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**From Invisibility to Liminality: The Imposition of Identity among
Non-Federally Recognized Tribes within the Federal
Acknowledgment Process**

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From Invisibility to Liminality: The Imposition of Identity among Non-Federally Recognized Tribes within the Federal Acknowledgment Process

by

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I. Introduction

The courtroom fell silent as Abel Blackmar, a New York State Supreme Court judge, presented his conclusive findings on the Montauk Tribe's lawsuit. The year was 1910 and the Montauk Tribe argued that its traditional lands in eastern Long Island, New York were acquired, by the industrialist Arthur Benson, through illegal transactions made in the late nineteenth century and early twentieth century (Rose and Rose 2015:61). While the court case was based upon these land claims, Blackmar's final judgment revealed that it was predominantly a contest over the tribe's identity, questioning whether the Montauk people were truly American Indians in the first place. In an instant, the tribe's identity was judged and framed. To the shock of the Montauks within the courtroom, Blackmar announced the tribe's extinction. According to Blackmar, the tribe had disintegrated as a result of assimilation with the local non-Indian populace. The tribe lacked both an internal government and a distinctive community. Presumed mixed-blood due to intermarriage with African Americans further delegitimized the tribe's identity as American Indian (Strong 1992). Culturally, socially, racially, and politically, the tribe did not meet the ideal standards of a distinctive American Indian identity. The legal statement of extinction sealed the tribe's fate; suddenly, the tribe and its members were rendered invisible. The present-day Montauk Indian Nation continues to live in a state of invisibility haunted by Blackmar's century-old declaration. This invisibility only reinforces questions on the tribe's authenticity. Without federal recognition, tribes, including the Montauk Indian Nation, have difficulty responding to challenges over their legitimacy as American Indians.

Federal recognition acts as a badge of authenticity for American Indian tribes. Since the 1970s, legislation has increasingly employed the definition of American Indian as one who is enrolled in a federally-recognized tribe (Brownell 2001:281). For example, a religious ceremony

involving eagle feathers or peyote may be illegal for non-federally recognized tribes who aren't protected under the American Indian Religious Freedom Act of 1978 (Dadigan 2011). Likewise, the Indian Arts and Crafts Act of 1990 states that it is illegal to sell arts and crafts advertised as American Indian made, or as authentically indigenous, unless the artisan belongs to a federally-recognized or state-recognized tribe (or if the individual is certified as an Indian artisan by a recognized tribe) (Castile 1996:745). Lastly, the Native American Graves Protection and Repatriation Act of 1990 allows federally-recognized tribes to protect sacred sites and demand the repatriation of cultural artifacts and burial remains. In most cases, non-federally recognized tribes are unable to successfully demand the repatriation of its ancestral remains through the act (Barker 2013; Talbert 2012). Such legislation promotes the illegitimacy of non-federally recognized tribes—contributing to their invisibility—while establishing federal recognition as the standard of an authentic tribal identity. Fundamentally, attaining federal recognition is about attaining legitimacy as a people.

Identification as American Indian is never freely asserted or given, but must be continuously proven. As stated by George Pierre Castile, “Indians have become the only card-carrying ethnic group in America and now must be able to produce their papers on demand” (Castile 1996:745). In order to prove and verify their identity (i.e. to become federally recognized), non-federally recognized tribes must measure up to the regulations established by the federal government in the Federal Acknowledgment Process (FAP). Within this formal process, tribes are judged through “externally imposed definitions of Indianness and tribal existence enforced by the government officials who evaluate and decide whether to grant federal recognition” (Den Ouden and O'Brien 2013:5). In a sense, non-federally recognized tribes are put on trial—judged from criteria employed by outsiders—as in the Montauk case.

In this thesis, I argue that the Federal Acknowledgment Process demands that non-federally recognized tribes appear as “liminal” entities. The phrase “liminal” is defined as a status or state in which one is “betwixt and between” two categories, two identities, or two social statuses, but is neither one nor the other. In order to become federally recognized, tribes petitioning through the Federal Acknowledgment Process are compelled to provide a substantial amount of evidence proving that they are: culturally and socially distinctive—recognizably different from American society—while also remaining intelligible (most often, politically intelligible) to the federal government. As in the Montauk trial, tribes should appear as non-assimilated—close interaction with American society serves to delegitimize a tribe’s “Indianness”. However, there is a limit to recognizing difference. Tribes must also be politically organized under western standards of governance—tribal governments predominantly formed around a written constitution with democratically elected leaders filling bureaucratic positions. In other words, petitioning tribes must simultaneously exist in a mythical past, uncontaminated and isolated from western influence, and in the present, acclimated to and engaged in western standards of legality and governance.

In this juridical process, difference or distinctiveness and similarity or intelligibility are posed as opposites, yet the federal government demands that tribes fit both categories simultaneously. Difference and similarity pull the tribes in opposite directions, stretching them across time and space—existing partially in the past as exotic, and partially in the present as familiar. Unable to fully fit either category (betwixt and between both difference and similarity), the liminal identity cannot be adequately maintained. As tribes present their distinctiveness, they may be viewed as too different from American society—most significantly from western

expectations and standards of political governance; when tribes appear too similar or assimilated to American society, they do not appear different enough from the nation-state.

In order to demonstrate the nature of this imposed liminality within the Federal Acknowledgment Process, I will begin by briefly reviewing the concept of liminality before detailing the manner in which American Indian identity has been construed historically and how these depictions connect to the construction of a liminal identity that non-federally recognized tribes must meet—between difference and similarity; between past and present. These arguments are framed by Elizabeth Povinelli’s theory of recognition among Aboriginal Australians. While Povinelli primarily focuses on recognition in terms of authentic cultural difference (and the failure, if not the impossibility, to measure up to these standards), I place an equal emphasis on the inherent limitations of recognizing difference—that those being recognized must also be intelligible or minimally assimilated to the nation-state. After correlating Povinelli’s ideas to non-federally recognized American Indian tribes, I will further detail the nature of federal recognition, its history, including an overview of the Federal Acknowledgment Process itself. Afterwards, I will briefly reflect on the biases of historical documentation that petitioning tribes confront while pursuing recognition and the possibility of imagining alternative conceptions of identity outside of the juridical process. In the final sections of the thesis, I will detail the struggles of two non-federally recognized tribes pursuing recognition: The Muwekma Ohlone Tribe (of California) and the United Houma Nation (of Louisiana). I will outline the history of both tribes followed by an analysis of the federal government’s response to their petitions for federal recognition. Through these two case studies, the imposition of a liminal identity will be revealed as well as how that identity, more often than not, fails to be maintained.

II. Introducing Liminality

Liminality, deriving from the Latin word “limen”, or threshold, was first discussed by Arnold van Gennep in relation to the structure and process of ceremonial rites of passage. Van Gennep noted that rites of passage (e.g. puberty, graduation, marriage, etc.) entail a change in one’s social status. In order to attain this new status, an individual must abandon or separate from his or her current social status. The liminal period marks the state when an individual has separated from his or her previous social status, but has not yet reintegrated and readjusted to his or her new social status. This transitional state exists “betwixt and between” both statuses, but is neither one nor the other.

Expanding upon the concept of liminality, the anthropologist Victor Turner noted that certain individuals or groups may be considered liminal beings as a condition of their very existence (Turner 1969). A shaman, who mediates between the sacred world and the profane world, may be viewed as a liminal person. Thus developed, the concept of liminality can apply to other circumstances beyond rites of passage. It is possible to talk of people and groups subject to legal processes as liminal beings. While waiting for the court’s decision, the accused is not guilty, yet not innocent; alternatively, a tribe within the Federal Acknowledgment Process is not yet recognized, but also not yet denied from being recognized. Tribes that petition for recognition do indeed stand at the “threshold” of recognition as they await judgment.

III. The Imposition of Identity

1. Creating the “Other”

In 1976, one non-federally recognized tribe stood at the threshold of recognition, not as part of the Federal Acknowledgment Process, but in a court case over land claims and tribal identity. The Mashpee Wampanoag Tribe sued the town of Mashpee, Massachusetts in an attempt to reclaim tribal lands (about three-quarters of the town of Mashpee) that were taken illegally, according to the Indian Non-intercourse Act of 1790—prohibiting state transactions with Indian tribes without congressional approval (Clifford 1988:277). The primary question that developed during the trial, similar to the 1910 Montauk court case, was whether the Mashpee Tribe was truly an Indian tribe today and continuously an Indian tribe throughout history. The jury determined that the Mashpee people did not consistently constitute an Indian tribe; only around 1834 and 1842 did the jury admit that the tribe existed (ibid.:335). The tribe shifted in and out of existence—revealing “people who were sometimes separate and ‘Indian,’ sometimes assimilated and ‘American’...Indians in Mashpee lived and acted *between* cultures in a series of ad hoc engagements” (ibid.:342). In reflecting upon the court’s decision, James Clifford muses that “only a few basic stories are told, over and over, about Native Americans and other ‘tribal’ peoples. These societies are always either dying or surviving, assimilating or resisting. Caught between a local past and a global future, they either hold on to their separateness or ‘enter the modern world’” (ibid.:342). In other words, American Indian identities appear to be situated in a liminal state, juxtaposed between a mythic and timeless past and the assimilative present, whether in court or in the Federal Acknowledgment Process.

One of the most long-standing and prevailing ideas on American Indian people is the inevitability of their extinction, through genocide or through assimilation into Euro-American

civilization. American Indian identity was first constructed in opposition to Enlightenment-derived ideas of universal reason, progress, and modernity. American Indians were perceived as the antithesis of European morality and reason: as depraved, childlike, belligerent, primitive, impoverished, irrational, and so on. In quoting the words of Edward Said, Dan Gunter states that “the American Indian has provided European Americans with ‘one of [their] deepest and most recurring images of the Other’” (Gunter 1998:100). Due to this imagined opposition, Euro-Americans felt it was their duty and burden to civilize the natives. Euro-Americans justified the coercive acquisition of native lands and the destruction of native cultures and peoples in the name of this civilizing project. The destruction was reframed as the necessary transformation of natives from their state of savagery into the Euro-American state of civilization (Perry 1995:571; Dennison 2014:1-2). The natives who were “saved” by becoming civilized merely lost their authenticity as natives. Indian identities were and continue to be constructed as timeless, embedded in an imagined, mythical past prior to European contact. Thus, “by creating an image that was ‘uncivilized’ by European standards, the immigrant Americans were able to define away any Native Americans who adopted white culture” (McCulloch and Wilkins 1995:366). Change and acculturation marked and continues to mark the end of an authentic American Indian identity (Miller 2003:53).

This circumstance parallels Johannes Fabian’s discussion and critique of how anthropology categorizes and describes the societies and cultures that it studies. According to Fabian, the subject under study, the “other”, is relegated to another time separate from the modern world that the anthropologist exists within. From this allochronic discourse, the “other” is constructed by the static, immutable, and seemingly objective representations postulated by the anthropologist. Fabian refers to this separation of time, the anthropologist in the present and the

“other” in the timeless past, within ethnographic description as the denial of coevalness (Fabian 1983). This constitutes the refusal in permitting American Indians to enter the modern world without first discarding their identity as American Indians.

Furthermore, the categorization of the “other”, existing in another time, is a matter of control and intelligibility. The native “other” exists as a relational concept (Miller 2003:56), only constructed in opposition, that promotes Euro-American authority and hegemony. As stated by James C. Scott, John Tehranian, and Jeremy Mathias, people and places must be evaluated and defined in the language of the colonizers in order to effectively rule over the “other”—“In the case of colonial rule, when the conquerors speak an entirely different language, the unintelligibility of the vernacular landscape is a nearly insurmountable obstacle to effective rule. Renaming much of the landscape therefore is an essential step of imperial rule” (Scott, Tehranian, and Mathias 2002:5-6). American Indian people have become legible through the impositions and regularities of Indian identity constructed and utilized by Euro-Americans (Gunter 1998:103).

2. The Cunning of Recognition

If nineteenth century liberalism, deriving from the progressive ideas of the Enlightenment, encouraged colonization and the destruction of native culture and people (Mehta 1999); then, twentieth and twenty-first century multicultural liberalism, organized around cultural diversity and tolerance, leads to the strict regulation of indigenous identities, requiring those identities to be both socially and culturally distinct from the nation-state (the U.S. or elsewhere) as well as intelligible through the language and standards of the nation-state. This is, indeed, the premise of Elizabeth Povinelli’s argument in *The Cunning of Recognition*.

Povinelli focuses on the demands of authenticity placed on Aboriginal Australian identities, specifically for making aboriginal land claims. In order to be recognized (for these land claims), indigenous Australians must express their cultural distinctiveness from the Australian nation-state—“to identify with a lost indeterminable object—indeed, to be the melancholic subject of traditions” (Povinelli 2002:39). They must identify with a traditional past that is structured around ancient ways of life that precede the existence of the Australian state. The impossibility of existing in some “other time” while living in the modern nation-state, involved in land claims with the Australian government, suggests that the modern juridical examination for an authentic identity “always already constitutes indigenous persons as failures of indigeneity as such” (ibid.:39). Past idealizations of indigenous Australians can never be fully represented in the present-day. Ancient practices and meanings transform through time—they are presented in “*whatever* language and moral frameworks prevail *at the time of enunciation*” (ibid.:55). Therefore, “every determinate content of Aboriginal culture—every propositional content—forecloses the imaginary fullness of ancient law. Every time indigenous subjects provide content to their traditional practices, they do so in present time—linguistic time—and this marks their alteration by history” (ibid.:55). The question of assimilation creeps in as the alluring magic of ancient rituals becomes too intelligible, too understandable to non-native Australians. The expression of cultural difference from the nation-state in the present seems to inherently limit the possibility of fully recognizing such difference. The mere existence of indigenous Australians in the present already hinders their authenticity. A news article detailing the life of one native Australian, referred to by Povinelli, informs the reader that “this last real Larrakia is *really* no different than the average Australian (white) citizen” with ordinary pastimes such as watching *Days of Our Lives* (ibid.:59).

Povinelli also points towards another limitation in the recognition of cultural difference—rituals that are too different from western standards, deemed as morally repugnant. Under national and international standards of human rights, certain practices such as genital mutilation are unacceptable in the celebration and recognition of cultural difference (ibid.:24). Overall, the recognition of an authentic native identity is threatened on both ends—by the suspicion that indigenous people have lost their ancient traditions and exist in the present as assimilated to non-native society and by the concern that certain rituals are too different from western standards of morality.

3. Between Us and Them

These dual limitations are likewise present in the Federal Acknowledgment Process. This “technology of regulation” (Gunter 1998:90) seems to depend upon “how many Aboriginal traits the petitioning tribe retains in common with the mythic notion of ‘Indian or ‘tribe’” (McCulloch and Wilkins 1995:368). In attempting to meet the high standards of “Indianness”, several tribes have adopted the attire of traditional Plains Indian cultures, most notably the headdress, in order to make their presence known (Miller 2003:83). Others have indicated that traditional Plains Indian culture, of chiefly authority, headdresses, and a spiritual connection with the land, has become the generic basis of a (pan-) Indian identity (Hanson 1997). In most cases, petitioning tribes emphasize their own unique history in order to demonstrate their isolation from and non-assimilation to American society. However, this attempt to meet the regulations of a distinctive tribal identity jeopardizes that identity as being perceived as too different—culturally, socially, or politically—from the expectations of the federal government. This directly corresponds to Povinelli’s notion of repugnance.

The recognition of difference is tempered by the necessity that such recognition is intelligible to western standards of identity—most significantly, western standards of political governance. An “ideal” tribe emerges through the recognition process (Paschal 1991:224)—one that maintains its isolation from American society, but is also intelligible and organized around western standards of formal political authority (Gunter 1998). As I will discuss in more detail later, a proper and legally legible tribal government derives from the Indian Reorganization Act (IRA) of 1934. The act solidified the concept of federal recognition alongside the reorganization of tribal governments. These new tribal governments formalized around written constitutions, democratically elected leaders in bureaucratic positions usually involving a tribal council fulfilling roles similar to Congress and a tribal chairman/chairwoman or chief akin to the President. This style of governance does not directly correspond to the diverse forms of traditional governance used by American Indian tribes (these traditional forms may, in turn, appear too different and unintelligible within the recognition process). Non-federally recognized tribes tend to reorganize their government to match the IRA-style of governance prior to pursuing recognition. The creation of these new westernized governments suggests that petitioning tribes are, at least minimally, integrated or assimilated into American society. Bruce G. Miller reflects on the seemingly incongruous recognition of native peoples based upon their historical assimilation when claiming that, “Indigenous communities, in some cases, are simply unable to meet the legal thresholds imposed but, ironically, could potentially do so if their ancestors had quickly acquiesced to demands of white authorities; assimilated; developed centralized, hierarchical governance; and begun written recordkeeping in the nineteenth century” (Miller 2003:44).

Overall, petitioning tribes within the federal recognition process must provide proof that they predate Euro-American influence while being organized as “quasi-European entities” (Gunter 1998:122). The tension of being culturally distinct and different from American society and being intelligible and assimilated to American society entails the basis of the liminal identity imposed upon tribes in the Federal Acknowledgment Process. Miller has alluded to the tension of this liminality by stating that, “there remains the problem that if tribal people voluntarily participated in the state programs soon after contact, they now run the risk of appearing impure and assimilated. On the other hand, if they failed to cooperate with the intruding society, they now suffer from the failure to be administratively noticed and eligible for inclusion among other indigenes” (Miller 2003:212). To put it another way: at times, a petitioning tribe must appear as a unicorn inhabiting a mythical past; at other times, a petitioning tribe must discard its horn and appear as an ordinary horse living in the present. Since the two are juxtaposed in time, it appears contradictory for the federal government to mandate that a tribe be both simultaneously.

It may be said that the federal recognition process produces a “double-bind” based upon that contradiction. The phrase derives from Jessica Cattelino’s description of tribal sovereignty among the Seminole Tribe of Florida. Cattelino states that the double-bind operates in this manner:

“American Indian tribal nations (like other polities) require economic resources to exercise sovereignty, and their revenues often derive from their governmental rights; however, once they exercise economic power, the legitimacy of tribal sovereignty and citizenship is challenged in law, public culture, and everyday interactions within settler society” (Cattelino 2010:235-236).

In the recognition process, this correlates to the demand that petitioning tribes provide evidence as to their (cultural/social) distinctiveness and (political) intelligibility. As tribes present their distinctiveness, they may fail to appear as fully intelligible. When tribes are fully intelligible to

western expectations, they may fail to appear as distinctive enough from American society. The expression of one category of their imposed, bifurcated identity limits the opposing category.

The uncertainty and indeterminacy of this “betwixt and between” status has been similarly perceived by Thomas Biolsi in his discussion of federal Indian law. Biolsi states that there is an ongoing tension between recognizing the special rights of native people (as fundamentally different from the nation-state) and subsuming native people within the full jurisdiction of the U.S. (as fundamentally integrated and assimilated into the nation-state). He goes on to claim that federal Indian law is based upon this contradiction—it “has the seeds of its dissolution within its own discursive terms” (Biolsi 2001:14). Likewise, within the Federal Acknowledgment Process, the demand that tribes appear as liminal beings already establishes the failure to recognize these tribes.

Clifford did claim that only a few stories about American Indians are told over and over again—the mythical past and the assimilative present. The Federal Acknowledgment Process is the stage through which these stories are performed; the platform through which a liminal identity is constructed and deconstructed. Unlike Fabian’s depiction, the inspected tribe is not solely placed in some “other time” but also in the present-day. The past and the present simultaneously exist as an anachronistic fantasy always on the verge of collapsing. Through this anachronistic fantasy, the question “what was it like back then (before white settlers)?” suddenly becomes sensible to those inspecting the authenticity of modern indigenous people, even if only for a moment (Povinelli 2002:64). The imposition of a liminal identity leads petitioning tribes to appear as more or less distinctive and more or less assimilated; or as more or less in the past and more or less in the present. Like a game of tug of war, the liminal identity under inspection is stretched apart—as one side begins to pull and prove that the tribal identity is distinct, the other

side, of intelligibility or assimilation, fails to be evinced, and vice versa. Perhaps the only winning move is not to play. For many non-federally tribes, however, this is hardly a sufficient option. Attaining federal recognition is an imperative goal for these forgotten tribes.

IV. Recognizing (Non-) Recognition

1. “Those Whom Even Time Forgot”: Non-Federally Recognized Tribes and Federal Recognition

In order to demonstrate the imperative nature of federal recognition for non-federally recognized tribes, it would be useful to begin by detailing the meaning and value of federal recognition. After defining and discussing federal recognition and the non-federally recognized tribes who seek it, the development of recognition, into its specific legal usage, will be traced through time—from 1778, when the first treaties were made between tribes and the United States, to 1978, when the Federal Acknowledgment Process was formally established.

Following an overview of the Federal Acknowledgment Process itself, I will briefly discuss the inherent biases in historical documentation that often claim that petitioning tribes are already extinct. This section will conclude with some thoughts on the possibility of imagining alternative tribal identities separate from the claims of extinction or the imposition of liminality in the recognition process.

Federal recognition entails the government-to-government relationship between the U.S. and a tribal entity. Through this special relationship, the U.S. acknowledges a tribe’s inherent rights of sovereignty—rights which the federal government has a responsibility to protect. Beside the right to form their own government, tribes are able to make and enforce laws, tax their populace, establish and determine rules for tribal membership, license and regulate

activities within their jurisdiction, and so on. Federally recognized tribes are also entitled to certain federal services and protections. Currently, there are 567 federally recognized tribes. The exact number of non-federally recognized tribes is not known. According to Russell Thornton's analysis of the 1990 census, only 60% of those identifying as American Indian belonged to a federally recognized tribe (Thornton 1997:38). The other 40% does not necessarily reflect the total amount of individuals belonging to non-federally recognized tribes, but rather to individuals self-identifying as American Indian. Other scholars have pointed out that between 1960 and 1990, the number of American Indians documented through the census more than tripled; a growth that cannot solely be explained by an increase in the birth rate and a decrease in the death rate, but rather by a new ethnic consciousness and pride (arising from the civil rights movement) encouraging individuals to claim or reclaim their American Indian ancestry (Nagel 1995). In recognition politics, the rise of individuals self-identifying as American Indian has led to concerns over the possibility that petitioning tribes are fake, "wannabe" tribes (with no documentable Indian ancestry and stereotypical views on native culture), classified as "Indian descendant recruitment organizations" attempting to take advantage of the special benefits and services reserved for recognized tribes—a situation described by one scholar as the "Southeast Syndrome" (Quinn 1990a). Such anxieties over authenticity have been used to justify the strict regulations within the Federal Acknowledgment Process (Miller 2004:69); regulations which will be analyzed later on.

In 2012, the U.S. Government Accountability Office (previously known as the General Accounting Office) (GAO) released a report detailing the limited amount of federal funding provided to non-federally recognized tribes. The GAO identified the existence of around 400 non-federally recognized tribes (U.S. GAO 2012). Compared to the 567 federally recognized

tribes, this is a substantial amount of tribes that continue to exist without legal recognition. How did so many tribes become non-recognized? In many cases, “these tribes were too peaceful to present a military threat, too small or isolated to be noticed, or simply possessed nothing that the United States and its citizens desired to have” (Anderson 1978:7). Thus, the federal government never bothered establishing a relationship with such tribes. In other cases, certain tribes, particularly in the eastern U.S., only signed treaties with colonial governments prior to the establishment of the United States or as in California, the treaties made with the U.S. were never ratified by Congress (the circumstance of the Muwekma Ohlone Tribe, to be discussed later) (Riley 2014:452). Lastly, tribes may have strategically avoided detection as Indians, purposely obscuring their own identity, by migrating to isolated, barren, and uncultivated areas in order to elude federal officials and avoid coercive, assimilative, and genocidal Indian policies. For example, the United Houma Nation, to be examined later, traveled south to the secluded swamps and bayous in Louisiana to resist the removal policies that resulted in the Trail of Tears. Another strategy included hiding in plain sight by outwardly adopting European culture and intermarrying with the surrounding non-Indian society while secretly maintaining tribal traditions (Porter 1979). Due to this strategy, American Indians are often misidentified in census records as mulatto, mixed-blood, white, or black; a circumstance which the federal government, ironically, perceives as assimilation into American culture and society and the abandonment of an Indian identity (Mather 2003:1830).

As mentioned previously, federal recognition bestows sovereign rights and federal services to these once forgotten tribes. These benefits provide a large incentive in pursuing federal recognition. Most notably, the U.S. government provides economic support in the form of federal loans, as well as an array of programs and services including health care, housing

assistance, and economic development opportunities (Gonzales and Evans 2013:42). The federal government also provides educational assistance in the form of scholarships and grants to members of federally recognized tribes (Mather 2003:1834). Federal funding can play a significant role in the maintenance and development of a tribal community given the high rates of poverty among American Indian tribes. The 2000 census indicated that American Indians have the highest rates of poverty out of any ethnic group. Furthermore, a report published by the Department of Labor stated that, in 1997, 50% of American Indians in the labor force were unemployed, although this rate has improved due to the success of tribal gaming operations (Cramer 2005:52). The situation, however, is even worse for non-federally recognized tribes. For example, 80% of the members of the Mowa Choctaw Indians, according to the 2000 census, were below the poverty level (ibid.:54). Attaining federal recognition would ameliorate these dire circumstances.

An equally significant reason for pursuing recognition is to have legal confirmation of a tribe's authenticity—"an unquestionable, determined, and once-and-for-all autochthonous, *Indian*, status: an external validation for their own traditional knowledge. Many want a legal status that enables them to fight local, state, and national doubts about their 'authenticity,' their 'genuineness' as Indians." (Blu 2001:73). Claims of tribal extinction can finally be countered by obtaining federal recognition. Centuries of invisibility may abruptly come to an end.

Prior to recognition, however, a state and status of invisibility proceeds into a state and status of liminality within the Federal Acknowledgment Process. This formal process was established in 1978. Since then, the Office of Federal Acknowledgment (OFA) (originally called the Branch of Acknowledgment and Research) within the Office of the Assistant Secretary – Indian Affairs (AS-IA) of the Department of the Interior (DOI) have concluded and decided

upon 51 cases. Of those 51 petitions for federal recognition, 18 tribes passed the regulations and attained federal recognition; the other 33 tribes were denied federal recognition. In other words, about 65% of tribes do not meet the regulations of the acknowledgment process. Arguably, the failure rate would be even higher if it counted the large number of tribes who have not yet submitted a full petition that the OFA deemed ready for active consideration. Over 350 tribes have sent a letter of intent to petition for federal recognition, less than 100 tribes have completed a full petition (Coronado 2016:551). There are also the tribes who haven't bothered to petition in the first place after realizing that they would be unable meet the strict criteria employed in the process or the financial burdens necessary to conduct research for a full petition (Myers 2001:275). As stated by the anthropologist Jack Campisi, non-federally recognized tribes face high standards of evidence that even many federally recognized tribes would be unable to meet (Campisi 1991:58). The difference between the tribes who obtained federal status and those who did not is "often an accident of history" (Blu 2001:72). How exactly did tribal recognition develop from this accidental history into the formal and convoluted legal process established in 1978?

2. History of Recognition

Recognition was first utilized in a cognitive sense—"that federal officials simply 'knew' or 'realized' that an Indian tribe existed, as one would 'recognize', for example, the existence of a large Irish population in Boston" (Quinn 1990b:333). The formal jurisdictional sense of the term—the acknowledgment of tribal sovereignty within a special government-to-government relationship—began to be more consistently used in the 1870s and was fully established, superseding the cognitive sense of recognition, by 1934 through the passage of the Indian Reorganization Act (ibid.:333-334). The earliest form of recognition was through treaty-making,

from 1778 until its abolishment in 1871 (ibid.:339). However, there was no consistent definition of Indian or Indian tribe used by all three branches of the federal government to indicate what recognition entailed and what tribes qualified for it. The language of recognition inconsistently referred to Indians “in amity with the United States”, “Indians not members of any of the states”, “those whose lands were ‘secured by treaty with the United States’”, “friendly Indian tribes”, or simply “the Indians” (ibid.:340-341). Chief Justice John Marshall stated in the 1831 Supreme Court case, *Cherokee Nation v. Georgia*, that the relationship between Indian tribes and the United States is peculiar. Indian tribes were not to be considered foreign entities, but as “denominated domestic dependent nations”—like a ward to its guardian (ibid.:344). I would argue that the phrase, “domestic dependent nations”, hints at the liminality imposed on American Indian identities. It seems to state that Indian tribes are distinct from the United States, through the implications of the word “nation” involving some socio-cultural and political sovereignty, and alternatively, Indian tribes are integrated and within the jurisdiction of the United States, through the words “domestic” and “dependent”. Acculturation is at odds with distinctiveness, yet both categories are simultaneously involved.

American citizenship and tribal membership were often perceived as incompatible, similarly at odds with each other, in the nineteenth century—“it was impossible for an Indian who was a citizen, voted, and generally associated with non-Indians to be simultaneously maintaining tribal relations” (Roth 2001:51). According to the 1884 Supreme Court case, *Elk v. Wilkins*, Indians were not citizens of the United States; instead they belonged to their own tribe with its own distinct political community (Quinn 1990b:349). This affirmation would be reversed in 1924 through the Indian Citizenship Act, granting U.S. citizenship to all American Indians. The bestowal of citizenship does not necessarily end the tension between an American

identity and an Indian tribal identity. In the Brothertown Indian Nation's petition for federal recognition, the OFA interpreted the tribe's U.S. citizenship among all of its members (including the historical allotment of the tribe's reservation to individual members) as an act of termination ending the tribe's sovereign status (Brown-Perez 2013:241).

Ultimately, the question over recognition was viewed as a temporary problem that would inevitably be solved through cultural extinction. As tribes assimilated into the U.S. and presumably became "civilized", they would no longer be recognized as distinct social, cultural, and political entities (Quinn 1990b:348). "Remnants" and "fragments" of tribes in the eastern U.S. were understood as being subject to the laws of the state in which they resided as full citizens (ibid.:353). In order to aid, encourage, and enforce this assimilation into the nation-state, the General Allotment Act, or Dawes Act of 1887 was passed. Through the act, tribal land was divided into small portions of land, or allotments, granted to individual Indians. This land, usually 160 acres per family, was held in trust by the federal government for 25 years or until the Indian landowners were deemed competent enough to manage the land themselves. Federal officials desired that Indians become self-reliant through the adoption of a sedentary, agricultural lifestyle as well as individualistic with a motivation to accumulate property and wealth. In other words, the act intended to civilize the Indians and integrate them into American society and the capitalist market (Biolsi 1995). The surplus tribal lands that were not allotted to individual Indians or Indian households were sold on the open market for American settlers. As a result of the act, the total land base of Indian tribes dwindled from 138 million acres to around 52 million acres by 1934 (McDonnell 1991:10).

While the act promoted the transition of tribal members to American citizens, the concept of recognition was not fully formed and established. Parting from previous court decisions, the

1901 court case *Montoya v. United States* stated that a tribe may be recognized but still not “in amity with the United States”. This suggests that there still existed some ambiguity between recognition in a cognitive sense and a jurisdictional sense. Notably, the *Montoya* case attempted to define the criteria of a federally recognized tribe: “By a ‘tribe’ we understand a body of Indians of the same or a similar race, united in a community under one leadership or government, inhabiting a particular though sometimes ill-defined territory...” (quoted in Quinn 1990b:352). This definition would serve as the precursor to the formal regulations of federal recognition established in 1978.

Prior to the adoption of this formal, juridical process, the jurisdictional sense of recognition needed to be formally solidified. This came about through the Indian Reorganization Act (IRA) of 1934, which was initiated by John Collier—the commissioner for the Bureau of Indian Affairs at the time. The IRA developed in response to the shortcomings of assimilative policies such as the Allotment Act. In particular, Collier was concerned over the substantial loss of tribal land, the continued impoverishment of Indian tribes, and the destruction of native culture and tradition (Kelly 1975:291-292). The act ended allotment policies and encouraged tribal self-governance—granting tribes more autonomy over their own affairs. Through the IRA, tribes were able to reorganize under a new government structure. The tribes that adopted a government through the act would be recognized for special federal services; likewise, the federal government would have a responsibility to protect the sovereignty of these tribes (Cramer 2005:18). This special government-to-government relationship between the reorganized tribes and the federal government explicitly and formally established the jurisdictional sense of recognition. The act referred to all Indians who are members of any *recognized* Indian tribe now under federal jurisdiction (Quinn 1990b:356). Over 200 tribes were eligible to reorganize under

the IRA and thus, become federally recognized. Interestingly, certain tribes were intentionally excluded. All of the tribes on the eastern seaboard were rejected as Collier perceived them to be merely “folk groups” rather than authentic tribes (Spruhan 2006:32). The problem seemed to be over assimilation and intermarriage with non-Indians. In another case, a tribe was rejected because its members owned radios in their homes which suggested that the tribe was too civilized to be legitimate Indians (Mather 2003:1831). Each tribe that was eligible voted on whether to reorganize and adopt a new government through the IRA. Those that refused to accept the government structure promoted through the IRA essentially became non-recognized (Field 1999:198).

The IRA standardized the structure of government for Indian tribes. The organization of IRA tribes derives from a written constitution, which is subject to review and approval by the federal government (Resnik 1989:713), based upon western standards of political authority. Unlike traditional forms of Indian political organization, IRA-style governments tend to involve “a separation of church and state, representative (rather than participatory) democracy, and separations of powers and functions of leadership” (Cramer 2005:60-61). As a result of the IRA, the majority of federally recognized tribes today are organized through an IRA government (Cramer 2005:20). In fact, almost 300 federally recognized tribes trace the origin of their recognition to the IRA era (U.S. GAO 2001:21). Since the IRA formally established the jurisdictional nature of federal recognition and standardized tribal governance among federally recognized tribes, non-federally recognized tribes pursuing recognition must, in turn, measure up to these standards of political governance. In other words, these tribes must be politically intelligible to the federal government in order to become federally recognized.

Although the concept of federal recognition was legally established through the IRA in 1934, there was no formal process to determine whether a tribe should be federally recognized. Before 1978, the bestowal of federal recognition was handled on an ad hoc basis (Gonzales and Evans 2013:38). The Cohen Criteria (from the Indian law scholar Felix Cohen) was used to determine whether a tribe should be federally recognized. The criteria entailed that a tribe must meet one of the following:

- (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 (Cohen 1942:271).

Ethnological and historical evidence demonstrating a tribe's existence was also used to make the determination.

By the 1960s and 1970s—concurrent with the civil rights movement—there was a proliferation of ethnic pride among American Indians. A new ethnic consciousness spurred political activism over American Indian rights and tribal sovereignty. The period gave birth to the American Indian Movement (AIM) which helped stage large-scale protests such as the Trail of Broken Treaties and the occupation of Alcatraz Island while demanding tribal sovereignty among all native nations (Cramer 2005:27-28). These demands were also taken up in court across the country. In the west, treaty fishing rights were reaffirmed, even among certain non-recognized tribes, in *United States v. Washington* (1974) (Miller 2004:35). In the east, two non-federally recognized tribes, the Passamaquoddy and the Penobscot, demanded the return of their tribal lands, equating to two-thirds of the state of Maine, while arguing that the state's land purchases were illegal due to the Indian Non-intercourse Act of 1790 (prohibiting states from

purchasing Indian land without congressional approval) (ibid.:36). The court decision of *Joint Tribal Council of the Passamaquoddy Tribe v. Morton* (1975) provided a ruling favoring the tribes. The federal government allocated \$81.5 million to the tribes for compensation and for use in purchasing land.

The rise of Indian activism coupled with successful court decisions led to more and more non-recognized tribes desiring the acquisition of federal recognition. The federal government realized that, in order to handle the increasing amount of tribes pursuing federal recognition, a formal process needed to be established (Quinn 1990b:362-363). This realization was also influenced by the criticisms and recommendations made in the American Indian Policy Review Commission's (AIPRC) Final Report in 1977 regarding recognition and non-federally recognized tribes. Within the report, the AIPRC condemned the treatment of non-federally recognized tribes—"There is no legal basis for withholding general services from Indians, with the sole exception of specific termination acts. There is no legitimate foundation for denying Indian identification to any tribe or community. The BIA has no authority to refuse services to any member of the Indian population" (AIPRC 1977:461). Ultimately, the AIPRC recommended that uniform policies and criteria be adopted in order to facilitate the federal recognition of tribes; ideally, the enacted policies would end non-recognition among all American Indian tribes (ibid.:479-480). While the federal government could not live up to the more idealistic demands of the AIPRC, they did respond in 1978 by establishing the Federal Acknowledgment Process in which non-federally recognized tribes could petition for federal recognition and become recognized or merely reaffirm their non-recognition.

3. The Federal Acknowledgment Process

The Federal Acknowledgment Process requires a petitioning tribe to submit a sufficient amount of evidence that proves the tribe's political, ethnological, and genealogical continuity from a historic tribe. As mentioned in the introduction, federal recognition acts as a badge of authenticity—presumably only tribes that are truly native become recognized. By demanding that tribes prove their identity through strict criteria, the Federal Acknowledgment Process generates and imposes a high standard of authenticity over tribal identities. In this section, I provide a brief overview of the Federal Acknowledgment Process and how this high standard of authenticity is created and justified in the process.

Unlike the more flexible Cohen Criteria, the Federal Acknowledgment Process demands that tribes meet all seven mandatory criteria (Riley 2014:455). The criteria, under the recent revisions in 2015, require that:

- (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 until the present;
- (c) The petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 until the present;
- (d) The petitioner must provide a copy of the entity's present governing document, including its membership criteria; or in the absence of a governing document, a written 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 composed 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 (U.S. DOI 2015:37889-37891).

The most notable change from prior regulations is the evidentiary starting point of 1900.

Previous regulations extended the evidentiary burden by placing the starting date “from historical times” (first sustained contact with non-Indians).

A tribe begins pursuing federal recognition by sending a letter of intent to petition. The Office of Federal Acknowledgment (OFA) must respond to this letter by providing a written notice of receipt within 30 days (Riley 2013:633). Then, the petitioning tribe focuses on researching and drafting a petition that will meet all seven regulations for federal recognition. Once the petition is submitted, the OFA conducts a preliminary review in order to provide the petitioning tribe with technical assistance, stating what portions of the petition have evidentiary gaps or if there are obvious deficiencies that need to be remedied. The tribe may respond to these letters and supplement its petition. After the tribe answers the evidentiary gaps and deficiencies in its initial petition, the OFA places the petition under active consideration (ibid.:634-635). Frustratingly, a tribe may wait several decades before its petition is actually considered. The slow pace of the OFA in reviewing and deciding upon petitions is often criticized; anthropologist Jack Campisi has referred to the OFA as a “bureaucratic mill that makes the continental drift look like a speedy process” (quoted in Cramer 2005:52). Upon reviewing a petition, the OFA publishes the Proposed Finding in the Federal Register, describing whether the evidence used by the tribe is valid or not, and thus, whether the tribe has met the regulations for federal recognition. After a comment period on the Proposed Finding, the OFA drafts the Final Determination, recommending to the Assistant Secretary – Indian Affairs whether to recognize the tribe or not. The Assistant Secretary makes the final judgment in the Final Determination which is published in the Federal Register. This decision, confirming or denying federal recognition, becomes effective shortly after (Riley 2013:636-638).

As previously mentioned, the OFA has concluded 51 petitions: 18 tribes have become federally recognized through the process and 33 tribes have been denied. The evaluation of these petitions is done by a team consisting of an anthropologist, a genealogist, and a historian (Riley 2014:463). Petitions should be evaluated under the standard of “reasonable likelihood of the validity of the facts”, however, the OFA team tends to analyze and judge the evidence through stricter, professional standards relative to their field of expertise before utilizing the regulatory standards. For example, a genealogist requires two valid sources of documentation in order to verify one’s descent—a standard higher than the “reasonable likelihood of the validity of the facts” (Riley 2013:636). As a result, the standards of proof have risen over time, leading tribes to spend more and more time and money researching and creating a detailed petition. Petitioning tribes often hire anthropologists, genealogists, and historians in order to counteract the high level of expertise and expectations in the OFA (Campisi 2003:506). The financial costs of producing an adequate petition continue to increase; since 1994, the cost per petition may be \$1 million or higher—a financial burden that few non-federally recognized tribes can afford (Cramer 2005:54). Although the Federal Acknowledgment Process developed into a convoluted, arbitrary, timely, and costly procedure, it was originally envisioned as a straightforward and simple process, without requiring tribes to seek help and expertise from outsiders. Indeed, some of the earliest petitions (including those that received a favorable finding) were no more than a couple hundred pages long. Today, a petition may be over a hundred thousand pages (Campisi 2003:505-506).

The strict standards of the process have been justified by the concerns over the “Southeast Syndrome”—illegitimate “wannabe” tribes attempting to take advantage of federal benefits and services (Quinn 1990a). Other scholars have realized that the amount of fake tribes

petitioning for recognition have been overestimated by the OFA (Campisi 2003:512; Starna 1991). Regardless, it does indicate that authenticity is a major question and concern regarding American Indian tribal identities. Anxieties over authenticity, created and reproduced through the process, lead to suspicions over inauthenticity. The tribes who are unable to meet the strict criteria of the Federal Acknowledgment Process may be perceived as inauthentic—as fake tribes—which in turn, further justifies the high standards of authenticity.

4. Narratives of Extinction

In the next section, I will examine how the high standards of authenticity are employed within the Federal Acknowledgment Process through the petitions of two tribes—the Muwekma Ohlone Tribe and the United Houma Nation. First, it would be worthwhile to express the inherent bias of historical documentation that tribes are forced to use as evidence of their tribal identity (or evidence that is used against them by the OFA).

Primarily, a tribe's petition is based upon written records, whether federal, state, or local, which document the tribe's existence through time. Non-federally recognized tribes are often deliberately rendered invisible and extinct in the historical record; these historical narratives may be further reproduced in the OFA's response to a tribe's petition. In other words, the records of history begin from a non-neutral perspective.

In nineteenth century New England, books, pamphlets, and other local written records mournfully proclaimed that native people had become extinct. While these narratives asserted the modernity of the New England region, they simultaneously denied that modernity to Indians by creating and reproducing the myth of Indian extinction (O'Brien 2010). The perspectives and voices of native people rarely appear in the historical record; rather, "the only history perceived as real was that documented by Euro-Americans in public records and other sources, which

focused on settlement by English ancestors, taming the wilderness, and subduing ‘the savage Indian’” (Gould 2013:215).

Likewise, for a period of 50 years, in the twentieth century following the eugenics movement, records in Virginia deliberately erased the existence of native people residing in the state. Virginia’s Bureau of Vital Statistics refused to register anyone identifying as an Indian while also changing the records of Indians to be read as “colored” or “negro”. Furthermore, people who gave their children Indian names could be jailed (Cook 2002:98; Koenig and Stein 2013:129). Even in Pennsylvania today, state officials continue to assert that no American Indians live within the state despite the existence of around 18,000 people identified as American Indian (Minderhout and Frantz 2008).

These narratives of extinction will reappear as I recount the histories of the Muwekma Ohlone Tribe and the United Houma Nation in the following sections. Ultimately, it seems impossible for the recognition process to be unbiased and fair when “the evidence itself is the product of historical policies and practices aimed at the diminution of native existence” (Gonzales and Evans 2013:37). One scholar goes so far as to say that the recognition process “depends on the myth that settler states did not intentionally and repeatedly attack the autonomy of Native peoples. The recognition criteria assume that colonialism itself did not happen” (Lowery 2009:513).

5. Alternative Identities

The alternative narrative of history from the perspective of native people fails to show up in the historical records (and thus, is hardly expressed in the Federal Acknowledgment Process). How might a tribe view its continued existence in the face of innumerable claims as to its

extinction? What would an authentic tribal identity look like beyond the imposed liminality in the recognition process?

During the Mashpee trial, Vine Deloria, Jr. identified a tribe simply as “a group of people living pretty much in the same place who know who their relatives are” (quoted in Clifford 1988:323). The anthropologist Karen Blu recounts that tribal identity among the Lumbee people is “based in an orientation toward life, a sense of the past, ‘a state of mind.’ It is a way of doing and being that is ‘Indian’” (Blu 1980:xii). Likewise, Edward Spicer states, in regards to the Yaqui people, that most typical elements that characterize an identity such as language, place of residence, and cultural practices inevitably change. Instead, a continuous tribal identity entails “a people’s awareness of their experience through time—their historical understanding of themselves” (Spicer 1980:360). These three conceptions of tribal identity—the recognition of family and ancestry, a way of being, and an awareness of a tribe’s shared history—seem to only add more questions over the nature of an authentic tribal identity. But these questions are primarily the concern of the federal government and not the tribes themselves. While federal recognition confirms that a tribe is legitimate, and tribes do, in part, pursue recognition in order to verify their identity, the value of authenticity rests in its acceptance by outsiders. A tribe is already aware of what it is; the federal government and the general public are neither fully aware nor accepting of what a tribe claims to be.

Rather than employing these alternative conceptions of identity, the Federal Acknowledgment Process relies upon an imposed liminal identity conjured up by the federal government itself. In order to examine how this imposed liminal identity is enacted in the recognition process, I will analyze the circumstances of two petitioning tribes—the Muwekma Ohlone Tribe and the United Houma Nation. I will first recount the history of each tribe, from

first sustained contact to the moment that each tribe sent a letter of intent to petition for federal recognition—a history that more often than not has rendered both tribes invisible in different ways. Then, I will review the federal government’s response and judgment as to the petitions of both tribes, analyzing how a liminal identity is constructed within the recognition process and how that identity fails to be maintained.

V. The Muwekma Ohlone Tribe

1. History

The Muwekma Ohlone Tribe consists of the descendants of Costanoan (a phrase deriving from the Spanish term, *costeños*, or coastal people) natives located in the San Francisco Bay Area of California. In particular, the tribe is comprised of all the known lineages aboriginal to the San Francisco Bay Area who trace their ancestry through three Missions established by the Spanish empire: Mission Dolores, Santa Clara, and San Jose. Prior to European contact and the establishment of the missions, native Californians were foragers who subsisted primarily on fish, sea mammals, and shellfish (Leventhal et al 1994:303). Food surpluses and niche resources provided the basis for extensive regional trade networks between native groups. These groups were often connected through intermarriage which further supplemented trade alliances (ibid.:304).

In the late eighteenth century, Costanoan natives encountered Spanish colonists and missionaries who set out to dominate and control native populations by forbidding and destroying traditional cultural, political, and economic systems. At missions established by the Spanish empire, natives were coerced into practicing Christianity and agriculture—religious and subsistence practices intelligible to European eyes (ibid.:305). Native Californians were

reconstructed by the Spanish empire as “a laboring class marked as racially inferior whose work in mines, plantations, ranches, and farms provided sustenance for the colonial population and wealth for the crown and its minions” (Field 1999:196). Due to European-introduced diseases coupled with harsh and overcrowded living conditions at the missions, around 80% of the native population in the Bay Area was eliminated (Field et al 1992:415). While native resistance was a constant threat to Spanish control, many survivors continued to reside at or near the missions.

In 1834, the Mexican government, having won independence from Spain, secularized the missions and sought to divide mission property among the residing native Christians. Instead, powerful *californios*, Hispanic families inhabiting the Bay Area, bought mission property and established cattle ranches where, just as before, natives were used as a labor source—hired as vaqueros (ranch hands) and domestic servants (Leventhal et al 1994:307). Shortly after, the U.S. military invaded and took control over Californian territory. This was subsequently followed by a new wave of American migrants enticed by prospective riches from the Gold Rush (Field et al 1992:424). By 1850, California became a U.S. state.

Unlike the Spanish missionaries and Mexican landowners, the new American settlers preferred using Euro-American labor rather than native labor (Leventhal et al 1994:308-309). The attitudes of the American settlers towards the natives ran deeper than simple prejudice; rather, the state of California promoted genocidal practices on native populations. Thomas Butler King, a federal Indian agent reporting on the Indian situation in California in 1850, stated that California Indians were the lowest form of human beings who would inevitably become extinct (Slagle 1989:328). Likewise, a policy of extermination was proclaimed by Peter Burnett, California’s first governor, in his 1851 statement to the legislature: “A war of extermination will continue to be waged between the races until the Indian race becomes extinct” (quoted in

Laverty 2003:51). Laws were put in place to stifle the legal rights of American Indians—they were unable to vote, provide testimony in court, or bring forth a lawsuit (Field et al 1992:424-425). Other policies that followed a logic of elimination (Wolfe 2006) supported the slaughtering and scalping of native peoples as well as the kidnapping and indenturing of Indian children (Slagle 1989:327).

During this period, the ancestors of the Muwekma Ohlone Tribe, many from Mission San Jose and Santa Clara, sought refuge at Alisal, a ranch owned by a *californio*, just south of Pleasanton (Field et al 1992:425). At Alisal, Costanoan culture was revitalized through the performance of dance rituals which coincided with a resurgence of language, songs, and ceremonial regalia (ibid.:425). Traditional forms of ceremony and dance fused with the Ghost Dance (a contemporary religious movement). This syncretic cultural revival was recorded by several ethnographers who referred to the Indian group as the Verona Band due to their proximity to the Verona railroad station (ibid.:426). In the early twentieth century, an increasing amount of American settlers to the nearby land coupled with a series of fires that spread to Alisal disrupted the community (ibid.:426). Scattered families remained connected to each other through intermarriage and ritual godparenthood (Leventhal et al 1994:310).

Around this time, C.E. Kelsey, a federal Indian agent, was tasked with conducting a special Indian census among the many homeless and landless Indians in California in order to determine the amount of land to purchase for the establishment of small reservations known as rancherias. This state of homelessness was in large part due to the fact that 18 treaties made among many Californian native groups in the middle of the nineteenth century were never ratified. Interestingly, coastal mission Indians, such as the Muwekma Ohlone Tribe, were not directly involved in the signing of those treaties. Federal Indian agents viewed mission Indians

as tame and domesticated due to their presumed conversion to Christianity and their agricultural practices. Treaty negotiations did not seem necessary among groups perceived as already assimilated and integrated into the economic structure of the state (Lavery 2003:53). In other words, authentic Indianness was contested and challenged by cultural assimilation—being too similar to the livelihood and lifestyle of non-Indian, American citizens was and continues to remain problematic for asserting a recognizable Indian identity. This essentialist perspective would later be echoed by the anthropologist Alfred Kroeber who authoritatively promoted the tribe’s extinction and invisibility in 1925.

Prior to this declaration, Kelsey as well as C.H. Asbury, another federal Indian agent, documented the existence of the Verona Band. By being recognized and identified under several Appropriation Acts beginning in 1906—acts through which land purchases were to be made for homeless Indians—the Verona Band attained federal recognition up until 1927 (Field 2003:86-87). The sudden termination of the Verona Band was proclaimed and decided solely by Lafayette Dorrington, an Indian agent working from Sacramento. In a letter responding to the probable cost and amount of Indians for which land needed to be purchased, Dorrington stated, without visiting the group itself, that the Verona Band did not need land purchased for them. In the same letter, Dorrington’s negligence terminated the rights of around 135 other tribal groups in California (ibid.:87). Les Field, an ethnographer, suspects that this decision was influenced by Kroeber’s professional anthropological claim of Costanoan extinction a few years prior.

In 1925, Kroeber declared that:

“The Costanoan group is extinct so far as all practical purposes are concerned. A few scattered individuals survive...but they are of mixed-tribal ancestry and live almost lost among other Indians or obscure Mexicans. At best some knowledge of the ancestral speech remains among them. The old habits of life have long since been abandoned” (Kroeber 1925:464).

When Kroeber retracted his claim thirty years later, he clarified his meaning by stating, “Anthropologists sometimes have gone a step farther, and when they can no longer learn from living informants the speech and modes of life of the ancestors of these informants, they talk of that tribe or group as being extinct—when they mean merely that knowledge of the aboriginal language and culture has become extinct among the survivors” (Kroeber and Heizer 1970:3). However, this statement still entailed an essentialist and static concept of culture where change and assimilation contaminates the purity of traditional native culture. Once contaminated, the authentic Indian fades from view. In lamenting the loss of traditional culture, anthropologists who practiced salvage ethnography, such as Kroeber, had reinforced the inevitability of Indian cultural extinction. As Lisa Aldred recounts:

“Any semblance of similarity to Anglo culture meant the Native Americans in question had unidimensionally ‘assimilated’; the culture was therefore ‘spoiled’ for ethnographic inquiry into the ‘primitive’. Euroamerican societies were allowed to culturally borrow and change, but Native American societies’ cultures were either freeze-framed into a static, almost romanticized, image or else deemed ‘vanished’ or ‘assimilated’” (Aldred 1993:212).

Despite their invisibility as a result of termination and claims of extinction, the Muwekma Ohlone Tribe persisted as a community and people. Inspired by the civil rights and red power movement including the occupation of Alcatraz in the late 1960s (Russell 2007), families organized as the Ohlone Indian Tribe. This was done specifically to obtain rights over the Ohlone Cemetery at Mission San Jose—an important burial ground for the tribe (Field 2003:88). Following this, the tribe reorganized themselves in 1984 as the Muwekma Ohlone Tribe and “set about structuring themselves in response to the BIA’s regulations for tribal governance, even though those regulations did not correspond to the historic ways bands like the Ohlones had interacted and related to one another” (ibid.:88). The tribe must fit western standards of political organization in order to be visible and comprehensible. The situation was

no different when the tribe first encountered Spanish colonists who demanded that the natives practice agriculture and convert to Christianity. Continuously, native peoples are imposed to fit particular forms of identity in order to be recognized, literally and legally.

A desire to be recognized was spurred by the tribe's deep spiritual concern and responsibility towards its ancestors, as previously witnessed by the tribe's desire to protect the Ohlone burial ground (Field et al 1992:419). At first, this responsibility led to the tribe's demand that the bones of its ancestors that reside in museums and universities ought to be repatriated and given proper burials. This incited the response from archaeologists who attempted to discredit the tribe's authenticity—channeling Kroeber's claims of extinction (ibid.:422). In 1989, the tribe reached an agreement with Stanford University to return the ancestral bones in its collection (Gross 1989). During that same year, the tribe petitioned for federal recognition. Undoubtedly, attaining more substantial rights over burial sites and excavated bones was a significant reason for pursuing recognition (Russell 2007). The importance of being federally recognized for the repatriation of burial remains was confirmed one year later, in 1990, with the passage of the Native American Graves Protection and Repatriation Act (NAGPRA). In confirming the importance of federal recognition, the act, defining "tribe" in terms of being federally recognized, delegitimizes the tribes that pursue repatriation yet lack federal recognition (Barker 2013; Talbert 2012).

After petitioning for federal recognition in 1989, the tribe conducted extensive research on their history and genealogy, spending tens of thousands of dollars in order to gather enough documentary evidence that supported their continued existence as a tribe (Field 2003:88). In 1996, the Branch of Acknowledgment and Research (BAR), which handled petitions for federal recognition prior to its reorganization as the Office of Federal Acknowledgment (OFA), affirmed

that the federal government had previously recognized the tribe as the Verona Band as late as 1927 (*ibid.*:88). This allowed the Muwekma Ohlone Tribe to use revised criteria—the tribe merely had to demonstrate its continued existence from the latest date of previous recognition (i.e. 1927) up until the present. After compiling thousands of pages of evidence and responding to several technical assistance letters from the BAR, the petition qualified for active consideration in 1998. The tribe, however, was concerned that the petition would not be resolved for another 20 years given the BAR’s slow pace in resolving petitions. Unwilling to wait, the tribe filed a lawsuit against the BAR, compelling the BAR to complete its review of the petition within twelve months via a court issued writ of mandamus. The court found that the BAR’s delay of the tribe’s petition was unreasonable and demanded that the BAR make a final determination by 2002 (Mather 2003:1854-1856). By July 2001, the BAR submitted the proposed finding which stated that the Muwekma Ohlone Tribe would not meet the criteria for federal recognition. The negative determination was finalized and became effective on December 16, 2002.

2. Identity on Trial

The tribe failed to meet three out of the seven mandatory criteria under the revised regulations for tribes with prior unambiguous federal recognition—criterion (a) that the group has been continuously identified as an Indian entity since 1927 until the present; criterion (b) that the group comprises a distinct community in the present; and criterion (c) that the group has maintained continuous political influence or authority over its members since 1927 until the present.

In regards to criterion (a), the BAR stated that since 1927, the tribe was identified as an Indian entity in the years between 1965 and 1971 and from 1982 to the present. Due to the

almost four decades after 1927 of no identification as an Indian entity and only a 6-year period of identification during the 55 years between 1927 and 1982, the BAR declared that the tribe had not been identified as an Indian entity on a substantially continuous basis since 1927 (BAR 2002:45). The most common dismissal of the tribe's proposed evidence is that it merely indicated the existence and identity of individual Indians rather than a larger Indian entity to which they belong. This is most notable in the rejection of John P. Harrington's ethnographic field notes on the tribe in the late 1920s and early 1930s. According to the BAR, Harrington never explicitly referred to the Indians he visited and interviewed as members of a tribe and community (ibid.:13). Harrington, however, was focused on recording and preserving historical Indian languages—just as the BAR states—he was primarily interested in the past rather than contemporary tribal communities (ibid.:14). If “Harrington did not comment on existing social relationships nor portray his informants as part of an existing community or group” (ibid.:14), this perhaps reflects Harrington's methodology of salvage ethnography rather than the actual absence of a tribal community.

As previously noted with Kroeber, salvage ethnography promotes the inevitability of Indian cultural extinction by framing culture in essentialist and static terms. Harrington's focus, then, may have been on preserving the “pure” Indian from an idealized past presumably prior to cultural change and assimilation. Under this essentialist framework, the social organization of contemporary Indians was not of primary concern since they were no longer culturally or linguistically “pure”—no longer fully Indian. This fits neatly with Kroeber's statements in 1955 when he retracted the claim of Costanoan extinction, yet retained the idea that once native culture and language goes extinct among surviving Indians, they are just that: mere survivors and descendants of Indians (Kroeber and Heizer 1970:3). Interestingly, when the tribe attempted to

use Kroeber's 1955 statements as evidence of Indian identification, the BAR argued that Kroeber's primary point was that "historical groups that had lost their distinct culture had surviving lineal descendants...this was a statement about the survival of individual descendants, rather than Indian groups" (BAR 2002:28). In this case, the BAR directly applied essentialist notions of authentic Indian culture from Kroeber's underlying logic—the loss of distinct culture also entails the loss of authentic Indian communities.

Other evidence contested by the BAR includes the enrollment records from the Sherman Institute in Riverside, California in the 1930s and an Indian school in Chemawa, Oregon in the 1940s. The tribe argued that since several members enrolled in these two Indian schools, both institutions confirmed, approved, and identified them as part of the tribe. The BAR contended that there was no clear identification of their tribal affiliation—the records list their tribes as "Digger" and "Mission". These generic references, according to the BAR, did not refer to a specific tribal entity (ibid.:25-26). However, the use of these terms may have resulted from the negligence of the school administrators who did not care to document or recognize the exact existence of a particular tribe and community. Thus, a derogatory term and a generic regional term would suffice. As noted by Mark Myers, it is often the case that historical documents and census records fail to record particular tribal identifications; often, they fail to identify individual Indians as Indians, but instead as black or white (Myers 2001:280-281).

Lastly, the tribe mentioned that letters written by archaeologists in 1985 (although the BAR did admit that the tribe was identified since 1982, these letters were rejected as a basis of evidence) were addressed to "Members of the Muwekma Families"—as a form of tribal identification (BAR 2002:40). The BAR stated that this reference alongside other references of "Ohlone descendants" and an Indian "family" did not sufficiently identify "a larger Indian

entity” (ibid.:42). In this statement, the BAR seemed to imply that a tribe must be organized above the level of the family. Yet, for the Muwekma Ohlone Tribe, family has always been the core and underlying unit of the tribal community—as noted prior through the significance of marriage and ritual godparenthood. The importance of family was also demonstrated through the tribe’s desire to protect its burial ground and the burial remains of its ancestors. Overall, the arguments from the BAR, in regards to criterion (a), indicate that the tribe was not perceived as a cohesive social and political entity because it was not predominantly organized, socially or politically, above the level of the family. In other words, the tribe was too different from western standards of political organization to be recognized and made intelligible in the present. This difference, as part of the tribe’s imposed liminality, will be further emphasized and discussed in regards to criterion (c).

First, however, the other side of the tribe’s liminal identity within the process must be considered—of the tribe being perceived as intelligible and assimilated to the surrounding society and community. The tribe failed to meet the revised criterion (b) which required the tribe to demonstrate that it comprises a distinct community at present. As summarized by the BAR, much of the evidence demonstrated limited aspects of community that existed up until 1950 (citing cases of godparenting); most of the submitted evidence did not deal with the present day, which is the basis of the revised criterion (ibid.:99). The BAR argued that informal family gatherings, godparenting, and other activities performed by the tribe were done by only a small percentage of the tribe’s members as well as with non-Indians (ibid.:47). In analyzing the residential patterns of the tribe’s members, the BAR continued to argue that the community was not wholly unified—“the petitioner lived widely distributed in the southeastern San Francisco Bay/San Jose area *among several million non-Indians*. A residential pattern such as this one did

not allow the presumption that the members were in close contact with one another...” (ibid.:47-48, emphasis added). The BAR seemed to infer that a scattered Indian community could not exist among a surrounding non-Indian community—such a community would be too integrated and assimilated to stand on its own. As the BAR asserted, evidence of a distinct community may be proven at a particular point in time if “more than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the groups...” (ibid.:58). Exclusive territory control, isolated and presumably socially and culturally insulated from outside influences, operates as a proxy for proof of non-assimilation. Without this isolation, the tribe’s claims to an authentic Indian identity are questioned. Scholars such as Lorinda Riley have pointed out that the BAR/OFA tends to favor large, land-based tribes and tends to disfavor scattered tribal communities that lack control over a given territory in regards to criterion (b) (Riley 2013:650). Ironically, the federal government that failed to secure land for the many Indians tribes in California is now punishing the same tribes for not having a land base.

Despite the fact that the tribe was involved in certain sacred and secular ritual activities, in the obligations of godparenthood and the practice of Roman Catholicism, these practices did not constitute evidence of a distinct community. As stated by the BAR, cultural patterns that are shared among a significant portion of the group must be different from those of the surrounding non-Indian populace (BAR 2002:93). Thus, the BAR claimed that ritual godparenthood was not evidence of a distinctive community “because the network of godparenting relationships is not separate and distinct, is not under the control or design of the group, and is not different from the non-Indian population with whom they live, marry, and socialize” (ibid.:93). Interaction, as noted by the references to living, marrying, and socializing, with non-Indians seems to obfuscate the tribe’s distinctive Indian identity. Furthermore, the tribe’s overwhelming affiliation to the

Catholic Church served to discredit the validity of a distinct Indian community. Even if Catholicism was a key aspect of the tribal community, the BAR perceived it as a lack of necessary cultural difference—as evidence of cultural assimilation and integration into American society (ibid.:94). Essentially, the Muwekma Ohlone Tribe was not different enough—spatially, socially, or culturally, from the surrounding non-Indian society to be considered an authentic and distinctive Indian community.

The final part of the criteria that the tribe failed to meet was criterion (c). According to the BAR, there was insufficient evidence that identified political leaders or a governing body with political influence or authority over the tribe's members on a substantially continuous basis since 1927 (ibid.:139). No political action seemed to be taken on behalf of a larger Indian entity, beyond that of close family members (ibid.:101). Upon referring to a variety of sources, including Harrington's field notes and Kroeber's statements on the survival of Indian descendants, the BAR argued that no one had explicitly identified tribal leaders or a governing body (ibid.:104-106). In 1989, local newspaper articles did identify a leader of the tribe in contrast to articles from 1971 and 1972 which did not (local newspaper articles, however, are not usually viewed as knowledgeable sources in the BAR) (ibid.:106). This shift in recognition aligns with the tribe's formal reorganization into the Muwekma Ohlone Tribe in 1984—with a tribal council of elected leaders framed by a written constitution. It appears that, similar to the circumstances of criterion (a) where no tribal entity was continuously identified, the failure to recognize tribal leaders is due not to their actual absence, but due to the manner in which tribal authority is understood and acknowledged by western standards. After 1984, the tribe was politically intelligible to western standards of governance. In other words, prior to its political reorganization, the tribe failed to resemble post-1934 IRA-style tribes (Field 2003:89-90). As

previously discussed, the Indian Reorganization Act definitively established the jurisdictional sense of recognition while formalizing the structure of tribal governance. This reorganization supplanted informal consensus-based forms of government (Meyer 1999:233). Thus, the non-recognized tribes that maintained an informal government (after 1934) would not be legally legible within the expectations of the federal government as to what constitutes legitimate political authority. For example, among many Salish tribes in the northwest, political authority was not formalized, but rather based upon the influence of individuals knowledgeable in a particular skill or field (e.g. fishing or hunting). As is the case with the Muwekma Ohlone Tribe, informal leadership impedes on the tribe's attempts to be recognized—highlighting how the formal criteria of the recognition process “are in some cases inconsistent with customs of historic tribes” (Sweeney 2001:219). At best, these traditional customs were interpreted by the BAR as informal actions performed, among individual families, on an “ad-hoc basis” (specifically regarding the protection and maintenance of the Ohlone cemetery) (BAR 2002:115), devaluing their political import. Due to the tribe's informal, familial-based political organization (prior to its reorganization in 1984), the tribe was perceived as too different from western standards of political authority and governance.

Ultimately, the liminal identity imposed on the Muwekma Ohlone Tribe leads to its own dissolution. The tribe cannot be both different enough from U.S. society and culture and similar enough to western forms of political organization. The tribe cannot simultaneously exist in a mythical past, uncontaminated by American cultural and social influences, and in the modern world, fully acclimated to western standards of governance. Traditional, informal political governance and the importance of family as the basis of community entailed that the tribe was too different from the expectations of the government and society that bestows recognition upon

the tribe. On the other hand, geographic, social and cultural proximity to non-Indians marked the tribe as too assimilated, too similar to the government and society that wants to recognize the tribe's distinctiveness.

VI. The United Houma Nation

1. History

The United Houma Nation, presently comprised of over 17,000 members, resides in southern Louisiana, across several parishes, or counties, inhabiting secluded marshes and bayous. The tribe descends from the historic Houma Indians who were originally described by French explorers in the late seventeenth century; most notably in 1682 by René Robert Cavalier, Sieur de La Salle who documented the “Ouma” people located on the east bank of the Mississippi River, opposite of the mouth of the Red River and north of Baton Rouge (Davis 2001:479). The tribe interacted with several other tribal groups along the Mississippi, such as the Bayougoula, through alliances and intermarriage as well as through warfare (ibid.:478). The Houma also formed an alliance with the French who helped mediate a land dispute between the Houma and the Bayougoula—establishing the hunting land boundaries between the tribes by the placement of a red stick or pole (from which the city Baton Rouge received its name) (Miller 2004:159). Although the population of Mississippi tribal groups was severely diminished as a result of diseases introduced by Europeans, the tribe survived, often intermarrying with other diminished tribal groups (Davis 2001:478), and migrated south along the Mississippi River in the early eighteenth century in order to be closer to their French allies and further away from tribes allied with the English (Miller 2004:160).

In order to avoid British rule after the French and Indian War (ending in 1763), the tribe moved to the west bank of the Mississippi, which was then under Spanish control (Duthu 1997:421). As a result of colonial rivalries vying for the loyalty and support of the tribe, fissures within the Houma led to the establishment of several Houma communities with opposing tribal leaders (ibid.:421-422). There is no clear documentary evidence as to what happened to the communities or where the tribe migrated to and resettled. For the federal government, the absence of written records during this period marks the historic tribe's extinction (presumably through assimilation and disease), disrupting the ancestral link between the historic tribe and the present-day tribe, and thus, nullifying the tribe's acknowledgment claims (Miller 2004:161).

Oral traditions of the Houma, however, do explain that the tribe, or at least one of the Houma communities, migrated near present-day Montegut, a town just south of Houma, Louisiana on Bayou Terrebonne (or Terrebonne Parish)—an area that the present-day tribe continues to inhabit (ibid.:161). The tribe, led by Louis le Sauvage, was allowed to settle on this land due to Spanish land grants given to the tribe in the 1780s (Duthu 1997:423). In 1803, the United States acquired Louisiana through the Louisiana Purchase. Leaders of the Houma tribe met with the governor of the Orleans Territory, William C.C. Claiborne, in 1806 and 1811. The leaders, including one identified as chief Chac-chouma, were given uniform coats as presents. Oral tradition suggests that one of the other chiefs present was Louis le Sauvage (ibid.:424).

When confronted with U.S. Indian removal policies in the 1830s, the Houma strategically avoided detection and external identification as Indians. The tribe withdrew to isolated settlements, in undesirable and uncultivated swamps and marshes (Moberg and Moberg 2005:97). According to Houma oral tradition, Rosalie Courteau, niece of Louis le Sauvage, was an important leader for the Houma during this period, although influential family members also

held informal political influence in their respective communities (Duthu 1997:428-429). Likewise, traditional healers called “traiteurs” exerted informal influence and commanded respect (Miller 2004:174). Around the mid-nineteenth century, the Houma resided in several diffuse communities along Bayou Terrebonne, Bayou DuLarge, Bayou Petit Caillou, Bayou Pointe aux Chenes, Bayou Grand Caillou, and Bayou Lafourche (Duthu 1997:427). The Houma adapted to the isolated swamplands by relying predominantly on fishing and hunting. Interaction between the settlements was maintained through a system of canals or “trenasses”—the creation and maintenance of these canals was an important communal event. The preparation of tasso—stripping, smoking, and drying caught fish—was also an important communal and social event (ibid.:428).

In the early twentieth century, the tribe was visited by anthropologists, most notably by John R. Swanton who documented the tribe’s subsistence practices and recorded a small vocabulary of surviving words from the tribe’s traditional language. At the time, French was the predominant language among the Houma people and it continues to be important today (Moberg and Moberg 2005:97). While Swanton viewed the tribe as a mixture of various remnant tribal groups with Houma being the dominant element, another anthropologist, M. Raymond Harrington, who was writing in 1908, stated that the Houma were nearly extinct and lived like the white people near them without many surviving Indian cultural traits (Miller 2004:176-177). Similar to Kroeber’s statements regarding the extinction of Costanoan natives in the previous Muwekma Ohlone case, the claim of extinction coupled with the notion of assimilation must be contextualized within the methodology of salvage ethnography and anthropology in general. A methodology that adopts an essentialist framework of culture disallows the possibility of tribal continuity when faced with cultural change or assimilation. Continuity may only exist when a

culture is idealized in a timeless, unmoving past. Such logic continues to exist today—pervading the Federal Acknowledgment Process.

Due to the tribe's awkward racial identity (neither black nor white) in the binary racial classification system of the early 1900s in Louisiana, access to education for the tribe was limited. Indian children were prohibited from attending "white only" schools and the tribe refused to attend segregated schools for black children (ibid.:180). In 1913, Henry Billiot, a member of the tribe, took legal action in order to compel the local school administration to permit Indian children to white schools. In response, the school stated that Indians (specifically referring to Billiot's children) were "of the colored race" and thus, were unable to attend "white only" schools (Duthu 1997:430). Local non-Indian residents, noting the tribe's racial ambiguity, began referring to Houma individuals as "sabines"—a derogatory term implying that Houma people were the product of illicit sexual liaisons between blacks and whites (Miller 2004:180). With local resistance and discrimination towards the tribe's educational pursuits, the tribe turned to the federal government in order to secure funding. In 1931, the federal government dispatched Roy Nash in order to investigate the tribe and its claims. While acknowledging the tribe's Indian identity, Nash stated that the Houma people were of mixed blood with a small percentage of black blood. This would serve as justification in denying the tribe's educational demands (Duthu 1997:430). These statements were bolstered by the claims of the Terrebonne Parish school superintendent, Henry L. Bourgeois, who argued that the Houma were mixed bloods unfit to attend white schools, referring to them as "so-called" Indians (Bourgeois 1938). Still, anthropologists such as Ruth Underwood and Frank Speck supported and recommended federal aid for the Houma people.

Without federal support, the tribe had to rely upon missionary schools for education. In the mid-twentieth century, the state established an Indian school for the Houma within the Terrebonne Parish (Duthu 1997:431). By the early 1960s, Tom Dion, a member of the Houma, led the concerted effort to desegregate public schools in the area. Integration appeared to be the best option due to the substandard education provided at Indian schools (Miller 2004:187). In the subsequent court case in 1963, the tribe won, mandating the desegregation of the school system and allowing Houma Indians to attend. Spurred by their victory in court, the civil rights movement, and their participation in the American Indian Chicago Conference, the Houma people began to actively pursue their rights and assert their identity as an Indian tribe (ibid.:188). This political activism would lead them to petition for federal acknowledgment.

By 1972, the Houma Tribe was established with a formalized government. Houma members who were located along Bayou Grand Caillou felt underrepresented by 1974 and decided to break away and create their own political organization named the Houma Alliance (ibid.:189). Although the tribe was state recognized in the 1970s and received minor funds and services, most of the Houma people were illiterate and impoverished (ibid.:190-191). A survey done in the 1980s indicated that the median household income of the Houma was less than half of the state average (Faine and Bohlander 1986). Other studies reveal that around 50% of Houma members, specifically residing in Terrebonne Parish and Lafourche Parish, had incomes in 1989 that fell below the poverty level (Duthu 1997:433). Attaining federal recognition would ameliorate the tribe's state of affairs.

In 1979, the two Houma groups (the Houma Tribe and the Houma Alliance) decided to merge in order to more effectively pursue recognition; the United Houma Nation was formed. In that same year, the tribe sent its letter of intent to petition for federal acknowledgment (being one

of the largest groups, in terms of population, to petition through the Federal Acknowledgment Process). The United Houma Nation submitted its petition in 1985 and responded to subsequent letters of obvious deficiencies (technical assistance letters) from the BAR who wanted more historical documentation to verify the tribe's Indian identity. Ultimately, the United Houma Nation provided enough historical records and genealogical data to cover seventeen feet of storage space (Miller 2004:193). While waiting for the petition to qualify for active consideration, the tribe pursued an alternative path to federal acknowledgment—through legislation. Senator J. Bennett Johnston introduced a bill granting federal recognition to the tribe; however, as a result of opposition from oil companies fearing the loss of oil-rich land (land which would be reserved for the tribe if it became federally recognized), the bill never passed (Moberg and Moberg 2005:102-103). In 1994, the BAR released its proposed finding; it stated that the tribe did not meet the regulations for acknowledgment. Seventeen feet of evidence was not enough to prove the tribe's identity. After the tribe's rebuttal to the negative finding in 1996, no further action has been taken. A final determination has not yet been made.

2. Identity on Trial

According to the proposed finding, the United Houma Nation failed to meet three out of the seven criteria—criterion (b) that the group comprises a distinct community and has existed as a community from historical times until the present; criterion (c) that the group has maintained political influence or authority over its members as an autonomous entity from historical times until the present; and criterion (e) that the group's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. As previously mentioned, the tribe's acknowledgment claims were nullified by the BAR's contention that the historic Houma tribe

went extinct through intermarriage (assimilation) and disease in the late eighteenth century and thus, never migrated from the Mississippi River to the southern bayou areas where the current tribe resides (Miller 2004:161). Therefore, the three failed criteria must be prefaced by this perspective—the United Houma Nation is unable to descend from a historic tribe that went extinct and it is unable to maintain social and political continuity from an extinguished tribe. In other words, the United Houma Nation fails to meet criterion (b) and criterion (c) prior to 1830, prior to its migration and resettlement, and criterion (e) in general.

Regarding criterion (b), the BAR stated that the tribe did not migrate to Bayou Terrebonne as a cohesive group, but as individuals—mostly comprised of non-Indians (BAR 1994:7-8). Of the three main ancestral families to the modern tribe—Billiot, Courteau, and Verdin—the BAR argued that only one family was of identifiable Indian descent (and not necessarily affiliated with the historic Houma tribe). The Courteau family was associated with the Biloxi tribe; the Billiot family was of mixed ancestry—African-American and German Creole; and the Verdin family was mixed—German/French Creole and unidentified Indian (ibid.:9-10). The mixed racial ancestry of the founding families suggests that the tribe was not distinctive enough and already too assimilated to be authentic Indians—more European in cultural and social orientation than Indian (Miller 2004:168). Referring to the possibility of assimilation in this scenario, the BAR wrote, “Indian individuals and families also joined non-Indian society. Some Indians married non-Indian settlers. Others took on many of the customs of the new population. They were baptized. They learned and used the French language. They farmed and cared for domesticated animals. They held slaves. Some obtained land grants” (BAR 1994:8). The BAR implied that adopting European practices was incommensurable to an authentic Indian identity. Acculturation, however, was essentially inevitable and integral to the

histories of most tribes. Upon first contact with Spanish missionaries, the ancestors of the Muwekma Ohlone Tribe were forced into practicing agriculture and Christianity. Likewise, the ancestors of the United Houma Nation were in close contact with several colonial powers (most notably the French) which greatly influenced the tribe's settlement patterns and its alliances with other tribal groups. Still, the acknowledgment process prefers recognizing, in part, the ideal, mythical Indian stuck in a timeless past, uncontaminated from European influence.

Between 1830 and 1880, the tribe did meet the requirements of criterion (b) due to a particular regulation which allows tribes to meet the community criterion if it is shown that more than 50% of its members reside in a geographical area exclusively or almost near exclusively composed of members of the group (ibid.:11). This area "extended from just north of modern Montegut to Isle Jean-Charles on Bayou Terrebonne" (ibid.:12); its relative isolation allowed the tribe to maintain its necessary distinctiveness and difference from American society. As the tribe diffused into several different communities in the second half of the nineteenth century, the BAR presumed that the entire tribe across each community was no longer socially and politically connected (ibid.:13). Thus, the tribe did not meet the distinctive community requirement from 1880 to 1940, although individual Houma communities taken on their own could possibly meet the requirement (given their exclusive inhabitation of the area) (ibid.:14). By the mid-1940s, members of the tribe began to settle in urban areas for work which coincided with higher rates of exogamous marriage with non-Indians (ibid.:14). Although there was some evidence, after 1940, of group activity between communities (e.g. fishing and trapping), this does not account wholly for the entire tribe, especially the members residing in urban areas like New Orleans (ibid.:15). Therefore, the tribe failed to meet criterion (b) from 1940 to the present. Overall, the criterion was only met between 1830 and 1880. As in the previous case with the Muwekma Ohlone

Tribe, close proximity—spatially (in urban areas), culturally, and socially—to American society served to delegitimize the tribe’s Indian identity. The tribe’s mixed racial ancestry only further complicated and obscured its authenticity. The United Houma Nation was declared as too similar or too assimilated to non-Indian society and culture; or rather as not distinctive enough as American Indians.

If a tribe meets criterion (b) with sufficient evidence for a particular time period, the BAR admits that the tribe also qualifies for criterion (c) for that same time period. Thus, the tribe demonstrated political influence or authority over its members due to the tribe’s exclusive inhabitation in the bayou areas between 1830 and 1880 (*ibid.*:18). At the same time, however, the BAR disregarded the tribe’s oral tradition emphasizing the importance of Rosalie Courteau during that time period (*ibid.*:19). From 1880 to 1930, the BAR stated that there was no specific evidence detailing political influence or authority, despite Swanton’s ethnographic description as to the existence of leaders in the Houma communities (*ibid.*:20). Between 1930 and 1940, there was limited evidence of political leadership regarding the issue of segregated schools and the attempts to attain educational aid and funding through the federal government (*ibid.*:20). Lastly, from 1940 to the present, the BAR stated that there existed evidence of an informal, kinship-based system of leadership within the separate Houma communities—mostly comprised of “ad-hoc” leaders (*ibid.*:20-21).

Even with their formal structure of governance, since the 1970s, the BAR argued that very few people in the tribe were involved in political activities—meetings weren’t well attended and voting participation in tribal elections was also very low (*ibid.*:21). Low political participation does not necessarily imply a lack of political influence or authority, especially for a tribe that had recently adopted a new formal structure of governance. Consider the Upper Skagit

Indian Tribe (in Washington) who reestablished its system of government in the 1970s (shortly after the tribe attained federal recognition). In 1981, 124 individuals voted in the tribal elections, but in 1983 only 56 individuals voted (Miller 1989:92). Bruce G. Miller suggests that low political participation was in part due to a sense of disillusionment with the tribe's new style of government, which was drastically different from the tribe's traditional system of informal and consensual governance (ibid.:92). As tribes, recently recognized or pursuing recognition, struggle to operate within unfamiliar forms of governance, the BAR view traditional forms of informal, familial-based governance (Duthu 1997:428-429, 434) as insufficient evidence for criterion (c)—informal political leadership is merely “ad hoc” and too vague (BAR 1994:21-22). As previously demonstrated with the Muwekma Ohlone Tribe's petition, the BAR requires the petitioning tribe to fit the IRA model of governance—with formal bureaucratic positions filled by democratically elected leaders—even if the tribe under examination has never or only recently adopted a formal government. A formal tribal council organized through a written constitution is far more intelligible (to the BAR) than a system of governance perceived as informal, consensual, or “acephalous” (Evans-Pritchard 1940). In other words, the United Houma Nation's form of political organization, for most of its history since European contact, was not directly translatable into western understandings of political authority and governance. The tribe was too different, politically, from the expectations of the federal government.

Since the BAR held that the United Houma Nation did not descend from the historic Houma group, the tribe failed to meet criterion (e). The BAR further supplemented this decision by pointing out the racial mixture of the founding generation of the modern tribe. Most of the members of the founding generation were identified as non-Indian in contemporary nineteenth-century documents despite oral traditions ascribing their Indian ancestry (BAR 1994:25). As

mentioned in the Muwekma Ohlone case, contemporary records often fail to identify American Indians as such. They are likewise prone to contemporary racial biases. Louisiana's bifurcated racial classification system promoted the use of the derogatory term "sabine" to describe the Houma people. Local school administrators readily grouped the tribe with African Americans, imploring the Houma to attend the segregated schools for black children. Consider the identification of one Houma individual, Manette Renaud, across three different decades in the federal census. In 1850, she was identified as mulatto, in 1860 as Indian, and in 1880 as white (Miller 2004:171). With this much racial confusion, it is unlikely that Houma members were consistently and accurately identified as Indian.

Furthermore, the BAR declared that the only founding family who was of identifiable Indian descent was not affiliated with the historic Houma tribe; rather, the Courteau family was from the Biloxi tribe (BAR 1994:26). This neat ascription does not necessarily preclude the fact that the family was affiliated with the historic Houma people. As noted in the history section, tribes in the Mississippi area often merged and intermarried. The presumed tribal affiliation to the Biloxi "merely suggests the Houma accepted exogamous marriages, a common practice among pre-contact Native American societies" (Duthu 1997:426). The BAR concluded its argument by claiming that "the ancestral community represented Indian individuals separated from their tribes of origin who intermarried with *non-Indians* in the founding generation" (BAR 1994:27, emphasis added). From the perspective of the BAR, intermarriage with non-Indians operated as a form of assimilation (despite the fact that exogamous marriage was a tribal practice) and likewise, the tribe's racial ambiguity, as a result of this intermarriage, served to discredit the tribe's authenticity. In this sense, the tribe was perceived as both too similar to American society—through intermarriage and presumed assimilation—and too different from

the idealized image of the American Indian as one particular race—due to the tribe’s multiracial ancestry.

Throughout most of the proposed finding, the BAR denied the value and importance of the tribe’s oral traditions. This includes the identification of political leaders, particular ancestors identified as Indian/Houma (rather than non-Indian), and most significantly, the United Houma Nation’s ancestral connection to the historic Houma tribe. Ultimately, the failure to recognize the United Houma Nation stems from the BAR’s dismissal of the tribe’s oral traditions. Oral tradition tends to only be accepted as valid evidence when corroborated with tangible evidence—“the undervaluation of oral tradition biases the process towards Western ideas of what constitutes legitimate evidence” (Riley 2013:649). In James Clifford’s account of the Mashpee court case regarding land claims made by the tribe, the hierarchical authority of written sources of evidence over oral sources of evidence is made clear. The court case relied upon and valued literate over oral forms of evidence in order to reach a judicial decision (Clifford 1988:339). Clifford claims that there is a fundamental epistemic difference between literate and oral forms of knowledge. Oral histories recounted during the trial entailed many different voices recalling incomplete fragments of stories and memories of the tribe, often appearing contradictory. There was no single narrative, no objective truth to these oral histories—it wouldn’t be sensible to argue that an objective literate truth could emerge from these narratives. Yet, documentary evidence imposes an objective reading of history—the truth of the tribe’s Indian identity “had to exist or not exist as an objective documentary fact persisting through time” (ibid.:340). The documented truth of an Indian tribe has predominantly been in the hands of outsiders (ibid.:340). Even today, the truth of a tribe’s identity must be confirmed through the federal government and its acknowledgment process. For the United Houma Nation,

the absence of documented proof as to its ancestral connection to the historic Houma tribe implies that no connection objectively exists. Without documentary evidence, the tribe's own oral tradition, recounting its migration from the Mississippi River to the southern bayou territories, is devalued and ignored. This suggests that the tribe, relying upon oral tradition, is too different from western standards of intelligibility. The BAR is unable to directly translate oral histories into documented historical facts. As tribes rely upon their oral traditions, they are unable to meet western standards of legitimate evidence—they are perceived as too different and incomprehensible to American society. Alternatively, when tribes are consistently documented and recorded throughout time, they may be suspiciously viewed as already too assimilated, too integrated into American society.

The liminal identity imposed upon the United Houma Nation cannot be maintained. At times, the tribe appeared as too different from the expectations of the federal government—not assimilated enough to the political standards of American society or to the juridical standards of evidence that favors written sources of history over oral sources of history. At other times, the tribe appeared as too assimilated or as not distinctive enough from American society; the tribe was too integrated, socially and culturally, into the nation-state—through the presumed historical adoption of European values and a European lifestyle, geographic proximity to non-Indians as well as intermarriage with non-Indians.

VII. Conclusion

The plight of these two tribes, the Muwekma Ohlone Tribe and the United Houma Nation, in the Federal Acknowledgment Process reveals that the same stories on American Indian tribes and American Indian identities continue to be retold, as Clifford once remarked—

tribes are caught between a timeless past and an assimilative present. The recognition process appears as a scripted play that non-federally recognized tribes are forced to perform in. The scripts are handed to them from the federal government, albeit most tribes aren't given enough time to memorize their lines. The costumes, of headdresses, beads, and animal hides, are uncomfortably worn by the tribes. Suddenly, the play begins and the federal government spectates from the audience in order to judge the quality of the performance. The linearity of the story breaks down as parts of the play are performed out of order or simultaneously in a jumbled mess—the script demands that certain parts are played all at once. From this cacophonous mess, it seems impossible to recognize any semblance of meaning, any coherent sense of the tribe's performance. The audience's immersion is broken; they have seen this story performed thousands of times and are already aware of how it will end. The federal government is also no longer immersed in the story and the performance. The federal government becomes aware of the artificiality of the costumes, the stage, and the performance itself. In the end, the federal government is disappointed that the anachronistic fantasy—the story it wants to tell—collapses on itself. The immersive and seemingly magical, anachronistic, liminal space cannot be maintained when one is grounded in reality. The tribes, now perceived as failed performers, are dismissed from the stage; they disappear behind the curtain.

To put it more plainly, the liminal identity imposed within the Federal Acknowledgment Process—of difference from and similarity to the nation-state—fails to be maintained by the majority of tribes that pursue federal recognition. Tribes must be socially and culturally distinct from American society. Tribes must also be intelligible and assimilated to western standards of political governance and authority. One side of the imposed liminality places petitioning tribes in a mythical past, isolated from outside influences; the other side of the imposed liminality

places petitioning tribes in the present, influenced by and attuned to the political standards of western society. Petitioning tribes are unable to demonstrate that they exist within this anachronistic fantasy—as both prior to Euro-American contact and after Euro-American contact. Instead, petitioning tribes often appear as too similar or too assimilated (not different enough) to American society and too different (not similar enough) from American society. Thus, the Muwekma Ohlone Tribe and the United Houma Nation were both perceived as too assimilated due to their close proximity—geographically, socially, and culturally—to American society and non-Indians. These tribes also appeared as too different from the expectations of the federal government in regards to political authority and governance. Informal, familial-based forms of political organization do not legibly translate into western forms of governance—formal governments with democratically elected leaders framed by a written constitution. This difference was also witnessed in the federal government’s rejection of the United Houma Nation’s oral traditions—oral accounts of history that were too different, as a basis of legitimate evidence, from presumably objective, written forms of history. Ultimately, the Federal Acknowledgment Process is premised upon the same old stories on American Indian people—an eternal conflict between the past, resisting change, and the present, accepting such change.

The tribes themselves would like to tell an entirely different story. Compared to the federal government, American Indian people are far more aware that their identity isn’t necessarily predicated on an imposed liminality. The two sides of the liminal identity, distinctiveness and intelligibility/assimilation, need not be opposites that vie for control. Instead, both sides can exist harmoniously, not as an anachronism, but as a historical fact. American Indians are indeed American and Indian—this dual citizenship, for most native people, is not viewed as problematic (Biolsi 2005:251). It is, thus, perfectly sensible that the Seminole Tribe

of Florida, perceived as one of the most “traditional” tribes, was the first tribe to pursue tribal gaming and begin to accumulate wealth (Cattelino 2008:1). Likewise, it is possible for the Hopi Indian Nation to creatively integrate Hopi traditions into a western-style judicial court system (Richland 2008). The choice between entering the modern world and remaining in a mythical past doesn’t need to be made. A tribe’s own sense of identity may merely be the self-evident affirmation of its own history as well as its place in the modern world. This identity hardly needs to be stated or spoken, for it is already known and recognized by the tribes themselves. The Muwekma Ohlone Tribe continues to value the relationships between families and the responsibilities towards the ancestors of these families. The United Houma Nation continues to cherish its oral traditions over other historical accounts even when these oral traditions are questioned by outsiders. Essentially, the issue, of the Federal Acknowledgment Process, lies in the federal government’s non-recognition of these alternative and authentic tribal identities.

VIII. References

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