Indian Policy's efforts resulted in the last large-scale interrogation of federal acknowledgment in California that was published in 1997 as part of their final report and recommendations to Congress. Most of the problems addressed in the report, according to the Advisory Council, "[…] can be traced to [California Indians'] unique historical circumstances and the inconsistent and misguided federal policies that have shaped [California Indians'] history."[107] The Advisory Council describes the federal government's inequitable treatment towards California Indians as "institutionalized injustice," and explains:

> Not injustice isolated in time or effect, but a pattern of injustice that stretches across the better part of two centuries and threatens to enter a third. Not injustice based on ignorance or inadvertence, but injustice that has been acknowledged, documented and studied by the federal government—then to a large extent ignored. Institutionalized injustice that has affected every aspect of Indian life in California. Injustice which has evolved from state-sanctioned efforts to "exterminate" the Indians, to federal policies that perpetuate various forms of economic and social oppression, deprivation of rights, and poverty within California's Indian communities.[108]

To show how the historical treatment of Native California still impacted tribes into the 1990s, the Advisory Council created several Task Forces to investigate recognition, education, termination, health, culture, economic development, community services, and natural resources/the trust responsibility.

The Task Force on Recognition, chaired by Dena Ammon Magdaleno (Tsnungwe), found that, "At every hearing the [Advisory] Council conducted, it was confirmed that tribal status clarification is the primary issue of concern to California Indians."[109] The status of tribal recognition is so important because it is the point from which all federal responsibility emanates. Without clarification of tribal status, the Advisory Council's report and recommendations would not adequately address the issues California tribes were facing at that time. Another Task Force commissioned a report by the American Indian Studies Center at the University of California,

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[106] Pub. L. No. 102-416 (October 14, 1992), as amended by Pub. L. No. 104-109 (February 12, 1996).

[107] The Advisory Council on California Indian Policy, "Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416," (Washington DC1997), 2.

[108] Ibid.

[109] "The Accip Recognition Report: Equal Justice for California," (Washington DC1997), 1.

Los Angeles (UCLA). The report, "A Second Century of Dishonor," was completed in 1996 under UCLA professors Carol Goldberg and Duane Champagne with the help of several research assistants. Goldberg's and Champagne's report played off the title of Helen Hunt Jackson's 1881 book *A Century of Dishonor* that focused on injustices faced by Native Americans in the nineteenth century. "A Second Century of Dishonor" drew attention to the specific ways that the BIA treated California tribes differently with emphasis on underfunding and administrative neglect. One section of the report analyzed the condition and needs of unrecognized and terminated tribes in California.

The Report on Recognition as well as "A Second Century of Dishonor" outlined the ways the FAP is inherently flawed for California tribes and concluded that the primary reason was because of the historical injustices faced by California Indians since the beginning of U.S. settler colonial control. The Report on Recognition called the FAP a "continuing injustice" and offered recommendations on modifying the FAP criteria with regards to the experiences of California tribes. The Task Force on Recognition also provided draft legislation in their report, "The California Tribal Status Act," which they believed Congress should pass to ensure that the process for acknowledging tribal sovereignty would be equitable for California tribes. Since Congress and several other federal agencies have treated California Indians as a discrete group for other legislative purposes, the Task Force recommended that the BIA do the same for federal acknowledgment through Congressional passage of "The California Tribal Status Act." The Report on Recognition explains, "This draft legislation would allow currently petitioning tribes the option of either using a modification of the current federal acknowledgment process administered by the BIA, or transferring their petitions to an independent Commission on California Indian Recognition, created by Congress to administer a California-specific process for unacknowledged California Indian groups."[110] Though the Task Force on Recognition and the final Advisory Council report made these recommendations, the lack of institutional support for such a measure was voiced from the inception of the Advisory Council itself. In signing the "Advisory Council on California Indian Policy Act of 1992" into law, President George Bush, Sr. stated that while he supported the FAP and the restoration of terminated tribes, he did not "[…] support establishment of separate recognition procedures or policies exclusive to one State."[111] He further noted that, "I sign this bill on the understanding that the Council will serve only in an advisory capacity."[112] An unwilling Executive Branch foreclosed the possibility of a California-specific path to federal recognition at a critical moment of potential reform.

Truly understanding why California should be considered differently requires an awareness and understanding of the very reasons why recognition is so vexed for tribes today. The Advisory Council on California Indian Policy and other scholars have foregrounded the effects of U.S. settler colonialism, including state and federally funded genocide and unratified treaties, as the major causes of the ongoing dilemma between federal recognition and

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[110] Ibid., 19.

[111] George Bush, "Statement on Signing the Advisory Council on California Indian Policy Act of 1992," (Gerhard Peters and John T. Woolley, The American Presidency Project, 1992).

[112] Ibid.

unrecognized California tribes. An analysis of the multiple regimes of colonial control in California and their impacts is necessary to fully understand the complexities of federal recognition for California tribes. In addition to a synthesis of the analyses offered in previous studies, the following section analyzes more recent disputes surrounding federal recognition and the connection between race and federal recognition in California that have not been discussed in detail by scholars elsewhere. This section highlights perceptions of racial phenotype, the appropriation and embodiment of California Indian identity by descendants of non-California Indian settlers, the creation of "splinter groups," the politics of tribal gaming, and how these bear on tribal campaigns for federal recognition.

The Complexities of Recognition in California

The existing literature on federal recognition in California generally approaches the topic from one of two distinct, yet interrelated, ways. Some scholars foreground the difference in Spanish and Russian colonial political economy that produced varying outcomes in tribal status where most tribes colonized by the Spanish are unrecognized today while others associated with the Russians are federally recognized. Others foreground the impacts of U.S. settler colonialism including state and federally sanctioned genocide, failure to ratify treaties negotiated with California tribes, and other early laws and policies that contributed to the fracturing of California tribes. Included within these academic studies, all of which were published by non-Native anthropologists or archaeologists, is the recognition that anthropology (as a discipline) and anthropologists (as perceived authorities on Native American culture and life) have played significant roles in the subjugation of California Indians by the state and federal government.[113] In addition to the academic literature, various reports on the differential treatment of California Indians also center the specific colonial history of California as part of an institutionalized injustice and cause of contemporary conflicts over tribal recognition status. There have been significant developments with the FAP and how it continues to effect unrecognized tribes in California in the past decade since the publication of the first and only book-length academic study of a tribe's pursuit for federal recognition in California.[114]

Early Colonization of California and the Anthropological Record

The legacy of conquest and colonization in California is crucial to explaining the patterns of acknowledgment and lack thereof in the state. Kent Lightfoot's *Indians, Missionaries, and Merchants: The Legacy of Colonial Encounters on the California Frontier* begins with a candidly powerful question: "Why are some California Indian tribes recognized by the U.S. government, while others remain unacknowledged?".[115] This query is central to the project

[113] Les Field's work on federal recognition often includes Rosemary Cambra, Chairwoman of the Muwekma Ohlone Tribe, as a co-author. However, his inclusion of Cambra is a political statement within the discipline of Anthropology to denote his collaborative relationship with her and her tribe for his fieldwork.

[114] Tolley.

[115] Lightfoot, xi.

Lightfoot undertakes in his study of colonial encounters in California. He stresses that any study about Native Californian identities or recognition take into consideration the complex interactions and encounters with Franciscan missionaries, Russian merchants, Hispanic colonists, and American settlers that all had different, and sometimes competing, agendas for their exploits.[116] Through the utilization of historical texts, Native narratives, and archaeological fieldwork, Lightfoot argues that tribes subjected to Russian merchants and Spanish missionaries had divergent outcomes in terms of federal tribal acknowledgement in the contemporary. Lightfoot contends that so long as Native Californians engaged with Russia's economic pursuits, Russian colonists were not interested in displacing indigenous peoples or dispossessing them of their traditional lifeways. As a result, the Kashaya Pomo were able to maintain cultural practices and the political structure of their tribe more than other tribes along the route of Spanish missionization.

In contrast to the Russians, Spanish padres imposed a policy of *reducción* that displaced many Native Californians from their homelands and disrupted their traditional ways of life. The extremity of the *reducción* policy was applied differentially across the mission system leaving some tribes more heavily impacted than others. Ohlone, Chumash, Esselen, Gabrielino/Tongva, and other tribes along costal California were removed from their traditional villages and forced to live on mission grounds populated with Native peoples from various villages, sometimes speaking different languages. Alternatively, padres at San Luis Rey de Francia and San Diego de Alcala, the southernmost missions in Alta California, practiced a modified form of *reducción* that allowed many Luiseños and Kumeyaay (Digueños) to reside in their own villages instead of relocating to large mission centers.[117] Lightfoot argues that tribes subjected to the modified version of *reducción* were able to retain more of their traditional cultural practices because they were not as impacted by political reorganization as a result of relocation.[118]

As Lightfoot suggests, these early histories set the stage for an interrogation of tribes' cultural integrity by outsiders such as anthropologists and government officials. In the early 1900s, Anthropologists Alfred Kroeber and J.P. Harrington studied California tribes extensively. Kroeber's field research privileged tribes that had not been severely impacted by Spanish missionization and Hispanization. When he encountered tribes, like the Ohlone, he considered them "extinct so far as all practical purposes are concerned," and did not study them as extensively.[119] Tribes in San Diego County associated with the southernmost missions were studied in more detail because the modified *reducción* policy enabled those tribes to retain more of their traditional culture. U.S. Indian Agents then used the resulting anthropological

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[116] Ibid., 239.

[117] Ibid.

[118] Ibid.; Kent G. Lightfoot et al., "The Study of Indigenous Political Economies and Colonialism in Native California: Implications for Contemporary Tribal Groups and Federal Recognition," *American Antiquity* 78, no. 1 (2013).

[119] Alfred L. Kroeber, *Handbook of the Indians of California* (Washington, DC: Smithsonian Institution, 1925), 464.

documentation to establish with which tribes the government would officially interact.[120] In other words, these officials used anthropological information as a means for *not* engaging with "extinct" or "unrecognizable" tribal groups. Federal policy makers and land allotters often ignored tribes considered extinct by anthropologists, and many tribes were left landless and without means for support. Generally, tribes not as heavily impacted by missionization in San Diego County and in other parts of the state received federal land allotments and support from Indian rights activists.[121]

In the present, Lightfoot and other scholars contend that the fraught connection between Spanish colonization and early anthropological study has contributed to the federally recognized status of tribes across the state. Mapping out where federally recognized tribes are located visually shows that the majority of federally recognized tribes are located away from historic Spanish missionization. Therefore, these scholars contend that the FAP favors tribes that were not closely associated with Spanish missionization. Many tribes that are petitioning for federal recognition are from coastal California, and three of the four tribes that have been denied through the FAP were missionized.[122] Though Spanish colonization "ended" in 1821, the impact of missionization on California Indians and tribes is still very real.[123] Anthropologists and archaeologists who work with unrecognized tribes, like Lightfoot and Field, critically reflect on the ways their discipline continues to influence the lived realities of Native Californians as they advocate for collaborative research methods. Simultaneously, these works draw attention to the complexity of federal acknowledgment in California that emerges from early colonization and its effects.

State-Sanctioned Injustice and Federal Neglect: Genocide, Unratified Treaties, and

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[120] Field; Lightfoot; Lightfoot et al; Lee M. Panich, "Archaeologies of Persistence: Reconsidering the Legacies of Colonialism in Native North America," ibid.

[121] Though Lightfoot (2005) does not explicitly state this, not all Luiseños are federally recognized today. The San Luis Rey Band of Mission Indians is the only unrecognized band of the seven Luiseño bands and the subject of the remaining chapters in this dissertation. Also, this history is far more complex than what is discussed here, but it is meant to provide a general guide for understanding the patterns of federal recognition in California.

[122] The Tolowa Nation was not in the direct path of Spanish missionization in the past whereas the Muwekma Ohlone and the two Juaneño petitioners (#084A and #084B) were. Tribes from all parts of the state are currently petitioning for recognition and each tribe has a unique history that plays into contemporary unacknowledged status. This sub-section focuses on tribes affected by Spanish missionization while the following sub-section discusses U.S. settler colonialism's impacts on tribes throughout the state.

[123] The Mexican period (1821-1848) and end of the mission era also greatly impacted Native peoples' access to land – as non-Native/private residents took over large tracts of land and used Native people as very low-wage laborers. See Phillips (1975; 2010) and Haas (2013). The missions kept detailed records of baptisms, marriages, births, deaths, etc., and these records often provide historical and genealogical information for tribes seeking federal recognition.

Dispossession

The American period of California, which officially began in February of 1848, has been riddled with "institutional injustices" and negative consequences for California tribes.[124] The Advisory Council on California Indian Policy described the range of these injustices as growing from "…state-sanctioned efforts to 'exterminate' the Indians, to federal policies that perpetuate various forms of economic and social oppression, deprivation of rights, and poverty within California's Indian communities."[125] The inequities stem from a history of genocide, a pattern of federal neglect, and indecisive federal action that occurred through the inability to ratify negotiated treaties and the state's and federal government's implementation of discriminatory laws and policies. Ironically, the government has been well aware of the problems facing California tribes and tribal peoples, regardless of federally recognized status, since the 1800s. The condition of California Indians was documented by dozens of studies and reports commissioned by federal and state government agencies as well as private parties.[126] The problem is that though there has been a hyper-visibility of the issues, there has been little action on the part of the federal government or the courts to improve the health, education, and general well being of California Indians.[127] In contrast to other areas of the country, California's specific history of anti-Indian policies, the perpetration of genocide, non-ratification of treaties, and the federal government's underfunding of the BIA and other federal institutions in California meant to protect California Indian interests in land all make contemporary struggles for federal acknowledgment exceptionally difficult. Thus contributing to the ambiguous legal status of almost one hundred tribes.

The discovery of gold in California's Sierra foothills led to the largest migration in United States history. During 1849, the non-Indian population in California surged from approximately 25,000 to at least 94,000 in less than a year.[128] The influx of "forty-niners" to the northern portions of the state had a disastrous impact on both California Indians and the environment that hadn't been impacted by Spanish missionization or Russian mercantilism along the coast. Conflicts over land between miners and Native peoples caused the near decimation of California Indians who inhabited these contested sites. The invaders, "Using new state laws and

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[124] Policy, "Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416," 2.

[125] Ibid.

[126] Carole Goldberg-Ambrose and Duane Champagne, "A Second Century of Dishonor: Federal Inequities and California Trbes," (Los Angeles, CA: American Indian Studies Center, 1996); Policy, "Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416."

[127] Goldberg-Ambrose and Champagne.

[128] Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873*, The Lamar Series in Western History (New Haven, CT: Yale University Press, 2016), 77-78.

their rights as citizens, […] quickly and bloodily transitioned California's land base from one controlled mostly by Native peoples into one almost completely controlled by Euro-Americans."[129] The Gold Rush period is representative of one of the most horrific state and federally funded genocides of Indigenous peoples, and those who came to California during this time did so at the cost of Native ancestral lands, traditional resources, and lives.[130]

The term genocide was coined by legal scholar Raphaël Lemkin: "Defining the concept in 1944, he combined 'the Greek word genos (tribe, race) and the Latin cide,' or killing, to describe genocide as any attempt to physically or culturally annihilate an ethnic, national, religious, or political group."[131] The act of genocide is an ancient one, but Lemkin's new term came at a pivotal time when a framework for describing Nazi mass murder was needed. Building on Lemkin's concept of genocide, the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide defined genocide as a crime under international law that includes "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group."[132] Genocidal acts include:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.[133]

The Genocide Convention also criminalizes five acts associated with genocide that are punishable under international law:

(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;

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[129] Brendan C. Lindsay, *Murder State : California's Native American Genocide, 1846-1873* (Lincoln, NE: University of Nebraska Press, 2012), 179.

[130] Ibid.; Madley; Jack Norton, *Genocide in Northwestern California: When Our Worlds Cried* (San Francisco, CA: Indian Historian Press, 1979); Clifford E. Trafzer and Joel R. Hyer, *Exterminate Them!: Written Accounts of the Murder, Rape, and Enslavement of Native Americans During the California Gold Rush* (East Lansing, MI: Michigan State University Press, 1999).

[131] Madley, 4.

[132] "Convention on the Prevention and Punishment of the Crime of Genocide," (United Nations, 1948).

[133] Ibid.

(e) Complicity in genocide.[134]

Though the Genocide Convention was created in the twentieth century and cannot be applied retroactively, scholars agree that without doubt genocide took place in California between 1846 and 1873.[135]

With an estimated pre-Contact population of over 300,000, the California Indian population dropped alarmingly from 150,000 in 1848 to just over 16,000 in 1910.[136] Not only was frontier violence sanctioned by the state, it was largely funded by the federal government. Benjamin Madley revealed, "If state legislators were the main architects of genocide, federal officials helped to lay the groundwork, became the final arbiters of the design, and ultimately paid for most of its official execution."[137] The state of California passed twenty-seven laws that were then used by the State Comptroller to determine the expenditures related to the extermination, or genocide, of California Indians. Kimberly Johnston-Dodds found that "it is impossible to determine exactly the total number of units and men engaged in attacks against the California Indians. However, during the period 1850 to1859, the official record does verify that the governors of California called out the militia on 'Expeditions against the Indians' on a number of occasions, and at considerable expense […]."[138] Indeed, by 1863 the federal government had given California over $1 million dollars to reimburse militia expenditures.[139] Genocide was not committed solely through aggressive and pedagogic killing, or "the notion that killing indigenous Californians would teach survivors not to challenge whites."[140] The California genocide was also facilitated by legislators who created an environment where California Indians had little to no rights to protect themselves, their land, their culture, or their livelihood.

For example, in 1850 the early California legislature passed "An Act for the Government and Protection of Indians" that set up a form of legalized slavery under the guise of "apprenticeship." As James Rawls (1984) explained, "…any Indian not employed could be bought from a county or municipal official at a public auction."[141] The 1850 law allowed "any white person" to bail an Indian out of prison and in return, the Indian had to work for the bailer

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[134] Ibid.

[135] Lindsay; Madley; Norton; James J. Rawls, *Indians of California: The Changing Image* (Norman, OK: University of Oklahoma Press, 1984); Trafzer and Hyer.

[136] Lindsay, 123.

[137] Madley, 355.

[138] Kimberly Johnston-Dodds, "Early California Laws and Policies Related to California Indians," (Sacramento, CA: California Research Bureau, 2002), 16.

[139] Ibid.; Lindsay.

[140] Madley, 48.

[141] Rawls, 86.

until discharged. The white men who took advantage of the system were supposed to treat their Indian laborers humanely by offering food and board in return for servitude. However, poor treatment of Native people could hardly be adjudicated since lawmakers passed a series of laws that denied most Indians "…the right to testify, serve as jurors, or work as attorneys—on an explicitly racial basis—against whites in California courts."[142] An 1860 amendment to the act set up a system for California Indian youth under the age of fifteen to serve an "indenture of apprenticeship." Male California Indian youth under the age of fourteen could be indentured until the age of twenty-five, and females under fourteen could be indentured until the age of twenty-one. Many California Indian youth were without parents because of the mass killings, and they were susceptible to indenture in the homes of non-Natives who either directly participated in violence or benefited through the genocidal law and policies in the state. The 1860 amendment was devastating for Native families and youth as it led to kidnapping, rape, and sexual abuse.[143] In effect, the 1850 Act fractured tribal communities and contributed to the genocide of California Indian people. The effects of genocide are, of course, long lasting and today contribute to the difficulty petitioning tribes face in current campaigns for federal recognition after forced and coerced fracturing of tribal communities. The FAP asks petitioning tribes to prove they maintained political influence despite policies that undermined California Indian rights. For the Honey Lake Maidu, going through the FAP caused distress and historical trauma because it forced the tribe to confront histories of genocide.[144]

The federal governments' decision to not ratify eighteen treaties made from 1851-1852 was one of the most explicit examples of federal neglect towards California tribes. The treaties were made between approximately 119 tribes and three treaty commissioners.[145] The treaties would have created eighteen reservations totaling 11,700 square miles (7,488,000 acres) or about 7.5 percent of the state.[146] The U.S. Congress discussed and decided against treaty ratification in a secret session. The treaties did not reappear in the public record until an "injunction of secrecy" was removed more than fifty years later. Robert F. Heizer (1972) contends that, "Taken all together, one cannot imagine a more poorly conceived, more inaccurate, less informed, and less democratic than the making of the 18 treaties…with the California Indians."[147] The treaties demarcated eighteen tracts of land that were to be "…set apart and forever held for the sole use

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[142] Madley, 160.

[143] Lindsay; Madley.

[144] Tolley.

[145] George E. Anderson, W.H. Ellison, and Robert F. Heizer, *Treaty Making and Treaty Rejection by the Federal Government in California, 1850-1852* (Socorro, NM: Ballena Press, 1978); Robert F. Heizer, "The Eighteen Unratified Treaties of 1851-1852 between the California Indians and the United States Government," (Berkeley, CA: University of California Archaeological Research Facility, 1972).

[146] Johnston-Dodds.

[147] Heizer, 5.

and occupancy of said tribes of Indians," yet many of these same tribes are landless today because the Senate's refusal to ratify the treaties.[148] There was heavy opposition to the ratification of the treaties by California state legislators who were heavily influenced by the attitudes of non-Native settlers, and the legislators ultimately swayed federal opinions. The amount of land promised to California Indians stood in direct opposition to the state and the settlers who wanted the land for their own use. The Gold Rush absolutely influenced these attitudes and accelerated the desirability of land for non-Native use. Heizer asserted that Congress' disregard for the treaties it had sanctioned and appropriated funds for just two years prior to non-ratification also shows then-President Fillmore's, the treaty Commissioners', and the Senate's indifference to California's tribes. The federal government acknowledged California tribes' inherent sovereignty by entering into treaty relationships. However, the U.S. Congress never ratified the eighteen treaties because of the actions of the California legislature and strong public opposition. The denial of treaty ratification was a pivotal moment that continues to shape the contemporary legal and political conditions of California tribes.

At the same time the treaties were being negotiated throughout the state, Congress passed an *Act to Ascertain and Settle the Private Land Claims in the State of California*, or the Land Claims Act. Paired with treaty rejection and other genocidal policies, the Land Claims Act led to a crisis in Native land possession that had lasting repercussions for tribes that never secured a land base taken into trust by the government. This act established a commission to confirm private land titles issued by the Mexican and Spanish governments and to make sure that titles (patents) confirmed by the commission were recognized under U.S. law. Lands to which titles were not confirmed entered the public domain. The commissioners were also charged with the duty to identify the lands held, used, and occupied by Indian people.[149] However, the commissioners failed to carry out their duty to investigate, or determine, Indian land tenure. Thus, many California Indians effectively lost rights to their land. The land commissioners' inadequate treatment towards Native Californians had a detrimental consequence: all land within California that had no title confirmed by the commission was open to preemption and homestead filing by settlers.[150] Preemption allowed settlers, or squatters, to purchase the land on which they were squatting. This meant that local tribes without titles to their lands were vulnerable to non-Native encroachment and settlement. Settlers quickly took the best, well-watered Indian farmland while simultaneously dispossessing Native Californian people. Many Native Californians dispossessed of their land were never granted a reservation or rancheria, and many of those tribal communities remain unrecognized today.[151]

Recall that the FAP criteria require petitioning tribes to prove they have "existed as a

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[148] Ibid., 2.

[149] Florence Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986* (Lincoln, NB: University of Nebraska Press, 1987), 31.

[150] Ibid.

[151] Rancherias are small, often rural, pieces of land that are only found in California. Legally, they are not different from reservations. The difference in terminology stems from both the history of Spanish colonization and the amount of acreage.

distinct community" and "maintained political authority" autonomously over tribal members from 1900 to the present. Tribes that seek federal acknowledgment though the FAP must provide evidence to meet the criteria regardless of state and federal policies meant to eradicate Native peoples, cultures, and systems of governance. Past governmental (in)actions and policies, in the form of legalized genocide, rejected treaties, and land dispossession make it almost impossible for unrecognized tribes in California to prove continuity in ways that sufficiently meet the FAP regulations.[152] If California's history had not included so many injustices, perhaps all of today's unrecognized tribes would have been federally recognized at some point in time. Unfortunately, the FAP regulations disregard the United States' historical role in the current circumstances of California tribal composition as it places the burden on Indian peoples to prove their community and sovereign identities. Sara-Larus Tolley (2006) points out that, "[…] the Branch of Acknowledgement and Research's fundamentally negative, bureaucratic definition of what a tribe is *not* belies the reality of Native California history and contemporary life, which California Indian peoples have worked hard to establish for the state."[153] Cherokee lawyer and California Indian advocate Allogan Slagle also noted that California tribes' organization as "small distinct groups," otherwise known as "tribelets" by early California anthropologists, has led some BIA and OFA staff to believe that California tribes are lesser than other tribes or bands elsewhere in the country.[154] California tribes struggle with acknowledgment because the FAP criteria leave little room for historical specificities. Oral forms of evidence are considered by the OFA, but tribal oral histories are viewed as less reliable and require corroborating documentation. The histories and experiences of California's tribes are complex and varied, but their struggles for federal acknowledgment share common themes that stem from the multiple ways that colonialism has taken shape over time in California.

Native Authenticity, Tribal Gaming, and Precarious Claims to California Indian Identity

In the U.S. as a whole, preconceived notions of Native American racial authenticity have distorted critics' views of Eastern and Southern unrecognized tribes that have historically intermarried with African Americans. The legacy of the "one-drop rule," a concept that socially and legally classified any person as black who had "a drop" of African American blood, is at play when a dependence on stereotypical visual markers of racial "purity" are used as indexes for how Native Americans should look or act.[155] Use of racial ideologies has delegitimized unrecognized tribes' claims to federally recognized tribal sovereignty through a reliance on

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[152] Slagle; Tolley.

[153] Tolley, 40. The Branch of Acknowledgment and Research is now known as the Office of Federal Acknowledgment.

[154] Slagle.

[155] Thomas Biolsi, "Race Technologies," in *A Companion to the Anthropology of Politics*, ed. Joan Vincent and David Nugent (Malden, MA: Blackwell Publishing, 2004); Circe Sturm, *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma* (Berkeley, CA: University of California Press, 2002).

phenotype rather than an understanding of settler colonial structures and history that include racial mixing.[156] Renée Ann Cramer's *Cash, Color, and Colonialism: The Politics of Tribal Acknowledgment* shows how political contexts and public perceptions affect tribal acknowledgment. Cramer discusses how racial identity has affected the Mowa Band of Choctaws, a state recognized but non-federally recognized tribe from Alabama, and their quest for federal recognition. Cramer contends that the presence of African American ancestry within the tribe has stirred public suspicions that they are not "real" Indians; therefore, they should not be able to benefit from the privileges of federal acknowledgement.[157] The Poarch Band of Creek Indians, on the other hand, has more Euro-American heritage within the tribal membership than the Mowa. This has enabled them, in Cramer's view, to attain federal recognition.[158] Her examples are meant to demonstrate that there are fewer stigmas around Native people who look phenotypically white than black and how preconceived notions of race has profoundly impacted the politics of federal recognition processes. Similarly, studies of federal recognition in Louisiana by Brian Klopotek (2011), N. Bruce Duthu (1997), and Mark E. Miller (2004) also underscore how mixing between African Americans and Native Americans has impacted the racial composition of unrecognized tribes in that state.

In California, issues of racial authenticity have generally played less of a role in debates over federal recognition as there have been fewer doubts concerning unrecognized tribes' racial composition.[159] There are two predominant reasons why the general public has not accused unrecognized tribes in California of ethnic fraud. First, visual perceptions of California Indians based on phenotype often align with stereotypical renderings of Native American people. Many California Indians have mixed Native American, Spanish/Mexican, and Euro-American ancestry as a result of the particular colonial history of the state.[160] There are also many California Indians who have intermarried with people of Filipino heritage as well. Contemporary California Indian people who are descended from these multiple heritages are less susceptible to the same kinds of anti-Blackness that impacts unrecognized tribal communities in the South and on the East Coast. There are of course many California Indians of African and/or African American heritage as well, but tribal communities with a significant number of African/African American descended tribal members are rarer in California than in other geographic contexts. As mentioned

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[156] Clifford; Cramer; Klopotek; Miller.

[157] Cramer.

[158] Ibid.

[159] Goldberg-Ambrose and Champagne.

[160] This is by no means a statement to generalize the entire experience of Native Californian people. Individual Native Californians have practiced intermarriage and have varied heritage that makes up complex contemporary identities. This is also contingent upon identification of one's self or tribe as Native Californian because many non-Natives assume California Indian people are solely Mexican or of Mexican heritage. The erasure of California Indian identity in these instances underscores anti-immigrant and anti-Mexican sentiment throughout the state.

previously, the racial composition of tribes that look phenotypically white or Native, rather than African American, has made many concerns over racial authenticity less controversial in recognition debates.[161] This points to the power of visual perceptions of race that have long been used to educate audiences about the prevailing racial hierarchy within the U.S. The legacy and power of visuality extends in part from the display of exotic, racialized bodies in museums, world's fairs, and other contexts.[162]

The second reason claims of racial inauthenticity have been less frequent for unrecognized California tribes comes from a set of census rolls that were created between 1928 and 1933 (and later revised between 1944-55 and 1969-72) to document California Indian identity. In 1928, the California Indians Jurisdictional Act (CIJA) was passed as a result of a claim brought against the federal government by California Indians over the eighteen unratified treaties made between 1851-1852. In an effort to distinguish who the indigenous people of California were for distribution of settlement monies, the CIJA required that a census be taken of the "Indians of California" who were living in the state as of June 1, 1852 and their living descendants.[163] To be included on the census California Indian people had to fill out an application with certain information about their personal information, their tribal connection, the treaty or treaties associated with their tribe(s), and their ancestry. The application for enrollment had to be accompanied by an affidavit that had two or more sworn witnesses to verify the information each applicant provided was legitimate. After the roll was finalized in 1933, a subsequent claim was won in the Indian Claims Commission that provided more compensation for lands taken as a result of the unratified treaties. On September 21, 1964, Congress enacted legislation to authorize the creation of an updated roll of California Indians to determine who could access per capita payments.[164] Proof of descent from someone on the CIJA rolls has been used for many purposes, and it has been a primary way for California Indians from unrecognized tribes to prove their racial identity as Native American. Though the rolls have been useful for combating claims of racial inauthenticity, they have also been a source of tension for members of unrecognized tribes who fail to see how the federal government can "recognize" them as a California Indian while, at the same time, not recognizing their tribe.[165] The fundamental difference is that the CIJA rolls "recognize" individuals whereas the FAP recognizes, or acknowledges, the sovereign status of an entire tribe.[166]

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[161] Cramer.

[162] Shari M. Huhndorf, *Going Native: Indians in the American Cultural Imaginary* (Ithaca, NY: Cornell University Press, 2001).

[163] Bruce S. Flushman and Joe Barbieri, "Aboriginal Title: The Special Case of California," *Pacific Law Journal* 17, no. 2 (1984-1985); Goldberg-Ambrose and Champagne.

[164] Omer C. Stewart, "Litigation and Its Effects," in *Handbook of the North American Indian*, ed. Robert F. Heizer (Washington DC: Smithsonian Institution, 1978).

[165] Goldberg-Ambrose and Champagne.

[166] For some people, enrollment on the CIJA rolls was conflated with tribal enrollment. Indicating descent from a tribe or tribes on the rolls did not automatically enroll that person or

Though claims of racial inauthenticity from the general public have not been as charged in California as elsewhere, challenges to Native identity are prevalent within and amongst unrecognized tribes. Accusations and genealogical proof of inauthentic Native heritage for some people who claimed a California Indian identity have surfaced because of the FAP and the intense amount of genealogical research that is required for recognition petitions. Petitioning through the FAP requires genealogical evidence to show how present-day members of a petitioning tribe are related to members of an historical Indian tribe or tribes. The requirement, which comes from Criterion E of the FAP criteria, expects unrecognized tribes to create genealogical pedigree charts and digital family trees through software like Family Tree Maker or RootsMagic. Unrecognized tribes usually hire certified genealogists or other trained individuals to consult and perform the genealogical portion of the petition research.

During the process of compiling genealogical data, genealogical consultants informed some tribes that proof of descent from California Indian ancestors could not be found for some tribal members. Instead, genealogists found that many tribal members, in one case 80% of the tribe, actually descend from non-California Indian settlers who came to the region during the Spanish and Mexican eras of colonization.[167] The OFA also discovered discrepancies in genealogical information for members of one of the Juaneño Band of Mission Indians (petitioner #084A) when preparing a proposed finding against federal acknowledgment for the tribe. These controversial identities have sparked contentious debates and accusations within and between some unrecognized tribes primarily located in Southern California.[168] There has been some indignation from outsiders, particularly from anthropologists and archaeologists working with multiple tribal communities on cultural resource management projects, but overall there has been less of an outcry because of the authoritative nature of the CIJA rolls and their use by the BIA. The controversy surrounding California Indian identity presents a series of critical questions: How could non-California Indian people be enrolled in a tribe? Why and how had these individuals and families believed they were California Indians? How does this reality contribute to the complexity of federal recognition in California?

The misconceptions over California Indian identity are a product of misinformation on the CIJA rolls. As discussed before, the CIJA rolls were first created between 1928 and 1933 in an attempt to document all California Indians who were living in the state as of June 1, 1852 or the living descendants of California Indians who were alive on or after June 1, 1852. The roll of California Indian people was needed in order to distribute the settlement funds that were awarded for the denial of treaty ratification. As noted, applications to the CIJA rolls were required to

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their descendants in a tribe, since tribes are the ultimate decision makers of who is a member/citizen. See *Santa Clara Pueblo v. Martinez* (1978).

[167] Lorraine Escobar, "Worthless Paper and Shattered Identities," http://www.gabrielenoindians.org/Site/WORTHLESS_PAPER.html.

[168] See these sources: Kizh Nation Gabrieleño Band of Mission Indians, "Impostors," http://www.gabrielenoindians.org/Site/IMPOSTORS.html. Matt Coker, "Anthony Rivera's Juaneño Indian Tribal Council Says Chief David Belardes Is No Juaneño," *OC Weekly* (2009), http://www.ocweekly.com/news/anthony-riveras-juaneo-indian-tribal-council-says-chief-david-belardes-is-no-juaneo-6413921.

include an affidavit with two or more sworn witnesses that could verify applicants were truthful about their claim to California Indian identity. In theory, witnesses were supposed to be members of the applicant's community or other reputable California Indian people. Sometimes the affiants were non-Indians from outside of the community or even the local sheriff.[169] In practice, however, Lorraine Escobar (2010) explains:

> […] the affiant was not always a credible witness. Some were too young to have witnessed the facts as claimed by the applicant. And, persons who were outside of the Indian community were not likely to have personal knowledge of Indian parentage. In that case, it is more likely the affiant was swearing to the character of the applicant rather than having personal knowledge of the facts as stated. Even if an applicant was viewed as an Indian by such an outsider, this external identification was simply no substitute for the hard evidence which proves, or disproves, the claim. When enough doubt existed, even Agent Baker [the official in charge of enrolling California Indians], who never met these people before, made comments to support the applicant's claim, such as 'has the appearance of a half-blood Indian.'[170]

One of the major flaws of the enrollment process, then, was the absence of a method to verify an applicant's claims or witnesses' testimony. In many cases the non-California Indians who applied to the CIJA rolls, either between 1928-33, 1944-55, or 1969-72, were actually the descendants of early settlers who came to California during the Spanish and Mexican eras of colonization.[171] Similar to instances of ethnic fraud that took place in other parts of the country, non-California Indians may have applied to be included on the CIJA rolls in an effort to acquire some of the funds allocated for California Indian people. This would not be surprising given that the roll was created during the Great Depression and that non-Native settlers have a history of assuming a Native identity when it benefits them in the form of money or land.[172] One cannot assume, however, that the non-California Indians who applied to the CIJA rolls were doing so with malicious intent. Perhaps some were after the economic imperative, but perhaps some people did not know for sure if they had California Indian ancestry or not since they descended from families of early non-California Indian settlers in the area who, for example, could have intermarried with California Indians.

What adds to the problem is the BIA's use of the CIJA rolls for issuing Certificate

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[169] Escobar.

[170] Ibid., 4.

[171] Ibid.; Brian D. Haley and Larry R. Wilcoxon, "How Spaniards Became Chumash and Other Tales of Ethnogenesis," *American Anthropologist* 107, no. 3 (2005); Office of Federal Acknowledgment, "Proposed Finding against Acknowledgment of the Juaneño Band of Mission Indians Ajachemen Nation (Petitioner #84a)," (Washington DC: Office of the Assistant Secretary - Indian Affairs, 2007).

[172] Philip J. Deloria, *Playing Indian* (New Haven, CT: Yale University Press, 1998); Garroutte; Huhndorf.

Degrees of Indian Blood (CDIB) and some tribes' use of the CIJA rolls for enrollment purposes.[173] The dilemma is that non-California Indian people who have CDIBs issued by the BIA, or can prove descent to someone on the CIJA rolls, have used that information to indicate a legitimate Native American identity and as a means to enroll, or try to enroll, in a tribe. Anthropologists Brain Hayley and Larry Wilcoxon (1997; 2005) as well as some tribes have brought attention to groups of supposed Chumash and Tongva (Gabrieleño) people who are part of tribal communities that have taken steps to pursue federal recognition and collaborate or consult with agencies, scholars, and other institutions under the guise of California Indian identity.[174] This phenomenon of non-California Indians assuming a California Indian identity has seriously impacted the Juaneño Band of Mission Indians' (petitioners #084A, #084B, #084C) campaigns for federal recognition. While there were multiple criteria the Juaneño Band could not meet in the FAP for reasons associated with colonization discussed earlier in this chapter, the presence of these non-California Indians created a huge rift within their communities—leading the tribe to disenroll members, the creation of more Juaneño "factions," and the calling out of individuals and their claims to Native identity on the public stage.[175] Duane Champagne, a professor of Sociology and American Indian Studies at UCLA who has worked closely with unrecognized tribes in California for over two decades, posits, "[California Indians in unrecognized tribes] are doing what they've done for the last 10,000 years, they form coalitions and alliances, and even within the coalitions each family tends to have autonomy [.]"[176] In his statement, Champagne connects pre-contact California Indian culture to the "factions" that have emerged as a result of the FAP. While there is truth to the connection, some "factions" may also be the product of false information on the CIJA rolls. Had the precarious claims to California Indian identity ended with the CIJA rolls and the fraudulent disbursement of settlement monies, then confusion over tribal membership and problematic pursuits for federal recognition may have been avoided. The controversial outcomes of the CIJA rolls contribute to the complexity of

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[173] The BIA issues a Certificate Degree of Indian Blood, or a CDIB, to any person who can prove their Native American ancestry. CDIBs document a measurement of "Indian Blood," or blood quantum, that is reduced through non-Native parentage. For example, a child with one "full blood" (4/4) parent and one non-Native parent would have ½ degree Indian blood. If that same person later had a child with a non-Native, that child would have ¼ degree Indian blood. Blood quantum is often criticized because it serves to define Native people out of existence. At the same time, many tribes use CDIBs as part of their enrollment criteria.

[174] Haley and Wilcoxon; Indians.

[175] Acknowledgment, "Proposed Finding against Acknowledgment of the Juaneño Band of Mission Indians Ajachemen Nation (Petitioner #84a)."; Coker; "David Belardes, Oc's Most Controversial Native American Leader, Draws a Line in the Cemetery " *OC Weekly* (2009), http://www.ocweekly.com/news/david-belardes-ocs-most-controversial-native-american-leader-draws-a-line-in-the-cemetery-6413918.

[176] Lauren Gold, "Mission Impossible: Native San Gabriel Valley Tribes Seek U.S. Recognition," *Los Angeles Daily News* (2013), http://www.dailynews.com/article/ZZ/20130603/NEWS/130609475.

federal recognition in California as it presents another series of questions regarding ethnogenesis, identity change over time, ethnic fraud, and the ways in which settler colonialism permeates Native California.

The final factor that makes acquiring federal particularly difficult for California tribes that this chapter discusses is the Indian gaming industry. In contrast to *racial* authenticity, attacks on Native *cultural* and *tribal* legitimacy sometimes arise from the general public and some federally recognized tribes that disapprove of further Indian gaming development in the state. The views of non-Natives and select federally recognized tribes have caused significant hindrances to the FAP, and have made the process for unrecognized tribes more difficult than ever before. In spring of 2014 Assistant Secretary—Indian Affairs Kevin Washburn announced proposed changes to the FAP. Before then, the FAP had not been modified since twenty years earlier in 1994. The announcement was well received by unrecognized tribes because the proposed changes would modify language and certain dates that made petitioning difficult for many unrecognized tribes. The move to modify the FAP criteria also reinvigorated anti-casino organizations and some federally recognized tribes to criticize efforts for reform.[177] The most vocal and active anti-casino organization is Stand Up for California!. In response to the proposed changes, Stand Up for California! released a statement on July 9, 2014 that featured scare tactic rhetoric about what changing the FAP regulations would mean for tribal gaming. They wrote that the proposed changes would, "[c]ause a rapid increase in gaming facilities, potentially resulting in 22 new casinos in local communities, in particular, in high-density urban areas such as Los Angeles, Orange, San Francisco and Kern counties."[178] Director of Stand Up for California!, Cheryl Schmit, was quoted as well:

> 'These changes would likely result in an enormous and rapid increase in federally-recognized Indian groups in California, would dramatically increase the number of gaming facilities in the state's urban and metropolitan areas, as well as cause an increase in expensive and disruptive litigation over land and water rights,' continued Schmit. 'In addition, they could create economic hardships for currently recognized non-gaming tribal governments who will experience greater competition for the federal funds allocated annually toward tribal services.'[179]

The threat of Indian gaming in California has dramatically altered the landscape of recognition as unrecognized tribes are subjected to anti-casino, and thus anti-Indian, sentiment. A period of public comment on each petition is required before the Assistant Secretary—Indian Affairs can

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[177] Several federally recognized tribes in California were open to FAP reform because of the particular history of California, including unratified treaties, genocide, and the sustained uneven treatment of California Indians in the past.

[178] Stand Up for California!, "New Federal Proposal Could Have Damaging Impact on California Economy," news release, July 9, 2014, https://www.standupca.org/stop/Stand%20Up%20for%20California%20Press%20Release%20.pdf/view.

[179] Ibid., 2.

make a final determination, and the rhetoric used by anti-casino organizations and some federally recognized tribes against unrecognized tribes are often submitted for review.

Indian gaming is a lucrative industry for many tribes in California. Casino developers have approached unrecognized tribes to fund their petitions in exchange for agreeing to use the development company to build a casino after federal recognition is secured. A member of the San Luis Rey Band of Mission Indians explained:

> Every tribe was being approached for development. All of our neighboring tribes and so forth. There was a lot. […] We were coastal so we were an attractive candidate. But we were non-recognized, so there had to be, same thing with San Juan [Juaneño Band of Mission Indians], there had to be a good enough deal where they [the casino developer] would finance your recognition process on the condition that you [the tribe] would use them as a development company for a casino. That was negotiated as a promise because you couldn't, you can't obligate a tribe to do anything. There's no recourse for it, so it was a risk. It wasn't a huge risk because nobody ever reneged. […] So I was always dealing with those inquiries.[180]

While many unrecognized tribes never made agreements, some did make deals with casino developers to fund their campaigns for federal recognition. One group, the Gabrielino-Tongva Tribe, proposed casino development in Garden Grove and then later in Inglewood. A senior investor and the company he created specifically for working with the tribe, Century Gabrielino Casino Development Co., LLC, back the Gabrielino-Tongva Tribe financially.[181] A San Luis Rey Band of Mission Indians tribal member also revealed, "San Juan [Juaneño Band of Mission Indians] did make a deal and they were financed for their process, so they did submit a lot sooner than us in terms of the extent of the package they put together."[182] The partnerships created between unrecognized tribes and casino developers added to criticism from groups like Stand Up for California! that are invested in halting further casino development and, by extension, the federal recognition of more tribes in California.

Unrecognized tribes today are confronted with more opposition to federal acknowledgment than previously, and the proliferation of tribal gaming is one main cause. California is home to approximately sixty-nine Indian gaming operations, and this has created a backlash from the general public and some federally recognized tribes against unrecognized tribes attaining federal recognition. Renee Ann Cramer, in her book *Cash, Color, and Colonialism: The Politics of Tribal Acknowledgment*, argues that ideas about race and casino gaming profoundly impact public perceptions of federal recognition generally, and tribal peoples specifically.[183] Cramer uses the Mashantucket Pequot tribe from Connecticut as an example for

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[180] Anonymous member of the San Luis Rey Band of Mission Indians in discussion with the author, March 2015.

[181] Gabrielino-Tongva Tribe, "Home," http://www.gabrielinotribe.org/.

[182] Anonymous member of the San Luis Rey Band of Mission Indians in discussion with the author, March 2015.

[183] Cramer.

her analysis of public perceptions about Indian gaming. She found that casinos and money brought intense scrutiny from the outside because in the popular imagination Indians are supposed to be poor.[184] Thus, rich Indians seem like a paradox and the emergence of anti-casino propaganda in Connecticut is a direct result. In California, former Governor Arnold Schwarzenegger's 2003 recall election victory was due to his campaign's call to end casino-owning tribes' involvement in state politics and his demands that these tribes pay their "fair share."[185] The anti-tribalism that has emerged from the tribal gaming industry, particularly in California, complicates the landscape of federal recognition for petitioning tribes that face yet another roadblock to the acknowledgment of their inherent tribal sovereignty.

Conclusion

The Advisory Council on California Indian Policy outlined many of the problems facing unrecognized tribes in California in he late 1990s. The Advisory Council's report and recommendations were a crucial step towards addressing tribal status and the specificities of the California Indian experience. The Advisory Council made the flaws of the FAP explicitly clear:

> A major problem with the current process is that it requires unacknowledged tribes to prove their status as self-governing entities continuously throughout history, substantially without interruption, as though that history did not include the federal and state policies that contributed to the destruction and repression of these very same native peoples and cultures. The issue of federal recognition is crucial to all California Indians because its focus is the development of a coherent and consistent federal process for determining which Indian tribes shall be included within the federal-tribal trust relationship.[186]

For all of the good that came from the Advisory Council's report and recommendations to Congress in other areas of California Indian life, the Advisory Council's recommendations to remedy unrecognized California tribes' engagement with the FAP have never been met.[187] When the FAP regulations went through a revision process in 2014 and 2015, concerns over the California experience again surfaced. Written and oral comments submitted to the OFA called for a California-specific component to be added to the FAP. When the revised regulation were approved and published in the Federal Register in July of 2015, there was once again no recourse

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[184] Alexandra Harmon, *Rich Indians: Native People and the Problem of Wealth in American History* (Chapel Hill, NC: University of North Carolina Press, 2010); Cramer.

[185] Kevin Bruyneel, "The Colonizer Demands Its "Fair Share," and More: Contemporary American Anti-Tribalism from Arnold Schwarzenegger to the Extreme Right," *New Political Science* 28, no. 3 (2006).

[186] Policy, "Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416," 20.

[187] The Advisory Council's report and recommendations for the status of terminated tribes, however, led to further restoration of certain tribes' federal recognition.

for California tribes. As discussed in this chapter, there are numerous factors that impact the state of recognition for unrecognized tribes in California. To understand how all of these complexities may or may not shape individual tribes' experiences with the FAP and unrecognized status, the following chapters will focus on one tribe, the San Luis Rey Band of Mission Indians in San Diego County. Centering the San Luis Rey Band as a case study for the ways in which federal recognition affects actual people adds depth to published studies as well as offers another in-depth perspective into federal recognition in the United States and California.

Chapter 3 | "Time Out of Mind": The San Luis Rey Village and the Historical Origins of a Struggle for Federal Recognition

Six years after the Bureau of Indian Affairs (BIA) established the Federal Acknowledgment Process (FAP), the San Luis Rey Band of Mission Indians, a band of Luiseños from North County San Diego, sent a letter of intent to petition for federal recognition through the relatively new process. The decision to petition for federal recognition came after years of questions about why San Luis Rey lacked the same rights and political status of other Native Americans, including the six other bands of Luiseño people. Tribal community members wondered: Why don't we have a reservation? Why can't we access all of the resources reserved for Indian people? Why did the federal government treat our ancestors differently? In the early 1980s San Luis Rey members feared further marginalization from local and state officials and programs if the tribe took no action with the newly created FAP. Maintaining an unrecognized status precluded the tribe's ability to fully exercise tribal self-determination through providing certain cultural, political, and socio-economic resources and opportunities for the community. Tribal leaders pursued federal recognition as an opportunity to address the standing of the tribe's legal status once and for all.

The process of petitioning brings to the fore questions and complexities about the history of Native California and the federal government, the politics of Native American identity, and the problems with the FAP. The San Luis Rey Band's involvement is connected to a larger movement of unrecognized tribes across California to gain federal acknowledgement of their status as tribes, and in so doing to widen the possibilities for self-government and economic development and to secure their claims to traditional territories. At the same time, in undergoing the FAP, tribes confront the enduring power of the federal government, including its ability to define indigenous identities on its own terms. This power places the FAP in a long lineage of colonial policies and practices that are designed to establish the authority of the federal government over Native communities. The story of the San Luis Rey Band, then, presents a series of interrelated questions that this chapter investigates: What histories bear on the Federal Acknowledgment Process, and how does the situation of Native California, and Southern California in particular, contribute to the tribe's difficulty in gaining federal recognition? How and why did the San Luis Rey Band pursue the FAP? How is the San Luis Rey Band's petitioning process influenced by its particular tribal history? Why is the San Luis Rey Band the only unrecognized tribe in San Diego County?

As discussed in the previous chapter, the FAP presents specific difficulties for unrecognized California tribes. From a pre-contact society of unparalleled environmental and cultural diversity composed of small autonomous polities, to the destructive forces of Spanish missionization and a state and federally funded genocide, California Indians' unique history is at times incompatible with criteria for federal acknowledgment. Unrecognized tribes in California are often hindered in their quest for recognition of their sovereignty when challenged to prove political and community continuity after over two centuries of colonial laws and practices that negatively impacted Native peoples' lifeways and tribal governing systems.

While the FAP and its associated bureaucracy are problematic on a number of levels, unrecognized tribes from California consistently engage with the process regardless. They do so because the goal of campaigns for federal recognition is the formal acknowledgment of tribal sovereignty, or the right to self-government. Most unrecognized tribes have weighed their

options, and they usually feel that the pros of recognition outweigh the cons.[188] How federal recognition influences peoples' lives cannot be understated, and it is critical to understand why unrecognized tribes go through the available channels to gain federal acknowledgment for their tribal communities. Thus, the San Luis Rey Band's engagement with the FAP is a case that illustrates not only why tribes petition for federal recognition, but also to what extent tribes can use the FAP for their own political and social purposes. In this chapter, the San Luis Rey case study presents another look into the complexity of recognition in California and how unrecognized tribes are affected by U.S. legal policy. Every unrecognized tribe in the U.S. has a unique story, and the San Luis Rey story underscores the ways in which quests for federal recognition are deeply rooted in history. This chapter analyzes San Luis Rey's petitioning process through an investigation of the historical context that led to the band's decision to petition, and it provides a critical framework for the next chapter that centers the band's recent history and campaign for federal recognition. Shifting the focus to coastal Southern California adds depth to understanding how colonization in California impacts contemporary struggles for federal recognition and draws attention to a tribal community's history and experience that is often overshadowed by other federally recognized tribes in the region.

The San Luis Rey Band of Mission Indians, Tribal Politics, and Three Eras of Colonization in Southern California

The San Luis Rey Band of Mission Indians is the only unrecognized tribe from San Diego County and the only unrecognized band of Luiseño Indians.[189] There are seven Luiseño bands, and the other six federally recognized bands are: Pechanga, Pala, Rincon, Soboba, La Jolla, and Pauma. The Luiseño bands share some overlap in their histories, but each band has its own narrative and experiences shaped in part by colonization on Luiseño lands. The San Luis Rey Band of Mission Indians has been involved in petitioning for federal recognition through the FAP since the 1980s. But for most members of the tribe, engaging the FAP is just one part of a longer story. The longer history of tribal-U.S. relationships that emerges from tribal decisions to petition reveals that the project of recognition is not new. Indeed, the struggle for the recognition of San Luis Rey's inherent tribal sovereignty has been ongoing since the U.S. Senate refused to ratify the 1852 Treaty of Temecula to which a representative of the San Luis Rey Village was a signatory.

While the U.S. did not acknowledge the tribe's inherent tribal sovereignty over a century and a half ago through treaty ratification, the more immediate impetus for San Luis Rey's campaign for federal recognition in the 1980s was the tribe's involvement in a 1950 claim filed by several Southern California tribes in the Indian Claims Commission. Based on research completed for the claims cases, attorneys working with San Luis Rey knew the band did not have a reservation because land was never reserved for the community in the late 1800s as it had been

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[188] Miller; Tolley.

[189] Some tribal groups have sent Letters of Intent to petition with contact information from a San Diego County address. However, these other groups are not composed of Native American peoples who were originally from San Diego County in pre-contact times. One of the petitioners, for example, is known as the Chiricahua Tribe of California and is a descendant organization of Apache peoples who live in California.

for several other bands of Luiseño and Kumeyaay in San Diego County and what is now Riverside County.[190] After meeting with an attorney from California Indian Legal Services in the late 1970s, tribal representatives from San Luis Rey agreed that they should pursue federal recognition as an opportunity to address the tribe's legal status. Though the claims case was the catalyst for San Luis Rey to pursue the FAP after it was created in 1978, the following sub-sections analyze important moments throughout San Luis Rey's history up to the mid-twentieth century that represent the tribe's willingness to engage with the federal government in an effort to provide for the tribal community. These sections explain why the San Luis Rey Band is the only unrecognized tribe in San Diego County and reveal the foundation of the tribe's eventual decision to petition for federal recognition in the 1980s.

Prelude: Spanish and Mexican Colonization in the San Luis Rey Valley

In United States history, dominant narratives of "progress" and westward expansion leave little room for the experiences of Native Californians. The United States' conquest across the continent is told as a story that moves from east-to-west, from the Atlantic to the Pacific Ocean and beyond. What is left out in this epic of manifest destiny is that many Native American peoples maintained their ways of life and managed encounters with other colonial powers well before the United States arrived. Indigenous peoples in what is now California were exposed to Europeans as early as 1542, but sustained contact between California Indians and Europeans did not occur until the 1769 establishment of a system of twenty-one missions by the Spanish. The Indians of California endured Spanish, Russian, and Mexican colonial regimes before coming under the authority of the U.S. nation-state.

The mission system in what was called "Alta California" by the Spanish is notorious for its destructive effects and how it fundamentally changed Native peoples' lives. The type of control exerted by padres and soldiers at the mission was multilayered because it did not just directly affect Native Californians by means of social control, aggressive interaction, and gendered violence. Spanish colonialism also brought new pathogens and domesticated plants and animals that drastically changed the natural landscape, practices of Indigenous landscape management, and the relationship between California Indians and their environment.[191] As mentioned in the previous chapter, the Spanish used a method knows as "*reduccion*" to "reduce" and convert California Indians into Hispanicized, Catholic, and thus "civilized" members of the Spanish empire. Florence Shipek describes the logic behind the process:

> The standard colonial mission policy was to bring entire villages into a mission and turn them into a self-supporting and self-sufficient community by teaching them Catholicism and European-style agriculture, crafts, and animal husbandry. The missions were expected to supply the [Spanish] army with food and to supply laborers for the settlers in

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[190] Pamela Aldridge (attorney) in discussion with the author, July 2015.

[191] Kent G. Lightfoot and Otis Parrish, *California Indians and Their Environment: An Introduction* (Berkeley, CA: University of California Press, 2009); William Preston, "Serpent in the Garden: Environmental Change in Colonial California," *California History* 76, no. 2 and 3 (1997); Florence Shipek, "A Strategy for Change: The Luiseno of Southern California" (University of Hawaii, 1977).

> the pueblos and for the private ranchos (landholdings) granted by the government to retired soldiers and settlers, thus taking land needed by the Indians for their own subsistence. After ten years spent in communal life of the mission, the Indian was supposed to be ready for working-class citizenship and a small family subsistence plot of land.[192]

Indian land acquisition after the ten-year period rarely occurred. The method of *reduccion* was used throughout the mission system except for the two southernmost missions at San Luis Rey and San Diego. The policy was not followed at Missions San Luis Rey or San Diego because land and irrigation water were not available close to the missions, and also because some Alta California government officials advocated against the *reduccion* policy in the south.[193] Unlike other missions that congregated Indian people around the mission locale per the *reduccion* policy, "[o]nly the unmarried girls and women, the sick, the elderly, and some craft specialists" lived at Missions San Luis Rey and San Diego. The other Luiseño and Kumeyaay people were able to return to their personal homes and villages (some of which were within the San Luis Rey Valley as well as farther east and north) after attending certain events or performing labor at the missions.[194] Thus, Luiseños at Mission San Luis Rey and Kumeyaay peoples at Mission San Diego experienced missionization in a different way than California Indians associated with other missions. The divergence in policy and its effects on the Luiseño and Kumeyaay can be seen most prominently in data on population trends: as discussed further below, the Luiseño and Kumeyaay did not experience the steep population declines that other tribes in Mission areas did.

Shepburne F. Cook's *The Conflict between the California Indian and White Civilization*, originally published in the 1940s, analyzes how the missions of Baja California and Alta California impacted Native American populations. Cook underscored the ways that biological and non-biological factors caused drastic demographic decline among Indians at the missions. Cook lays out several factors such as disease, violence, malnutrition, low birth rates to show that conditions at the missions were deplorable. He found that severe population decline among mission Indians can be traced to the Spanish priests and their harsh practices, disease, and a higher death than birth rate.[195] Cook provides estimated population data, ranging from pre-contact to the late 1930s, for tribes affected by the missions. Cook's study also provides evidence that mission life was harsher on women than on men because they received no pre-natal care, they were often publicly shamed for infertility or stillbirths, and the women were subject to squalid conditions in the *monjerios*, the women's quarters where unmarried women and girls

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[192] *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*, 19-20.

[193] James A. Sandos, *Converting California: Indians and Franciscans in the Missions* (New Haven, CT: Yale University Press, 2004); Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*.

[194] *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*, 20.

[195] Shepburne F. Cook, *The Conflict between the California Indian and White Civilization* (Berkeley, CA: University of California Press, 1976).

were forced to live.[196] The gendered experiences of missionization resulted in generally unequal sex ratios and a lower birth rate. Cook found that population rates were higher at the southern missions compared to those in the north, but he did not analyze the differences in depth.

Addressing this phenomenon in her dissertation, Florence Shipek analyzed the population trends at the three southernmost missions: San Juan Capistrano, San Luis Rey, and San Diego. Mission San Juan Capistrano and Mission San Luis Rey are located within Luiseño territory. Mission San Juan Capistrano was founded earlier than Mission San Luis Rey, in 1776 versus 1798, and it utilized the *reduccion* method whereas Mission San Luis Rey did not. The Luiseños from the northern part of the pre-contact territory who were forced to congregate at Mission San Juan Capistrano call themselves Juaneños today. Though Luiseños and Juaneños are similar culturally and were part of the same language group pre-contact with a slight dialectical difference, the history of missionization and settler colonialism fractured the communities. Today, the Juaneños are part of various unrecognized tribal groups, whereas the Luiseños, except the San Luis Rey Band, are all federally recognized. The Luiseños and Juaneños acknowledge their shared culture, but there is a distinction made between the tribal communities contemporarily. Shipek's analysis showed that the difference in policy, *reduccion* at Mission San Juan Capistrano in contrast to no *reduccion* at Mission San Luis Rey and Mission San Diego, combined with proximity of a mission to a pueblo or presidio (military fort) and the maintenance of pre-contact Luiseño and Kumeyaay cultural practices, produced the population effects noted by Cook. Shipek found that all three missions had lower death rates compared to the eighteen other missions to the north, but Mission San Juan Capistrano had a more dramatic population decline than Missions San Luis Rey or San Diego because of that mission's use of the *reduccion* policy. Of the three, the San Luis Rey Mission had the lowest population decline with an average "crude death rate below 50 per thousand."[197] With regards to sex and birth, Shipek also noted, "In comparison to San Juan Capistrano and San Diego, at San Luis Rey the proportion of women and children remained relatively stable."[198] Shipek concluded that, "[…] in contrast to other missions, throughout the entire San Luis Rey Mission period, its male/female ratio remained close to unity, its baptismal rate continued high in comparison to its death rate, while its harvests proved relatively good and its portion of the Luiseño populations appears to have stabilized under the particular San Luis Rey living conditions."[199]

The way that Spanish missionization impacted Luiseños at Mission San Luis Rey is significant because the divergences are often used to explain the contemporary conditions for California tribes along the route of missionization. As discussed in the previous chapter, the effects of Spanish missionization led anthropologists to conclude that some tribal groups (not including those associated with missions San Diego and San Luis Rey) were culturally extinct. In

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[196] Robert H. Jackson and Edward Castillo, *Indians, Franciscans, and Spanish Colonization: The Impact of the Mission System on California Indians* (Albequerque, NM: University of New Mexico Press, 1995); Miranda.

[197] Shipek, "A Strategy for Change: The Luiseno of Southern California," 70.

[198] Ibid., 81-82.

[199] Ibid., 76.

some cases, those anthropological assumptions came to bear on the livelihood of tribal peoples. Scholars have argued that it is no coincidence that the U.S. government does not federally recognize the majority of tribes along the route of missionization.[200] However, if Luiseños at Mission San Luis Rey maintained a larger population and were able to sustain pre-contact socio-political band structure, then one of this chapter's key questions emerges: why is the San Luis Rey Band an unrecognized band of Luiseños today?

After the Mexican government won independence from Spain in 1821 there was a movement to secularize the mission system. The Mexican government passed secularization legislation in 1833, and by 1834 local authorities in Alta California began to dismantle the Franciscan mission system. Secularization policy included "the granting of emancipation to Indian converts living under the control of the missionaries, and the legal obligation to distribute lands, livestock, buildings, and other communal property among the surviving Indian converts, under the supervision of state-appointed administrators."[201] The mission lands were parceled out in the form of Mexican rancho land grants and some tracts of land became Indian pueblos. Under Mexican law, rancho land grants had a clause that excluded lands in use and occupied by an Indian village. In other words, Indians who lived within a land grant could not be dispossessed despite the fact that they lived within the boundaries of a rancho owned by someone else, although, as I will discuss, this clause was not always honored.[202] Two of the known Indian pueblos in Luiseño territory were at Pala and Las Flores. Las Flores, or the ranchería of Uchme, was the closest to the San Luis Rey Mission. The 100 Luiseño families who formed the Las Flores pueblo after 1834 were originally from the Uchme village prior to Spanish missionization, which underscores the continuity of Native people's relationship to place in spite of Spanish colonization.[203] The six rancho land grants in the contemporary San Luis Rey tribal area were: Rancho Agua Hedionda, Rancho Buena Vista, Rancho Guajome, Rancho Santa Margarita y Las Flores, Rancho Monserrate, and Rancho Los Vallecitos de San Marcos. The ancestors of the current San Luis Rey Band lived and worked on some of those ranchos as well as at the San Luis Rey Village that was located just west of the San Luis Rey Mission.

Pio Pico, the last governor of Mexican California, sought to own the Mission San Luis Rey lands, including where the San Luis Rey Band lived, for many years. In his power as governor, he successfully granted the mission lands to his brother, José Antonio Pico, and another man named Antonio José Cot in 1846. Robert Jackson and Edward Castillo describe the impact of Mexican colonization policy and land redistribution:

> One important element of the [Mexican] colonization policies was the concession to local governors of the authority to grant land. In the twelve years following the beginning of

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[200] Lightfoot; Lightfoot et al; Lee M. Panich, "Archaeologies of Persistence: Reconsidering the Legacies of Colonialism in Native North America," ibid.

[201] Jackson and Castillo, 87.

[202] Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*.

[203] Lisbeth Haas, "Emancipation and the Meaning of Freedom in Mexican California," *Boletin: Journal of the California Mission Studies Association* 20, no. 1 (2003).

> secularization, different regimes in California granted hundreds of thousands of acres of land to settlers in large tracts embracing thousands and in some cases tens of thousands of acres, much of the land previously undeveloped by the Franciscans or merely used as pasture for livestock. The Indians who remained at the missions following secularization generally lost out in the scramble for land despite their protests, and the more developed tracts of former mission lands were the most attractive.[204]

Through the sale of mission San Luis Rey lands, the ancestors of the San Luis Rey Band living at the San Luis Rey Village were surrounded by land owned by these Californios, or the Mexican elite of the time. The laws stating that rancho grantees could not dispossess Indian villages within rancho lands were still in effect, and the landowning Californios used the Indians "[…] of the enclaved rancherias as forced peon labor and restricted them in many ways."[205] Luiseño leaders at the San Luis Rey Mission regularly protested the actions of the Mexican *mayordomos*, the overseers and administrators of mission property and labor thereupon, and were subject to punishment for any violation against Mexican governing rules.[206] Julio Cesar, a Luiseño who was born at Mission San Luis Rey in 1824, recollected his experience growing up and working at and around the mission until his departure in 1849. He recalled some of the harsh conditions against Indians by the *mayordomos* as well as their efforts to acquire land, material goods, mission cattle, and other resources. Cesar recounted:

> Don José Antonio Estudillo, when he ceased to be administrator, took a rancho, San Jacinto, with cattle and everything, and it was no longer known as belonging to the Indians. Don José Joaquín Ortega, during his administration, appropriated to himself nearly all the mission cattle […]. It was said that Señor Ortega left the mission stripped bare, making an end of everything, even to the plates and cups.[207]

Even though the landowning Mexican elite and other officials often treated Luiseños poorly and appropriated land that should have belonged to the Indians, San Luis Rey Mission records indicate that between 1832 and 1843 the baptismal rate was higher than during Spanish control. This attests to an increased birth rate among Luiseños during that time.[208]

While there has been an abundance of scholarship on Spanish and Mexican colonization in California, information about life at the missions from the point of view of California Indians is rare. Julio Cesar's recollection is one exception, and so is the account of Pablo Tac, a Luiseño

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[204] Jackson and Castillo, 100,02.

[205] Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*, 26.

[206] Cultural Systems Research Inc., "Overview," (Private Collection, 1987).

[207] Julio Cesar, "Recollections of My Youth at San Luis Rey Mission," *Touring Topics*, November 1930, 42.

[208] Inc.

man who was also from San Luis Rey, or *Quechla*, who was the first California Indian to write about mission life and document a California Indian language. Pablo Tac was raised at Mission San Luis Rey where he was born in 1820, one year prior to Mexico's independence from Spain, and baptized in 1822.[209] In 1832 Father Antonio Peyri took ten year old Tac and twelve year old Agapito Amamix from San Luis Rey to Mexico City to study for the priesthood at the Iglesia y Colegio de San Fernando, the oldest Franciscan institution in the Americas for training missionaries to work with Indigenous peoples.[210] While in Mexico City, the political upheaval from the new policy of secularization under the Mexican government created an unstable environment at the Iglesia y Colegio de San Fernando. Peyri, who secured passage back to his home in Spain, took Tac and Amamix with him and they arrived in Barcelona on June 21, 1834. Peyri then sent Tac and Amamix to Rome to continue their studies of the priesthood at the Collegium Urbanum de Propaganda Fide where they enrolled in September of the same year.[211] Lisbeth Haas describes the significance behind the young Luiseño men's enrollment:

> Tac and Amamix enrolled at the Collegium Urbanum de Propaganda Fide as *Cheegnajuisci in California* —"people from Quechla"—as Tac later put it. *Quechla* at once referred to their ancestral territory and to the land on which the mission settled [.] This demarcation of origin also reflected Tac's sense that Luiseños continued to possess their ancestral territories, in contrast to the claims made by Spain and Mexico to the land. Being identified as *Cheegnajuisci in California* acknowledged their territory and suggested the intellectual space of affirmation that opened for both young men in Rome.[212]

While in Rome, Tac created the first written version of the Luiseño language. Lisbeth Haas argues in *Pablo Tac, Indigenous Scholar* that Tac used his Indigenous epistemology when he crafted a written form of the Luiseño language. His work used Luiseño spiritual thought and practice that alluded to the power relations, knowledge production, and cultural protocols within his community at the mission.[213] Sadly, Amamix passed away in 1837 and Tac in 1841 from illness. Neither of these Luiseño men was able to return their homeland at *Quechla* in the San Luis Rey Valley. The story of Pablo Tac and Agapito Amamix, Tac's written account of life at the mission, and his documentation of the Luiseño language are unique throughout Native California.

The influence of Spanish and Mexican colonization in the San Luis Rey Valley has been long lasting, and it continues to play a part in contemporary Luiseño life. The San Luis Rey

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[209] Lisbeth Haas, *Pablo Tac, Indigenous Scholar* (Berkeley, CA: University of California Press, 2011).

[210] Ibid.

[211] Ibid.

[212] Ibid., 12.

[213] Ibid.

Band, as the Luiseño band originally from the San Luis Rey Valley, confronts the legacy of Spanish and Mexican colonialism everyday—most noticeably through the power of naming and language as evidenced by the very names "Luiseño" and "San Luis Rey Band of Mission Indians."[214] For members of the San Luis Rey Band, knowing there are figures like Pablo Tac in the tribe's collective history is a point of pride and validation as Luiseño people from *Quechla*. For example, the San Luis Rey Band has undertaken initiatives to honor the memory of Tac and Amamix. In 1997, the San Luis Rey Band, with the aid of the San Luis Rey Mission, republished Tac's account, *Indian Life and Customs at Mission San Luis Rey*, in an effort to promote Native education and as a tribute to Tac's influential contribution to both Luiseño and California history. Most recently in 2012, Peyri Hall, the former Mission San Luis Rey schoolhouse, was renamed to Pablo Tac Hall. The Captain of the San Luis Rey Band, Mel Vernon, blessed the dedication sign at a ceremony with other tribal members. Captain Vernon supported renaming the building Pablo Tac Hall because it acknowledged the ancestors of the San Luis Rey Band who built the mission; ancestors who are often invisibilized elsewhere on the mission grounds.[215]

Moreover, establishing a connection to the ancestors of the San Luis Rey Band at the mission is also a fundamental part of the federal recognition process. The history of Spanish and Mexican colonization also directly influences San Luis Rey's recognition petition with regards to Criterion B, proving a distinct community, and Criterion E, proving descent from a historical Indian tribe. The 1994 version of the FAP regulations, the version the San Luis Rey Band was using when it submitted its petition, required petitioning tribes to show evidence of a distinct community "from historical times until the present," which could include evidence from the first sustained interactions with the Spanish. The revised regulations of 2015, however, require petitioning tribes to provide evidence of a distinct community from 1900 to the present, but it is yet to be determined if the change in date will actually help petitioners from California address the impacts of Spanish and Mexican colonization.

The following sub-section considers the San Luis Rey Band's historical interaction with the U.S. federal government to argue that these instances form a distinct San Luis Rey identity through assertions of inherent tribal sovereignty prior to the creation of the FAP, and second, are part of a historical continuum that influenced San Luis Rey's contemporary engagement with the FAP.

A Long Engagement: The San Luis Rey Band and the U.S. Federal Government, 1846-1950

As discussed earlier, in May of 1846 Pio Pico, Governor of Mexican California, sold the San Luis Rey Mission and its associated land, including the Rancho of Pala, to his brother and

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[214] Luiseño people also refer to themselves as *'ataaxum*, "the people," and *payomkawichum*, "the people of the west."

[215] Paul Sisson, "Oceanside: Luiseno Scholar Gets Place of Honor at Mission San Luis Rey," *The San Diego Union Tribune* (2012), http://www.sandiegouniontribune.com/sdut-oceanside-luiseno-scholar-gets-place-of-honor-at-2012jun09-story.html.

another man.[216] The people of the San Luis Rey Village were still living near the mission where they farmed to provide for themselves as well as the parish priest and the *mayordomo*.[217] At the same time, war broke out between the United States and Mexico. Pio Pico eventually fled from Los Angeles to Mexico after U.S. military occupation, and Juan Maria Marron II was left as the *mayordomo* of San Luis Rey. The U.S. army occupied parts of the Mexican territory including California, and the San Luis Rey Mission was a headquarters for multiple U.S. military units. The military commander of California, Captain J.C. Fremont, appointed John Bidwell as magistrate of the San Luis Rey District in August of 1846.[218] Bidwell was stationed at San Luis Rey where he interacted with members of the San Luis Rey Village and neighboring Californios. Bidwell specifically mentioned a chief named Samuel and noted that the Indians were friendly, spoke eloquent Spanish, and that some could read.[219]

After Bidwell retired from his position, U.S. military troops under Colonel John Kearny and Commodore Robert F. Stockton took over San Luis Rey in January of 1847. When they arrived in the valley, they got the keys to the mission from the alcalde of the San Luis Rey Indian Village, "a mile distant."[220] After Kearney and Stockton moved north, the Battalion of Mormon Volunteers stayed at San Luis Rey until April of 1847. In August of 1847, a member of the Mormon Battalion who stayed in the San Luis Rey Valley was appointed as sub-Indian agent for the lower district of California where the headquarters were at Mission San Luis Rey.[221] Simultaneously, throughout the late 1840s there was considerable Indian unrest and resistance to the Californio rancheros in Southern California. The presence of successive military units at San Luis Rey and the appointment of a military man to the position of Indian sub-agent are indicative of U.S. anxiety about the power of Southern Californian tribes. The Mexican-American War spurred further violent interactions between Indians, Californios, and Americans. For example, in 1846 in what is known as the Pauma Massacre, a group of Luiseños killed eleven Californios who sought refuge on the Pauma Rancho after the Battle of San Pasqual between Mexican and American troops.[222]

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[216] Though Pala is approximately twenty miles east of San Luis Rey, it is associated with the mission because an *asistencia*, or subsidiary chapel to the mission, was established there in 1813.

[217] Inc.

[218] Zephyrin Engelhardt, *San Luis Rey Mission* (San Francisco, CA: The James H. Barry Company, 1921), 136.

[219] Ibid., 137.

[220] Ibid., 138.

[221] Inc.

[222] George Harwood Phillips, *Chiefs and Challengers: Indian Resistance and Cooperation in Southern California, 1769-1906*, 2nd ed. (Norman, OK: University of Oklahoma Press, 2014).

The Mexican-American War eventually ended with the signing of the Treaty of Guadalupe Hidalgo on February 2, 1848. The treaty stipulated that citizens of Mexico who were residing in California would become citizens of the United States. Florence Shipek explained further, "The treaty states that [Mexican citizens'] property rights would be respected and affirmed by title under the laws of the United States. Inasmuch as Mexican law considered settled Mission Indians as citizens, technically they were entitled to all the rights and immunities of the citizens of the United States."[223] For the San Luis Rey Band and other Southern California Indians, the difference in U.S. property law after the Mexican American War led to decades of confusion, uncertainty, and aggression over the fate of Indian lands. The battles over land ownership and acquisition were furthered by genocide in California.

Genocide was perpetrated in California through a variety of techniques that were not limited to frontier violence. The creation of an environment in which Indian people were denied basic rights facilitated genocide in California. Genocide began with U.S. settlers and military entering Mexican California in the mid-1840s, and the Mexican American War and the discovery of gold in 1848 at Sutter's Mill in Coloma only intensified genocidal practices. The ensuing Gold Rush brought many more people from around the world to California and ushered in California statehood on September 9, 1850. During the Gold Rush, the lands in Southern California, though not being used directly for mining purposes, became rapidly populated as prospectors found little wealth in the gold fields and others passed through on overland routes from the Southwest. Many of these people set up homesteads or bought parcels of land during that time at the expense of Native claims to land. "In coastal Southern California and elsewhere in the Southwest," Lisbeth Haas explains, "capitalist industrialization required that Indian populations be further deterritorialized, meanwhile supporting the interests of (usually self-defined 'white') squatters and land speculators."[224] Non-Native settlement and land usurpation were aided by two key pieces of legislation, the state of California's 1850 Act for the Government and Protection of Indians and the federal government's 1851 Act to Ascertain and Settle the Private Land Claims in the State of California (also known as the Land Claims Act), as well as the U.S. Congress' failure to ratify eighteen treaties made between California tribes and the federal government.

In Southern California, the San Luis Rey Band and other Indian people made a relentless effort to counter non-Native claims to land and resources through outright resistance as well as engagement with the settler colonial institutions of the U.S. Resistance took shape through multiple forms: organized visits to the Land Office in Los Angeles and Washington DC, written protests regarding settlers' actions to Indian Agents and other officials, and armed force against settlers.[225] Several non-Natives also took an interest in the conditions facing the "Mission Indians" of Southern California and the federal government commissioned several reports to

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[223] Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*, 28.

[224] Lisbeth Haas, *Conquests and Historical Identities in California, 1769-1936* (Berkeley, CA: University of California Press, 1996), 4.

[225] See George Harwood Phillips (1975; 2014) *Chiefs and Challengers: Indian Resistance and Cooperation in Southern California, 1769-1906*.

document the conditions facing the Mission Indians.[226] For example, Helen Hunt Jackson, a proclaimed Indian rights activist, sought to bring attention to the circumstances of Southern California Indians with her 1884 novel *Ramona* and a co-authored 1883 "Report on the Conditions and Needs of the Mission Indians of California" for the Commissioner of Indian Affairs with an Indian Agent named Abbot Kinney. Though the efforts made by Native and non-Native people had varying outcomes for the situation in Southern California, the contours of genocide and the ensuing institutional injustices particularly impacted the San Luis Rey Band and resonate in the band's present unrecognized status. Not only was San Luis Rey's land highly desirable, but laws that enabled settlers to dispossess Indians of land also facilitated the band's land loss. For San Luis Rey, genocide and its repercussions shaped the band's interaction with white settlers who benefited from the socio-legal environment in California that was grounded in genocide and a lack of rights for Indian people.

Scholars of genocide in California contend that the legal environment, created by politicians in the California State Legislature who were heavily influenced by public sentiment, made possible the disenfranchisement, dispossession, and murder of California Indian people.[227] San Luis Rey's status as an unrecognized tribe today was sealed in the early years after California statehood in 1850. An unratified treaty, the legal environment in California created by the 1850 Act for the Government and Protection of Indians and the 1851 Land Claims Act, and the Office of Indian Affairs' inaction on disputes over the San Luis Rey Band's claim to land are fundamentally connected to the contemporary unrecognized status of the band. Control and ownership of land was the most important factor in San Luis Rey's engagement with the non-Native world. Securing the San Luis Rey Village was the top priority, and the band's struggles for land in the late nineteenth and early twentieth centuries were a prelude to the contemporary campaign for federal recognition. One of the hindrances to securing land was a general disregard for Native rights by settlers and governmental officials. After the 1850 Act for the Government and Protection of Indians was passed, county sheriffs were supposed to demarcate Indian occupied lands to prevent settlers from encroachment and the possibility of violent interactions. San Diego County may have been the only county in California to actually comply with that portion of the 1850 Act since little evidence of compliance has been found beyond Jackson's Mission Indian reports and within the archives of the San Diego County Court.[228] A report for the San Luis Rey Band's federal recognition petition by the independent research firm Cultural Systems Research Inc. stated that as part of the 1850 Act:

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[226] Though many tribes were associated with the Spanish mission system along the western part of California, the term "Mission Indians" for the BIA has historically and legally applied to Native Californians in Southern California residing primarily in nineteenth century San Diego, San Bernardino, and Los Angeles Counties. In their 1883 "Report on the Conditions and Needs of the Mission Indians of California," Helen Hunt Jackson and Abbot Kinney define Mission Indians as: San Luiseño, Digeuño, Serrano, and Cahuilla.

[227] Lindsay; Madley.

[228] Florence Shipek, "Documents of San Diego History: A Unique Case," *The Journal of San Diego History* 15, no. 2 (1969).

> [T]he sheriff of each county was authorized to determine how much land the Indians used and 'needed,' and to mark that off and prevent settlers from disturbing the Indians. This apparently was done throughout San Diego County, but accomplished nothing. In 1883, Helen Hunt Jackson found that each Indian 'Captain' had in his possession worthless papers that had been signed by the sheriff, and that delimited the boundries [*sic*] of their fields, pastures, and villages.[229]

As this statement suggests, the attempts to preserve the autonomy of Indian villages in San Diego County were met with resistance or were simply ignored by non-Native settlers in search of land. Since the Indian peoples of San Diego County had already established irrigable lands for agricultural purposes, the settlers were especially keen to stake homestead claims in those areas.[230] The San Luis Rey Village land was especially desirable since it was located near the San Luis Rey River and Mission San Luis Rey, a place that was already developed for agriculture and related industries for decades.

In an effort to assume control over Indian affairs in the region, President Fillmore was empowered by Congress to arrange treaties with California tribes on September 30, 1850, twenty-one days after California officially became a state.[231] Three treaty commissioners were appointed to make the treaties with California tribes, and they did so with approximately 119 different tribal representatives between 1851 and 1852. One of the commissioners, George W. Barbour, was supposed to negotiate treaties with the Indians of Los Angeles and San Diego in June of 1851. Fear of Indian hostilities, however, prevented Barbour from traveling to Southern California. The Native people who waited for Barbour were not pleased, and Barbour was informed of their dissatisfaction before he left California to return to Washington D.C. in October of that year.[232] George Harwood Phillips notes, "Although an Indian commissioner would eventually arrive in Southern California to negotiate treaties, it was only after an Indian uprising was well under way."[233] A paramount chief named Antonio Garra led the uprising in late 1851. Garra, who was baptized at Mission San Luis Rey and was taught to read and write there, was an influential Indian leader in Southern California who lived at the Kupa village post-missionization. Garra was a key organizer of Indian peoples in his plan to attack American settlements in Southern California. Phillips explains:

> […] Garra, greatly disturbed about the taxes his people were being forced to pay and probably terribly concerned over the number of immigrants passing through his territory, had been sending couriers over much of Southern California to enlist as many leaders as possible for a coordinated and massive uprising against the Americans. Garra was in communication with the captains of San Pasqual, Santa Ysabel, San Luis Rey, and

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[229] Inc., 37.

[230] Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*.

[231] Anderson, Ellison, and Heizer.

[232] Phillips, 97.

[233] Ibid.

Temecula.[234]

Though Garra requested aid from Indian people at San Luis Rey, Domingo, the captain of the tribe, did not support the uprising. Domingo and some other Luiseño and Cahuilla leaders sided with the Americans, and Domingo was ready to assemble his people for the Americans if needed.[235] The Garra uprising ended with a battle at Los Coyotes Canyon, and the subsequent capture, trial, and execution of Garra and other Indian leaders involved.

Prior to Garra's capture, word of his uprising spread quickly throughout California. Fears of Indian attacks on white Americans prompted treaty commissioner O.M. Wozencraft to expedite his visit to Southern California. In January of 1852, tribal leaders from Luiseño, Cahuilla, and Serrano territories convened in Temecula, CA, to meet with treaty commissioner O.M. Wozencraft. The treaties of "peace and friendship" were made in an effort to establish reservation lands for tribes away from primary areas of white settlement and bring the tribes under the jurisdiction of the federal government by way of extinguishing Indian title to land.[236] The treaties also made stipulations for the establishment of schools and for certain goods, supplies, farm animals, and agricultural equipment to be given to the tribes on the proposed reservations. Eleven Luiseño men signed the treaty. Pedro Kawawish signed on behalf of the San Luis Rey Village at the Mission and initiated a government-to-government relationship with the U.S. when he made his X-mark. However, since the treaties were never ratified, primarily due to strong opposition from the California legislature, what should have been an act of recognition was transformed into a disavowal of inherent tribal sovereignty.[237] Congress' refusal to ratify the California treaties not only undermined tribal sovereignty, but it also underscored the federal government's views on the status of aboriginal title in California. Flushman and Barbieri contend that, "The history of the subsequent refusal by Congress to ratify these treaties not only suggests that nonratification extinguished existing Indian title in California but also raises doubts whether Congress ever recognized that Indian title existed in the state."[238]

Simultaneous with treaty negotiations, a second critical piece of legislation impacted Native land claims. The 1851 Act to Ascertain and Settle the Private Land Claims in the State of California, also known as the Land Claims Act, was informed by the Treaty of Guadalupe Hidalgo's requirement for the U.S. to recognize and legitimate land claims created under prior sovereigns. Any land claims found invalid or not presented to the land commission within two years would enter the public domain and become available for homesteading and preemption.

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[234] Ibid., 101-02.

[235] Ibid., 105.

[236] Heizer.

[237] J.J. Warner of San Diego County was the only member of the California senate to support the ratification of the treaties. However, he suggested that instead of setting aside large reservations, California Indians revert to a system similar to Spanish missionization. Warner, as a ranch owner, presumably suggested that alternative because it would presumably provide him with a perpetual workforce of Indian laborers to exploit.

[238] Flushman and Barbieri, 439.

Before the act was passed, a series of reports were created to assess the nature of land titles made under Spanish and Mexican law so that the U.S. federal government could begin to recognize and settle land claims per the stipulations set forth in the Treaty of Guadalupe Hidalgo. The federal agents who researched and wrote on the status of land title showed a bias against Indians and even speculated in land during the process of reporting. William Carey Jones, for example, purchased property at Mission San Luis Rey and the associated ranches at Pala and San Juan only to sell it shortly after for a profit.[239] The federal agents reported that Spanish and Mexican law only recognized Indian land ownership over settled lands as opposed to the entirety of the state.

Once the Land Claims Act was passed, the statute of limitations to present claims for review was within two years. Since the act was passed in 1851, that meant that anyone who wanted to have his or her land claim verified by the U.S. government would have to do so by 1853. Most California Indians were unaware that they had to present their lands claims to the commission, and most certainly did not know that not claiming aboriginal title to the entire state would have implications for land claims in the future. The transfer of the unclaimed lands into the public domain after 1853 is particularly important for understanding the San Luis Rey Band's history and experience. Once land was considered part of the public domain, Indians could no longer make a claim and the public land was open to homesteading and preemption. Though the federal government intended to make provisions for California Indians through the Land Claims Act, "…the rush of events in California started by the discovery of gold in 1848 spelled the doom of any attempt to treat California Indian titles with the consideration that was accorded Indian titles in other parts of the United States."[240] In the aftermath of the Land Claims Act, the San Luis Rey Village and most of the San Luis Rey Valley passed into the possession of non-Native settlers, even though Native people still lived in the area and were unaware of the new ownership.

The process of dispossession set in motion by the Land Claims Act and the unratified treaties did not happen immediately, but was a gradual development in Southern California. With regards to Indians in San Diego and Los Angeles, Florence Shipek found that:

> "…until 1865 most villages in the interior of Southern California and a few near the coast continued in relatively undisturbed use of their lands (Shipek 1969, 1972, 1977, 1980) even though they did not acquire legal title, due to the improper inaction of the federal land commission. Although a few were dispossessed before 1865, most Indians remained in their villages, farming their lands and keeping some stock."[241]

This was the case for the San Luis Rey Band, and the 1860 census records clearly demarcated the "San Luis Rey Indian Village" in the San Luis Rey Township. The 1860 census also recorded Indian owned agricultural production in San Diego County. For the San Luis Rey Village, it was

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[239] Inc., 36.

[240] Flushman and Barbieri, 399-400.

[241] Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*, 32.

recorded that the 107 Indians had $1500 value for livestock and $100 for animals slaughtered. The San Luis Rey Village also produced fifty bushels of wheat and 250 bushels of Indian corn.[242] Special Indian Agent W.E. Lovett called a meeting of Southern California Indians in 1865 that was held in Temecula. It was the first time Southern California Indians convened with federal officials since treaty negotiations were held at the same location thirteen years prior.[243] Lovett reported that about 1,400 Luiseño, Cahuilla, and Kumeyaay Indians were present. The San Luis Rey Village representative(s) reported that there were 75 people, 62 beeves, and 45 sheep at San Luis Rey.[244] As the Civil War came to a close in 1865, more settlers came to Southern California and began encroaching on several of the Mission Indians' villages and agricultural fields. During this time, that the San Luis Rey Village was seriously impacted by white American settlement and entered a struggle over the recognition of their rights by the U.S. government that has extended to the present.

On January 15, 1870, after recommendations from various Indian Agents, President Ulysses S. Grant established reservations at Pala and San Pasqual by executive order. White settlers who lived in those places would have to relinquish "their" lands and move elsewhere. White settlers were enraged, believed that an awful precedent would be set if they were forced to move, and rejected the reservations. The reservations caused tensions between settlers and Native people, as well as amongst Native people who had varying perspectives on moving to reservations. On February 17, 1871, President Grant terminated the Pala and San Pasqual reservations because of the overwhelming opposition from whites in San Diego County.[245] Though Pala and San Pasqual would be re-established four years later, the incident illustrates the environment in San Diego County that privileged non-Native access to and ownership of land. At the same time in the early 1870s, a squatter named John Summers moved to the San Luis Rey Valley and established himself near the San Luis Rey Village. In 1873, Benito Molino, the Captain of the San Luis Rey Band, protested Summers' claim to the land occupied and used by the San Luis Rey Village.[246] He wrote:

> I, Bonito Molino, Indian Captain of the Band of San Luis Rey Mission Indians of San Luis Rey, San Diego County, California, hereby protest against said claimant being allowed to make a homestead or in any manner acquire the said land for the following reasons,

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[242] "Production of Agriculture in San Luis Rey Township in the County of San Diego in the Post Office San Diego," in *Selected Federal Census Non-Population Schedules, 1850-1880* (Provo, UT: Ancestry.com, 2010).

[243] Joel R. Hyer, *"We Are Not Savages": Native Americans in Southern California and the Pala Reservation, 1840-1920* (East Lansing, MI: Michigan State University Press, 2001), 79.

[244] Office of Indian Affairs, "Annual Report for the Commissioner of Indian Affaris, for the Year 1865," (Washington, D.C.: Government Printing Office, 1865), 123.

[245] Hyer, 81-83.

[246] Benito Molino later changed his surname to Molido and both spellings are present in archival materials.

1st - That the Indian title to said land has not been extinguished nor in any manner purchased or acquired by the Government of the United States,
2nd - That said lands have been in the peaceable possession of the Fathers of the Indians who now occupy the said lands as an Indian village and for agricultural purposes for hundreds of years,

That said Somers has not purchased the Indian Title nor occupied said lands peaceable and with the consent of the Indians who are the rightful owners of the said land, but on the contrary he the said Somers seeks to oust the Indians and take from them the land on which their Village stands and the lands which they now cultivate and which has been owned and cultivated continuously by them and their Fathers "Time Out of Mind" and there has never been a question as to the ownership of the said land by said Indians and their Fathers except by the said John Somers.

And as Captain of the Band of the Mission Indians living at the Indian Village at San Luis Rey, San Diego County, California, I, Bonito Molino, protest against the occupancy of said Village by said John Somers as a Homestead claim under the laws of the United States and in the name of and for my people as well as for myself protest against the Government of the United States granting to said John Somers or any person whatever any rights claim or possession in or to the above described lands or any land to which the Indian title has not been extinguished in the United States Land Office within and for the Los Angeles Land District of the State of California and I declare that I with the band of Indians of which I am Captain now live on, occupy and cultivate the said lands for more than forty years that I was born upon said land and My Fathers for hundreds of years before me.

Bonito Molino[247]

In his powerful statement, Captain Benito Molino expresses the confusion over Indian land rights across the state. Captain Molino, like many other California Indian people, was not aware that Indian title was extinguished through the Land Claims Act and the unratified treaties. Captain Molino's letter was a refusal to settler colonialism in Southern California, and his letter outlines the San Luis Rey Villages' perspective on land rights and Indian ownership of the land. Captain Molino's letter is also an instance of the San Luis Rey Village's strategic willingness to use settler colonial institutions for the preservation of the village.

In addition to Captain Molino's letter, some Indian Affairs officials reported on the issue facing the San Luis Rey Village to the Commissioner of Indian Affairs. B.C. Whiting, the Superintendent of Indian Affairs in California from 1867-1873, mentioned the San Luis Rey Village in a report written in May of 1873 for the Commissioner of Indian Affairs. In October of 1873 Special Indian Agent John G. Ames reported on his interactions with the Mission Indians of Southern California. During his tour of the area, Ames met with several Mission Indians who voiced concerns over land and rights. On July 11th Ames met with the people at the San Luis Rey

[247] Bonito Molino, "Bonito Molino to United States Land Office," (National Archives, Washington D.C.: Microfilm Series 234, Reel 45, 1873).

Village and they once again iterated their protest of John Summers' homestead claims.[248] A correspondent for *The San Diego Union* newspaper, reporting from San Luis Rey in January of 1876, wrote: "We notice that in the reservation of lands for Indians, recently published in The Union, the rancheria of San Luis Rey is not included. The Indians have dwelt here as far back as the oldest resident remembers. They have several comfortable houses, and number about ten families. These Indians are on the homestead tract of John Summers."[249] Despite protest from the San Luis Rey Village, Summers was given a land patent on June 3, 1877.

On February 7, 1878, leaders from the San Luis Rey Village wrote a letter to the Secretary of the Interior. They implored: "We do not ask…for the Government to give us money, nor blankets, nor seeds; only some lands for us to cultivate for the support of our families, and to raise our animals to work our lands, and that this land shall be protected against whites and that you hold a protection over us so that it cannot be taken from us."[250] The uncertainty of autonomy for the community and the risk from non-Native settlement compelled the San Luis Rey leaders to seek the "protection" of the federal government. Based on the language used in the letter that conveys a sense of pride, the term "protection" reads less as a helpless plea, than as a nod to the contemporary trust relationship that, "[…] broadly entails the unique legal and moral duty of the federal government to assist Indian tribes in the protection of their lands, resources, and cultural heritage."[251] In the 1870s, during the time the tribe wrote this letter, the connection between tribes and the federal government was problematically referred to as that of a guardian-ward relationship. Today, that language is seen as offensive and incorrect because it renders tribes as weak and dependent upon the U.S. But when San Luis Rey leaders wrote that letter over 130 years ago, they were asserting themselves not as wards in need of guardianship, but as a distinct Native community with rights to their land and the right to the legal responsibility of the federal government.

A year later on March 12, 1879, a delegation of Luiseño leaders from eleven different places wrote and signed a petition asking S.S. Lawson, an Indian Agent for the Mission Indian Agency, to forward their request to the President and Congress. The petition decrees that, "[…] we find ourselves in a critical situation in the Southern part of the state of California, frequently molested by settlers, and whereas efforts have been made, and prepared to remove us from the land where our ancestors have resided for generations…[.]"[252] They go on to list the names of the villages and the number of Indian people living at each. For San Luis Rey, it is written that

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[248] Office of Indian Affairs, "Annual Report of the Commissioner of Indian Affairs, for the Year 1873," (Washington D.C. 1873).

[249] "A Correspondent Writing from San Luis Rey, January 26th, Sends the Union the Following Items of News," *The San Diego Union*, January 30 1876.

[250] Cited in Richard L. Carrico, *Strangers in a Stolen Land: Indians of San Diego County from Prehistory to the New Deal* Second ed. (Newcastle, CA: Sierra Oaks Pub. Co., 2008), 86.

[251] Wilkins and Stark, 313.

[252] S.S. Lawson to Hon. E.A. Hayt, 26 March 1879, Box 17, Folder L. B543, Special Case 31, Record Group 75, National Archives Building, Washington D.C.

there are fifty-seven people. The Luiseños signing the document describe that they, "Respectfully petition and request of the proper authorities to provide that we may be permitted to continue residing in the places above mentioned, and in the free and peaceful possession of our homes…[.]"[253] Of the eleven signers, "Benito Molido" is listed as the "Capetan de San Luis Rey."[254] Interacting with the government and other tribes is a signifier that the community was known as its own separate Luiseño band and acted as such by participating in regionally specific proceedings.

To exemplify the sentiment of non-Native settlers in Southern California, a letter written in 1889 by former U.S. Indian Inspector William Vandever to the Secretary of the Interior is here quoted in full. At the time of writing, Vandever was living in Ventura, CA and was serving a second elected term as a representative to the U.S. Congress. Interestingly, thirteen years prior, Vandever was tasked with reporting on the conditions of the Mission Indians in California. In his 1876 report, he advocated for the federal government to secure lands for the Mission Indians as soon as possible and that removal of the Indians to Indian Territory would be disastrous. In a little over a decade, Vandever's views became quite the opposite. The following letter from 1889 demonstrates the ironies of settler claims to legitimacy and clearly reveals white settlers' sense of entitlement to land in Southern California. Mr. Vandever writes:

> Sir:
>
> I enclose a communication which sets forth truthfully a case of great hardship, and wrong, which is but one of many resulting from the action of the government in dispossessing honest and deserving settlers from their comfortable and valuable homes in San Diego and San Bernardino Counties, of California, for the benefit of a lot of shiftless Indians, incapable of improving the land, and who have no disposition to change their vagabond habits. Long association of these Indians with white settlements, has inured them to the vices of bad people, to the utter extinction of virtue, and habits of industry. These so called Mission Indians, like Indians generally, imitate the vices rather than the virtues of civilized society, and it is cruel as well as absurd to turn good citizens and thrifty settlers upon public lands out of house and home, to make room for a miserably debauched and demoralized set of unfortunates who will desolate rather than improve the farms assigned them from which white men have been thrust.
>
> By arbitrary executive orders these outrages are now being perpetrated upon settlers in Southern California, for the supposed benefit of a lot of Indians who, no matter what the Government may bestow upon them, at the expense of others, will continue to live in squalid poverty, and idleness to their dying day.
>
> I trust that you will take immediate steps to arrest this wrong, and to inform yourself fully of the circumstances attending the eviction of settlers from their homes in Southern California, which has been going on for some time under mistaken humanitarian views concerning the welfare of the Indian. Scalping white people on the plains is no more cruel, than is this measure of oppression by the Government, in turning white families from comfortable homes their enterprise and industry have built up, to

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[253] Ibid.

[254] Ibid.

> make room for Indian wards, demoralized through generations of profligacy.
>
> A Commission of sensible men should be appointed to examine these numerous small reservations of land set apart for the Indians in Southern California, to report upon the feasibility of consolidation upon public unsurveyed land, and also upon the just compensation that should be made to settlers who have been disposed of their homes, and who cannot be reinstated, and for such other relief as the case may call for.
>
> Very Respectfully,
> Your Obedient Servant
> Mr. Vandever[255]

Vandever's letter is a telling example of the way that many non-Native landowners thought about Mission Indians. His and others' logic had implications for policy and governmental action. With little support from settlers in Southern California, the federal government's attempts at securing land for Mission Indians was often met with resistance or disregard. The little land that had already been reserved for some tribes in Southern California was consistently subject to non-Native encroachment and purposeful homestead claims.[256] Despite settlers' problematic views and deceptive actions, in 1891 the federal government passed the Act for the Relief of the Mission Indians to address the wrongs facing Mission Indians in Southern California. The Mission Indian Relief Act, as it was also known, was largely spurred by Helen Hunt Jackson's and Indian Agent Abbott Kinney's recommendations in their "Report on the Conditions and Needs of the Mission Indians of California."[257]

The Mission Indian Relief Act established a special commission to survey the lands where Native people lived, both on and off reservations. Albert K. (A.K.) Smiley led the Mission Indian Commission, and it came to be known as The Smiley Commission. The other members of the commission were Judge Joseph B. Morse and Professor C.C. Painter. All three men were part of the Lake Mohonk Conference of Friends of the Indians and the Indian Rights Association of Philadelphia.[258] Soon after the passage of the Mission Indian Relief Act, the Smiley Commission came through Southern California in March and April of 1891.[259] According to A.K. Smiley's diary, his commission came to San Luis Rey on April 9, 1891.[260] When the Smiley group came

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[255] Mr. Vandever to Commissioner of Indian Affairs, 17 October 1889, Box 19, Special Case 31, Record Group 75, National Archives Building, Washington D.C.

[256] Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*.

[257] Helen Hunt Jackson and Abbott Kinney, "Report on the Needs and Conditions of the Mission Indians of California," (Washignton D.C.: Government Printing Office, 1883).

[258] Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*, 39.

[259] Smiley, A.K. "Smiley Commission Report." (A.K. Smiley Library, Heritage Room Archives, Box 44, 1891).

[260] Smiley, A.K., "Account of a trip through Southern Califomia spring of 1891 as

to San Luis Rey, the people refused to leave their traditional territory. Smiley wrote:

> Near the old San Luis Rey Mission are some forty Indians, the only ones left in the immediate vicinity of this once most flourishing mission.
>
> They are on private land, which has been patented, though there was testimony that the Indians were on it long before it was entered by the white man to whom it was patented. These Indians are needed as laborers in the immediate neighborhood. They have, during all the years this has been held by this white man, cultivated their fields, and are in comfortable homes. They utterly refuse to consider the question of removing to some other place, and, unless ejected by the Sherriff [*sic*], will remain where they are, and if thus ejected they can find homes on one of the reservations set apart for those who may be evicted from their present homes.
>
> The Commissioners find themselves unable to do more than make this provision and ask that Mr. Lewis, special attorney for the Indians be instructed to protect them in what are, at least, their equitable rights.[261]

The people of the San Luis Rey Village did not want to relocate to a different place where they had no connection. That decision has had vast implications for the San Luis Rey Band today. On one hand it ensured that the people of the San Luis Rey Village stayed in their traditional tribal territory. But on the other, it hindered the creation of reservation lands for San Luis Rey and precluded federally recognized status that comes from having land in trust. The San Luis Rey Band's choice to live on traditional territory actually weighs against recognition in this case. Other bands of Mission Indians that did not have reservations during the same time period later received trust patents to reservation lands from the Office of Indian Affairs (later the BIA) that were originally surveyed by the Smiley Commission.[262]

Since no lands were reserved for the San Luis Rey Band after the Smiley Commission, the San Luis Rey Village again raised the issue to the local Indian Agent in 1894. Indian Agent Francisco Estudillo wrote the Commissioner of Indian Affairs about the San Luis Rey Village:

> I have the honor to call your attention to the Indians living near the Old San Luis Rey Mission in San Diego Co. and ask if no provision can be made for these people. They

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chairman of Mission Indian Commission," March-December 1891, A.K. Smiley Library, Redlands, CA.

[261] A.K. Smiley, "Smiley Commission Report," (Redlands, CA: A.K. Smiley Library, Heritage Room, Box 44, 1891).

[262] Lack of funding and time restraints led to some errors in the Smiley Commission's work, and all Mission Indian villages were not visited. Moreover, Florence Shipek (1984) contends that the effectiveness of the Commission was diminished "…by the existence of deliberately or accidentally confused earlier survey lines, an unsympathetic General Land Office, and also less competent, or some possible less-than-honest, employees and surveyors who were necessarily entrusted with carrying out the work of actually locating lands and boundaries (39-40)."

> have lived and occupied these lands to my knowledge for 35 years, and now they are threatened with eviction. If there is anyway of securing their lands to them, I should be most happy to aid in that direction. Otherwise I shall inquire and see where they can best be removed to. Their condition is really piteous.[263]

Though various Indian Agents wanted to help the San Luis Rey Village, their efforts were never actualized. An idea to have the San Luis Rey Village relocate to the Potrero reservation was sent to the Commissioner of Indian Affairs, but there was never any follow-up or initiative to make the move. Based on the Smiley Commission's earlier proposition to relocate the San Luis Rey Village, it is more than likely that the tribal community would not want to move even though that was the remedy most Indian Agents suggested. Leading up to the turn of the century and at the beginning of the twentieth century, the San Luis Rey Village continued to live in the same place despite land disputes. Indian Agents continued to include the San Luis Rey Village on annual census documents for the Commissioner of Indian Affairs from 1897 through 1903.

In addition to the Smiley Commission, the Mission Indian Relief Act also provided specific guidelines for allotting the Southern California reservations the Commission surveyed. Allotment, a national assimilation policy legalized by the 1887 Dawes Act, had an interesting effect in Southern California. While the Dawes Act facilitated the loss of millions of acres of land elsewhere in the country, in San Diego County the reservations were not large enough to accommodate the amount of acreage generally allotted to Indian people.[264] Insufficient land at Pala reservation, for example, meant that the Indian Agent "…simply bestowed land titles on people who already considered these lands to belong to them" and in that way "the allotment system at Pala during the early 1890s reaffirmed the ties of some Luiseños to their native lands."[265] In other words, the Dawes Act did not succeed at detribalization at Pala in the same way it did in other parts of the country; even though allotments were created, the Indians at Pala still saw the reservation as part of the collective for culturally specific land tenure practices. Indeed, since reservations in Southern California were generally in the traditional territories of the tribes, there were long established land tenure practices that persisted. Though many Indian people wanted allotments to affirm their ties to land, there was some opposition to the allotment surveyors and the preference given to non-Native settlers in boundary disputes. Organized opposition to allotment largely stopped the process in San Diego County from 1896-1920.[266]

From the 1920s-1950s, San Luis Rey still maintained their identity as a tribal community and asserted it repeatedly in local settings and among other tribes. On December 7, 1923, the Superintendent of the Mission Indian Agency in Riverside wrote to Father Dominic of the San

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[263] "Francisco Estudillo to Commissioner of Indian Affairs," in *Al Logan Slagle Collection* (University of California, Davis, Box 42, SLR Estudillo Folder, 1894).

[264] The Dawes Act facilitated Native American land dispossession because non-Native settlers were able to purchase the surplus land not allotted to Indian people.

[265] Hyer, 99.

[266] Allotment continued on the Pala reservation from 1903-1905. Ibid.; Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*.

Luis Rey Mission. He said:

> Reverend Sir:
>
> Thomas Iguerra, F. L. Foussat, Miguel Salgado, Victor Molino, O. Soto, and several other Indians have signed the enclosed petition to the Secretary of the Interior in which they call themselves the Mission Indians of the San Luis Rey Reservation, and protest against being allotted. They also complained of having been driven out of their homes on February 9, 1912, and of having had a couple thousand sheep taken away from them. None of these Indians are enrolled, or appear to have been under the jurisdiction of the Indian Agency, they being considered citizen Indians. We have no record of a San Luis Rey Reservation, or lands held in trust for Indians in that vicinity, Pala being the nearest reservation.
>
> Will you kindly refer me to someone who can give me accurate information as to the matters complained of by these Indians? There have been so many cases of injustice having been done to Indians by having been dispossessed of their ancestral homes that I do not wish to hold out hope to the San Luis Rey Indians that I can give them any relief, but I would like to have the facts at hand should there be a chance of helping them in the future.
>
> Thank you for any information, or suggestions.
> I remain,
>
> Sincerely yours,
> Superintendent[267]

The language used to describe San Luis Rey as a "reservation" and to protest allotment is very important because it reveals the way in which San Luis Rey people conceived of the Indian world in San Diego County. San Diego County was, and still is today, dominated by reservation politics and life. Despite the lack of land acquisition for the San Luis Rey Band, the tribe still saw its place alongside other tribal communities and still engaged in local tribal affairs.

The San Luis Rey Band was also involved with the Southern Californian intertribal organization that began in 1919 known as the Mission Indian Federation (MIF). Cahuilla, Luiseño, and Kumeyaay Indians created the MIF in an effort to reject BIA paternalism and to guard the interests of Southern Californian Indians. Faustino Foussat, the Captain of San Luis Rey from the early 1900s until his death in 1965, attended MIF meetings held on local reservations and brought information back to the San Luis Rey Band. A list of tribal leaders in the MIF from February of 1929 lists "Faustino Fausette" from "San Louis Rey, village."[268] In interviews with tribal members, several referenced activities like the MIF that the tribe and tribal representatives participated in and which involved the federal government. Faustino Foussat's

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[267] "Mission Indian Agency Superintendent to Father Dominic," in *Al Logan Slagle Collection* (UC Davis Special Collections, Box 42, SLR Superintendent Folder, 1923).

[268] "List of Tribal Leaders in Mission Indian Federation," in *Florence Shipek Collection* (Kumeyaay Community College, San Luis Rey Binder 1, 1929).

involvement with the MIF was a point to which interviewees consistently returned.

In the 1940s, Foussat would often bring one of his granddaughters, Quinn, to the meetings and she would serve in a secretary-type position reading documents and letters from Washington D.C. and taking notes for those in attendance. Quinn, an elder within the community today, was in high school at that time and she remembered that, "He [Faustino Foussat] would have the Indian people come over to the house [in San Luis Rey] for meetings all the time. He would take me to Pauma for Indian meetings out there too. They talked about stuff that Washington was doing at that time."[269] This and other references to Foussat's actions during that time by tribal members is important because it shows that the community consistently points back to the activities SLR was concerned with as part of a longer history of interaction with the federal government. The interaction is significant to tribal members because it represents an ongoing effort on the tribe's part to secure rights and recognition from the government. When I asked interview participants about the meetings Faustino Foussat attended, four individuals connected the contemporary struggle for federal recognition with what Foussat was trying to accomplish during his time in the MIF.

> OC: Do you know what [the Indian people] were talking about at those [Mission Indian Federation] meetings?
>
> Q: They talked about stuff that Washington was doing at that time, to be recognized, or whatever they were going to do. I don't know because all I did was read the letters. And I said what am I reading about, you know? But my grandfather was trying to get everybody together more or less to be in the Federation. That was the first group of Indians trying to get recognized I think.

The correlation between participating in the MIF and seeking federal recognition reveals that the quest for federal recognition has shifted community members' understanding of the past interactions with the government. Though the FAP was not even created at that time, tribal members' tendency to associate federal recognition with other moments of historical interaction with the federal government underscores the FAP's place in the tribe's understanding of its historical trajectory.

Conclusion

The decision to petition for federal recognition through the FAP in the 1980s was not made in isolation. There were many factors that contributed to San Luis Rey's involvement that point to the greater connection between Southern Californian tribes, both recognized and unrecognized. The activism and involvement of Southern California tribes with the Mexican and U.S. federal governments, from protesting corrupt *mayordomos* to treaty negotiations to the activism of the MIF, played a significant role in influencing San Luis Rey tribal leaders' and members' ideas about engaging with the federal government.

Interviews and archival materials show that engaging with the FAP is just the most recent iteration of an ongoing struggle for the recognition of inherent tribal sovereignty from the federal

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[269] Anonymous member of the San Luis Rey Band of Mission Indians, interview with the author, March 2015.

government. The battle is an inherited one that goes back over 150 years for most unrecognized tribes in California. Such is the case for the San Luis Rey Band. Pedro Kawawish's signature on the 1852 Treaty of Temecula marked the beginning of what should have been an acknowledgment of San Luis Rey's sovereignty. But without ratification, what should have been a moment of recognition has turned into an inherited injustice. The San Luis Rey people have not taken this as the final determination on behalf of the federal government. Each generation of San Luis Rey people have adjusted their struggles towards acknowledgment in skillful ways to deal with the government's whims towards Native peoples. San Luis Rey's involvement with the FAP is the contemporary incarnation of this struggle.

The history of the San Luis Rey Band analyzed in this chapter provided context for the tribe's contemporary campaign for federal recognition. While anti-recognition rhetoric often obscures the ways in which unrecognized tribes have engaged the federal government historically, the San Luis Rey Band's strategy to gain rights through the FAP exemplifies the ongoing nature of federal-tribal engagement for unrecognized tribes in California. A treaty relationship and a socio-political presence in Indian affairs throughout Southern California should have supported recognition for the San Luis Rey Band in the late nineteenth and early twentieth centuries. However, the San Luis Rey Band's decision to remain within its traditional territory during the Smiley Commission and the inaction of the Office of Indian Affairs regarding the theft of the San Luis Rey Band's village lands prevented the establishment of a reservation, and thus an ongoing relationship with the federal government like that of the federally recognized Luiseño bands. Shifting the focus to coastal Southern California and the San Luis Rey band draws attention to a tribal community's history and experience that is often overshadowed by other federally recognized tribes in the region. The next chapter builds on the historical context laid out herein and centers on the San Luis Rey Band's struggle for sovereignty and self-determination from the mid-twentieth century through the present.

Chapter 4 | "It's a Legacy Project": The San Luis Rey Band of Mission Indians and the Federal Acknowledgment Process, 1950-2014

The San Luis Rey Band's decision to petition for federal recognition through the Federal Acknowledgment Process (FAP) in the 1980s was not made in isolation. As the previous chapter argued, the history of the San Luis Rey Band in San Diego County and the band's interaction with settler colonists provide crucial context for understanding the band's contemporary involvement with the FAP. The last chapter also underscored the broader connections between Southern Californian tribes in the nineteenth and early twentieth centuries, from treaty negotiations to the activism of the Mission Indian Federation, and how the intertribal network set the stage for San Luis Rey's choice to petition for recognition through the FAP. Building on the historical framework set forth in the previous chapter, this chapter provides an account of the impetus to pursue federal recognition and a heretofore untold history of the San Luis Rey Band's engagement with the FAP since the 1980s. Original interviews, questionnaire responses from tribal members, and materials from multiple archives, including the private collections of various San Luis Rey tribal members, inform this chapter. By analyzing the San Luis Rey Band's petitioning process from the early 1980s to the present, this chapter builds on the previous chapter to show how the band's participation with the FAP is part of a longer effort towards tribal self-determination and an affirmation of inherent tribal sovereignty.

The San Luis Rey Band's Decision to Petition, 1950-1984

The last chapter ended with an analysis of the San Luis Rey Band's involvement with the Mission Indian Federation (MIF). The MIF was an important organization for Southern California tribes and it had a high level of influence. The Captain of San Luis Rey, Faustino Foussat, and other San Luis Rey people attended MIF meetings and remained in contact with Purl Willis, the non-Indian legal advisor to the organization. Sometimes disagreements and contention arose at the MIF meetings, and some MIF members would wonder out loud why San Luis Rey people attended the meetings at all since they weren't reservation people.[270] Regardless of inter-organizational and inter-tribal politics, Faustino Foussat remained politically active as the Captain of the San Luis Rey Band. He recruited his daughters, grandchildren, nieces, nephews, and cousins to attend MIF meetings and to be involved in local Indian affairs. It was through his political engagement that the San Luis Rey Band carried on as an active political entity.

In addition to taking political stances on local Indian affairs and disputes with the Bureau of Indian Affairs (BIA), the MIF was influential in a series of claims cases against the U.S. government that were made for non-ratification of the eighteen treaties and subsequent land loss. Three decades prior, in the 1920s, California Indians successfully sued the U.S. government:

> The Indians of California in 1928 were permitted, under H.R. 491, Seventieth Congress, to sue the federal government for compensation promised but not provided by the 18 unratified treaties that they had entered into in good faith. The attorney general of California was authorized to prosecute the suit. The suit was settled in 1944 in favor of

[270] Inc., 67.

> the California Indians and a judgment of $5,025,000 was awarded.[271]

During the process, a roll of the Indians of California was created to aid in documentation and subsequent settlement distribution. Faustino Foussat, his wife Francisca, and their daughters all filled out applications to be on the 1928 roll, and they received part of the settlement money after it was awarded. San Luis Rey tribal members connect the contemporary campaign for federal recognition back to Faustino Foussat's effort to involve San Luis Rey people in what would become a settlement for the unratified treaties: "I feel it started with the 1928-33 California Rolls when the federal government wanted to identify all California Indians whether federally recognized or not. Proof was by application and sworn statement. SLR was one of these tribes."[272] Evidence of individuals' enrollment on the California Indian rolls can be useful for the purposes of federal recognition as long as it not the only way of proving a California Indian identity. As discussed in Chapter Two, the Office of Federal Acknowledgment does not value enrollment as an Indian of California as evidence for the FAP without corroborating proof of California Indian heritage prior to the census rolls. This is because some non-California Indians were accepted on the census rolls due to inaccurate information, uninformed witnesses, or fraud. For some members of the San Luis Rey Band, there has been an effort to reconcile the difference between the individual and the tribal identity for the FAP. Tribal Advisor, Christine, explains:

> Trying to understand what exactly recognition is—trying to help people reconcile this as part of their identity: the fact that it's not challenging your identity as an Indian or a Native. [The FAP] was challenging us as a tribe. You can say it, but people don't fully digest it. So I spent a couple years reinforcing this thing…the government is not saying we're not Indian, we need to prove that we are a tribal government—very different things. And every step along the way since then, constant reinforcing of that. People seem to get it, but I think it's just a hard, hard thing to reconcile. You're questioning my identity and [people] become very defensive. [273]

Faustino Foussat's awareness and involvement with local Indian affairs was invaluable for maintaining the San Luis Rey Band's identity as Indian people on the individual and tribal scale.

Soon after, the Indian Claims Commission (ICC) was created in 1946, and two claims were filed in the commission that represented the "Indians of California." The first was Docket 31 and Docket 37 followed. Members of the MIF questioned the validity of the term "Indians of California" and whether it would have any legal standing as an "identifiable tribe or band" under the guidelines of the ICC.

Because of the skepticism behind the generalized "Indians of California," the MIF members pulled out of Docket 31 and contracted with another attorney to file a similar claim for

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[271] Robert F. Heizer, "Treaties," in *Handbook of the North American Indian*, ed. Robert F. Heizer (Washington DC: Smithsonian Institution, 1978), 703.

[272] Response to questionnaire by an anonymous member of the San Luis Rey Band.

[273] Interview with Christine, anonymous member of the San Luis Rey Band of Mission Indians, March 2015

taken lands that became Docket 80. At the same time, another intertribal contingent filed another "Indians of California" claim (Docket 37), and several other individual tribes filed separate claims as well. Since there was an abundance of claims from California Indians, some attorneys and representatives for the various tribal claimants urged consolidation of all the claims. Most of the MIF members, however, did not favor consolidation. For instance:

> The original Docket 80 attorney strongly recommended consolidation, but after a series of meetings with Southern California Indians, the majority refused consolidation. Influenced by the non-Indian MIF counselor, most felt that they had a better chance of winning their claim than did the "Indians of California". They pointed to the continuous existence and identifiability of the bands; many still knew band boundaries. In addition, many had given the counselor primary material evidence, old papers and documents passed down in their families.[274]

As conversations regarding consolidation were taking place, four additional claims were added to the Mission Indians' Docket 80. The additional claims were Dockets 80A, 80B, 80C, and 80 D. On June 1, 1955, the ICC ordered that the Mission Indian Land Claims be consolidated with the other California Indian land claims cases. Docket 80D was consolidated into the Mission Indian Land Claims, while Dockets 80A, 80B, and 80C were to be tried at a different time.[275] On December 15, 1976 the ICC ordered Docket 80A, the claim regarding water loss from reservations, to be transferred to the United States Court of Claims.

Throughout this process, the San Luis Rey Band remained actively involved with the attorneys working on the various iterations of the claims cases. Faustino Foussat was instrumental in providing information about the claims cases and helping other San Luis Rey people fill out applications to be listed on an updated California Indian census for subsequent settlement money distribution from the 1928 California Indian Jurisdictional Act. Foussat's inclusion on the original 1928 California Indian census was influential for this effort. Despite the "Indians of California" language in the claims cases, the ICC accepted Docket 31, and on July 20, 1964 a negotiated settlement in favor of the Indians of California was made for $29,100,100.[276] Discussing the claims cases, Omer C. Stewart writes, "As of June 30, 1971, the 1964 award of $29,100,000 had been reduced by payment of attorneys' fees to $26,491,000 but had been increased by interest less costs by $9,643,543.66 to a total of $36,134,534.66 to be added to the $1,496,246.08 remaining from the Act of 1928. Thus, as of June 30, 1971, $37,630,781.74 was available for per capita distribution to nearly 65,000 Indians of California."[277] Many members of the San Luis Rey Band today remember receiving a per capita distribution from the settlement, or know that their parent or grandparent received money for

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[274] Florence Shipek, "Mission Indians and Indians of California Land Claims," *American Indian Quarterly* 13, no. 4, Special Issue: The California Indians (1989): 413.

[275] Ibid., 411.

[276] Stewart.

[277] Ibid., 708.

being a California Indian. Just as the 1928 California Indian Jurisdictional Act and the Docket 31 success influenced the San Luis Rey Band, so did the outcome of the Docket 80A case.

In 1965, Faustino Foussat passed away. The leadership was then passed down to the younger generation, particularly Faustino's descendants Miranda and Tony. Others were very active in tribal decision making as well. Despite the transition in leadership, the San Luis Rey Band was one of twelve bands that retained legal counsel after December 1977 when the U.S. moved to dismiss thirty-eight inactive plaintiffs on the Docket 80A case. Tony, a former member of the San Luis Rey Tribal Council, noted: "In '75 or '77 is when, one of those two years I can't recall, [Quinn] called us all up and said we got a lawyer here and we're fighting for the water rights. We're part of the water rights."[278] An attorney in Washington D.C. named Arthur Gajarsa reinstated the case and began the process of hiring experts and filing an amended petition for the twelve bands that remained on Docket 80A.[279] On June 22, 1978 the Court of Claims denied the U.S.'s move to dismiss the twelve bands' case, and those bands were then severed from Docket 80 and became part of Docket 80A-2.[280] Docket 80A-2 continued to center the federal government's failure to protect the aboriginal and reservation water rights of the twelve different bands. In the American West, Indian water rights have been highly disputed and an important area of federal Indian law. The *Winters* Doctrine, named after the U.S. Supreme Court Case *Winters v. United States* (1908), is the foundation of Indian water rights in U.S. law. The *Winters* Doctrine affirms that when Congress reserves land it also reserves a sufficient amount of water to support the reserved land.[281] Since the San Luis Rey Band never had a reservation or any land reserved, the claim solely focused on the San Luis Rey Band's loss of aboriginal water rights.

In 1979, the bands filed an Amended and Supplemental Petition that stated five categories of claims that the six bands were using. After the U.S. responded to the Amended and Supplemental Petition in November 1979, claims of six of the twelve bands, the Cuyapaipe Band, the Morongo Band, the La Posta Band, the Pechanga Band, the Santa Rosa Band, and the San Luis Rey Band, were separated from Docket 80A-2 for a trial in the Court of Claims.[282] In 1988, a Berkeley, CA based law firm, Alexander & Karshmer, took over the case for the six bands. *Cuyapaipe Band of Mission Indians, et al. v. The United States of America*, as the case came to be known, ended in a settlement out of court in 1993.[283] The settlement reached between the counsel for the tribes and the United States:

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[278] Interview with Tony, anonymous member of the San Luis Rey Band of Mission Indians, January 2016

[279] "Barbara E. Karshmer to Denise Homer," (Private Collection, 1993).

[280] "Plaintiffs' Contention of Law and Statement of Facts Docket 80a-2," (Private Collection, 1992).

[281] Jr. William C. Canby, *American Indian Law in a Nutshell*, Sixth ed. (St. Paul, MN: West Publishing Co., 2015).

[282] "Plaintiffs' Contention of Law and Statement of Facts Docket 80a-2."

[283] *Cuyapaipe Band of Mission Indians, Et Al. V. The United States of America*, (1993).

> …was based primarily upon what the Tribes had proven and the Government agreed historically had been irrigated at the various Reservations and the Tribes' losses due to the failure of the government to assist in continuing such irrigation for economically feasible crops. However, because the San Luis Rey Band never had a Reservation, its claim was limited to the Government's failure to protect its aboriginal water rights, and thus its portion of the settlement is to be based upon its relative share of the value of the Tribes' aggregate aboriginal water rights.[284]

The San Luis Rey Band was awarded $100,000, but the money has never been allocated to the tribe because it is unrecognized. The plan for the use of the settlement states, "The share of the award in Docket 80–A–2 made to the San Luis Rey Band of Mission Indians shall be invested by the Secretary, until such time as a specific plan for the use of the funds is approved by Congress."[285] Contemporarily, the San Luis Rey Tribal Council periodically receives updates on the settlement monies, which are collecting interest. San Luis Rey's inability to use the settlement funds is a point of frustration for the Tribal Council and other leaders in the tribe. Several tribal members think that the settlement funds could have been used to help San Luis Rey's campaign for federal recognition or used for another community effort. Christine said, "I know they've looked into trying to get access to it because, you know, we wanted to use the money for the recognition and for ourselves, but we can't access it. Even though they negotiated this with a non-recognized tribe the condition was you wouldn't get access to it until then."[286]

The San Luis Rey Band's involvement with the Docket 80A-2 case had multiple impacts for the tribal community. One effect has been on tribal members' perceptions of their Native identity and the legal status of the San Luis Rey Band. In conversation, one tribal member expressed her confusion about San Luis Rey's status as an unrecognized tribe for the very reason that the band was part of the water rights settlement case. Tribal members also mention San Luis Rey's participation and settlement award in various settings as a way of showing the band's long-standing interaction with the federal government. Mention of the band's inability to access the settlement monies is used to express dissatisfaction with the band's lack of federal recognition and the injustice of the federal government's recognition of some tribes and not others. As one tribal member noted, "In the state of California we have more tribes than any other state. Why should some be acknowledged and we are not? I believe that if we are recognized it will give our people a sense of respect that was taken away from our ancestors."[287]

Another significant effect was the docket's role as a catalyst for pursuing federal

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[284] "Barbara E. Karshmer to Denise Homer," 3-4.

[285] Bureau of Indian Affairs, "Plan for the Use of the Mission Indian Judgment Funds in Docket No. 80 a-2 before the United States Court of Federal Claims," *The Federal Register* 60, no. 112 (1995).

[286] Interview with Christine, anonymous member of the San Luis Rey Band of Mission Indians, March 2015

[287] Response to questionnaire by an anonymous member of the San Luis Rey Band.

recognition through the FAP. An attorney working on the water rights cases named Pamela Aldridge, who was part of California Indian Legal Services and the Mission Indian Bands Paralegal Consortium, was an important figure in the early efforts for federal recognition. While working on the water rights in the 1970s, Aldridge wrote a proposal for a grant to train paralegals to do archival research at the National Archives in Laguna Niguel.[288] The paralegals were instructed to make copies of any documents that mentioned Mission Indians, with particular emphasis on documentation of water use and agriculture.[289] From those copies, the paralegals then separated the documents that pertained just to San Luis Rey/Luiseño Indians and the San Luis Rey Band in particular. Aldridge recalled that in the documentation uncovered at the National Archives the Indian Agents treated the San Luis Rey Band similarly to other San Diego County tribes. For example, the agents included San Luis Rey on censuses and in reports to the Commissioner of Indian Affairs. The documentation also revealed the San Luis Rey Band's dispossession of their village, the Smiley Commission's failure to patent any land for the San Luis Rey Band, and the band's attempts for redress at the local and federal scale.

Since the San Luis Rey Band was always considered another distinct band of Indians in San Diego County, despite not having a reservation, Aldridge and other attorneys working on the water rights case wanted to address the issue. Aldridge approached the leaders of the San Luis Rey Band in the late 1970s to talk about the water rights case and the prospect of seeking federal recognition through the newly created FAP. Aldridge's main contact person was Miranda, and Miranda served as a liaison figure between Aldridge and the rest of the San Luis Rey Band. Miranda and Aldridge scheduled about ten meetings with members of the San Luis Rey Band to discuss the band's history and the prospect of pursuing federal recognition through the FAP.[290] Aldridge remembered that Miranda and others were excited to pursue federal recognition because the tribal community didn't fully understand why they were not recognized when the other Mission Indians had been. At the meetings, it was agreed that the San Luis Rey Band would pursue federal recognition and one of the first steps would be finding funds to do so.

The San Luis Rey Band and the Federal Acknowledgment Process, 1984-2014

On September 4, 1984 the San Luis Rey Band wrote a letter of intent to petition for federal recognition through the FAP. The letter stated:

> My name is [Miranda]. I am the Spokesperson for the unrecognized San Luis [Rey] Band of Mission Indians. We believe that we are eligible for federal recognization [*sic*] and therefore are filing this letter as our Notice of Intent. Please furnish us with all information on recognition as well as any documents we may need to fill out. Please send this information to the Mission Indian Bands Paralegal Consortium at the address above. Thank you for your prompt attention to this matter.[291]

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[288] The National Archives moved from Laguna Niguel, and it is now located in Riverside County in the city of Perris.

[289] Pamela Aldridge, phone call with author, July 1, 2015.

[290] Ibid.

With this simple letter, the San Luis Rey Band began a process that no one imagined would be ongoing over thirty years later. After the letter was received, the Branch of Acknowledgement and Research (BAR) responded on September 28, 1984 with a letter that acknowledged the receipt of San Luis Rey's letter of intent to petition for federal recognition. The letter continued:

> In order to place your petition on our priority register, we will need a letter or formal resolution signed by members of the group's governing body which simply states that the San Luis [Rey] Band of Mission Indians are petitioning for Federal acknowledgment and that this action is authorized by their governing body. Once this formality has been taken care of, we can then place the San Luis [Rey] Band of Mission Indians on the priority register and publish the required notices. Complete documentation of the petition in accordance with the regulations may be submitted at a later date.
>
> Within 30 days after receiving such a letter or resolution, the Assistant Secretary—Indian Affairs is required by 25 CFR 83.8 to send you an acknowledgment of receipt and to publish in the Federal Register, as well as in your local newspaper, a notice of such receipt. He is also required to notify the Governor and Attorney General of California of your petition.
>
> Following this notification, you will be required to submit documentation addressing the mandatory criteria established in 25 CFR 83.7 before we can begin active consideration of your petition. Since there are more than 80 petitions awaiting active consideration at the present time, you will have adequate time to prepare this documented petition. Although the Bureau cannot do the actual research for your group, the Branch of Acknowledgment and Research will be happy to provide suggestions and advice upon request.[292]

The San Luis Rey Band responded on October 10, 1984 with a letter that provided authorization from the governing body to pursue federal recognition. In the same letter, the San Luis Rey Band also informed the BAR that the tribe requested funds from the Department of Health and Human Services Administration for Native Americans to conduct the necessary research for the petition.

With Pamela Aldridge's help, the tribe secured the grant from the Administration for Native Americans in 1985 to pay for research and the creation of a documented petition for federal recognition. The grant was for $90,000 over two years. An independent research agency established in 1978 called Cultural Systems Research Inc. (CSRI) was hired for the assignment because they were researchers for the water rights case and had extensive experience working with Southern California Indians. Well-known California anthropologists Dr. Florence Shipek, Sylvia Vane, and Dr. Lowell Bean were employed by CSRI. Since these researchers were involved in the water rights cases, they already had some historical documentation that could

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[291] "Letter from San Luis Rey Band of Mission Indians to Branch of Acknowledgement and Research," (Private Collection, 1984).

[292] "Letter from Hazel E. Elbert to San Luis Rey Band of Mission Indians," (Private Collection, 1984).

transfer directly over to the federal recognition petition. However, there was still an enormous amount of work to be done to gather more information and have the documentation apply to the FAP criteria. CSRI largely worked towards proving the San Luis Rey Band was an autonomous entity from historical times to the present.

CSRI created a research and work plan in April 1985, and their research commenced on May 9, 1985 when Lowell Bean and Sylvia Vane attended a meeting with the San Luis Rey Band to discuss their plan of action.[293] In addition to drawing on existing files and published materials, the researchers of CSRI undertook archival research at various locations including Mission San Luis Rey, the National Archives in Laguna Niguel, CA and Washington DC, the San Diego Historical Society Library, the Bureau of Indian Affairs branch in Riverside, CA, and the genealogical libraries of the Latter Day Saints in Menlo Park, CA and Salt Lake City, UT. CSRI also conducted interviews with several members of the San Luis Rey Band, Luiseños on other reservations, and older community members in the vicinity of the San Luis Rey Mission. The interviews largely informed CSRI's creation of genealogy charts and their interpretation of the band's history.

While CSRI undertook the burden of historical and ethnological research about the San Luis Rey Band, Pamela Aldridge worked with the community to create a governing document per criterion D of the FAP. Criterion D requires a copy of the group's present governing document that includes its membership criteria. If no written document exists, then the petitioner must provide a written statement describing in full its membership criteria and current governing procedures. Though the criterion appears to make room for more traditional, or culturally based governments, most unrecognized tribes adopt constitutions largely based on models provided through the IRA. Just as a tribe's adoption of the IRA in the 1930s led the BIA to facilitate the development of a tribal governmental structure, the BIA provides unrecognized tribes pursuing recognition through the FAP with models of constitutions and certain guidelines to follow when establishing a governing document. One such document disseminated by the BIA in 1981 states that one of the advantages to having a constitution is, "Other governments and federal agencies are more likely to pursue positive dealings with tribal leaders who are serving under a written form of organization approved by the Secretary of the Commissioner."[294] Pamela Aldridge used this document when she helped San Luis Rey create an initial constitution. Aldridge also helped the Band create an Enrollment Ordinance and a Membership List.

As CSRI and Pamela Aldridge aided the San Luis Rey Band, it became clear that the project would take longer than anyone anticipated. The Association for Native Americans grant period was only two years, and the funding rapidly dwindled as expenses for labor, travel, and associated research costs began to add up. Aldridge requested additional time and funding through the Association for Native Americans, but her request was denied. In a report for the grant, Aldridge wrote:

> The Project's only exception to its planned approach was the unexpected length of time it took to do the necessary legal and historical research necessary to complete an undertaking of this magnitude. The number of sources available to

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[293] Cultural Systems Research Inc., "Report on Research Accomplished, 1985," (Private Collection, 1985).

[294] Bureau of Indian Affairs, "Drafting and Reviewing Proposed Tribal Constitutions and Amendments," (Private Collection, 1981), 3.

> the consultants was more than expected. Numerous day long trips were made to meet with individual Indians to find out what information they had and each conversation was recorded. Numerous additional sources were located and must be meticulously tracked down, investigated and researched.
>
> The Project requested additional time to finish the research but the request was denied. Since no additional funding was made available the Project's consultants must now donate their time and business expenses. This will greatly delay the Petition for Recognitions submission to the Bureau of Indian Affairs. It is expected that an additional six months will elapse before the Petition is ready for submission.[295]

The grant expired before all of the necessary research was completed and tailored to the FAP criteria. Aldridge mentioned in her grant report that the research consultants would donate their time to finishing the petition, but in reality that was not the case. Sylvia Vane of CSRI wrote to Aldridge on April 15, 1987 updating her on the progress of the petition components and telling her, "It has proved more time consuming to finish than I had hoped."[296] Vane made a copy of the letter for Florence Shipek and wrote at the bottom, "Florence—They got word that a request for more time and money is denied, and the deadline is April 20. SV"[297] With the impending grant expiration and request for an extension denied, CSRI sent Aldridge what they had completed so she could forward the materials on to the BAR.

Pamela Aldridge ultimately submitted the incomplete, and in some cases incorrect, CSRI research, genealogical information, and constitution in 1987 to the Branch of Acknowledgment and Research. People interviewed in the tribe today are unclear about what exactly happened during that time frame because shortly after the incomplete petition was submitted the tribe fell out of contact with both Pamela Aldridge and CSRI. Tribal members also had no recollection of why Pamela Aldridge was no longer involved, and several believed that she must have passed away. CSRI also stopped working on the petition research because the Association of Native Americans grant funding ran out. Without contact from the BAR or others who had been so involved in securing the tribe's recognition initially, the tribal community presumed it was just a matter of waiting for a decision.

After a few years had passed, the BAR contacted San Luis Rey in 1991 to inform them that the Branch was planning to make changes to the FAP criteria. The prospect of reform prompted tribal leaders to seek aid in understanding what exactly that would mean for San Luis Rey and its petition. A young tribal member and recent Master's graduate, whose pseudonym is Christine, was "called into service" to help her tribal community navigate the reform process. In

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[295] "Administration for Native Americans Objective Progress Report," (Private Collection, 1987).

[296] "Copy of Letter from Sylvia Vane to Pamela Aldridge for Florence Shipek," in *Florence Shipek Collection* (Kumeyaay Community College, Box 025, Folder 22 "SLR Band Recog", 1987).

[297] Ibid.

doing so, Christine became the primary contact and lead facilitator for the tribe's recognition campaign. She attended meetings, informational sessions, and other programs and workshops about the FAP and about the proposed changes to the process. As an intermediary between the BIA and the Tribal Council, Christine undertook the arduous task of consistently educating the Tribal Council on matters of federal recognition and the meaning of the FAP. She acquired what research CSRI had completed and began to translate the information into a narrative format that would meet the requirements of the FAP since what Aldridge previously submitted did not do so.

Building the tribe's case for federal recognition entailed a lot of activities, but to Christine, the most important component was the constitution. To reinvigorate San Luis Rey's petitioning efforts the tribe moved to revise the constitution that Pamela Aldridge had helped create in the 1980s. Christine recalled, "That constitution, the original one, was recommended for a lot of tribes. It included blood quantum as the membership requirement. It resembled much more of an organizational constitution versus a government constitution."[298] Though it did meet the needs for having a formal document, she thought the BIA constitution, "[…] was so cookie-cutter. It didn't mean anything to anybody."[299] An apt parallel to the FAP itself, the BIA has a pattern of influencing tribes to govern in a way that is legible within Western conceptions of government. Christine also thought the old constitution, "[…] was certainly too flexible, or it just wasn't strong enough to withstand certain challenges and we saw that happening with San Juan [Capistrano] especially."[300] The Juaneño Band of Mission Indians, the people just north of San Luis Rey, was also seeking federal recognition. The Juaneños share some similarities with San Luis Rey historically and contemporarily as they navigate the FAP. Christine also explained that San Luis Rey was, "Very careful to get the leadership question correct," because they, "[…] had already been hearing problems that San Juan [Capistrano] was having in terms of if [the tribal leadership] is too loose, then you can have a real question of who's in power."[301] Looking to the shortcomings of the Juaneño Band of Mission Indians' petition was a way for San Luis Rey to gauge the OFA's treatment of California tribes and the particular colonial history of the state. "We spent a lot of time—months and months—developing that and debating over different issues," she recalled.[302]

While significant consideration was given to the different branches of government, including judicial in addition to the tribal and general council legislative bodies, several pieces of the constitution have yet to be realized in practice because of the inherent limitations of unrecognized tribal status. Without jurisdiction over tribal lands, for example, unrecognized tribes are limited in what they can actually administer. Christine pointed out: "The tribal court has never been activated, but it is called for in the constitution. There's several things called for

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[298] Interview with Christine, anonymous member of the San Luis Rey Band of Mission Indians, March 2015.

[299] Ibid.

[300] Ibid.

[301] Ibid.

[302] Ibid.

in the constitution that haven't been activated."[303] Questions over leadership and governing systems garnered considerable attention by the Tribal Council, but the question of enrollment became particularly salient amongst the General Council as they reviewed the proposed changes to the constitution made by the Tribal Council. The original BIA constitution called for blood quantum as one of the requirements for enrollment, but the Tribal Council saw blood quantum as a detrimental way to define membership, not just for San Luis Rey, but for all tribes because of the way it defines Indian people out of existence through outdated theories of race that serve the interests of the federal government. The inclusion of blood quantum in the BIA constitution parallels the IRA and its call for blood quantum as an element of tribal recognition. The conflation of blood or race and political status remains a central challenge facing tribes today as they grapple with terms of Native identity and sovereign status. To address the blood quantum issue, Christine said the tribe […] really took a stand on lineal descent," and since, [Blood quantum] was just assumed, [we tried] to really understand the historical context of why that policy was put in place."[304]

After the constitution was approved by consensus of the General Council, it was submitted to the BIA along with the rest of the petition materials in 2001. Confusion arose, however, when the BIA informed the tribe that the Tribal Council had not certified any of the petitioning materials, including those that had been submitted by Pamela Aldridge. Around the same time, the FAP was no longer administered by the BIA or the BAR and transferred administratively to the Office of the Assistant Secretary—Indian Affairs and the Office of Federal Acknowledgment (OFA) in 2003. The tribe did not want the previous materials to be considered by the OFA because they were primarily research summaries that did not fully address each of the seven criteria. The OFA would not remove those materials, so the tribe had to certify them along with the 2001 petition. The petition was finally fully certified in 2008 for review. Six years passed, and it was not until December 31, 2014 that San Luis Rey heard back from the OFA with what is called a Technical Assistance letter. The Technical Assistance letter is a document sent to petitioning tribes in an effort to aid the tribes in refining their petition. The letter makes suggestions to the petitioning tribe for each of the seven criteria. The suggestions are meant to advise the tribe on how to strengthen certain portions of the petition that, from an initial read-through by staff at the OFA, need to be developed further.

Currently, San Luis Rey is working towards modifying their petition to account for the recommendations made in the Technical Assistance letter, such as creating a digital version of the genealogical information through the RootsWeb software. When asked about the current campaign for federal recognition, members of the tribe also spoke passionately about their commitment to providing for their families, youth, and other members of the tribe. The majority believes that one way to accomplish this on a large-scale is by becoming federally recognized. Similar to the perspectives of other unrecognized tribes, San Luis Rey people see recognition as a form of justice and an affirmation of their identities as Native American peoples.[305] A tribal

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[303] Ibid.

[304] Ibid.

[305] There are many sources, including news articles, documentaries, books, and articles that mention this positionality and statement by unrecognized tribes. One example of another California tribe's expression of this can be found in: McCawley.

member reveals, "It is very important for me to have our ancestors, current members and family, future children and family know that our SLR Band has always existed and should be recognized. We want to provide and have the benefits other tribes may have and provide to their people. We want to continue to preserve and protect our ancestral land and cultur[e]."[306] Another said, "It will take a new generation of quality leadership to complete the process, and I have faith in the talents of our up and coming member activists."[307]

Conclusion

When asked about her role in facilitating the petitioning process, Christine said, "Emotionally, on some level it feels very undone. It's a real effort, but it never felt like it was mine. It's a legacy project, you know? Our ancestors … have been working on this too. Waiting and everybody's hoping for this, so I hope it's not a legacy to pass on to the next generation! I really hope to see the fruition of [the FAP]."[308] Interviews and archival materials show that engaging with the FAP is part of an inherited struggle that goes back over 150 years for the San Luis Rey Band. While anti-recognition rhetoric often obscures the ways in which unrecognized tribes have engaged the federal government historically, the San Luis Rey Band's strategy to gain rights through the FAP exemplifies the ongoing nature of federal-tribal engagement. Participation in the water rights, as this chapter described, is part of the longer movement made by the San Luis Rey Band for tribal self-determination that extends back to treaty negotiations with the federal government. Each generation of San Luis Rey people have adjusted their struggles towards acknowledgment in skillful ways that parallel the government's whims towards Native peoples. The idea that the project of pursuing federal recognition is something that is passed down is significant. It shows how the tribe has banded together for generations for the betterment of the people, and that pursuing federal recognition is only the most recent iteration of the tribe's ongoing assertion of its inherent tribal sovereignty and system of tribal governance that is foundational to maintaining a sense of tribe and family.

The OFA is careful to underscore that the FAP is not about determining whether individuals are Native American racially or culturally; rather, that federal recognition grants formal acknowledgment of tribal political sovereignty. The San Luis Rey Band is well aware that it must mold to the government's standards, but it holds the position that, "[…] there is more to be gained through federal recognition than through rejecting it as a hopelessly fraught colonial relationship that true sovereigns need not pursue."[309] Gaining official recognition is part of a strategy to acquire rights, resources, and, most importantly, land for the San Luis Rey tribal

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[306] Response to questionnaire from anonymous member of the San Luis Rey Band of Mission Indians

[307] Ibid.

[308] Interview with Christine, anonymous member of the San Luis Rey Band of Mission Indians, March 2015.

[309] Ouden and O'Brien, 16.

community. Existing as a tribe outside of U.S. federal jurisdiction means that unrecognized tribes like the San Luis Rey Band are governments in a position to choose how they enact inherent tribal sovereignty and their right to self-determination, albeit in sometimes limited ways. If that means seeking federal recognition through the FAP, then that is the tribal community's decision to engage the federal government. Through attaining federal recognition, the tribe actually sees the very process as an act of resistance, affirmation of identity, and a means for securing autonomy away from the federal government.

But the tribe has been functioning and surviving for years despite their lack of acknowledgment. One former Tribal Council member, Lisa, stresses that, "We're an unrecognized tribe, but we can't think that way." This statement gets to the core of how San Luis Rey, and undoubtedly many other unrecognized tribes, maintain their tribal identity and enact tribal sovereignty within and beyond the bounds of federally approved definitions. The following chapter explores these themes for the San Luis Rey Band through the tribe's creation of an inter-tribal pow wow. The chapter will show how a complex story is rendered visible through the San Luis Rey Band's quest for federal recognition; a story of colonization and federal neglect, but more importantly: a story of self-determination, of community identity, and of family.

Conclusion | A Pow Wow with Purpose: Bridging the Federal Acknowledgment Process, Community Identity, and Tribal History

The Process and The People concludes with a discussion of the San Luis Rey Band's annual intertribal pow wow because it is a powerful example of the ways that tribal status and the FAP can influence unrecognized tribes. In response to the demands of petitioning for federal recognition, the pow wow demonstrates cultural distinctiveness, community cohesion, collective identity, and historical continuity. As a strategic political move in 1997, San Luis Rey's inaugural pow wow served multiple ends at the same time that, socially, it brought the community together for an event with historical resonance. First, the pow wow was intended to show the local community there was a Native American tribe in Oceanside with a connection to the area that predated colonization. Second, the Tribal Council made the decision to host a pow wow in an effort to provide a sense of community identity in a tangible way at a time when the tribe's federal recognition effort was taking precedence. And lastly, the pow wow was a way to revive the late 19th and early 20th century tradition of holding fiestas—week-long gatherings with food, trade, and Luiseño games, dance, and ceremony—for Native and non-Native people at the San Luis Rey Mission.

The pow wow, then, poses broader questions that this conclusion considers: What understandings of identity underpin the Federal Acknowledgment Process, and how do they relate to the San Luis Rey Band's own conceptions of community identity? Given the embeddedness of federal acknowledgement in colonial policies and relationships, to what extent can tribes use the Federal Acknowledgment Process for their own political and social purposes? How do unrecognized tribes enact self-determination and tribal sovereignty?

The San Luis Rey Band of Mission Indians' Annual Intertribal Pow Wow

The year 1998 marked the 200th anniversary of Mission San Luis Rey's founding. Celebrations for the bicentennial were set to take place during the second weekend of June. One of the most highly anticipated events for the bicentennial was a performance by The Cappella Giulia Choir of St. Peter's Basilica in Rome, also known as the Vatican Choir. The Vatican Choir's presence at Mission San Luis Rey made international headlines because it was the first time the group, which was formed in 1513, would travel to North America to perform. That same weekend, the San Luis Rey Band would hold its 2nd annual intertribal pow wow. It was intentional on the tribe's part to have these events coincide because of the visibility it could bring to the tribe and to the pow wow.

For so many years the tribe persisted in the greater San Luis Rey Valley, but non-Indians rarely took notice of the tribe. Perhaps this is because the San Luis Rey Mission stands in, quite visibly, as the main signifier of "history" in the area, thus obscuring the contemporary tribal community. It is also likely that the San Luis Rey Band's landlessness has influenced the broader community's lack of understanding. Though the San Luis Rey Band and other Luiseño Bands are intricately connected to the mission, there were few tangible ways for the general citizenry of the North County San Diego to grasp local Native history, culture, and government. Miranda explained that to combat this form of invisibility the tribe decided to take on the issue in 1997:

> We were making our way and then we decided, well, people didn't know there were Indians in Oceanside or in the community. And so we thought, how do we let them know

> that, yes, there [are] Indians? So we decided to have a pow wow. It's a wonder we even had it—we had no money! No money in our little treasury; probably a few hundred bucks. The Captain decided, ok, we have a pow wow. So we talked to the church [Mission San Luis Rey] and other people, and [the Captain] said clear up your credit cards because if it doesn't pan out we're all gonna share in this expense. So that's what we did. We brought all our barbecues from home, whatever we needed we bought ourselves, and we had a pow wow.[310]

The first annual San Luis Rey intertribal pow wow was a great success. In order to facilitate the pow wow planning process and the management of funds, the San Luis Rey Mission Indian Foundation was created at the same time. A former Tribal Council member, Lisa, also said, "The most important thing that I think we did when I was on the Council was we created the pow wow that we have every year. So that's been going now for almost twenty years. We always had gatherings, but we never—the public wasn't invited."[311]

Politically, the San Luis Rey Band would do as much as it could to facilitate tribal members' needs. Tribal Advisor, Christine, described why pursuing the pow wow was so important for the tribe in the 1990s. She said:

> As a government, we were trying to coordinate more for peoples' health arrangements through Rincon Indian Health Clinic, their paperwork, and anything else they needed. We were always dealing with issues around foster care and children that were put up for adoption, and commenting on those. And doing scholarship requests for education grants and scholarships. And when people needed paperwork to qualify for some type of government program we were helpful on that.[312]

Government function weighed on the Tribal Council as they worked as hard as they could, with little to no resources, to provide for the tribal membership. In order to bring balance back to the community, the pow wow became of cultural relevance and importance. "On the cultural side, the big [initiative] of course, was the pow wow[,]" Chrisitne recalled, "That was no small feat […] it took a lot of time and energy and we wanted something people could actually relate to."[313] Further, she also noted that, "Federal recognition process is important and everybody needs to understand it to an extent. But they don't live it, it doesn't warm their heart whatsoever. It's all technical. It's so complicated and it's frustrating. And there's not a whole lot to participate in, so we needed other things for people to actually do."[314] Another tribal member, Victor, appreciated

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[310] Anonymous member of the San Luis Rey Band in discussion with the author, March 2015.

[311] Ibid.

[312] Anonymous member of the San Luis Rey Band in discussion with the author, March 2015.

[313] Ibid.

[314] Ibid.

that the pow wow served as a way for tribal youth to learn about what it means to perform hard work and to volunteer.

Other local tribes aided in spreading the word and provided contacts for San Luis Rey's first annual pow wow. Intertribal pow wows have come to represent a pan-Indian idea of Native American culture with an emphasis on Plains traditions. Even though the San Luis Rey pow wow invited all nations to participate, they inserted aspects of Southern California tribal culture as a way of truly making the pow wow an intertribal event with an emphasis on the traditions of local tribes.[315] San Luis Rey had a tribal history booth, bird singers used the arena to sing songs, and peon, a Southern California gambling game, was played through the night. The centrality of Luiseño people at the pow wow has not gone unnoticed over the years. Miranda recalled:

> […] the comments that we've gotten is [that] other tribes in the surrounding area come to ours. They don't go to each others'. And so [a man] from La Jolla has said a couple times, at different pow wows, he's said that you're going to become the drawing point for the tribes because they all come to yours. But we don't go to each other's. But they do come to this one. And so yeah, that was interesting and I thought, well, thank you! I'm glad that we do bring you together […].[316]

A local TV channel also made a video to highlight the first annual pow wow, and a San Luis Rey dancer told the videographer:

> In years past there's never been anything to really acknowledge or commemorate in any way the American Indian, the California Indian, or Luiseño […and] their contribution to the Mission. So, from what I understand of [the pow wow] is that it's kind of something to show that part of the history of the Mission and to shed a little bit of light on Indian cultures as a whole.[317]

Through the pow wow, the San Luis Rey Band was able to meet the tribe's goals of bringing awareness to the local non-Native community in the North County of San Diego, as well as bringing the San Luis Rey tribal membership together to host an event for the well-being of the tribal community.

The pow wow was especially meaningful for elders because many grew up going to, or hearing about, fiestas that took place at Mission San Luis Rey and the surrounding reservations. The fiestas would bring the Luiseños from reservations and other locals together for food, music, dance, trade, stories, peon, and ceremonies.[318] From the journal of Gregorio Omish of Rincon,

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[315] Many tribes insert their own culture into the contemporary pow wow setting. See Goertzen (2005) in *Powwow* (Ed. by Ellis, Lassiter, and Dunham) for a discussion of this practice by tribes in the Northeast.

[316] Anonymous member of the San Luis Rey Band in discussion with the author, March 2015.

[317] KOCT North County's Channel, "1st Annual Inter-Tribal Pow Wow (1997)," (2016).

[318] Shipek, "A Strategy for Change: The Luiseno of Southern California."

Florence Shipek describes that fiestas, "…produced income for many families who cooked and served various types of food. A family, or two men as partners, rented space […] and erected a brush ramada (a small brush-walled booth) in which to cook and serve food."[319] Shipek also wrote that in 1895, despite being warned by Indian Agent Francisco Estudillo to not attend, Luiseños from Rincon went to a fiesta at San Luis Rey on August 25th and stayed for a week. In 1896 Luiseños from La Jolla and Rincon reservations went to another San Luis Rey fiesta as well.[320] In the early 1900s, the fiestas at San Luis Rey ceased, but by starting an intertribal pow wow in Luiseño territory in the 1990s, the San Luis Rey Band reiterated their presence and remade local tradition.

Just like the fiestas, the San Luis Rey pow wow has always been held on the grounds of the Mission San Luis Rey. In response to being asked about why the tribe chose to hold the pow wow at the mission, Miranda said:

> That was just where we should have it. That was our village, our ancestors built it, and that was just the natural place to have it. And so we went to the priests and asked them and they were open to it; they agreed. I don't even think we thought of any place else. It was meant to be. We had this spiritual leader and he asked if he could bless the field, we had [a San Luis Rey elder] do it, so I asked [the elder] if it's ok if this shaman wants to do it and he said, yeah it's fine. So he [the spiritual leader] blessed it too and then he came back and he said, 'Your ancestors have been waiting a long time for this.'[321]

Tribal Advisor Christine shared her perspective on what the location of the pow wow means: "[For elders,] the process of coming to terms with their relationship with the San Luis Rey Mission and what that meant took time. Having the pow wow [at the Mission] was part of our community healing in terms of the relationship with the Mission."[322] Ruth, who works on language revitalization, expressed her thoughts on the importance of the land at Mission San Luis Rey:

> To me land is extremely important and it always has been. There's a certain feeling I get when I go to certain places: around Batiquitos Lagoon, the San Luis Rey Valley, and the Mission. But it's not the Mission [that gives me feelings]. It's the land. When I was younger I had a great deal of trouble with migraine headaches. And one day I was there [the Mission] and I was down there in that area behind Pablo Tac Hall, and I think there was a meeting going on inside, and I just had to go outside. I remember I stood there, facing west, and I just stood there very quietly and this breeze just came through and my

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[319] Ibid., 211.

[320] "San Luiseno Draft Prepared for Docket 80a-2," (Private Collection), 19.

[321] Anonymous member of the San Luis Rey Band in discussion with the author, March 2015.

[322] Ibid.

headache was gone. Something just came over me and it was like I was taken care of.[323]

Elsewhere, I explained, "As an unrecognized tribe with no reservation, the Mission has served as one place for the tribal community to connect and assert their identity. The stories held within the tribe that detail life before, during, and after the Mission illustrate resilience and the tribe's deep connection to that place."[324] Indeed, the complex relationship between the San Luis Rey Band and Mission San Luis Rey is ever-present on the minds of tribal members as they engage with the space during the pow wow.

Today, the San Luis Rey Band is very active with local city governments, institutions, and organizations. Protecting and saving sacred sites, in particular, has been one of the most robust aspects of the tribal government and the Chief Legal Counsel for the tribe. The San Luis Rey Band's tribal territory is under consistent development, and it has been of utmost importance to make sure that the tribe is involved in consulting with developers and others who may impact sacred and ancestral sites. Sacred site protection can be extremely sensitive and it can require a certain level of immediacy. Some San Luis Rey tribal members have dedicated their lives to protecting and maintaining the tribe's cultural resources, but this is work that requires specific cultural knowledge, some technical training, and a large time commitment. The majority of the tribe is not involved in the highly sensitive work that goes into tribal cultural resource management. For many tribal members, planning and volunteering for the pow wow is a top priority.

The pow wow is still held every year and serves as a time when extended families come back to the Mission and celebrate their history with other tribes and the local San Diego community. The San Luis Rey Band, as of 2017, has hosted the pow wow for twenty-one years. Unrecognized tribes have been critiqued for participating in the Federal Acknowledgment Process because of the way it discredits and objectifies Native American identity and tribal governance. Yet, the Federal Acknowledgement Process was the very impetus for the pow wow and it has been strategically used by the San Luis Rey Band.

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The San Luis Rey Band has been functioning and surviving for years despite their lack of acknowledgment. As one tribal member, Lisa, puts it, "We're an unrecognized tribe, but we can't think that way."[325] This statement gets to the core of how San Luis Rey, and many other unrecognized tribes, maintain their tribal identity, preserve cultural practices, assert their presence on the land, enact tribal sovereignty, and collaborate with local governments, universities, federally recognized tribes, and countless others. Though the federal government does not officially acknowledge San Luis Rey, the community has not let this legal status inhibit

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[323] Ibid.

[324] Olivia Chilcote, "Pow Wows at the Mission: Identity and Federal Recognition for the San Luis Rey Band of Luiseño Mission Indians," *Boletín: Journal of the California Missions Studies Association* 31, no. 1 (2015).

[325] Anonymous member of the San Luis Rey Band in discussion with the author, March 2015.

tribal self-determination.

There is a longer story of tribal-U.S. relationships that is rendered visible through the San Luis Rey Band's quest for federal recognition; a story of colonialism and neglect, but more importantly a story of family and of community identity. Tribal sovereignty is, "The spiritual, moral, and dynamic cultural force within a given tribal community empowering the group toward political, economic, and, most important, cultural integrity, and toward maturity in the group's relationships with its own members, with other peoples and their governments, and with the environment."[326] By this definition, the San Luis Rey Band has been asserting its tribal sovereignty, though perhaps not always termed as such, since pre-Contact times. The very reality of inherent tribal sovereignty lies within the fact that it predates European colonization of Native American lands and peoples. Members of the San Luis Rey band know they have been a distinct group of people since time immemorial. The tribal leadership emerges from the membership. It emerges from ancestral ties and understanding of the past. Inherent tribal sovereignty comes from '*ataaxum*, the people. The connections between people and their ancestry are what bring the tribe together. Tribal sovereignty highlights that there is more beyond federally approved standards of tribal nationhood that not only predate the U.S. nationstate, but also destabilize its reach of authority. Existing as a tribe outside of U.S. federal jurisdiction means that unrecognized tribes like the San Luis Rey Band are governments in a position to choose how they enact inherent tribal sovereignty and their right to self-determination, albeit in sometimes limited ways. If that means seeking federal recognition through the Federal Acknowledgment Process, then that is the tribal community's decision to engage the federal government—a decision that should not be easily seen as a concession to the settler colonial nationstate. Compromising to fit the U.S.'s vision of tribal nationhood is one way of accomplishing a goal that the tribe sees as having more positives than negatives. That is, through attaining federal recognition, the tribe actually sees the very process as an act of resistance, affirmation of identity, and a means for securing autonomy away from the federal government.

Each generation of San Luis Rey people have adjusted their struggles towards acknowledgment in skillful ways that parallel the government's whims towards Native peoples. San Luis Rey's involvement with the FAP is the contemporary incarnation of this struggle, and tribal events like the pow wow show how expressing community identity becomes folded into the process of petitioning for federal recognition. Lisa, a tribal member who has been immersed in this endeavor, puts it this way: "We are survivors and we were here from the beginning of time, and we'll be here till the end."[327]

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[326] Wilkins and Stark, 312-13.

[327] Anonymous member of the San Luis Rey Band in discussion with the author, March 2015.

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