CONSTITUTING AN OSAGE NATION:
HISTORIES, CITIZENSHIPS, AND SOVEREIGNTIES

By

JEAN DENNISON

A DISSERTATION PRESENTED TO THE GRADUATE SCHOOL
OF THE UNIVERSITY OF FLORIDA IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

UNIVERSITY OF FLORIDA

2008
To my father, who pointed the way.
ACKNOWLEDGMENTS

In writing this dissertation I incurred many debts, most especially to those Osage who have allowed me to share their perspectives and histories. The early encouragement and patience of the 31st Osage Tribal Council, Julia Lookout, Leonard Maker, Katherine Red Corn, the Osage Government Reform Commission, Hepsi Barnett, and the Osage Language Department made this research possible. The stories told and questions asked by the general Osage population gave substance to this dissertation. To these people I will forever be in debt.

While at the University of Florida I was fortunate to find a group of professors and graduate students who have nurtured my academic growth. Dr. Peter Schmidt continually impressed me with his insights. His thoughtful reviews and questions kept me on track. Dr. Marilyn Thomas-Houston’s support during my 6 years at the University of Florida and her unwavering confidence in my abilities kept me at the University. Through their excellent seminars both Dr. Brenda Chalfin and Dr. Stacey Langwick provided me with the central theories that inform this dissertation. Without their guidance I would have been at a great disadvantage.

My fellow graduate students provided the other central components of my graduate education. The critical perspectives provided by Rob Freeman, Roberto Barrios, Lauren Fordyce, Jai Hale Gallardo and Scott Catey cannot be overstated. Scott spent many hours reading and commenting on my early chapters. His continued insistence led me to return repeatedly to the archival documents that play a crucial role in the stories I tell below. Because of our parallel paths through the research and writing stages of our dissertations Lauren provided the most important part of any graduate education: emotional and moral support.

My graduate studies and dissertation writing were supported by University of Florida fellowships. I received major grants from the National Science Foundation and Wenner-Gren to
conduct my research in Oklahoma during the Osage Tribe’s 2004-2006 government reform process. I offer thanks to the funding sources and to the people that helped make these great opportunities available. I would also like to thank my husband, parents, and grandmother, who all provided additional financial support throughout the graduate process.

This dissertation, in addition to being born out of a supportive community, good supervision, and funding, developed out of ongoing conversations among current scholars in the fields of Anthropology and American Indian Studies. From these discussions I am most indebted to Audra Simpson whose research, writing, and comments on my dissertation were my biggest inspiration. My conversations with and readings of Circe Sturm, Pauline Strong, Valerie Lambert, Kimberly TallBear, Lee Baker, Michael Asch, and Brian Noble provided additional resources for thinking through this material.

This dissertation benefited greatly from the editors who generously lent their time. Special thanks to Traci Yoder for her keen eye and quick turn around time, my mother Sally Dennison whose patience with my writing has helped me to succeed in academia, and finally, my husband Michael Ritter, who in addition to his constant patience and support during the research and writing stages of this project, spent six straight days helping me to tear apart and put the first full draft of my dissertation back together. Additionally, several Osage also thoughtfully reviewed the dissertation. In directing me to essential readings, as well as critiquing its weak points, Veronica Pipestem greatly assisted me with the final version. Priscilla Iba’s review of Chapter 6 flagged several of my errors as well as challenged me to further articulate both the successes and challenges of the reform process.

Lastly I would like to acknowledge the limits of this dissertation. While I strove to capture the complexities involved in the current Osage political situation, it must be recognized that
words can only convey slices of experience. In addition to being limited by the inexperience of my youth, it is simply not possible to write about, much less understand all of the vastly different and changing ideas surrounding Osage histories, citizenships and sovereignties. My hope then is that this dissertation is understood as a beginning.
# TABLE OF CONTENTS

ACKNOWLEDGMENTS .........................................................................................................................4

ABSTRACT.....................................................................................................................................9

CHAPTER

1 INTRODUCTION ..................................................................................................................10
   Approach to Research.............................................................................................................12
     Positioning Myself ...........................................................................................................12
     Moving from Reflexivity to Diffraction .........................................................................20
   Timeline ...........................................................................................................................23
   Evidence Collected ..........................................................................................................24
   Approach to Writing ...............................................................................................................25
     Mincing Words ................................................................................................................25
   Anthropology and the North American Indian .................................................................26
   Political Anthropology ....................................................................................................34
   Science Studies ................................................................................................................37
     Histories, Citizenships and Sovereignties .......................................................................40

2 MOVING TO A NEW COUNTRY: NEGOTIATING COLONIAL LIMITATIONS ........44
   Separation of Culture and the State ........................................................................................45
   Moving to a New Country ......................................................................................................51
     Trade Relations and Land Acquisition ............................................................................54
     A More “Workable” Government ...................................................................................59
   Leaving the Old Ways Behind ............................................................................................62
   Colonial Reworkings of Change ........................................................................................64
     The Battle Against Allotment ..........................................................................................65
     Incorporation and Termination .......................................................................................69
     Efforts Toward Reform .....................................................................................................73
     Leave It Alone .................................................................................................................75
   Debating the role of the Osage Mineral Estate .......................................................................81
   Conclusion ..............................................................................................................................87

3 THE FUNDAMENTAL POWERS OF BLOOD ...................................................................90
   BIA, CDIB, OTC, OGRC and Who Gets to Vote ...............................................................91
   The Dangerous Power of Blood ..........................................................................................97
     Historicizing Race ............................................................................................................97
     Racializing Indians through Science ..............................................................................99
   Mixing Blood in 19th Century American Literature and Science ..................................102
   Blood and Policy ...............................................................................................................105
   Colonial Impacts ...............................................................................................................114
Abstract of Dissertation Presented to the Graduate School of the University of Florida in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy

CONSTITUTING AN OSAGE NATION: HISTORIES, CITIZENSHIPS, AND SOVEREIGNTIES

By

Jean Dennison

May 2008

Chair: Peter Schmidt
Major: Anthropology

This dissertation examines the mapping of Osage nation building within the context of their 2004-2006 citizenship and government reform process. It is driven by three primary concerns: first, to study how the colonial situation created certain limitations on and possibilities for Osage citizenship and governmental formation; second, to follow the ways in which desires surrounding Osage identity and governance were created and changed through the reform process; and third, to record how the writers of the 2006 Osage Constitution navigated the conflicts arising from these histories and desires in order to create the new governing structure. My analysis integrates colonial policies, local histories, authorized and unauthorized stories about the reform process, biological “facts,” emotions and personal experiences. By recognizing the dynamic tensions from these different sources, my research promotes a detailed picture of how understandings of past, present and future are currently being debated among the Osage. One of the primary goals of this dissertation is to explore how American Indian populations today are negotiating colonialism and how these lessons might help us understand politics more generally.
CHAPTER 1
INTRODUCTION

Diffraction patterns record the history of interaction, interference, reinforcement, difference. Diffraction is about heterogeneous history, not about originals. Unlike reflections, diffractions do not displace the same elsewhere…Rather, diffraction can be a metaphor for another kind of critical consciousness…one committed to making a difference and not repeating the Sacred Image of Same. [Haraway 1997]

As I was walking into the Osage Tribal Council office, I decided to drop by and visit Julia Lookout. Julia had been my first contact within the Osage government when I began my research almost a year before and had been extremely helpful and encouraging about my desire to study the Osage’s government reform process. When I asked her how things were going, she responded with her usual “same ol’ same ol,’” but she was visibly frustrated. Before coming to work for Chief Jim Gray and the Osage Tribal Council (OTC), Julia had spent her career working for Fortune 500 companies, helping to create better business environments. She had frequently talked about her frustrations with the tribal council form of government and how its structure made any sort of planning impossible. I could see that she was busy, so I started to walk away, but she stopped me by saying, “And you wanted to be Indian.”

This led to an awkward pause where I was not sure how to respond; was it that simple, had I returned to do my research with my father’s tribe in order to avoid becoming white in the world of academia? Reading my thoughts she went on to say, “I always thought that I would grow up to be a white girl, but look at me back here dealing with all this. Jean, look at you now. You just could not stay away.” She then told me she was impressed with how I had stuck through the entire reform process, with all its drama. “I can hardly handle it most of the time,” she said, “but there is just so much work that needs to be done here” (Personal communication, April 19, 2006).
In the many conversations I had while doing my dissertation research on the 2004-2006 Osage reform process, it became clear that seemingly ‘solid’ categories, such as “white” or “Indian,” were continually in flux. To be white could mean having a certain biological make-up or it could refer to a lack of Osage community connection. For many Osage, deciding where to live and whether or not to work for the Osage Tribe was as much about identity as it was about employment. Rebuilding the Osage Nation after a century of federal control was not only about sovereignty and identity, but also about building a healthier community. Within the 2004-2006 reform process, it became impossible to explicate the internal and external debates about identity, sovereignty, nation building, and tribally sponsored community programs. If the Osage remained a tribe of around 4,000 people, whose elected leaders were primarily responsible for increasing revenues of the mineral estate – distributed in per capita payments to these select people – then the impact of the Osage tribe on the lives of Osage people was going to be held to a minimum. If, on the other hand, the Osage were able to create a nation that represented the 16,000 people descendant from the 1906 roll, with a government focused on building a whole host of programs including health care, language revitalization, education, and elder services, then other notions about being part of an Osage community became possible.

In December 2004, the OTC sponsored federal legislation (HR 2912) that lifted 98 years of direct colonial control, allowing the Osage people to once again determine their own citizenship and form of government. The federal government was no longer going to hold the Osage people under a resolution style government with its 4,000 shareholders, but what would take its place? As the appointed members of the Osage Government Reform Commission (OGRC) solicited opinions about the future of Osage citizenship and governmental structure, I was able to gather various ideas about what it meant to rebuild an indigenous nation in the early part of the 21st
century. This dissertation will explore these ideas in order to understand the ways in which histories, emotions, and experiences were hardened into the constitution adopted by the Osage people on March 3, 2006. Moreover, this dissertation will make sense of the motivations that led the Osage people to reconfigure the “Osage Tribe of Oklahoma” into the “Osage Nation,” and the implications this has for the Osage people and the colonial relationship more generally.

Approach to Research

Positioning Myself

Late one night in March 2004, I received a call from my father. He told me that up on “the hill” (the area in Pawhuska, Oklahoma where the OTC chambers and other offices of the Osage Tribe are located), there had been a lot of discussion about reforming tribal membership. I laughed and told him that people had been talking about reforming membership my whole life and most of his. He replied that this was different, and that the OTC had introduced a bill in the US Congress to finally settle the membership problem and Congressional field hearings had just been held in Tulsa. At these hearings, various people had argued that the Osage needed, like all other tribes in the continental United States, to be able to determine their own citizenship and form of government. It now looked like the U.S. House would soon pass the bill and send it on to the Senate.

My father, always scheming for ways to bring me back to Oklahoma, made a convincing enough case that night on the phone to get me back home for the summer. I had just finished my Masters at the University of Florida (UF) and was eager to start my dissertation research. I talked with the OTC and received their approval to do research, began doing interviews with the key players in the reform, and facilitated a youth video workshop where three Osage girls made a video about what it meant to them to be Indian today entitled How, We Are Present. For the 2004-2005 school year, I returned to UF, where I finished my coursework, wrote grants, and
took my qualifying exams. I was able to return briefly to Oklahoma in February 2005 to join in the celebration of Osage Sovereignty Day. During the celebration, I worked with the Osage Tribal Museum in order to record interviews of various Osage and what they wanted from the reform process. In May 2005, I was finally done with all my obligations in Florida and was able to return to Oklahoma full-time for my dissertation research.

When I attended my first Osage Government Reform Commission (OGRC) business meeting, I became concerned that the reform process might not be successful. There were thirteen months remaining before the next OTC elections were scheduled, and this suddenly seemed like an extremely short timeframe in which to write a constitution. It took the OGRC many months to begin working as a cohesive group or even toward a common goal. When I attended my first meeting in early May 2005, they had been together a little over two months but were still negotiating their relationships. They had also just recently acquired staff members and an office, so the process was just beginning in earnest. The conversations during my first meeting jumped from topic to topic with little coherence. When I introduced myself and the dissertation project I was hoping to do on the reform process, they seemed accepting, yet hesitant. They were still unsure of how the reform process should proceed and thus having another witness with a video camera (there was already one provided by the tribal museum) likely only added to their sense of being overwhelmed.

During this early period, I frequently had extra time between Tribal Council and Government Reform meetings. Occasionally, I would stop by and see an elder who worked for the tribe. Even upon first meeting me, she was very talkative, always telling intricately woven stories that frequently incorporated Indian politics, recent television programming, and Osage genealogies. About a politician from another tribe she said, “He is an apple Indian, red on the
outside, but white within,” meaning that while he looked Indian, his practices resembled a white man. She then asked me if I was a “Dennison Osage.” When I answered yes and told her who my grandfather was, she said that she had known him. She said that her grandfather had also married a white woman, but that even before that it was unlikely that her family had been full-blood Osage. “There were almost no Osage full-blood families after the French. My grandfather had sandy brown hair like yours, but he could speak Osage. People would come from all around to speak Osage with both my grandfather and my father, but I never learned much.”

This focus on the multiple strands of behavior, physical traits, and language/cultural proficiently continued to frequent many discussions during the reform process. My own heritage was occasionally brought up. Many people placed far more emphasis on my connections to the tribe through my father and grandfather than my seemingly disconnected phenotype of fair skin or lighter brown hair and eyes, at least in my presence. Since my grandfather had been an “original allottee,” meaning he had been listed on the 1906 Osage allotment roll, and had lived his entire life on the Osage reservation, most Osage saw me as an Osage, even though I could not under the old federally imposed structure participate in tribal politics. My father, who had inherited his father’s share in the Osage mineral estate, was an official member of the Osage tribe, having the right to vote and run for office. Under this existing system, it was not until his death would I inherit his share in the mineral estate and be able to vote in tribal elections.

As the reform continued, the commissioners and many of the other Osage involved in the reform accepted me (and my video camera) as part of the process. Because I attended OTC and other meetings as well as talked to many different Osage, I frequently could offer helpful information about what was going on around the reservation. It was also clear that as an Osage I hoped for the success of the reform process, so that I might be able to participate in tribal politics.
while my father was still living. This inside connection frequently gave me access to discussions I would likely not have had otherwise, at least not as quickly. Most likely this connection also kept some people from confronting me about doing my research. As one younger Osage told me during an OTC meeting, “You’re Osage, you have the right to write about this process however you want.” Of course, there were others who were concerned about how I was going to be using the information I collected, particularly during the meetings I recorded of the Osage Shareholders Association (OSA). Prior to each of the five meetings I recorded of the OSA, I would ask those in charge of the meeting whether or not it was okay if I recorded the meeting. I was repeatedly told that it was an open meeting and that it was often recorded for various reasons. During the first four meetings, nobody voiced any concern, so I continued to record the meetings. Many people in attendance knew about my research and told me that they were glad to have their opinions recorded.

By February 2006, the OSA, for reasons that will be discussed throughout this dissertation, was taking a strong stance against the proposed Osage Constitution. On February 26, 2006, various participants in the Shareholders association began to fear that their stance against the constitution was going to be used against them or their children who were employed by the Osage Nation. One woman had recently been fired from one of the tribally owned casinos and some of the shareholders were afraid this was because she had attended a recorded meeting about problems with the Osage’s gaming institutions held by the OSA. When I asked the woman herself, she told me that she thought she had lost her job because she was not willing to fall in line with the person who was running the casino (Personal Communication: February 26, 2006).
Because of the controversy, I suggested that the chair of the meeting open the issue of my filming for discussion among those in attendance. Because I was not recording the discussion, the following account was derived from my notes:

**Participant 1:** This is a closed association who pays dues and thus the information here is not open to the public.

**P2:** I might agree with you during our normal business, but what we are discussing today is public and I want a record of it. I want the council and the commission to see it.

**P3:** I agree that this is a private club, we have to pay $25 a year to be a part of it. Further, people will not feel free to talk if the camera is on.

**P4:** I would like to suggest a compromise. I think that she should record the four major presentations we have and then she can turn the camera off allowing people to have their discussion.

**P5:** There could be people who are singled out for their opinions. There have already been some repercussions of all the video that is being done.

**P6:** I want the council and the commission to hear what I have to say, but there are others who might not feel comfortable.

**Jean Dennison:** That is why I asked when I came in today if anybody had a problem with my recording. Let me back up a minute and tell you all why I am here. For those of you who don’t know me, I am currently doing my dissertation research on the Osage governmental reform process. This organization [OSA] is a very important part of that process, so several months back I came to one of your meetings. At that time Billy Sam was chairing the meeting and I asked him if anybody would have a problem with my recording. He said that it was an open meeting and that anything said there could be shared. I understand that he might have misunderstood that and I sure don’t want to get people into trouble or make anyone uncomfortable, so I am glad this is being put to a vote.

**P7:** Another option rather than being recorded could be having everyone who wants to share something write it down on one of these index cards.

**P4:** I make the motion that we allow her to film the first four recordings with the understanding that it is only for our use and for her own use and it shall not be shared with any third party.

**Jean:** I could make sure that any use of this material did not include anyone’s names and that the actual footage would not be shown.

**P5:** I second that motion.
P8: But now there are two concurrent motions on the floor. We need to vote on the first
motion, which was just whether or not we wanted recordings at these meetings.

P5: That was not the last motion; the last motion was just whether or not we wanted to
open up the issue for discussion.

P9: All those in favor of P4’s suggestion that she be allowed to film the first four speakers
and that the footage be for us and her to use, but that it should not be disclosed to any third
party please raise your hand…All those opposed.

There were no votes opposed to this motion, so I recorded the four presentations and then turned
off my camera. This was the only encounter I had during the reform process about my
recordings, likely because all of the other recordings were either voluntary (i.e. during a formal
interview) or were during public meetings. People who spoke during public meetings knew they
were going on record (not only my record, but also records being made by the OTC, the Osage
Tribal Museum, and/or the OGRC).

Another example of the sort of hesitation I occasionally encountered during my fieldwork
occurred while I was attending an OTC meeting. During the meeting, I sat next to a woman with
whom I had not yet had any interactions. She asked me about some of the video footage I had
recorded of the Osage Sovereignty Day celebration and then discussed how much last minute
work she had to do on their sons’ outfits for the yearly June dances. ‘Were you at the dances last
year?’ she inquired, and I responded that I had been. She then asked where I lived and I told her
that I was staying with my parents in Skiatook, a town about 45 minutes outside of Pawhuska
(the capital of the Osage Nation), which straddles the Osage reservation and Tulsa County.
Starting to show some frustration, she said, “To me you have an accent, an eastern accent.” I was
a little taken aback by this, but responded that I had gone to college in Ohio and married an
Ohioan. To this she expressed satisfaction; she had succeeded in placing my foreignness in an
understandable sphere. “It is an Ohio accent,” she said with authority. By continuing to study
me, she had eventually found a characteristic that marked me as partially outside the spectrum of the community (Personal Communication June 1, 2005).

The need to place a researcher, or anyone, within the spectrum of belonging is a fundamental part of constructing any community. During my research I was frequently situated as both part of and outside these boundaries, even within the same conversation. The more I explored these positionings, both my own and that of others, the more it became clear that few people were able to maintain a position of being completely “of the Osage community” at all times and within all spaces. During these frequent clashes over knowledge and boundary mapping, it was the very definition of the community that was at stake. Because the Osage, like all communities, is not only always in flux, but also defined differently from different subject positions, these discussions about who was entitled to claim belonging, and how much, were central to very establishment of a community. This dissertation is fundamentally an effort to explore these negotiations throughout the period of the 2004-2006 Osage reform process.

Whereas within the reservation categories such as “being Indian” or “being white” were generally acknowledged as fluid and consisting of a range of factors such as physical traits, biological relation, cultural involvement, language proficiency, and even one’s accent, outside the reservation these categories were far more fixed. While at school in Florida, I had occasional encounters with other graduate students who seemed perplexed with how to position me. While I “looked white,” I had a connection to the Osage community. A few people even questioned me outright about the sincerity of this connection and insinuated that its primary function was to give me better access to scholarships and grants. One of these encounters took place during my office hours after I had returned to Florida to complete my dissertation. In a conversation with two fellow graduate students, I mentioned that my father was actually registered by the federal
government as “incompetent,” meaning that the federal government managed any trust lands or funds he possessed. One of the students, whom I had only had occasional contact with, looked at me and said, “I did not know you were Native American. Is your father a full-blood?” I responded no, and explained that the Osage did not configure membership strictly along the lines of blood quantum, but by descent. The conversation then continued:

Grad student 1: So, did you father grow up in the area?

Jean: Yeah, and they live in the area now.

GS2: Do they live in tipi's?

All: Laugh.

GS2: Sorry, when I lived in Canada my friend who was an anthropologist took me to stay in a tipi.

Jean: Was the tipi where they lived or was this something they set up for visitors?

GS2: I guess it could have been just where we stayed. I think it was part of some festival. I am not sure where the people stayed.

GS1: So that makes sense. I knew you did your research there [with the Osage], but that would make sense with the funding. They would be like, of course. Now, where are my Yoruba roots?

Conversations of this kind, while not frequent during my graduate education, did occur on occasion. Another graduate student asking me about my background said, “but you don’t dress like an Indian.” Valerie Lambert (2007) has also written about the different perceptions of the categories of white and Indian on and off the reservation (see also: Sturm 2002, Garroutte 2003). According to Lambert, “The larger, non-Indian society treats the categories of white (or black) and Choctaw as mutually exclusive. In general, Choctaws do not” (2007: 200). Because I did not fit certain notions from popular film or elsewhere about what it was that constituted an Indian, including certain dress, skin color, or even living in a tipi, some people outside the reservation have a hard time accepting the authenticity of Osage connection. As this dissertation
will explore, such inquiries have long histories as well as important ramifications for the Osage reform process. In these ways, I was deeply implicated in all aspects of the 2004-2006 Osage reform process, but particularly with one of its central questions: Who is it that constitutes an Osage?

**Moving from Reflexivity to Diffraction**

The reflections just shared have become quite common within cultural anthropology and certainly have a place in terms of understanding how the process of knowledge production takes place. There is no doubt that my preexisting connection to the Osage tribe helped to frame the sorts of questions I asked as well as the sorts of answers I found satisfying. I do not begin my dissertation with these stories, however, to reveal any bias that underlies this dissertation. To do so would reinforce the idea that my “marked” experience is somehow less accurate than a more “neutral” perspective.

The ideal witness has traditionally been constructed within western scientific discourses as objective, neutral, and thus invisible. In order to really see how things are, one is supposed to ignore personal opinions and just translate reality “as it is.” However, as Donna Haraway (1997) writes, this space of objectivity is located in a deeply western, heterosexual, white, male perspective. Citing the Protestant English scientist Robert Boyle as one of the central models and forerunners of the paradigm of objectivity, Haraway argues, “Enhancing their agency through their masculine virtue exercised in carefully regulated ‘public’ spaces, modest men were to be self-invisible, transparent, so that their reports would not be polluted by the body…This is a crucial epistemological move in the grounding of several centuries of race, sex, and class discourse as objective scientific reports” (1997: 32). Boyle, whose laboratory experiments involved “gentlemen” witnesses, helped to establish the criteria around which one could remain unmarked and thus objective.
Those who do not fit the image of this “modest gentlemen” must frequently struggle to prove that their own point of view does not pollute neutral scientific observation. Rather than having the authority to witness, these marked individuals are understood as inherently subjective. “Colored, sexed, and laboring persons still have to do a lot of work to become similarly transparent to count as objective, modest witnesses to the world rather than to their ‘bias’ or ‘special interest’” (Haraway 1997: 32). In this way, the special interests of the white, protestant, heterosexual gentlemen were rendered as neutral, just as all other positions came to be marked. Embedded in the facts produced in these scientifically objective spaces are the perspectives of a very small minority of the population. In leaving such positions as unmarked, science has frequently reinforced the observations from certain positions as more real.

Reflexivity is often touted as the solution to this problem of self-invisibility. However, as Haraway goes on to point out, this “relentless insistence on reflexivity…[is] not able to get beyond self-vision as the cure for self-invisibility. The disease and the cure seem to be practically the same thing, if what you are after is another kind of world and worldliness” (1997: 33-34). Reflexivity often assumes that under the bias lies an inherent truth, which must simply be unearthed, thus hiding the multitude ways in which realities in the making consist of negotiated experiences. Rather than challenging the existing status quo, reflexivity works to reinforce it. Even as it refocuses the discussion on the “self” and the “subjective” rather than the “other” and the “objective,” it still maintains these binaries. Reflexivity has become a way of purging oneself of all the markers of subjectivity, rather than a way of understanding who it is that is able to claim objectivity and why.
As an alternative to reflexivity, Haraway presents diffraction. While her concept of diffraction is not completely developed, Haraway describes it most fully in reference to a painting by Lynn Randolph.

Diffraction patterns record the history of interaction, interference, reinforcement, difference. Diffraction is about heterogeneous history, not about originals. Unlike reflections, diffractions do not displace the same elsewhere…Rather, diffraction can be a metaphor for another kind of critical consciousness…one committed to making a difference and not repeating the Sacred Image of Same. [1997: 273]

In this dissertation, I will use diffraction, rather than objectivity or reflexivity as my central metaphor. Instead of trying to discover what it is that constitutes “Osageness,” or to reflect the idea of “Osageness” through my own experience, this dissertation looks at a broad range of evidence including colonial policies, local histories, authorized and unauthorized stories about the reform process, biological ‘facts,’ emotions and personal experiences in order to map out Osage nation building within the context of the 2004-2006 citizenship and government reform process. Rather than attempt to create a single lived reality surrounding the Osage, I follow the diverse ways in which various Osage incorporate differing ideas into their own notions of self and nation, creating multiple lived realities. These diffraction patterns complicate simple ideas of “Indian,” “Osage,” or “colonized,” focusing instead on the ways in which these categories are continually being negotiated. By moving the focus of anthropological writing away from a taxonomic approach, diffraction works to explicate rather than to generalize.

In a similar vein, Valerie Lambert (2007) writes that anthropologists should center their research and writing around key events. Using the writing of Sally Falk Moore, she calls for the study of “events that provide evidence of ‘the ongoing dismantling of structures or attempts to create new ones,’ that reveal ‘ongoing contests and conflict and competitions,’ or that expose the ‘complex mix of order, anti-order and non-order’ that characterize ethnographic realities” (11). The 2004-2006 Osage reform process was just such an event. By focusing on what is being
negotiated, rather than making generalizations about what “is,” the Osage reform process allows for a study of the Osage that avoids creating a homogenized and timeless picture. I work to understand the continuous production and negotiation of these categories. In doing so, my goal is to open up possibilities for an Osage future, rather than to foreclose a future by defining the Osage as encapsulated in a static past.

**Timeline**

In an interview I conducted with Osage Chief Jim Gray shortly after the passage of HR 2912 (a US law recognizing the Osage’ inherent right to determine their own membership and form of government), he explained how this law developed. During the 2002 OTC election, several of the candidates, including Gray, ran on a platform of changing the requirements for membership in the Osage Nation. When those running on this membership platform were elected for the next four-year term, the new tribal council felt it had a mandate to reform membership. They held community meetings and ultimately lobbied Congress for a bill that would not only allow for membership reform, but also reforms in the structure of government (Personal communication, December 29, 2004).

In February 2005, the OTC created the ten-member reform commission and set them the task of determining what changes the Osage people wanted for membership and government structure. Leonard Maker, the Head of Planning for the Osage Tribe, had spent the previous year developing a reform plan, which was to be implemented once the bill was passed. According to the Comprehensive Plan created by Maker and established as an ordinance by the OTC, the OGRC were responsible for: holding a series of community meetings; creating a webpage; circulating mailings in order to obtain citizen involvement; creating a questionnaire representing the information gathered from the public; and, then drafting a constitution that represented the majority opinions as expressed in the questionnaire. While the reform commission completed all
of these assignments, they also added a referendum\(^1\) election in November 2005 because they did not feel they had enough information from the questionnaire to draft a constitution. The final vote of the Constitution was held in March 2006, and elections to the new government were held in June.

**Evidence Collected**

From May 2005 until August 2006, I attended and video-recorded the weekly OGRC meetings as well as the bi-weekly OTC meetings. During this time, I also recorded 71 interviews with various people of Osage descent, including members of the OTC and OGRC, about what they wanted from the reform process as well as how they thought about the process. Additionally, the OGRC held 42 community meetings at various places on the reservation, in nearby cities, and in Texas and California, where Osage gave their opinions about what kind of government the Nation should have, how citizenship ought to be determined, and the problems they had with the reform process. I attended and recorded 34 of those meetings as well as talked informally with people about the reform process. I also attended and recorded five of the monthly meetings held by the Osage Shareholders Association, where many of the complaints associated with the reform process were articulated. Even when recording these meetings and interviews, I took extensive notes so that I might better understand the context in which these conversations were taking place.

The Internet also provided a central tool for following the reform process. On a weekly basis, I read and recorded the extensive information posted online through the Osage

---

\(^1\) While the election was called a referendum, its purpose was to allow people to agree or disagree with a series of options. The issues ranged from membership qualifications to the structure of the government. All of the options were supported by over 78 percent of the voters. Four of the questions presented two options, all of which had clear victories except question 8, which was split 48.4 percent to 51.6 percent. This was the only question that was not directly incorporated from the referendum vote into the final constitution. See appendix-c for a breakdown of the referendum vote.
Government Reform website, the Osage Shareholder website, and several other sites that had space devoted to the Osage reform process. I have continued to monitor these online forums for discussions on the reform process, which is still actively being debated over a year later. In order to provide a background to the reform process, I also completed extensive archival research at the White Hair Memorial Research Center and Tulsa University. I spent additional time in Oklahoma working with the Osage Language Department, the Osage Education Department, and the Osage Tribal Museum. These spaces provided an important backdrop to the reform process and offered alternative perspectives concerning the reform.

**Approach to Writing**

**Mincing Words**

Within the literature on American Indian communities, anthropological or other, there has been a long-standing debate about terminology. The term “Native American” arose as a reaction to the term Indian, which was seen as a colonial word beginning with Columbus’ supposed confusion about landing in India. When at all possible, it is certainly best to use tribally specific terms such as Osage or Choctaw, but sometimes it is important to refer to larger trends affecting indigenous people throughout America. I have chosen to use the word Indian, primarily because it was the word most commonly used within the Osage community. I will also use the word indigenous, which is beginning to grow in popularity. Similarly, I occasionally use the designation tribe, although the Osage refer to themselves more and more as the Osage Nation, because the word tribe is still in common usage. The term “tribal nation” helps to clarify when I am talking about American Indian nations, rather than nations more generally.

Tense is another common problem with which writers of anthropology frequently have to deal. Anthropologists have been strongly critiqued for their use of the “ethnographic present,” the use of the present tense to create synchronic times divorced from change. Present tense has
the ability to freeze cultures within a static time, ignoring changes that are constantly occurring. For this reason, most of this dissertation is written in past tense. The use of past tense is also problematic because American Indians have far too frequently been vanished to the past. My best solution to these problems has been to reference the specific period I am talking about, namely the 2004-2006 reform process. I will also occasionally switch into present tense in order to make the point that these are issues that are still important to Osage people today and will likely remain so into the future.

Because I was using a video camera throughout my research, most of the quotes within this dissertation are directly from transcriptions made of meetings or interviews. Only occasionally when I was not recording were the quotes taken from my notes. All quotes from interviews, meetings, and personal conversations have a date, and the community meetings are also referenced as to their location. When I am referencing a conversation that either happened informally or during a formal interview, I refer to it as a personal communication. Even though most people I interviewed did not request anonymity, I have only used the names of the major, public governmental figures to avoid any negative consequences that could result from being quoted.

**Anthropology and the North American Indian**

The earliest tendencies within anthropology were to collect, purify, and classify. Growing out of the field of ethnology, with its clear connections to social Darwinism, anthropology’s origins are rooted in the classification of the human races (Baker 1998). Located within driving distance from American universities and museums, North-American Indian populations were seen as a central link in understanding the evolution of humans from a state of primitive savagery to modern civilization. Lewis Henry Morgan’s interest in Native American social organization and ideas of progress inspired the discipline of anthropology. In his book *Ancient Society,*
Morgan argues that each culture represents a different stage of evolution and can be placed on a progressive evolutionary scale. For Morgan, every group goes through these various levels of development, each with its own distinctive mode of subsistence, in order to reach civilization. As he writes, “with the production of inventions and discoveries, and with the growth of institutions, the human mind necessarily grew and expanded; and we are led to recognize a gradual enlargement of the brain itself” (1877: 37). While such an approach clearly challenged assumptions about the fixed nature of race, it used research with American Indians to prove their inferiority.

In describing early ethnographers, Leah Dilworth (1996) argues that salvage anthropology grew out of desire not to save American Indian cultures from extinction, but to promote it.

These ethnographers believed anthropology was a science that could be an agent of social reform; by observing civilization at earlier stages of its evolution they could understand the nature of progress and use this knowledge to further the nation’s progress. They also felt their studies would provide answers to the “Indian problem,” which after the Civil War, seemed soluble by either “civilization or extermination” (24).

Dilworth goes on to say that Morgan’s ideas of cultural evolution “dovetailed nicely with notions of assimilation; it made the process of civilization seem inevitable and natural” (27). Through their research, these early ethnographers argued that American Indians were capable of being civilized, which was then used as a justification for allotment and other devastating federal programs. Anthropologists went about proving their hierarchies through the collection of thousands of pounds of American Indian material culture and thousands of pages of kinship charts, grammatical structures, and taxonomic descriptions of ceremonies. The goal was to create a record of these practices before they were gone, because even though the culture was assumed to be inferior, its study was seen as central to understanding modern civilization.

One consequence of this search for material to be categorized as authentically primitive was that early anthropologists frequently missed the political realities that were being negotiated
at the time of their research. In describing the work done among the Hopi in the late 19th century, Dilworth (1996) argues that even though complex debates about allotment that were taking place they were generally absent from early anthropological accounts. “Even though ethnographers were working at Hopi amidst these political and social conflicts, this information was, for the most part, absent from Fewkes’s and other ethnographic accounts…These scientists were interested in the essential Hopi…they were interested in formulating theories about humanity as a whole” (29-30). Instead of focusing on lived experience, these early anthropologists were interested in snippets of culture that could be collected and then displayed (through books or exhibits) as part of their argument for the existence of a hierarchical schema.

An early example of how collection and classification was put to use is the World’s Columbian Exposition, held in Chicago in 1893. Following the lead of a series of expositions starting in 1851, the Columbian Exposition set out to show the "natural conditions" of all the people inhabiting America before Columbus arrived, and to promote the spread of humanity and civilization across the continent (Hinsley 1991: 347). The goal of the organizers, including anthropologists, was to "establish a baseline against which to measure civilized progress" (Hinsley 1991: 350). For Marilyn Ivy (1995), ‘being modern’ often requires this “emergence of ‘tradition,” because “progressive history” has to be measured against some sort of background (5). Further, the ‘modern’ concept of the nation-state also requires such a baseline. As Benedict Anderson writes in *Imagined Communities* (1983), “If nation-states are widely conceded to be ‘new’ and ‘historical,’ the nations to which they give political expression always loom out of the immemorial past” (11-12). In the case of the Columbian Exposition, the United States was a young country and thus needed to connect itself with an immemorial past, something the historically located ‘native’ was made to provide.
The organizers of the Columbian Exposition, however, did not stop with the creation of this pristine native. They also turned this ‘native’ into an object for ‘modern’ consumption. In setting up the exposition, for example, it became crucial to demarcate the visitor from the performer with a physical boundary, because it was felt that "where the gaze can be returned, specular commerce becomes uneasy" (Hinsley 1991: 358). For Hinsley, this detachment was further strengthened by the payment of an admission fee. "The process of commodification," Hinsley argues, "rested on the premise that at the bottom everything is for sale and everyone has a price–that the world, no matter how bizarre, is reducible to cash terms" (1991: 362). By creating the ‘natives’ as static in time and making them into a commodity, the organizers of the fair established objectification as a potent way of dealing with other cultures.

This objectification was extremely potent in shaping not only the imaginations of the American people, but also the policies of the federal government toward American Indian populations (not to mention the parallel processes occurring with African Americans and other “non-whites”). In talking about the three “founding fathers” of American anthropology, including Daniel Brinton (1837-1899), John Wesley Powell (1834-1902), and Frederic Ward Putnam (1839-1915), Lee Baker (1998) argues, “Each of these men articulated an evolutionary paradigm imbued with ideas of progress and racial inferiority. In turn, politicians and others within specific institutions used these or similar ideas to justify the oppression of people of color” (52-53). For American Indians, this era of the founding of anthropology was closely linked to the federal government’s policies of allotment, termination, and assimilation (forced education, the criminalization of religious and cultural practices, and the onslaught of missionaries within their territories). For the Osage, this period involved the loss of over a hundred million acres of land, the destruction of two governing systems, and a complete change
in lifestyle with the imposition of allotment. There is no doubt that early anthropologists played an important role in the colonial oppression of American Indian peoples, both by ignoring oppressive policies in their writings as well as by offering justification for federal policies through their salvage techniques and evolutionary classification systems.

In the early twentieth century, as anthropologists began to take a more critical stance toward cultural evolution and the hierarchies of early anthropology, they tended to embrace cultural relativism. Thomas Biolsi (1997) describes Margaret Mead, Ruth Benedict, and Edward Sapir’s version of relativism as “‘intergrationist’ relativism.” “In this view, a culture is an integrated, coherent whole, which is greater than the various shreds and patches that make up its parts. Furthermore, the world is filled with an array of distinct cultures, with discrete boundaries, not unlike species” (Biolsi 1997:136). While this approach allowed anthropologists to move away from racial hierarchies, it was still dependent on the problematic approach of classification. If there were boundaries around a culture, then there were also points at which cultures ceased to be coherent and thus became inauthentic. In discussing the work of anthropologist Haviland Mekeel (1902-1947) among the Oglala Lakota of the Pine Ridge reservation, Biolsi argues that just such a problem developed: “The cultural relativist apparatus generated a severe classificatory problem for Mekeel in which most Oglala people and most of what they thought and did in the real world of the reservation could not appear authentically Indian” (136). Instead of trying to understand the complex realities that were being negotiated within the colonial situation, Mekeel and other anthropologists attempted to purify and categorize. By searching for the least polluted group (i.e. the group that had had the least contact with white people or culture), these anthropologists not only reinforced very particular images of
what it was that constituted an Indian, but also worked with government agencies to force these ideas back onto Indian populations, through citizenship criteria and/or governmental structure.

Mekeel, for example, was hired by the Applied Anthropology Unit of the Office of Indian Affairs (OIA) in 1935 to help draft tribal constitutions for the Pine Ridge and Rosebud reservations under the provisions of the Indian Reorganization Act. As Biolsi explains, “Mekeel and the superintendent insisted that the *tiyospaye* was the only appropriate form of political organization for the Lakota, and that other units of organization—those being demanded by many Lakotas, for instance—represented inappropriate forms resulting from the effects of reservation life and the breakdown of aboriginal organization (1997: 149). Ignoring not only the requests of the indigenous populations, but also important preexisting arrangements within the Treaty of 1868, these constitutions gave substantive shape to anthropological desires to purify the people they encountered into their models of the primitive past. As Biolsi notes, “Thus did a powerful anthropological vision of the primitive help construct, not just an idea about the Lakota, but one of the very real, very material, colonial structures through which the Lakota would be allowed to be Lakota in twentieth-century American—their official tribal government.” Ultimately, these desires by early anthropologists to collect, purify, and to classify have had real and devastating impacts on American Indian populations.

Reacting to these unsatisfying encounters with anthropologists, American Indian communities began closing their doors. In 1970 Vine Deloria, Jr wrote:

> Behind each policy and program with which Indians are plagued, if traced completely back to its origin, stands the anthropologist. The fundamental thesis of the anthropologist is that people are then considered objects for experimentation, for manipulation, and for eventual extinction… Not even Indians can relate themselves to this type of creature who, to the anthropologists, is the “real” Indian. Indian people begin to feel that they are merely shadows of a mythical super-Indian. [81-82]
Within this passage, Deloria brings up three central issues with the role anthropologists have too often played in the lives of American Indian people. The anthropologist’s research not only objectifies the Indian, but is also responsible for programs that have aided the federal government in their colonial project to control, transform and eventually annihilate Indian populations. Additionally, anthropologists have used their tools of collection, purification, and generalization to create a “mythical super-Indian,” which not only does not exist, but also makes many Indian people feel inauthentic.

In the last thirty years, anthropologists have increasingly responded to these critiques, moving away from the insistence on purification and categorization toward understanding the complex dynamics at work within current Indian communities. Instead of trying to purify the people and situations in which they come into contact, recent anthropologists have attempted to understand issues that are important to Indian populations. Thomas Biolsi and Larry Zimmerman’s 1997 edited volume *Indians and Anthropologists: Vine Deloria Jr., and the Critique of Anthropology* investigated various anthropologists’ response to Deloria’s critiques. In their introduction, Biolsi and Zimmerman argue, “What will ultimately be required for us [Indians and Anthropologists] to get along is not new theories, paradigms, discourses, or texts (no matter how critical they might be), nor new sensitivities and ethical stances on the part of anthropologists (no matter how progressive they might be), but a change in the social relations of scholarly production within the academy” (17). By this, Biolsi and Zimmerman mean that research should stop reflecting the agendas of the establishment (whether that be the federal government, academia, or the colonial project more generally) and to start building collaborative relationships with indigenous communities that engage the issues these communities find of central importance today.
As Biolsi and Zimmerman point out, this is not a simple project. In addition to a shift in focus, a significant change would also require a modification of institutional protocol: “To change the content of what anthropologists do, we will have to develop new criteria of promotion and tenure, for example, in which outreach and service to American Indian constituencies count as much, if not more than, traditional scholarship” (1997:17). Another component Biolsi and Zimmerman cite as central to moving away from the colonial relationship between American Indians and anthropologists is the structural change in the relationship that keeps American Indians outside of academia. In the ten years since this publication, this structural relationship has slowly begun to change. More and more North American Indians are entering academia, gaining training in anthropology, and writing on issues of central importance to their own communities. Audra Simpson and Valerie Lambert are two central examples.

Simpson works with the Kahnawake Mohawk focusing on narratives of self, home, and nation. She writes, “The culture and issues of native peoples can best be examined in terms of the lived experience of nationhood. In order to appreciate that experience, one must take account of the shared set of meanings that are negotiated through narrations--through the voices and structural conditions that constitute selfhood” (2000: 126). Rather than attempting to categorize Kahnawake practices into bite size chunks or purify Kahnawake culture down to some fundamental essence, Simpson focuses on a plurality of experiences and narrations. She analyzes the “utterances, conversations and discourses that work in concert to shape the collective fate of the community and enable forms of recognition and membership within the polity of Kahnawake” (2003: 11). Instead of ignoring the ways in which settler state politics are at work within the lives of Kahnawake people, Simpson understands these colonial politics as a crucial, although hardly all determining, aspect of her research. Rather than seeing Kahnawake
identity as something that simply is, Simpson works to understand the various local and colonial factors involved in these negotiated processes of internal and external recognition.

In a similar vein, Lambert focuses on the “ways by which living Choctaws are exercising Choctaw tribal sovereignty” (2007: 15). In order to do this she looks at how tribal history, local political movements, economic development, election politics, race, identity, and relationships with the state of Oklahoma and the federal government are all interwoven within the daily practice of Choctaw sovereignty. Like Simpson, she refuses to freeze Choctaw identity or nationhood as something static, but instead understands them as “sufficiently flexible and polysemous that they can be selected, assembled, and deployed in different ways and with different meanings at different points in time...[They] are not fixed, but are best understood as claims that are negotiated and renegotiated, institutionalized and reinstitutionalized, over time” (2007: 10). By shifting the focus from purified culture to contested politics, both Lambert and Simpson avoid many of the shortcomings found within earlier anthropological studies of the American Indian. Instead of ignoring the issues of central importance to indigenous people today, both Lambert and Simpson meet these issues head on. These two authors thus provide a central orientation for my treatment of the Osage.

**Political Anthropology**

Because of these early approaches, anthropologists and political scientists have been slow to recognize American Indian populations as having sophisticated political structures, much less the status of nations (Mair 1977). Reacting to these histories, Simpson (2000) makes the argument that, “much like the nationhood of western states (which we will take to be the analytic norm and proceed to problematise), the nationhood of indigenous peoples is made from the bare parts of consciousness and history. However, unlike the nationhood of western states, the nationhood of indigenous peoples has been bifurcated and disassembled with global processes of
colonization” (116). Simpson, unlike earlier political anthropologists engaging indigenous populations, sees the nation not as a category that groups either do or do not fit within, but instead recognizes the importance of the discourses active within the communities themselves. Various people across the world now refer to themselves as nations, even when they exist within larger nation-state systems such as the United States and Canada. Denying that these groups fit some category of the nation-state does not help us understand this phenomenon better. Instead, Simpson outlines a productive approach to the nation, arguing that it is “a collectively self-conscious, deliberate and politically expedient formulation and a lived phenomenon” (2000: 118).

Within the field of political anthropology, there has been a recent move toward understanding governmental formations less in terms of defining political institutions, creating concrete categories, or labeling regime shifts. Political anthropologists are moving away from defining the boundaries around terms such at the nation and instead focusing on the “local meanings, circulating discourses, multiple contestations, and changing forms of power” (Palay 2002: 469). In this way, Julia Paley (2002), Philip Corrigan and Derek Sayer (1985), and William Roseberry (1994) have called for a political anthropology that sees governments as enacting a form of power that is “not a shared ideology but a common material and meaningful framework for living through, talking about and acting upon social orders characterized by domination” (Roseberry 1994: 361). Rather than seeing the nation as a particular set of political practices, this approach focuses on the processes at work within governing institutions. I build upon this approach to political processes by examining the Osage constitutional reform as a moment in which local debates about power are negotiated through particular limiting
discourses, including U.S. governmental policies, differing local understandings, and conflicting ideas about history, biology, and relation.

Duncan Ivison, Paul Patton and Will Sanders (2000) explicitly explore the relationship between political theory and the rights of indigenous people. Rather than creating a static definition of sovereignty involving its connection to the nation-state system, these authors attempt to understand how the concept of sovereignty is being mobilized within indigenous communities, a subject I explore at length when asking how the Osage envision sovereignty. Ultimately, these authors argue for “a more context-sensitive and multilayered approach to questions of justice, identity, democracy and sovereignty. The result would be a political theory open to new modes of cultural and political belonging” (21). Rather than making assumptions about colonial politics or what has been “forced” on indigenous populations, this perspective provides another alternative: focusing on political belonging in the making. By looking in depth at government building among the Osage, it is possible to understand the complexities involved in questions of politics and justice in Native North American today.

Lambert (2007) also provides an important approach to political anthropology among indigenous groups. Arguing against the work of political theorist Ernest Gellner, Lambert discusses how nation-building projects are not necessarily homogenizing. She recognizes that for the Choctaw there were some limited homogenizing effects, but there is also a process of pluralization at work: “While exploring ethnographically a set of key principles of informal Choctaw political organization, I identify and describe the production of difference that emerged during and through the tribal electoral process” (Lambert 2007: 13). Specifically, she looks at how the election created three dividing lines among the Choctaw, including employment by the tribe, residence within the reservation territory, and a blood quantum. Similarly, I explore the
limitations within Gellner’s traditional thesis of homogenization, arguing that the Osage Nation-building process maintained and strengthened older divisions among the Osage, including the shareholder/non-shareholder and blood based divisions as well as worked to create new divides between those supporting and not supporting the 2006 constitution.

Science Studies

The third body of literature I draw from is science studies. While only a small part of my dissertation includes the study of science, these approaches underpin my entire research project. Scholars such as Joseph Dumit (1997), Sarah Franklin (1997), Donna Haraway (1997), and Bruno Latour (2000) have resisted the notion of the “ideal witness,” constructed within western scientific discourse as objective, neutral, and thus invisible. Instead of trying to discover an ultimate “Truth,” these authors create new ethnographies that use variously situated perspectives in order to expose the boundaries that get made around nature, culture, objects, subjects, and science. These authors work against the traditional approach of discovering what “is” and instead attempt to trace out the ways in which realities take shape.

Franklin (1997), for example, uses this approach to understand the desires surrounding in-vitro fertilization (IVF) in England. Franklin uses variously situated perspectives such as historical accounts of conception, interviews with women from Britain during the Thatcher period, debates in the British Parliament, and popular media representations to show how hopes for a naturalized family become intertwined with conceptions of scientific progress, Darwinian understandings of nature, consumerist technology, and patriotic perceptions of citizenship. Like most of the theorists within science studies, she is careful not to write off these technologies as either all good or all bad, but presents these discourses as heavily embedded within a complex network of desires. By looking at the various discourses in which these discourses are put to work, Franklin is better able to understand how “realities in the making” are taking shape around
IVF. Similarly, I combine personal discussions, message board postings, newspaper articles, Osage legislation, community meetings, formal interviews, court rulings, Oklahoma regulations, origin stories, competing histories, biological ‘facts,’ and participant observations during the writing of the 2006 Osage constitution in order to understand the interlinking process surrounding indigenous nation-building in the 21st century.

Joseph Dumit’s approach to science studies has also greatly shaped both the kinds of questions my research asked and how I present my written representation of nation-building among the Osage. In particular, I have been influenced by his understanding of “objective self-fashioning,” the process whereby “we take facts about ourselves—about our bodies, minds, capacities, traits, states, limitations, propensities, etc.—that we have read, heard, or otherwise encountered in the world and incorporate them into our lives” (1997: 89). This understanding of identity allows me to witness the ways in which the facts surrounding sovereignty and biology “never travel alone,” but are laden with stories, experiences, authorities, and definitions of human nature. Throughout, I build on Dumit’s ideas about self-fashioning to better understand the ways in which various Osage made sense of self and nation during the 2004-2006 Osage reform process.

Bruno Latour also contributes significantly to the field of science studies and my approach to anthropology. In one publication, he writes about how it became possible for Ramses II to be diagnosed with tuberculosis three thousand years after his death, when the disease was only discovered as existing in the 19th century. Latour (2000) writes, “Koch bacillus can be extended into the past to be sure…but this cannot be done at no cost. To allow for such an extension, some work has to be done, especially some laboratory work. The mummy has to be brought into contact with a hospital, examined by white-coat specialists under floodlights, the lungs X-rayed,
bones sterilized with cobalt 60, and so on” (249). What Latour points out as interesting about the
diagnosis of the Ramses II’s body is not so much that it is a rewriting of history to match present
scientific understandings, but that there is a host of apparatuses and concepts that must be
utilized in order for this to happen. In other words, the ‘facts’ of tuberculosis can’t exist without
these technologies, and these technologies cannot travel back in time. “For technology,” Latour
points out, “objects never escape the conditions of their production” (2000: 250).

This approach allows me to better investigate the biological elements of Osage citizenship.
Rather than seeing blood as simply a bodily substance, I view it as an institution. As Latour goes
on to say, “When a phenomenon ‘definitely’ exists this does not mean that it exists forever, or
independently of all practice and discipline, but that it has been entrenched in a costly and
massive institution that has to be monitored and protected with great care” (255 emphasis
added). These institutions are anything but static, for there are many forces that must constantly
work to maintain them as realities.

This study, then, is about the mapping of various institutions including: colonialism, Euro-
American blood, Osage blood, sovereignty, and community based reform. I investigate each of
these institutions by looking at the various ways in which they were talked about, the various
objects, subjects, and histories that were brought into these debates, and how they manifested
within the 2006 Osage Constitution. Within each chapter, I inquire into one of these institutions,
examining the forces that go into its maintenance, those that are trying rework it or completely
tear it apart, and perhaps most importantly, how these institutions were being circulated during
the 2004-2006 Osage reform process. Like Haraway’s diffraction, science studies provides an
approach to American Indian studies that does not take categories for granted, but instead
follows the ways in which they are created and negotiated.
Histories, Citizenships and Sovereignties

In order to examine nation-building among the Osage, I investigate the debates about history, citizenship, and sovereignty that surrounded the 2004-2006 Osage reform process. Central to this story are the obstacles that colonialism imposes as well as the difficulties faced within community-based reform efforts. Chapter Two focuses on how the Osage have negotiated their colonial relationship with the United States government and examines how various Osage have dealt with the colonial process. While some people have become afraid of change because of its connection to the federal government’s policy of termination, others have continued to embrace earlier ideas of “moving to a new country.” For these latter Osage, even drastic change is seen as something inherently part of what it means to be Osage, rather than something that destroys Osage identity. In looking at these debates about change, this chapter focuses on the colonial histories that are told about the Osage, how these histories were discussed during the reform process, and ultimately how these histories are negotiated in order to fashion particular Osage identities. It becomes clear that various histories were mobilized throughout the reform process in order to argue for very specific ideas of what the future of the Osage nation should entail.

Chapter Three lays the foundation for my discussion of Osage citizenship and blood-based ideas about belonging. In addition to focusing on many of the central debates about citizenship during the 2004-2006 Osage reform process, this chapter also takes an in-depth look into the histories surrounding blood within Euro-American understandings of race and biology. Through the circulation of racial notions in science, literature, and federal policy, some Osage have internalized race-based classification systems, even as they turned these systems on their head. Rather than devaluing Osage blood, these colonial understandings of race are used by some Osage as a way of asserting their own authority to claim Osage identity and others’ lack of
authority. Within these assertions about the importance of blood is certainly an element of colonial-based fear. Without these racial markings, some Osage fear that the federal government will cease to recognize them as Indians. This chapter speaks to the power of colonial discourses as well as the Osage power to rework these discourses, empowering themselves and their own ideas about what constitutes an Osage.

The discussions I present in Chapter Four further complicate the more over-determined elements of Euro-American notions of blood. Rather than merely inverting the racial hierarchy, many Osage completely reworked blood as a means to create a connection among the Osage, rather than as a means to exclude. By investigating the specific histories surrounding Osage adoption and Osage understandings of blood, this chapter explores the racial undertones within discussions of blood. Rather than defining citizenship by residence within a defined territory, Osage blood-based understandings of connection allow for a more inclusive approach to determine belonging. Ultimately, the very act of having to create such strict ideas of what it is that constitutes a citizen illustrates the power of the current world system, with its insistence on strictly defined nations and populations.

Within Chapter Five I will provide insight into the larger context in which the Osage reform process took place. Debates about sovereignty were central to the reform process along with other negotiations taking place about how the government and the citizenship criteria would be structured, and they will continue to be a central aspect of Osage nation-building. I investigate both the concept of sovereignty itself, some aspects of its history, and how the Osage were using it during the first part of the 21st century. Rather than the exclusive or even supreme authority to control everything within a territory, Osage and other American Indians are now fighting for what can better be understood as layered sovereignties. While some people might
find the term layered authority to be more appropriate, in this chapter I illustrate the historical reasons the term sovereignty has become so important. I then examine negotiations between the Osage Nation and the State of Oklahoma, in which this sovereignty was being determined. The debates about tobacco compacting with the State of Oklahoma provide an important illustration of the processual nature of American Indian sovereignty today. I conclude with an investigation into how the 2006 Osage Constitution addresses issues of sovereignty and some of the immediate backlashes from non-Osage to these claims to authority within the Osage reservation after the passage of the Constitution. These investigations reveal that Osage claims to sovereignty are no different from any other claim to sovereignty across the globe. Sovereignty is always a negotiated process.

Chapter Six addresses the problems that developed during the Osage community-led government reform process. In addition to talking about the structure of the 2004-2006 Osage reform process and the major complaints voiced about the process, the largest challenge to community-based reform is that it is inherently political. Those who had the most to gain, including myself, supported the process, while those who had the most to lose, primarily members of the Osage Shareholders Association, tried hard to stop the process. While there were other forces at work, it is clear that many of those who do not support the current administration also do not support the 2006 Constitution. It is also evident that no reform process is ever complete, that these matters will continue to be negotiated among the Osage.

This dissertation is ultimately about a particular moment in the colonial relationship between the Osage and the U.S. government. After a hundred years, the Osage have once again asserted, and had acknowledged, their right to determine their own citizenship and form of government. In order to understand the various forces at work within this moment, I have
outlined a range of histories. These histories include stories of Osage governmental organization, colonial relations, federal policies, blood, adoption, citizenship, sovereignty, reform, and, perhaps most tenaciously, negotiation. I have also paid particular attention to the ways in which various Osage were talking about the reform, what it meant to them, and what they envisioned for the future of the Osage Nation. Central to my story are the uneven ways in which the Osage people have interacted with the colonial process. Some Osage feared this change, worrying that it was just the latest attempt to destroy the mineral estate, which they viewed as the fundamental core of the Osage. Others were hesitant, worrying that a hundred years of colonial control had rendered the Osage no longer fully capable of self-management. Still other Osage saw this moment as one of the great “moves to a new country,” signally that change for the better was on its way.

Through this study I offer anthropology, political science, and American Indian studies several lessons. Perhaps most importantly, this study acknowledges the uneven nature of the colonial relationship as well as the lack of uniformity within American Indian populations. Rather than viewing either the colonial process or the Osage themselves as fixed objects of study, I have built on recent work within science studies to better understand the complex ways in which circulating knowledge works to reinforce and break apart various power structures. I have studied the ways in which different people talk about Osage history, citizenship, sovereignty, and governmental reform in order to better understand the many forces at work within this particular colonial moment. Rather than viewing anthropology’s goal as the collection of facts about the way things are, I see anthropology as providing key insight into how things are negotiated. My approach refuses to freeze the Osage, or the colonial relationship, as something static and thus works to open up possibilities for an Osage future.
CHAPTER 2
MOVING TO A NEW COUNTRY: NEGOTIATING COLONIAL LIMITATIONS

In fact 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…Their history was a series of cultural and political transactions, not all-or-nothing conversions or resistances. [Clifford 1988]

In the United States, the colonial process has primarily involved a series of attempts by the United States government to absorb indigenous populations under its supreme authority. In telling various Osage stories of colonialism, however, it becomes apparent that this was and continues to be a negotiated process. By investigating the limitations colonialism imposes on the Osage, as well as the possibilities it enables, it is easy to see how this process is far from uniform, but instead contains many creative maneuverings. Of central importance to this story is the way in which the Osage’s older governing practices were rendered unfamiliar to the Osage population through the imposition of a tribal council structure of government. However, this is not a story about “the colonized,” but rather the continuing, complex and uneven negotiations that have taken place between various Osage and the United States government.

One of the most telling results of the colonial process can be seen within the decision to include almost no Osage cultural practices, either current or historical, into the 2006 Osage constitution. For many Osage, keeping this culture separate from the governing institution is a way of keeping it safe from the influence of politics. Furthermore, because the Osage have been under a foreign governing institution for over 100 years, it no longer made sense to connect Osage cultural practices and governance. Another central aspect of the continuing colonial process is the way in which the Osage Mineral Estate has come to be seen by some as a sacred institution, whose quarterly payment checks and administration were at times given more thought than the structure of the Osage government itself. Finally, while some Osage embrace change as a central element of Osage identity, others have come to fear change, because of its
connections to the federal government threats of ending Osage recognition. Only after outlining Osage history is it possible to understand how these various responses created very specific arguments about the shape of the Osage governing institutions during the 2004-2006 Osage reform process.

**Separation of Culture and the State**

The Osage people, calling themselves Ni-U-Ko’n-Ska, or Children of the Middle Waters, had various smaller and larger levels at which governance took place. Using the extensive writings of Francis La Flesche, a member of the Omaha tribe who did research on the Osage around the turn of the 20th century, Garrick A. Bailey (1995) pieced together a picture of Osage cosmology and tribal organization. Although the Osage first encountered Europeans in 1541, Bailey argues that it was not until the mid 19th century that their social and religious structure was changed radically by the colonial process. Thus, in the early 20th century when La Flesche interviewed Osage, he was able to talk to many people who had reached adulthood under the system that had been in place immediately prior to full colonialization.

Bailey argues that early in Osage history a group of tribal advisors, referred to here and elsewhere as “the Little Old Men,” gathered together to observe and reason out the structure of the cosmos. When they felt secure in their observations, they organized the various Osage people into a model of the cosmos with twenty-four *u-dsé-the/fireplaces*, or clans, representing the spectrum of life symbols, which included animals, plants, celestial bodies and other occurrences such as storms and thunder. Each of these clans was divided into smaller bands as well as grouped together into two groups, the Earth people (Hun-kah) and the Sky people (Tzi-zho). “Collectively all twenty-four clans, through their life symbols, symbolically represented the cosmos in all its diversity” (Bailey 1995: 40).
During the 2004-2006 Osage government reform process, this Osage history, as outlined in Bailey’s book and also told in oral histories, occasionally surfaced as a possible model for what the Osage Nation could become. A bill reaffirming the “inherent sovereign rights of the Osage Tribe to determine its own membership and form of government” (Public Law 108-431) passed both federal houses and was signed into law in December of 2004. This left the Osage Tribal Council, as the acting government of the Osage Nation, with the job of creating a process for reform. Because they were already occupied with the general operations of the tribe (signing mineral leases, overseeing several multi-million dollar casinos, and running health, housing, language and education programs), they decided to create the Osage Government Reform Commission (OGRC) to oversee the reform process. The OTC appointed ten people as commissioners, all of whom ended up being headright holders, with the goal to “provide a means through which the Osage People will establish a government that reflects the will of the Osage People” (Osage Government Reform Project Comprehensive Plan February 21: 2005: 8).

Early in the reform process, the OGRC gathered at Tulsa University for a training session on Indian governance and law, sponsored by the TU Indian Law program. During the training, one of the TU lawyers asked,

How important are the clans, the Great people and Little people? How important are these things to your new government? Should a traditional chief be brought back? We get taught to think in terms of three branches (what the rules are, if they are followed, and who mediates the situation when they are not). Maybe this history is useful, maybe it is not. How much of this are you going to carry into the future? Different tribes are doing different things. How much tradition of the Osage must be taken into the future for the betterment of the Osage Nation? [TU Training May 19th, 2005]

Addressing these questions, one of the Osage reform commissioners went to the blackboard at the front of the room, saying that she had studied the traditional government through the writings

---

1 The OTC could have easily ignored the Public Law, especially since implementing reform meant they would be putting themselves out of business as the primary Osage government.
of Bailey as well as through members of her own family for 25 years. She drew two half circles on the board with the sky people on top and the earth people on bottom. She explained that they each had their own high chief and lesser chiefs. She continued by saying that part of the governance structure involved a large gathering in the Fall. “So they gather; they begin to fast and pray. And they come out of this lodge here [pointing to the blackboard] and they begin to dance on this side like this [Sky]; and on this side [Earth] they dance like this. They meet in the middle. They do that for four days from sun up to sun down. They never sing the same song twice. They’ve got four days of memorized songs and each clan would have their own” (TU Training May 19th, 2005).

The commissioner went on to explain that it was only possible for this event to take place if all the clans were there and they each sang their own songs, which only they knew. If there was any disharmony in the tribe, they had to work it out beforehand. She concluded by saying,

You had to forgive and have restitution all the time. This translates to me into two houses, government houses. It would bring in custom and tradition if we had a new government that had both the sky and the earth people involved and in the villages. That was the band people. So we know enough of our traditional customs to know how maybe to put this together. I don’t know that anybody would want it like that or not, but each one could have representatives from these two sides. [TU Training: May 19th, 2005]

By the end of the process, however, it was clear that few other people had concrete ideas as to how an Osage governing document could incorporate these ancient practices or particular Osage customs. Furthermore, many people argued against the inclusion of any Osage cultural practices because they felt that they needed to remain separate from the government.

About six months into the reform process, a questionnaire was circulated to all Osage who had current contact information listed with the Tribe. Over thirteen hundred Osage returned the questionnaire with approximately 500 suggestions to the question of how Osage culture could be incorporated into the new governing document. Some of the questionnaire responses rejected the
idea that the governing document should include culture at all. One person wrote, “It shouldn’t. Osage culture should be maintained and transferred by the people themselves. If you need a governing document to tell you how to be Osage, you’ve waited too late to take care of your culture.” Another person responded, “Osage culture has done well without being incorporated into a governing document. Keep it separated, independent.” These and other vocal Osage argued adamantly that the new Osage governing document should be completely separate from tribal culture, and particularly separate from older tribal practices such as the clan system. The other questionnaire responses focused mostly on how the new government structure needed to ensure that language and cultural practices were “preserved” and “supported,” by the new government, but few responses suggested any sort of inclusion of these practices within the constitution.

The one exception to this was an Elders Council. The 1994 Osage Constitution\(^2\) had included a council of elders, which was to “serve in an advisory capacity to the Osage National Council on matters pertaining to cultural, historical, and traditional activities of the Osage people” (Constitution of the Osage Nation 1994: 12). This Elders Council had been partially modeled after the “Little Old Men” discussed in oral traditions. This council of elders was referred to eight times within the questionnaire and about the same number of times during community meetings. However, even within these calls there was frequently still a desire to keep the government and culture separate. As the only person who expanded on their ideas about an Elders Council wrote on their questionnaire, “The government should not have anything to do with the preservation of the culture. It should be preserved by a council of elders, who

\(^2\) From 1994 until 1997 the Osage operated a Constitution created from the court case Fletcher v. United States, where Judge James O. Ellison mandated a constitutional referendum process. The Tenth Circuit United States Court of Appeals in Denver, Colorado, overturned this constitution arguing that Ellison’s mandate had violated the sovereign immunity of the Osage Tribal Council.
direct the government on cultural issues. Anyone on the culture commission would not serve in
government."

Outside the questionnaire, many Osage expressed similar concerns regarding the
incorporation of older Osage practices into the new governing system. Central to these concerns
was the desire to keep politics outside cultural events such as naming ceremonies and the yearly
dances, which had their own means for determining authority. Many of the elders\(^3\) I talked with
or heard speak during the 2004-2006 reform process wanted to make sure the new government
was not able to meddle in cultural affairs. Several tribal elders argued adamantly against
including anything from the old ways with statements such as, “If you don’t know what you are
doing, you could do a great deal of damage. We have an order to everything we do” (Personal
Communication: February 07, 2006).

During the writing retreat in early January 2006, the Osage government reform
commission, its staff, Osage lawyers, and a couple of Osage elders met to turn the year of
community feedback into a constitution. One of the primary issues early on was the way in
which cultural aspects, including an Elders Council, should or should not be included in the
constitution. In the constitutional draft assembled by Hepsi Barnet, the OGRC Coordinator, a
similar Council of Elders was outlined as existed in the 1994 Constitution. In response, one of
the elders told a couple of stories. The first story discussed how when his father had been on the
Tribal Council in the 1950’s he had gone to one of the districts to try to help with some problems
that had developed. “Dad went down there and said, is there any way the council can help you?
And he was immediately told, in Osage, to get his rear back to the hill and stay there. We’ll take
care of this, they said” (Writing Retreat January 07, 2006). The second point he addressed was

\(^3\) Elder here refers not just to age, but those who were leaders in various cultural affairs, i.e. Headman or Whipman
of the I’n Lon Schka Dances.
how, for many traditionalists, it was the cultural aspects that enabled an Osage government and thus the culture needed to be recognized as above the constitution. “What gives us sovereignty is our language, our dances, our names, our ways, our customs, our dress, our land, jurisdiction; that’s our sovereignty. Because of that we can create a constitution” (Writing Retreat January 07, 2006). In this way, he argued that the culture needed to be protected from politics. He referred to the government and the culture as oil and water, and thus in need of constant separation.

Agreeing with him, one of the Osage lawyers said that his father had taught him very similar things. He went on to suggest that it would be a major problem if the headmen from the yearly dances wanted to use the Elders Council to become part of the government. “Then you have an added incentive for that position, people trying to get into that position to get into government” (Writing Retreat January 07, 2006). Instead the Osage lawyer suggested, “What if we just said in Section 1 that the government has a duty to promote language and culture… that’s something the government does better than interfering with traditional structures in place” (Writing Retreat January 07, 2006).

Following these arguments, Article XVI of the 2006 Osage Constitution reads, “The Osage People have the inherent right to preserve and foster their historic linguistic and cultural lifeways. The Osage Nation shall protect and promote the language, culture, and traditional ways of the Osage people” (Osage Nation Constitution 2006: 17). Additionally, the Constitution says, “The first regular congressional session of each year shall be titled the Hun-kah Session and the second regular congressional session of the year shall be titled the Tzi-zho Session. This schedule shall be in honor of the ancient moiety division of Earth and Sky and serves to remind all Osage of the responsibility to bring balance and harmony to the nation” (Osage Nation Constitution 2006: 5). In 2006, the Osage voters passed a constitution that “honored” these
ancient moiety divisions and worked to “protect and promote the language, culture, and traditional ways,” but did not directly incorporate any of these historical or cultural aspects into their new governing structure.

In writing about constitutional reform among Indian tribes, the Harvard Project on American Indian Economic Development argues that having a cultural match is one of three most critical factors in having an economically successful government. They define cultural match as “a fit between those governing institutions and indigenous political culture—in short, the institutions had to match indigenous ideas about how authority should be organized and exercised; otherwise, it would lack legitimacy with the people being governed and would lose their trust and allegiance” (Cornell et. all 2004: 7). While this and other aspects of the Harvard Project were frequently cited during the reform process, including in the May 2005 issue of the Osage News, this theory did not quite make sense for the Osage, whose primary desire was to keep cultural practices separate from the governing structure.

One of the reasons given for this separation was a fear that the government would interfere with the cultural systems in place, which already had well-established means of determining authority. Another fear was that close association between the two would bring people into the cultural practices with the wrong reasons. However, to really understand this disconnection between Osage cultural practices and governance it is central to turn back to Osage history and the means by which the United States government succeeded in breaking apart older Osage governing structures from their inlaid cultural practices.

Moving to a New Country

In his seminal book on Osage history, John Joseph Mathews (1961) describes the origin of the Osage people. He explains that “the newly-arrived-upon-earth children of the sky, represented by the Wah-Sha-She, the Water People, the sub-Hunkah, the Land People, and the
grand division the Tzi-Sho, the Sky People, came upon the Isolated Earth People, the indigenous ones” (1961: 53). These four groups decided to come together and form a tribal unit and “were anxious to lead the Isolated Earth People away from the earth-ugliness of their village, saying that they were thus taking them to a ‘new country’” (1961: 53). As Mathews continues, this was only the first of many moves to “a new country.” “The Little Old Men spoke of these moves as one might speak of changing camping places, and each organizational step was a step away from the old, just as they walked away from the disorder of the old campsites…” (Mathews 1961: 53). As others have noted (Burns 2004, Warrior 2005), these moves were more than geographical changes in location, but also included changes in governing style, community structure, and spiritual practices.

Contrary to popular notions that being American Indian means remaining unchanged since time immemorial, many Osage have pulled on this idea of “moving to a new country” to describe periods of change. In this way, many Osage make sense of even drastic change as something inherently part of what it means to be Osage, rather than something that destroys Osage identity. In talking about the success of the Osage’s first written constitution, for example, Warrior (2005) states, “I would like to suggest, though, that a major part of the answer lies not with the cultural practices the Osage were learning from outside their culture, but with the continuation of traditions they had developed over the course of centuries. In adopting their constitution, in other words, they were “moving to a new country” (74).

The central goal of this chapter is to provide a rendering of Osage history that does not insist that the Osage Nation exist unchanged. Instead, I will show how the Osage have creatively maneuvered within the colonial process, avoiding the federal government’s efforts to swallow them completely within the U.S. governing structure. Simultaneously, my story accounts for the
unethical process by which the United States government attempted to subsume the Osage and the consequences of colonialism on the Osage people. By showing the forces the Osage have been up against, this is a story of endurance. By affirming the Osage right to be, these stories, given authority throughout the 2004-2006 Osage reform processes, are ultimately more about an Osage future than about an Osage past.

In order to understand the process whereby the Osage people were separated from these older Osage practices, I will next turn to various accounts of how the colonial process unfolded. In telling this particular story, it becomes evident that the embrace of change through the continued use of the metaphor of “moving to a new country” is central to understanding the complexities of the Osage colonial situation. Rather than building an identity on the idea of maintaining a certain way of life, many Osage have built an identity on their willingness to embrace change.

Indigenous people are defined by colonizing forces, such as the U.S. federal government, as those who can prove an unbroken link with the past traditions and cultures of a geographic area. James Clifford (1988) documents the powerful consequences of such tactics in the Mashpee Wampanoag 1976 court case, in which the tribe was denied federal recognition because “to recreate a culture that had been lost was, by definition of the court, inauthentic” (1988: 341). Importantly, this link to past ways of life is also exactly what the colonial process has been trying to sever. As Clifford goes on to say,

The Mashpee were trapped by the stories that could be told about them...In fact 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...Their history was a series of cultural and political transactions, not all-or-nothing conversions or resistances. [1988: 342]

In this chapter, my focus is not on conversion or resistance. Instead, I tell a story of uneven, but continual negotiations between the Osage and various colonizing forces.
**Trade Relations and Land Acquisition**

The Osage first encountered Europeans, specifically the French, in 1673. According to historian Willard Rollings (2004), it only took twenty years of contact to fully equip the Osage with horses and guns, allowing them to control westward trade on the prairie-plains of Arkansas, Missouri, Kansas, and parts of Oklahoma: “Living along the Arkansas, Missouri, Osage, and Red Rivers allowed the Osage to severely obstruct French trade into the West and to seriously limit their western rivals’ access to guns and ammunition necessary to counter Osage raids” (Rollings 2004: 25). By the late 18th century, the Osage not only controlled the trade between the French and the Western tribes, but also among the different European frontiers (Rollings 2004).

Terry P. Wilson (1985) outlines a very similar story of early contact, adding that it was their interactions with the French that caused the Osage to greatly escalate their raiding of nearby tribes. Similar to the story told by Rollings, Wilson continues,

Taking full advantage of their strategic position on the Missouri River, the Osage extracted from the French, and later the Spanish, anxious expressions of goodwill in the form of gifts and diplomatic favors. At the same time, they terrorized other tribes with the aid of French weapons and horses. So frequent became these incursions against neighboring tribes and depredations on French and Spanish traders and trappers that the Spanish governor in New Orleans accepted the recommendation of Auguste Chouteau, a French trader, that a fort be built near the Osage to bring them under control. [1985: 2-3]

According to Wilson, this trading post completed in 1795 did little to stop Osage raiding, but did succeed in providing the French with enough control over Osage leaders to convince almost half the Osage to resettle near the Arkansas river, allowing for the easier exchange of trade goods. Wilson suggests that this split likely “marked the beginning of the end of traditional life for the Osage” because the tribe was no longer consolidated enough to protect their domain (1985: 5).

In 1803, the American government “purchased” this area from the French as part of the Louisiana Purchase, and the Osage’s trade advantages, and thus authority in the area, was
heavily threatened, particularly with the removal of other Indian groups into Osage territory. As President Jefferson expanded on Washington’s Indian assimilation plans, the first step was to remove the eastern tribes to west of the Mississippi river, the area controlled by the Osage. As Rollings describes, “The Osage were the first western tribe sent to Washington by Lewis and Clark because they occupied and controlled that region just across the Mississippi between the Missouri and the Red Rivers that was to be the new homeland for those eastern tribes” (2004: 36). After his first meeting with the Osage delegation, Jefferson wrote a letter to the Secretary of the Navy, Robert Smith.

The Osage arrived day before yesterday; had their first audience yesterday, I will have another today. They are the finest men we have ever seen. They have not yet learnt the use of spirituous liquor. We shall endeavor to impress them strongly not only with our justice and liberality, but with our power and therefore shall send them on to see our populous cities, Baltimore, Philadelphia, New York and Boston. The truth is they are the great nation South of the Missouri, their possession extending from thence to the Red river, as the Sioux are great North of that river. With these two nations we must stand well, because in their quarter we are miserably weak. [Jefferson 1804: Jackson 1978: 200]

From this letter, it is clear that in 1804 the scales of power had yet to tip in the favor of the new nation of the United States. From Jefferson’s speech to the Osage delegation a couple of days later, it is possible to understand some of the strategies he would use to change the power dynamic with the Osage: “Our dwellings indeed are very far apart; but not too far to carry commerce & useful intercourse. You have furs and pelttries which we want, and we have clothes and other useful things which you want…We propose, my children, immediately to establish an Agent to reside with you, who will speak to you our words, and convey yours to us” (Jefferson 1804: Jackson 1978: 201). The two central aspects of this relationship, as Jefferson outlines them here, are trade and the establishing of an agent. While the effects of the agents and their growing authority were still years in the making, the effects of trade with the United States were realized much sooner.
Jefferson’s plan for this area was to increase the numbers of trading posts and to provide unlimited credit, encouraging Indians to create large debts, which could later be used to acquire Indian land⁴. According to Rollings, these efforts only strengthened the Osage, giving them more trade to control. In 1808, therefore, the territorial governor Meriwether Lewis banned on all trade with the Osage and ordered the tribe to move to a site on the Missouri river. At this new site, threatened with war and an end to all trade, two of the three Osage bands were forced to sign a peace treaty where they ceded fifty thousand square miles of land in exchange for a new trading post and an annuity of $1,200. By 1814, the United States government was able to control all trade with the Osage, making the Osage extremely vulnerable to the wishes of the American government (Rollings 2004).

Control of trade and greater access to guns and horses allowed the American government to gain the upper hand in negotiations with the Osage in a very short period. According to Burns (2004), from 1808 until 1839 there were seven treaties under which the Osage lost control over 10,151,718,000 acres. He writes, “These cessions were more than mere yielding of territory. Along with the cessions went the sacred animals and the responsibility for protecting the land. Thus each cession weakened the Osage spirit and limited their food base. Dispirited and undernourished, the Osage were increasingly vulnerable to assaults on their lands and culture” (2004: 166).

Unlike many indigenous populations, who were moved far from their homes, the Osage were able to remain within their territorial base, even as this base continued to drastically shrink.

⁴ As he wrote to William Henry Harrison in 1803, “

To promote this disposition to exchange land, which they have to spare and we want, for necessaries, which we have to spare and they want, we shall push out trading uses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands. [1950: 370]
in size. U.S. payments for Osage lands were shockingly low, for example, one-sixth of a cent per acre in 1808. In 1818, a tract of land in Oklahoma and Arkansas was purchased from the Osage for $4,000 and immediately sold to the Cherokee for $2,000,000 (Burns 2004). About this process as a whole Burns writes, “With few exceptions, Indian land titles were usually obtained by chicanery of all kinds, coercion, flattery, bribery, false claims, and seldom by outright conquest. Many justifications were offered for seizing Indian lands, but the fact remains that Indian lands were taken without any real right and with compensations that were insulting in their insignificance” (2004: 166). The Osage, however, rarely accepted these treaties without resistance. As Rollings writes, “When forced to give up something, they agreed reluctantly and often immediately repudiated or ignored any concessions, as witnessed by their refusal to consolidate all three bands in the north or to vacate any lands ceded in the 1808, 1818, 1825, and 1839 treaties” (2004: 39). In losing control over trade in their area, the Osage lost the authority that would have enabled them to deny American desires for land.

On the American side, acquisition of land was typically justified in terms of meeting the needs of the growing American population. The United States government initiated the treaty making-process in the 1860s because whites had moved onto the Osage reserve. Superintendent Elijah Sells, who negotiated the 1865 treaty, illustrates some of the issues at work during this period:

The Osage reservation is within the geographical limits of the State of Kansas, and white settlements are crowding down upon Indian lands and in many instances within the Indian reservation. The imminent danger of conflict between the whites and the Indians as well as the demands for these lands for white settlement by the authorities of and settlers in Kansas furnishes satisfactory reasons why the Indian title to these lands should be extinguished at an early date. [1865: 6]

The U.S. government persuaded the Osage to cede 871,791.11 acres of land in Kansas. However, unbeknownst to most Osage, $776,931.58 of the sale profits went into a “Civilization
fund.” As the treaty reads, “the remaining proceeds of sales shall be placed in the Treasury of the United States to the credit of the ‘Civilization fund’ to be used under the direction of the Secretary of the Interior for the education and civilization of Indian tribes residing within the limits of the United States” (Kappler 1972: 878). In this way, the Osage were forced to contribute over three-quarters of a million dollars to the building of colonial schools across America, including Carlisle Indian School and Haskell Institute.

According to David Parsons (1940), the use of their funds for such projects was the final straw for many Osage, who by 1869 were no longer willing to enter into the treaty-making process. Concerning a speech made in 1869 by Chief Joseph Paw-ne-no-pahshe, Parsons writes,

He said he was opposed to selling more land and stated that their listening to the advice of the Great Father had already cost the Osage a great deal of country and had brought on the deplorable condition in which they found themselves…He reminded the commissioners that instead of protecting the Osage as provided by treaty, they had told them that they would be unprotected; and that instead of removing the intruders they had come for more land. [1940: 32]

The Osage, however, were not the only ones who had grown dissatisfied with the treaty-making process. On March 3, 1871, the Congress passed an Indian Appropriation Bill that stated, “Provided, That here-after no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty” (16 Stat. L. 465). This brief period of Osage history was certainly the most destructive period of the colonial process to date. In addition to loosing billions of acres of land and funding projects whose sole intent was to destroy native culture, the treaty period also worked to deteriorate the governing structure of the Osage people.

Even at the beginning of the treaty process it was clear that the current form of government was not suitable for negotiating with the United States. Since each of the treaties was signed by only a small fraction of the Osage leadership, but had full ramifications on all
Osage, many people became disgruntled. Furthermore, the loss of land and the dispersal of the annuity checks led to drastic changes in daily routines, rendering older forms of governing incommensurate with current lifestyles. Finally, in negotiating the colonial situation some Osage certainly the internalized ideas of civilization currently in circulation, giving older practices an air of ‘savagery.’ With all of these factors working in unison, it was clear that by the late 19th century older practices no longer made sense.

A More “Workable” Government

In a last attempt to escape America’s continued territorial expansion, the Osage were persuaded to sell their lands in Kansas and buy back a small tract of their Oklahoma lands in what was by then known as Indian Territory. Instead of allowing the promised period of isolation, the federal government immediately began a whole new series of invasive tactics, this time focused on dismantling the Osage governing structure. According to Burns, the older Osage government was still intact in 1870, at the signing of the Osage Removal Act. The Osage had refused to meet at the Removal Council until all Osage leaders had finished the Spring Hunt, which ended in Oklahoma rather than on the old Kansas lands.

This battle to maintain control over their own affairs was also evidenced, according to Burns, in the questions the Osage prepared for their Superintendent Enoch Hoag upon their first meeting in Oklahoma. In addition to inquiring about who controlled the funds promised to them by the American government, the leaders wanted to know, “Would the Osage be permitted to have their own regulations in their new home” (Burns 2004: 319). The answers to these questions were, according to Burns, importantly connected. By not giving the Osage control over their own funds, the federal government was able to gain an upper hand in Osage affairs (Burns 2004).
For Deloria and Lytle (1983), a central aspect of the colonial process was the destruction of many of the tribal governments. Frustrated by the slow and deliberative process by which most tribal organizations made decisions, the federal government began creating more “workable” councils, which could quickly make decisions and support federal mandates. As Deloria and Lytle describe, “The Indian agent would gather together the most influential leaders of the bands or communities living on the reservation and ask them to form an ongoing council to assist him in whatever functions he felt could be delegated to them (1983: 93). By creating small tribal councils, the BIA not only tried to take control of the decision-making processes across Indian country, but they often succeeded in destroying the ways of life that surrounded older governing structures. In 1877, the BIA’s Osage agent described his creation of the first Osage council structure:

The Osage in many respects differ from other Indians of the Indian Territory. They are more jealous of each other, and of those who care for them. Each chief seems jealous lest some other chief should outrank him, and hence the difficulty of governing the tribe through the chiefs, and in some instances the chief fails to control his own immediate band. Another year’s experience proves the wisdom of the course adopted on taking charge of the agency, in the selection of an executive committee, consisting of governor, chief councilor, and business committee of five, making seven persons selected from among the leading men of all the different factions. These seven men, regardless of character, are recognized as the representative men of the tribe, and through them its business with the agent and government is transacted. [Annual Report: 92]

This long excerpt from the BIA is revealing on multiple levels. The jealousies and control issues described within the report were the inevitable result of the colonial process. In addition to being transferred to smaller and smaller land bases and seeing the extinction of the buffalo and other resources, the Osage people had to deal with their entire government structure being ignored by the BIA agent, who appointed his own leaders within the Osage people. By completely disregarding the entire Osage structure of governance, the Osage agent delivered a powerful blow to the Osage peoples’ autonomy.
The Osage did not passively accept this reconfiguration, but in 1881 passed a Constitution that once again allowed them to govern themselves. According to Wilson (1985), this effort to reestablish self governance was directly motivated by the success of an Osage delegation that traveled to Washington D.C., going over their BIA agent’s head, where they negotiated for treaty annuities to be paid mostly in cash. By taking over the BIA’s mechanism for control, the annuity payments, the Osage delegation also reasserted their ability to speak for themselves rather than through an agent of the federal government. This Constitution was copied directly, almost word-for-word, from the 1839 Cherokee Constitution, with its three-part government, democratic elections, and control over its own boundaries. The Osage thus adopted a governing structure that was fundamentally recognizable to the U.S. federal government in hopes of being left alone to manage their own affairs.

As I mentioned above, for Robert Warrior (2005), the 1881 Osage Constitution was a classic example of the Osage practice of “moving to a new country.” Following the practice of accepting radical change as part of maintaining national identity, the Osage set out to regain their autonomy. About the 1881 Constitution, Warrior writes,

But this was more than mere mimicry and the framers of the Osage Constitution took it as seriously as the leaders of the United States had in adopting theirs. As had happened all those centuries ago when the people from the stars invited the Isolated Earth People to turn away from the chaos and violence, the embattled Little Ones looked deep into themselves and declared themselves to be a people…the 1881 constitution sets out the parameters of a self-determined, self-imagined, autonomous Osage Nation. They undid the lie that Indian people were not capable of living out the challenges of modernity. [2005: 74-75 emphases added]

From Warrior’s reading of this history, it is possible to better understand the uneven nature of the colonial process. While some people simply read the 1881 Osage Constitution as mimicking the colonial government, many Osage have argued that it was an attempt to subvert the colonial process through a subversion of America’s tools of democracy and nation building. Importantly,
this Osage willingness to change was predicated on the insistence of maintaining themselves as a distinct people. For Warrior, the writing of the 1881 Constitution shows how change was accepted as a necessary part of survival rather than a threat to some sort of fundamental Osage identity linked to immemorial past. In describing the 1881 constitutional government, Agent Miles wrote, “The Osage regard themselves as a nation with a big ‘N,’…This government is a very real thing to the Osage” (Annual Report 1894, 241).

**Leaving the Old Ways Behind**

In observing the 2004-2006 Osage reform process, it became clear to me that this belief in leaving the old ways was still a part of some Osage worldviews. Over and over again, people argued that older practices no longer made sense within the colonial context and could not be practiced in fragments. Additionally, there was a very strong sense among some Osage that these older cultural practices, which formed the basis of governance prior to the colonial period, should not be included because they no longer had meaning to the majority of the Osage people. One elder who had studied Osage history extensively explained to me that these old ways were heavily integrated with a religion that was no longer practiced and required elements that were now illegal under federal law, such as the occasional murder of non-Osage. “We have had to change with the flow of time and the old people knew that. They insisted that we not try to bring these things we could not understand forward” (Personal Communication May 24, 2005).

Another elder expressed to me his concern about the use of older Osage words and ideas within the new governing document. “These words are not understood anymore. These are ideas that were supposed to be left behind” (Personal Communication: January 01, 2006).

Because of the long colonial history that separated the majority of Osage from these practices, it did not make sense to imagine this structure as a possibility for the future. This was stated most clearly during an OGRC business meeting after an Osage attending the meeting had
expressed concern that the Osage Constitution had been patterned after the colonizer rather than their own heritage. In response to this, one of the reform commissioners said:

I think we all honor and reflect our heritage from before we were moved from Missouri and Kansas…But what we discovered in our process, which has been about 11 months talking to Osage people everywhere, is that the majority of Osage we talked to can’t understand how those structures worked. Fortunately or unfortunately, they can understand the federal government system. So when we’ve asked this question in surveys, “would you like a three-part government or would you like something else,” an overwhelming majority said they’d like a three-part government; it’s one they’re familiar with. [OGRC business meeting February 06, 2006]

Within the reform process, many Osage embraced the idea of “moving to a new country” as part of their imaginings as to what the future of Osage government should look like. This concept was also evident in the more general conversations about culture that took place during my dissertation research. At an Osage Tribal Council meeting in August 2005, it was brought to the council’s attention that an Osage war bundle had been found for sale on Ebay. The Osage employee in charge of repatriation had immediately contacted the Native American Graves Protection and Repatriation department as well as the FBI, who had gained possession of the bundle and wanted to know what should be done next. Gilcrease museum had offered to keep it. One of the people on the council suggested that since there had been a ceremony 100 years ago to put the bundles away (i.e. bury them), perhaps there should be some sort of ceremony to welcome the bundle back. Another person on the council, however, protested immediately. He said, “I want to go on the record at this point that we should not have any new ceremonies. We just need to put that stuff away. We don’t know anything about it” (OTC Committee Meeting, August 22, 2005). The rest of the council agreed to have the bundle buried immediately.

These sorts of interactions occurred frequently during the reform process when older cultural practices were brought up. A central aspect of these ideas of “moving to a new country” was not only that these things could not be understood anymore and thus needed to be put away,
but also that cultural practices had to change in order to continue having meaning to peoples’ lives today. As one Osage elder explained to me, people often over interpret the meaning of cultural aspects of the yearly In-Lon-Schka dances. She gave the example of a visitor who had asked her the purpose of the fans. Her response was, “Have you noticed it is a hundred degrees out here?” The elder said that she thought most things were done because that is what made sense at the time, not because it had some deep spiritual meaning. Or perhaps the deep spiritual meaning could not be separated from the fact of its functionality. She then told a story of her cousin who had always cut turkeys in half before cooking them, until one day she found out from her grandmother that the only reason this had been done for generations was because they had not had a pan big enough for the full turkey. This led us into a conversation about older Osage practices and how those things had to be left behind. “The main problem are the people that sit on their high horse telling other people they are doing things wrong, when they really could not know any better…We can’t go back, those things are gone, we have to go forward” (Personal Communication, August 22, 2005).

Colonial Reworkings of Change

Not all members of colonized populations react in the same manner. While much of the effort behind the writing of the 2006 Osage Constitution can be seen as an attempt to embrace change and make the most of the colonial situation, there was also a small, but vocal minority of Osage who greatly feared any sort of change. A central part of the continued colonial situation for these Osage was an association between change and the termination of the Osage Nation. To understand these fears and where they came from it is again important to look at Osage history, particularly the period surrounding the allotment of the Osage reservation.
The Battle Against Allotment

No matter how real the government was to the Osage, in 1900 the BIA once again created a Tribal Council government, with their own appointed officials. The BIA agent justified this move by arguing that: “The principal causes were…(1) Acrimonious disputes between the two factions over election; (2) entire absence of harmony between the Osage tribal offices and the Indian agent in administration of tribal affairs; (3) the selection of ignorant men as officeholders; and (4) the profligate use of moneys received from permit taxes” (Annual Report 1900: 173-174). However, as several Osage historians have argued (Burns 2004, Warrior 2005, Wilson 1985), the creation of the new Tribal Council had much more to do with the desire to allot the reservation than it did with any problems that had developed within this new government. As Burns writes,

If we were to apply the same criteria to recent administration of the United States government, it too would be abolished…When one considers that the Osage did not spend their future generations into a vast debt, one has a right to question the suspension of their government…It was known that the National Council was opposed to allotment. Allotment was a necessity from the Euro-American viewpoint, especially with the possibility of statehood in the near future. [Burns 2004: 393-394]

For these historians, it was allotment rather than Osage governing problems that led to the dismantling of the 1881 Osage Nation.

The federal policy of allotment officially began in 1887 with the Dawes General Allotment Act that called for widespread surveying of native tribal lands and peoples. Once the surveys had been completed, these lands were parcelled out, usually in 160-acre tracks, to individual Indians. The remaining lands were then opened up for white settlement. As M. Annette James describes, “between 1887 and 1934, the aggregate Indian land base within the United States was ‘legally’ reduced from about 138 million acres to about 48 million” (1992 117). Another primary motivating force was the potential for relief from the obligations promised in the treaties with
North American Indian nations. If Indians were made into American citizens, then the treaty promises of continued payments would no longer have to be honored.

This large-scale policy of allotment was seen at the time by both the federal government and an array of humanitarian organizations, including the Indian Rights Association, Indian Protection Committee, and the Friends of the Indians, as a solution to the problems of the Indian. Since colonial contact, Indian resources such as the buffalo and other game had been depleted, leading to wide-scale hunger and drastic changes in lifestyle. Allotment, it was argued, would create American citizens by allowing each Indian to become a “civilized” contributor to American society. Euro-Americans saw the breakup of tribal lands as allowing Indians to move beyond the problems supposedly created by tribal structure and adopt “civilization.”

Because the Osage had purchased their lands, they were not subject to the Dawes Allotment Act that forced this breakup of tribal lands. Wilson writes at length about the federal government’s campaign to allot the Osage reservation. In 1888, when the United States government decided to turn “Indian Territory” into “Oklahoma Territory,” three Osage representatives from the national government traveled to Washington, arguing shrewdly that such a creation would ultimately lead to the loss of Osage lands. In Washington they argued, “We shall have no friends around us and no hope for the future, and no motive to cultivate the ground that must soon pass into the hands of strangers” (quoted in Wilson 1985: 37). The U.S. government continued its push for allotment, arguing that Oklahoma needed to become a state and thus all reservations had to be allotted.

In 1893, the Osage National Council appointed a committee to deal with this pressure to allot. This committee traveled to Washington D.C. in 1894 to voice Osage perspectives about the allotment process. The Osage expressed two primary concerns with allotment, that the past
treaty obligations be honored and that the roll be examined for fraudulent entries, since the
decision to allot would depend on a vote of enrolled adult males (Wilson 1985). In response,
Secretary of the Interior Hoke Smith argued that these were minor problems and that he wanted
to know what their issues were with the concept of allotment in general:

Bigheart replied for the delegation, citing the disastrous effects on other tribes of
application of the Dawes Act. He also noted examples of white men who, despite having
been reared in a tradition of economic endeavor, had been financially ruined trying to farm
small parcels of land in Oklahoma Territory and nearby states. Exasperated by Bigheart’s
adroit arguments, Smith abruptly terminated the exchange with a warning; “You had
better think seriously about the advisability of…[taking] lands individually, now when
[you] can do so on very liberal terms…the time is coming when [you] will have to. [quoted
in Wilson 1985: 39]

Later the same year, a federal Commission came to the reservation to continue their arguments
for allotment. According to Wilson (1985), in January of 1895 a representative from the Osage
government by the name of Strike Ax argued:

When our chiefs sold reservations in the states, the government would say you are all
hemmed in by whites and your Great Father does not want you to be bothered, just come
down to the red man’s country where you will never be disturbed. The government
promised me when we came here that we would be the fartherst [sic] west and..at the
fartherest edge of Indian country and it was impossible to be bothered and now you seem
to think we are in bad shape with the whites. As you say, we have more whites than
Indians, but where shall we go? [40]

To which a member of the federal Commission replied: “On your farm.” (Wilson 1985: 40).

These excerpts illustrate the insistence with which the federal government imposed not only
allotment, but also the certain assumptions about civilization. In saying that the farm was the
only place left for the Osage, the federal government was attempting to transform the Indian
body into a “civilized” American citizen. The Osage National Council was not swayed by these
arguments for “civilization” and continued to rebuff all of the federal government’s lobbying
(Wilson 1985).
In 1898, the federal government, tired of dealing with the Osage National Council, once again created a tribal council structure for the Osage and populated it with allotment-friendly Osage. As Wilson writes, “Hitchcock’s decision to abrogate the Osage national government came at the direct request of the commissioner of Indian Affairs, William A. Jones. A firm advocate of speedy allotment for all reservations, Jones believed that tribal government ‘perpetuated barbarism and retarded civilization’” (1985: 42). It was still another six years before the federal government was able to sway the Osage population in favor of allotment, but in the meantime they had intentionally destroyed another Osage governing structure, the 1881 Constitution.

Central to Wilson’s story of allotment is the federal government’s desire to reassert control over the Osage population. Through their insistence on allotment, the U.S. government was attempting to do away with Indian governance altogether, thus rendering themselves the only sovereign authority within the United States. The Osage National Council, attuned to this reconfiguring, fought allotment not only for its insistence on individual land ownership, but because it would once again mean the loss of Osage autonomy. It was this story of wrongful, and even illegal, destruction of the Osage National Council that continued to circulate during the 100 years of federal control of Osage governance. These grievances eventually led various Osage to turn to federal court5 and ultimately the United States Congress in order to reinstate the Osage’s right to determine their own government.

---
5 The two central Osage lawsuits dealing with Osage governmental reorganization were Logan v. Andrus (640 F.2d. 269 10th Cir. 1981) and Fletcher v. United States (90 C.248e Northern District Court of Oklahoma). The ultimate decision of both courts was that while the 1881 Constitution had been illegally abolished the Osage Tribal Council was the federally recognized government of the Osage people.
Incorporation and Termination

The battle for allotment ended with its favorable vote by the Osage population and the passage of the 1906 Act on June 28th (34 Stat. 539). This act allotted the 1,470,057-acre Osage reservation and dispersed $9,000,000 from the Osage BIA account among 2,230 people listed on the BIA’s Osage roll. Importantly, the Osage fought for and were able to preserve the cohesiveness of their reservation by maintaining collective ownership over the mineral reserves under this area. The BIA set up an elected tribal government whose only job was to administer this mineral estate. This government was only intended to last for twenty-five years, at which time the BIA assumed that the Osage people would be able to manage their affairs individually, eliminating any need for a tribal government.

Under this new system, tribal membership was based on a commercial model of headright shares. Rather than allowing the Osage people to act as a nation, as they had in 1881, the headright system attempted to render the Osage people nothing more than shareholders in a minerals corporation. This meant that only those Osage listed on the 1906 roll could vote or run for office in tribal elections. Osage born after the July 1, 1907 cutoff date could not participate in tribal politics unless they inherited a share in the mineral estate from someone listed on the roll. Furthermore, in the mid-twentieth century, the weight of the vote became dependent on the percentage of the headright.

This headright system of membership often created two different classes of people within a single Osage family. One common example of this occurred when older siblings were original allottees, meaning they were listed on the 1906 roll, but their younger siblings were born after the cutoff date. All those listed on the roll, no matter what their age, were given four-160 acre parcels of land within the Osage reservation, 1/2229\textsuperscript{th} share of all monies produced from the mineral estate, and a vote in tribal elections. Any Osage born after the 1907 cutoff date received
no benefits and had no voice in the tribal elections. It was only upon the death of a person holding a share in the mineral estate that these disenfranchised people could gain access to the land, money and the ability to vote. Often when a parent would die, they would leave equal parts of their mineral share to each of their children. If there were two children, they would each get $1/4458^{th}$ of a share in the mineral estate and half a vote in tribal elections.

Additionally, a quarter of the headrights left tribal member-control in the 20-year period when the mineral estate headrights were considered like any other property, which could be willed or sold to anyone or any organization. Many churches, lawyers and even famous actors ended up with shares in the mineral estate. This did not give the new owners a vote in tribal elections, but it did keep some Osage descendants from voting. Because the headright system was linked to quarterly financial payouts from the sale of oil on the reservation, all attempts to open up membership were challenged as merely attempts to redistribute this money. By the twenty-first century, this form of government had left nearly 16,000 of the approximately 20,000 people with Osage ancestry without voting rights, alienating them from tribal politics.

Furthermore, the mineral estate was originally set to expire in 1931, with the mineral rights transferring to the property owners. According to Burns, by the 1920s much of Osage land had passed to whites, particularly local bank owners and legal guardians. These individuals banded together in 1920 and fought against the extension of the Osage Mineral Trust, in hopes that they could gain access to these lucrative mineral rights. At this moment, the Osage people were drastically close to being swallowed up by the general American governance system. To fight this the Osage Tribal Council drafted a resolution that stated:

…WHEREAS, said banks have large deposits of Osage Tribal funds and said guardians are receiving great benefits from handling the estates of members of the tribe, and in opposing the extension of the mineral period, are working to the detriment of the Osage Tribe of Indians and to the detriment of their wards, respectively…THEREFORE, be it
Resolved by the Osage Tribal Council...That the Council hereby requests the Honorable Secretary of the Interior and the Commissioner of Indian Affairs, to withdraw from any bank, whose officers or directors use any influence to prevent the granting of an extension of the mineral period, all funds of the Osage Tribe deposited therein, and that they use their influence and efforts to cause to be removed any guardian of the estate of an Osage Indian who is using his influence to prevent the granting of the extension of the mineral period. [quoted in Burns 2002: 426-427]

Rather than sending this resolution directly to the federal government, it was first circulated to eighty-four guardians and seven banks, all of whom immediately withdrew their opposition to the extension. This, however, was not the end of the opposition to the extension of the Osage mineral estate. Not surprisingly, the Oklahoma Congressional members refused to support the extension bill unless the Osage agreed to a 5 percent Gross Production Tax on all minerals extracted. In this way, the state was able to gain access to tribal resources, something usually prevented by the federal government. The Osage Tribal Council, not having any other option, agreed to the tax (Burns 2002).

The Osage Tribal Council was able to extend the mineral estate until 1958 and then to 1983. It was not until 1978 that the Osage were able to convince the government to change wording about the duration of the mineral estate from “until otherwise provided by Act of Congress” to “in perpetuity” (92 Stat. 1660). However, as Burns (2002) argues, what the Congress was extending into perpetuity here was the mineral estate, not this particular system of Osage governance. In the same 1978 law it was stated, “The tribal government so constituted shall continue in force and effect until January 1, 1984, and thereafter until otherwise provided by Act of Congress.”

---

6 This Gross Production tax remained a very large issue during the 2004-2006 Osage reform process, particularly because a certain percentage of the monies were supposed to go to education and roads in Osage county (also known as the Osage reservation). The State of Oklahoma continues to refuse to account for these monies, and, other than a few bonus checks to local schools, it is still unclear where this money has gone. Much like the monies of the Civilization fund, tax funds earmarked for the Osage no doubt went to many things the Osage neither had control over nor supported.
In addition to this battle to maintain the mineral estate, the Osage also had to fight against the 1950s federal policy of termination. In 1953, the Osage, along with several other tribes, faced termination through House Concurrent Resolution 108. While the federal government had long been trying to “get out of the Indian business,” this period of termination was its most straightforward and ‘successful’ attempt. Because of Osage wealth, they were seen as no longer needing the support of the federal government and thus eligible for termination. The Osage, understanding the importance of federal recognition, sent representatives to Washington to use Osage wealth to negotiate a continuing relationship. During the hearings on July 22, 1953, Osage Tribal Councilman George V. Labadie made the following argument:

**MR. HARRISON:** You are willing to pay every bit of the expenses?

**MR. LABADIE:** Yes, sir.

**MR. HARRISON:** That will include not only the $40,000, which is the difference between the $300,000 cost of operation and the $260,000 you pay, but also the cost of administration by the Department of the Interior.

**MR. LABADIE:** Correct and the area directors.

**MR. HARRISON:** I understand then you will take immediate steps to work out with the Department of the Interior representatives the plans to take care of the payment on a fair and equitable basis?

**MR. LABADIE:** Certainly.

**MR. HARRISON:** I might say I can find no fault with an agreement of that kind nor can I find any fault with the continuation of the trust provided you are willing to pay for the additional cost. I might just say frankly that I feel that a tribe that is as wealthy as your tribe is and people as competent as you are, making the record that you and other people have in business, certainly should not expect the federal government to continue payment of all the extra costs. If the continuation of [the] trust is going to be beneficial to you, then you should be willing to pay for it.

**MR. LABADIE:** That is correct. And we will do that. [quoted in Burns 2002: 428-429]

This exchange illustrates that by 1953 the federal government had long forgotten all the promises it had made to the Osage in exchange for their land. Once again, the Osage had no choice but to
accept the terms the federal government was willing to offer. Because of Osage oil money the Osage continued to be recognized as a federal tribe. Since the passage of this bill in 1953, the Osage are the only tribe paying for the costs of running their own BIA agency (Burns 2002). Because the oil under the Osage reservation will eventually run out, many people have feared the eventual termination of the Osage tribe. However, recent investment in gaming has once again altered the situation, allowing the Osage to create programs to serve their community and rebuild the Osage Nation. While Osage governance and autonomy are based on principles far older than economic development, it is through these means that the Osage and many other Tribal Nations today are being revitalized.

**Efforts Toward Reform**

Even while fighting the federal government in order to maintain recognition, more and more Osage were being alienated from the shareholder controlled government. In the 1950’s and 1960’s, a group of Osage got together to form the Osage Nation Organization (Oh No). The central argument of the group was that the 1881 Osage Nation had been illegally terminated by the BIA and was thus still an active government. In addition to wanting to return to this governing structure, this group was motivated by a desire to move Osage citizenship away from the headright system toward a $\frac{1}{4}$th blood quantum requirement. Because of their insistence on a blood quantum, and fears that their real intent was to do away with the headright system altogether, which was still providing shareholders with a substantial check each quarter, the Oh No’s were never successful in their reform efforts. Rather than bringing an end to the Osage Tribal Council (OTC), they ended up rallying many Osage behind this federally imposed system.

However, in 1978 this effort to delegitimize the OTC led to *Logan v. Andrus* (457 F. Supp. 1318), with mixed results. The trial judge held that the 1881 Constitution had been illegally abolished saying, “The Secretary of the Interior was attempting to exercise legislative power
when he purportedly abolished the government of the Osage Nation in 1900, and thus such action was beyond the scope of his authority and of no legal effect” (457 F. Supp. 1318, 1324). However, the court decided that because the OTC had been in place for over seventy years, it now had general legislative authority over the tribe. Thus, even though the BIA had illegally abolished the Osage Nation, the OTC was now considered the only active government of the Osage people. In the appeal, the legislative authority of the OTC was reaffirmed (640 F.2d 269 [1981]).

This issue was again brought up in 1990, when another group of Osage took the preexisting Osage constitutional government to federal Court (Fletcher v. United States, 116 F.3d 1315). As Robert Warrior explains,

In a move that surprised many, in 1992 U.S. District Court Judge James O. Ellison reached what can be seen legally as a decision in equity and mandated a process through which citizen-members of the Osage Nation (most of whom were ineligible to vote under the tribal council system) voted, over the course of two years, in a referendum process to reinstate their National Council. [2005: 54]

This court-mandated process resulted in a new Constitutional government, which was seen as being amended from the 1881 Osage Constitution. Because this outcome was a negotiation between the BIA and the plaintiffs of the case, much of the new constitution was written without the consent of the Osage population as a whole. A majority of Osage voters did approve the final 1994 Constitution. In 1997, however, the 10th Circuit Court of Appeals reversed Judge Ellison’s ruling on the basis that the OTC had sovereign immunity and could not have its general powers stricken by the U.S. court system. In recognizing the OTC as the Osage government, this ruling extinguished the 1994 Osage government and returned voting to only those holding a share in the minerals estate (Warrior 2005).

By 2004, this imposed Tribal Council structure had done much damage to the Osage as a nation. In addition to alienating thousands of Osage from tribal politics, this system had many
problems as a governing institution. Because all authority was concentrated in the tribal council, there was no one to prevent misuse of authority, misappropriation of funds, or outright corruption. Frequently, the Osage voters responded to these problems by electing new officials every election, but the lack of continuity led to projects being funded for short periods and then scrapped with each electoral change. Finally, because there was no official way of making law, a resolution was often passed one week and overturned the next. These problems ultimately scared away valuable people, resources, and funds from the reservation area.

**Leave It Alone**

Even with all its problems, the Tribal Council system still had authority among many Osage people during the 2004-2006 government reform process. While there were certainly plenty of shareholders in favor of changing the governing structure, there was a small group who wanted to keep the system exactly like it was. As one tribal elder explained in a community meeting, “Our generation back then, my grandfather’s days, my father’s days, they had a good time back then because they worked under this council system. It was good for them. The next generation, my generation, these young ones in here, their parents, your parents and my parents, they were involved back then. They thought it was good the tribal council had sole authority” (February 28, 2006). Central to these sorts of arguments was the feeling that this system had been in place for a century and it had worked to keep the Osage people together. Furthermore, because parents and grandparents were most frequently the ones to have a headright, it was argued that this system allowed elders to make decisions based on their more mature understanding of Osage politics and history. For other people the Tribal Council system had developed authority simply because it had been in place for a hundred years.

During an Osage government reform business meeting in September of 2005, one of the commissioners pointed out that the real cultural match for the government had a lot less to do
with cultural practices and a lot more to do with the Osage shareholder system, which had been in place for the last hundred years. Perhaps more than any other comment received during the reform process, the OGRC was told over and over again, “I don’t care about what sort of government you create, but don’t touch the mineral estate.” During a community meeting in Greyhorse one man said, “You all need to stay out of the mineral estate…You all have your other business to take care of. You have no business in there. The shareholders can decide; the shareholders can appoint; let the shareholders figure it out” (January 12, 2006). Another frequent comment focused on making sure the mineral estate was kept separated from the other governing affairs, “Ok, so what is needed is a clear separation of the minerals operation and the governing of the nation, as well as their various monies. They must be kept separate” (Oklahoma City May 05, 2005).

In fact, the force of these concerns was strong enough to frequently derail entire meetings. While the focus of the meeting might be on the problems of nepotism or the need for checks and balances, the comments would often return to the mineral estate. The general consensus was that current shareholders should continue to be the only ones receiving the proceeds from the mineral estate, which was guaranteed by federal Law, or making any decisions related to the mineral estate. From these discussions, it became clear that the structure of the new government was far less important to many Osage than the protection of the mineral estate.

The central motivation for keeping things the same was fear. Because of movements such as the Osage Nation Organization (Oh No), there was a strong connection created in the minds of many Osage between reforming the government and redistributing the mineral shares. While the Oh No’s never argued for the redistribution of the mineral shares, they did attempt to get other money owed to the tribe by the federal government distributed to descendants of the 1906 act
who were on record as having 1/4th and over Osage blood. Concerns that similar efforts were at work within the 2004-2006 reform caused significant commotion throughout the reform process, with the reform commission having to insist over and over again that the mineral estate shares were protected from redistribution, taxing, and being used as collateral by the new government.

These fears greatly complicated the Osage reform process, because they created questions about any sort of change. Articulations such as the following were frequent throughout the reform process,

You're not going to change- - - you're not going to, like she said, ‘your Mineral Estates are protected.’ It's ruled by a CFR Regulations in the Supreme Court so you can't set one, this referendum thing here has no dealings with that. You can't say anything about that so I want everyone to know that you can't change that part of it. Is it true that just what you are here to do is to form a new government? [OGRC Community Meeting, Pawhuska, April 4, 2005]

The code of federal regulations (CFR) mentioned above is a set of U.S. regulations that stipulate how the Osage mineral estate was supposed to operate, including how many elected officials it would have. These codes were originally written to support the 1906 Congressional Act, but have been amended many times in the last hundred years. During the reform process these CFRs were brought up repeatedly, usually ending conversations about alternative government structures and refocusing the discussion around the laws already in place. The reform commissioners themselves spent many hours mired in discussion about the CFRs and how they could work around them if changing them was not an option.

Finally, the OGRC turned to the BIA for guidance as to how the federal government would react to such a change. When the Osage Superintendent was approached about this subject, she clarified that the federal government would change the CFRs to meet the new Osage governing structure. While many people were relieved that they did truly have this sort of freedom, other Osage, particularly members of the Osage Shareholder Association, continued to feel that it was
better just to leave the mineral estate alone. Many people equated change with a threat to the
Trust Relationship. In a posting on the Osage Shareholders Association (OSA) Website in
October of 2006, one person explained that the anxieties surrounding the trust were not simply
monetary. He went on to say,

It’s all about the legal concept of a trust and about keeping the Osage Trust intact, so that
the special relationship the 1906 act gives all the Osage people with the federal
government, will not be destroyed. A trust can be thought of as a box in which something
of value is kept safe for the owners. It is usually meant to keep the valuables safe not only
from outside forces, but also from unauthorized use from the owners. So there are special
rules as to its use and a trustee is placed in charge of both protecting the valuables and
regulating their use. As long as the box is kept intact and all the rules are followed the
trust itself can be thought of as being intact and unassailable…I want agreements made that
are consistent with the CFRs.

Central to this posting is a fear that if any rules associated with the mineral estate were changed
that the entire trust relationship would crumble. Because of the effort involved in extending the
mineral estate into perpetuity, there were good historical reasons to assume that the federal
government would use any excuse possible to finally succeed in subsuming the Osage
completely.

Throughout the reform process, these sorts of fears were articulated in many different
ways. At the beginning of an Osage government Reform meeting, the Osage public was given
the opportunity to express their concerns, and one shareholder said,

There are several Osage that think that there is a plot going on to try to get the minerals
from underneath the trust; that the [new Osage] government will actually end up with the
minerals and they'll no longer be ours; that they'll be turned over to somebody else
because it goes back to greed. When you look at this land all around us and think at one
time we owned every inch of this ground. And now we have hardly nothing. [September,
26, 2005]

7There are many arguments about the origin and exact meaning of the trust relationship between the United States
government and Indian Tribes. Wilkins and Lomawaima (2001) summarize these debates and describe this trust as
“the notion of federal responsibility to protect or enhance tribal assets (including fiscal, natural, human, and cultural
resources) through policy decisions and management actions” (65).
Because of the long history of colonial encroachment, the Osage people certainly have good reason to fear further losses. Over and over again, the federal government made promises and then broke them, playing Osage factions against each other in an attempt to meet the Euro-American desires for westward expansion leading to smaller and smaller reservations and ultimately allotment. In particular, the more recent loss of reservation land to whites through means such as failure to pay property taxes and outright fraud, is still very fresh in the minds of many Osage. Unfortunately, as frequently occurs after prolonged colonialization, these fears are not limited to the actions of the colonizer, but are turned inward, shedding doubt on all reform efforts. These individuals continued to fight the government reform process and formed part of the 33 percent minority that eventually voted against the 2006 Osage constitution.

This small group of shareholders saw such moves by the federal government to allow more Osage self-determination as the government’s latest attempt to get out of the Indian business. On the Osage Shareholders Association (OSA) webpage, one member wrote a long posting entitled, “White Hair Stills the Wind,” which told a particular Osage history in order to support one way in which the Osage future could be imagined. The posting tells a story about two of the Osage Villages, the Grand Village and the Little Osage Village. The Little Osage had asked and received permission to secede, but later, surrounded by enemies, asked the larger group if they could return. The Little Osage ended up settling about 6 miles away. The posting continues that in 1806, when US Army Lieutenant Zebulon Montgomery Pike visited the Osage, he could not convince White Hair, the central leader of the Grand Village, to help him establish a route through to the Colorado area, but the Little Osage decided to help. Because of his “reckless temperament” Pike ended up abandoning all his men, who did not have enough food or
protection from the cold, and was eventually captured by the Spanish. The posting concludes by saying,

In modern day Osage politics, there seems to be a willingness by the US government to remove their responsibility to the Osage. Is this the same reckless temperament White Hair saw in the folly of the Americans in 1806? Also are Shareholder Osage (also known as “1906 Osage”) equivalent to Grand Village Osage of 1806 when they demonstrate their willingness to grant a group of Osage permission to pursue their own political endeavor? I am sure that the temperament of the 1906 Osage will once more be demonstrated if the efforts of the new government fall short of expectation. There seems to be a substantial effort displayed by the new Osage government as they tend toward the betterment of our Osage people. But cautious concern, as demonstrated by White Hair in 1806, to protect the Osage Trust should be our greater calling as the electorate. Let’s not forget that the 1906 Act was probably second only to the life ways and ancient rule of the Grand Village of the Osage, on the Osage River in Missouri. [www.Osageholders.org 2006]

This posting equates the reckless temperament of Pike and the Little Osage to the new Osage Nation. In this telling of Osage history, the Osage Mineral Estate becomes the protector of the Osage people, as well as a form of government “second only to the life ways and ancient rule of the Grand Village of the Osage.” Using history in such a way enables this writer to question the new Osage government while reasserting the importance of the Osage Mineral estate.

This posting also illustrates the power the 1906 Act continues to hold for some Osage individuals. Furthermore, this story exemplifies that the source of this authority stems primarily from a fear that the U.S. will no longer recognize its trust relationship with the Osage Nation, thus bringing about the termination of the mineral estate and ultimately the Osage Nation as a whole. Through the colonial process, self-determination itself has because a dangerous sign for some Osage. These fears surrounding the mineral estate powerfully illustrate the ways in which the colonial process has impacted the Osage people. Fears of termination of the trust relationship were powerful enough to make the 2004-2006 reform process exceedingly complicated. Through repeated threats of termination, the federal government has created a situation in which
many Osage are terrified of any change, even while acknowledging the insurmountable problems with the Tribal Council structure.

**Debating the role of the Osage Mineral Estate**

From the very beginning of the reform process, it was clear that the hardest problem the Osage Government Reform Commission (OGRC) had to solve was how to reform the government while simultaneously leaving the mineral estate intact. In legislation created by the Osage Tribal Council and passed by the United States Congress, it was stated,

> Notwithstanding section 9 of the Act entitled, ‘An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes,’ approved June 28, 1906 (34 Stat. 539), Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own form of government provided that the rights of any person to Osage mineral estate shares are not diminished thereby.” [Public Law 108-431: December 3, 2004]

Thus, the Osage people had the right to create any government they wanted, so long as this government did not diminish the rights of any persons to their mineral estate shares. However, legality was just the beginning of the issues associated with the Osage Mineral estate.

The OGRC learned very early in their first round of community meetings that most Osage Shareholders were fine with allowing non-shareholders to becomes citizens, but they wanted to be assured, over and over again, that these changes were not going to affect their mineral estate shares. The rest of this chapter will explore the different views in circulation during the 2004-2006 reform process about how the mineral estate should be handled in the making of a new Osage government. Among the Osage people, there were multiple ideas about how the mineral estate should be treated, including leaving everything alone, creating the mineral estate as one house in a bicameral system, or making it part of the larger Osage Nation. In exploring the debates surrounding each of these ideas, it is possible to understand both the problems
colonialism has created for the Osage people and the continued insistence that this colonial situation not prevent the Osage from rebuilding themselves as a nation.

The primary problem with the “Leave it Alone” strategy is that most Osage agreed that membership needed to be reformed. There was no way, however, to simply add new people into the current Osage government without opening up the mineral estate decisions to non-shareholders, because the current government was the sole decision-making body for the mineral estate. It was thus reasoned that there had to be some way to create a new government while preserving the mineral estate. One creative solution to these complexities was to create a bicameral system of governance. While there were many versions of this suggested, the general idea was that the Osage shareholders would elect one body and the general Osage population, including the shareholders, would elect another. This was seen as not only uniting the tribe, but also appeasing the shareholders who were afraid that the new government would in some way harm the mineral estate. At one of the early community meetings a shareholder outlined this view:

I don’t particularly want to see a nation and a tribe. I want to see us all together. One way to do that would be to have a bicameral form of government where you have a council that is elected by the shareholders. It’s going to happen no matter what because that’s part of the law. But also have a House that would be elected by all of the Osage . . . I think if we put it all together in one unit, one government, we could do something that would be effective as far as all of us working together. [OGRC community meeting Skiatook: May 12, 2005]

As we saw earlier, one of the reform commissioners also desired a bicameral structure because it would also create a link with earlier Osage governments. To address these ideas the Osage Government Reform Commission created the following question as part of the November referendum:

Option A. The newly reformed Osage government is reorganized under one governing constitution of the Osage Nation with one governing body organized into a 3 branch system that does not include the Osage Tribal Council as part of that system. The Osage
Tribal Council functions as an independent body with no governmental authority, yet retaining all its present fundamental organization, authority and responsibilities over the Osage mineral estate in accordance with the Osage Allotment Act of June 28, 1906. (sec. 9, 34 Stat. 539)

Or

Option B: The newly reformed Osage government is reorganized under one governing constitution of the Osage nation with one governing body organized into a 3 branch system that does include the Osage Tribal Council as part of that system. The Osage Tribal Council is established as a second chamber of a bicameral, or two house system, within the legislative branch of the newly reformed Osage government. Elected by Osage shareholders, the Osage Tribal Council retains all its present fundamental organization, authority and responsibilities over the Osage mineral estate in accordance with the Osage Allotment Act of June 28, 1906 (sec.9, 34 stat 539). All legislative authority, other than that specified to manage the mineral estate, is delegated to a house of representatives elected at large by all adult members of the Osage Nation. A bright line must be drawn between the two houses to clearly delineate duties and responsibilities.

When the Osage people answered this question, they were split almost exactly down the middle with 51.6 percent of the voters voting for option A and 48.40 percent voting for option B. The one thing that was certain from this result was that the Osage people were not united around a bicameral system of governance.

Because “Option A.” had officially won the referendum election, the Osage Tribal Council could not be part of the 3-branch system in the form of one half of the legislature. However, many people still feared a repeat of the two-government system created in 1994. The telling of Osage histories once again played a major role in how the Osage future was imagined. In 1994, a three-part government was created with a National Council, Executive, and Legislative branches. Because this constitution was a court-mandated negotiation among the BIA, the Osage Tribal Council, and the party suing the government for improper dissolution of the 1881 government, the Osage Tribal Council was left intact. The assumption was that the Tribal Council would focus on the minerals and the new National Council would handle all other Osage affairs.
Several problems quickly developed between these two organizations. First, the national government had no way to pay for itself. Oil money was used to pay for the Tribal Council, but could not be used for the national government and gaming was not yet a resource the Osage Nation had developed. Another problem was that the buildings, equipment, and other possessions had ambiguous ownership, with both sides claiming the title. Finally, it was argued that the National Council was meddling in the Tribal Council affairs through the creation of certain laws. In a Pawhuska community meeting during the 2004-2006 reform process these issues were brought up and one Osage responded at length:

We’ve been dealing with this for years and years. Like Mr. Redeagle said, the 1906 [Act] has been very good to us. But our people have always been moving forward and we always change and change is needed. We have to make some changes because there are Osage that are totally estranged from their own nation. At the same time, let’s learn from our history. People who don’t know their history are bound to live the same things over and over again. The main reason I came tonight is share a little bit of information with you; a little bit of our history. I was on the tribal council with Mr. Redeagle in 1994 when we had a constitution. I thought it was a good constitution. I thought it spelled things out. When we started out we were happy, like a bunch of kids starting something new. The tribal council was glad to shift all those responsibilities and duties over to the national council; we took care of the minerals. During the time that the tribal council took care of the minerals, for the first time in history, the Osage people pumped our own oil. No other people in the world had this many resources and sat on it and did nothing but take royalty income . . . . . . But we’ve got to learn from mistakes. I am saying let’s make sure the Osage tribal council does not break any rules of the National government. Let’s make sure that the rules are written in such a way that that doesn’t become necessary, because this was the downfall of our last government. [January 19, 2006]

This quote nicely summarizes many central issues of the 2004-2006 reform process. While history is central for understanding future paths, change is still highlighted as the central way forward for the Osage people. Furthermore, this quote illustrates from an inside perspective that even if the Osage people had good intentions starting out with the 1994 government, it failed because there was no agreed upon process for them to negotiate their relationship.

Others during the reform process insisted specifically on the need for one government. During a Bartlesville community meeting another person said:
It’s one government, the way I see it. The way that my father, I and Paula, and my family here and friends, have been debating since last week on a daily basis. When the constitution is set, it’s done, and we have a president or chief, the mineral estate then becomes a board… There’s no longer a government because if you’re not dealing with my health care anymore, my education, my housing, of that which, it is a contradiction in terms… The mineral estate now becomes a true economic developing board. [April 28, 2005]

In the end, the reform commission ended up writing a constitution that included something very similar to this view, with the Minerals Council acting within the larger Osage Nation.

This decision to create one government still left the central problem of how the mineral estate could be included in the government and subject to the laws of the nation, while at the same time maintaining the greatest possible independence. The OGRC spent several weeks meeting with their lawyers, holding a law symposium of Osage lawyers and meeting in a weeklong writing retreat. After coming up with their best solution, the OGRC took their ideas back to the people in a series of community meetings. One of the government reform commissioners explained their findings at a Hominy community meeting:

It’s well understood that the tribal council or mineral council would not have the same role that they’ve always played. They will no longer be the governing body of the Osage people. But it’s our feeling and the feelings of the Osage people that we’ve visited with that they certainly want that council to exist and they want them to handle strictly the mineral shares for the shareholders. The problem remains, how do we keep a government-to-government relationship existing? We don’t want to go back to two governments and we will not. We’ll have one governing body and then the mineral council will be a separate part, still elected by the shareholders… The way we feel it will be tied to the government is that a clause could be written in there that within five days of a lease, the chief would have a right to decline it if it violates Osage law set by the constitution. He can’t decline just because he doesn’t like it. But if it violates Osage law he can then decline it. That is the tie that brings it into the new government to keep its sovereign immunity powers under the government. Without it we were afraid, and we’ve had attorneys advise us, that the Bureau of Indian Affairs could say we’re no longer going to deal with this because that’s not the governing body any more. And it would put us in a quandary of who does have a say. And we think the Osage people feel that the shareholders want that mineral council to oversee and to control the oil portion, but not anything to do with day-to-day government. [January 16, 2006]
In 2006, this approach to incorporating the Osage minerals council into a new government was accepted by a 2/3rd majority of the Osage voters. Article XV, section 4 of the 2006 Osage Constitution created a minerals management agency entitled the Osage Minerals Council. This agency was, as the constitution reads, “established for the sole purpose of continuing its previous duties to administer and develop the Osage Mineral Estate in accordance with the Osage Allotment Act of June 28, 1906, as amended, with no legislative authority for the Osage Nation government.” To assure that the Osage Minerals Council did not violate Osage law, the same section of 2006 Constitution includes this stipulation:

Mineral leases approved and executed by the Council shall be deemed approved by the Osage Nation unless, within five (5) working days, written objection is received from the Office of the Principal Chief that the executed lease or other development activity violates Osage law or regulation. Any dispute that arises through this process may be heard before the Supreme Court of the Osage Nation Judiciary.

What was particularly important about this move was that those shareholders voting for the new system, including the acting members of the Osage Tribal Council, voted for a system in which they were going to lose their monopoly over general Osage governance. When asked about this loss of power, one person with multiple headrights responded, “That is power I should never have had to begin with” (personal communication, September 12, 2005).

The passage of the 2006 constitution was only the beginning of the debates about the new role of the Osage mineral estate. Many people continued to express fears that this new system gave the Chief too much authority over the mineral estate, especially since the Chief did not have to be a shareholder. Some even went as far as to threaten lawsuits because they felt the minerals council had not been properly protected. They argued that the mineral estate had in fact been diminished by its new place within the larger Osage Nation, particularly since they no longer had a chief or vice chief and were left with just the 8 council members. As one tribal elder put it
early on in the reform process, there was always the possibility that the future of the Osage Nation would be decided by a lawsuit. 

If they decide to allow all Osage into the system, then the headright holders have a right to sue because the council has not protected the headrights by bringing in all these voters. If they create a two part system, with one group over the mineral estate, then the other group will sue because they are not having full say in their government. Either way they should just do it and get the lawsuit out of the way, because it will decide what kind of government we are going to have. [Personal Communication August 26, 2005]

These debates surrounding the Osage mineral estate illustrate, perhaps more than anything else, the complex set of issues the colonial situation has created for the Osage people.

Conclusion

In this chapter, I have combined various histories of the Osage people in order to tell my own story of the colonial process. The Osage benefited from their central location and were able to gain power during the early colonial period by establishing extensive trade relations. When the United States government monopolized trade in the area, this Osage position was greatly weakened. Through control of trade, greater access to guns and horses, and outright deception, the United States government was able to negotiate a series of vast land acquisitions. Control over land, and the annuity payments promised for the land, enabled the federal government to take control of Osage governance and to ultimately persuade the Osage to accept allotment.

In 1906, when the Osage Tribal Council was set up, the federal government thought that it was creating an end to the “Indian problem.” In 25 years it imagined that the Osage people would be incorporated into American culture and would no longer need to have a governing body to manage Osage affairs. The Osage were able to fight off this series of threats through various creative maneuverings, which, while drastically changing their governmental structure and way of life, enabled them to maintain their position of difference in relation to the general
American population. Even while the Osage fought this incorporation through various extensions of their trust relationship, more and more Osage fell outside their governing structure.

By the time the federal Congress was persuaded in 2004 to give the Osage the same rights as other tribes, to determine their own membership and form of government, the U.S. government had created a complex problem for the Osage in terms of how the system of headright shares would be preserved while allowing for a government that met the current needs of all Osage people. This impasse illustrates the continuing colonial impacts on the Osage people today. Fear of change, in particular, threatened to stagnate all reform efforts, letting few conversations stray far from the protection of the mineral estate. In making fear the central topic of discussion, the colonial process has weighed heavily on the Osage people.

Another consequence of the colonization has been the complete disconnection between older Osage governing practices and the 2006 constitution. The colonial government not only illegalized central aspects of these earlier Osage ways of being, but also, over time, rendered them unfamiliar. In creating a tribal council structure and only recognizing its authority, the United States government succeeded in significantly altering Osage practices. Interestingly, the disconnect created between Osage culture and political structures was still strong enough in 2006 to facilitate the general consensus that Osage cultural practices should remain completely separate from Osage governance. In dictating the government structure of the Osage for 100 years, the United States government broke apart older linkages between religion, governance and culture, so that by 2006 cultural practices were understood as something completely separate from governance.

However, the Osage cannot be understood as passive victims of colonization. Over and over again they have argued for their right to maintain as much of their autonomy as possible.
Using their history of embracing change, the Osage have not let themselves be dissolved as a people, even if this meant drastically changing their own ways of living. Rather than defining themselves simply in terms of a connection to a single past, many Osage have embraced change as a means of ensuring their future. While some might read Osage history as a series of losses, their continued perseverance in the face of great colonial opposition should instead be read as a series of negotiations.

Over and over again, the Osage have asserted that they are not only a people, but also a nation. To this end, the 2006 Osage preamble reads,

Having resolved to live in harmony, we now come together so that we may once more unite as a nation and as a People…Acknowledging our ancient tribal order as the foundation of our present government, first reformed in the 1881 Constitution of the Osage Nation, we continue our legacy by again reorganizing our government…We, the Osage People, based on centuries of being a People, now strengthen our government in order to preserve and perpetuate a full and abundant Osage way of life that benefits all Osage, living and yet unborn. [Osage Constitution: 1]

Rather than treating the past as some sort of static ideal to be returned to, this passage is creating a connection with the past, predicated on Osage reorganization. It is this ability to change that enables an Osage future. Furthermore, it is the Osage insistence on their own nationhood that denies the federal government’s efforts of total incorporation. As Article I states, “This tribe shall hereafter be referred to as The Osage Nation, formerly known as the Osage Tribe of Indians of Oklahoma” (Osage Constitution 2006:1). By once again rejecting the label of tribe, the Osage people are utilizing the idea of nationhood to reassert their ability to control their own affairs. In 2006, they succeeded in reasserting themselves as a nation, even as the fear of change threatened to stagnate or reverse this process.
CHAPTER 3
THE FUNDAMENTAL POWERS OF BLOOD

Objective self-fashioning is how we take facts about ourselves—about our bodies, minds, capacities, traits, states, limitations, propensities, etc.—that we have read, heard, or otherwise encountered in the world and incorporate them into our lives. [Dumit 1997]

In March of 2006, the Osage voters approved a constitution stating, “all lineal descendants of those Osage listed on the 1906 roll are eligible for membership in the Osage Nation” (Osage Nation Constitution 2006). While this phrase appears simple, it is actually a complex consolidation of a myriad of debates surrounding citizenship that have been going on for centuries, particularly regarding the role Osage blood should play in determining who can be considered an Osage citizen. The next two chapters will map the various institutions that have surrounded Osage blood. As Bruno Latour (2000) writes, “When a phenomenon ‘definitely’ exists this does not mean that it exists forever, or independently of all practice and discipline, but that it has been entrenched in a costly and massive institution that has to be monitored and protected with great care” (255).

Blood must be understood not simply as a physical substance, but also as an institution, or, more accurately, multiple institutions, which are not uniform throughout time or space. In human history, the significance of blood has changed many times. Even now, blood, as the substance by which physical traits are passed from one generation to the next, no longer quite makes sense. Genes have come to take blood’s place as a marker of heredity, leaving blood as mere metaphor, no longer assumed to contain the fundamental characteristics of an individual, and therefore, no longer supported by current science. Scientists are now investing their time and resources into tracing out connections between genetic codes and physical traits, leaving the institution of blood to unravel from neglect. However, for many Osage as well as other indigenous peoples, blood still has real power. In order to make sense of this power, the various
institutions of blood must be scrutinized. After outlining some of the debates about blood which took place at the beginning of the 2004-2006 reform process, this chapter will trace out European understandings of Indianness and how some of these concepts surfaced during the reform process. The following chapter will illustrate, however, that the Osage did not simply accept this European institution of blood, but created their own institution, negotiated out of their own experiences.

BIA, CDIB, OTC, OGRC and Who Gets to Vote

During the summer of 2004, I returned home to Oklahoma in order to lay the foundation for my dissertation research on the Osage government reform bill that was moving through the US Congress. The second interview I conducted was with Leonard Maker, the head of planning for the Osage Nation. Maker had been put in charge of creating a plan for the reform process and had a large schematic drawn on a dry erase board in his office outlining the major events he thought should take place, including: community meetings, trainings, and a referendum election.

During the interview, Maker explained that the first decision to make was who got to vote on the future of the Osage nation. Giving a brief history of the tribe, he explained that in 1906, when the Bureau of Indian Affairs (BIA) finally persuaded the Osage population to allot their reservation, the BIA created a roll that listed all the members of the tribe. From this roll, Maker went on to say, there are around 20,000 lineal descendants, all of whom were eligible for Osage Certificate Degree of Indian Blood (CDIB) cards from the BIA. However, because of the shareholder system created by the federal government in 1906, children born after July 1, 1907 were not eligible to vote in tribal politics or run for office. It was only when members on the original roll died that Osage born after the cutoff date were able to inherit land, a share in the mineral estate proceeds, and a vote in tribal politics. This was even further complicated by a later decision to have tribal votes dependent on the percentage of headright held. When three
siblings would inherit equal shares of one parent’s headright, for example, they were only given a 1/3rd vote in tribal elections. By 2004, this system recognized only 4,000 people as eligible to vote, with many having less than half a vote. These inequalities are what eventually led the Osage Tribal Council (OTC) to press the federal Congress for a change in the law.

In discussing who he thought should be eligible to vote if the bill was passed, Maker asked, “It is a chicken and egg question, who decides who the Osage are to participate? Assuming that everybody, most of the 20,000 people that we say are of Osage descent, are of Osage descent, then those are the people we want to be represented” (Personal Communication: July 20, 2004). Maker went on to explain however, that central to the passage of Osage allotment in 1906 was the stipulation that the Chief would have three months to file with the Secretary of the Interior a list of names that were on the BIA roll by fraud or descended from people put on the roll by fraud. The principal Chief created a list of 244 persons. The Secretary of the Interior heard these cases, but in the end decided not to remove any names from the list based on what he saw as insufficient evidence. (Personal Communication, July 20, 2004; Annual Report 1907: 116).

Maker went on to explain that some Osage did not want the 1906 roll to be the basis for membership because of these fraudulent enrollees. It was argued that because these people did not have Osage blood, they should not be granted a Certificate Degree of Indian Blood card, and ultimately should not be eligible to vote in Osage elections. Maker explained,

I just learned over the last several years we had a person working at the agency here who was able to look at the roll and at the documentation that was available to show that there are a number of people on the Osage roll from 1906 who were not of Osage blood. This person refused to issue CDIB cards to these people because, simply, they were not of Osage blood. She could not ethically or legally, in her opinion, sign off on a document that said they were of Osage blood because from her analysis from what the actual record showed, they were clearly not of Osage blood. [Personal Communication: July 20, 2004]
This question of who should be eligible to participate was thus not easily answered. On one hand, there was a 100-year precedent of the 2,229 headrights that had by now been unevenly split among 4,000 people controlling Osage elections. However, this was the system the OTC was trying to fix with their U.S. Congressional bill. On the other hand, there were around 20,000 people who were lineal descendants of the 1906 roll, but this roll now contained hundreds of descendants perceived as fraudulent. Finally, this issue of fraud was caught up in debates about blood and biological conceptions of being Osage. Some of the people listed on the 1906 roll had been adopted into the tribe and were accepted at the time even though they had no Osage blood. Adoption was practiced by the Osage before the arrival of the Europeans and was seen by some to be more culturally appropriate than blood-based forms of membership.

The bill reaffirming the “inherent sovereign rights of the Osage Tribe to determine its own membership and form of government” (Public Law 108-431) passed both federal houses and was signed into law in December of 2004. Choosing to act immediately on this law, the Osage Tribal Council (OTC) put Maker’s reform plan into motion. In February of 2005, the OTC appointed ten people as commissioners with their mission being to “provide a means through which the Osage People will establish a government that reflects the will of the Osage People” (Osage Government Reform Project Comprehensive Plan, February 21, 2005: 8). Maker’s original plan called for half the commissioners to be headright holders and half non-headright holders, but various Osage Tribal Councilmen argued that they wanted to instead focus on getting the best people for the job (OTC Committee Meeting, February 7, 2005). When all the reform commissioners ended up being headright holders it seemed more likely that the motivation for changing the comprehensive plan was a fear that non-shareholders (those who had not yet, or never would, inherit a headright) might create a government that was somehow harmful to the
mineral estate. This move, however, caused many people to question the process of the reform from the very beginning, saying the reform commission did not accurately represent the Osage population\(^1\).

The plan handed to this new commission (officially titled the Osage Government Reform Commission) by the OTC did not, however, clarify who was meant by “the Osage People,” but did stipulate that they needed to create a registration process for the proposed constitutional referendum based on existing lists including, “the CDIB list, membership list, newsletter list, other lists” as well as certify this list for the referendum” (Osage Government Reform Project Comprehensive Plan, February 21: 2005: 8). For Maker and some members of the OTC, this process included at least the option of having the voting list go through a period in which descendants from these members who had been listed as fraudulent were subject to challenge (Personal Communication: July 20, 2004).

In May of 2005, I returned to Oklahoma to complete my dissertation research. The reform process had officially started in February with the appointment of the OGRC, but by May the OGRC was just setting up its office and beginning its first round of community meetings. In addition to the OGRC business and community meetings, I began attending the weekly OTC meetings. At 9 a.m. on July 1,\(^{st}\) I arrived for an OTC meeting and was immediately asked to leave the chambers, along with all other non-elected officials, because the CDIB department\(^2\) had asked for an executive session. Later, from various sources, I pieced together that this meeting

\(^1\) This and other problems with the reform will be discussed at length in chapter six.

\(^2\) In order to take more control of the process by which the Bureau of Indian Affairs (BIA) awarded Osage Certificate Degree of Indian Blood (CDIB) cards, the 31\(^{st}\) Osage Tribal Council (200-2004) contracted with the BIA, and created the CDIB department within the Osage Tribe. This department was intended to help Osage fill out the necessary paperwork, but ultimately it was still the BIA who determined the criteria for the card and signed off all cards issued. According to the BIA, to receive a CDIB card you had to prove descent from someone listed on the BIA’s 1906-allotment roll. This card enabled you to receive certain federal benefits including health care at Indian clinics and various Native American scholarships.
was called because the BIA was no longer signing CDIB cards of those descendants who did not have Osage blood. This was particularly significant since federal government had never admitted that there were people on the 1906 roll who were fraudulent, even when Osage leaders had taken such arguments to a hearing in front of the Secretary of the Interior in the early 20th century. The OTC was thus left with a dilemma of whether or not to act on this opportunity to show that the BIA’s roll had been wrong all these years. If so, the federal government could probably be held negligible in court for massive losses of land and mineral estate proceeds that went to “non-Osage.”

Several weeks later, after holding long meetings with the OGRC about the list of “non-blooded” and “fraudulent” Osage, the OTC realized through conversations with the Osage BIA Superintendent that this was not a change in BIA policy. It turned out that an Osage woman in the tribal CDIB department had started placing the word “adopted” on all CDIB card applications when she had evidence claiming the ancestor did not have Osage blood, either because they had been adopted into the tribe or because they had been placed on the roll fraudulently. When the BIA Superintendent of the Osage Tribe received these CDIB applications, she had been refusing to sign them because of the word “adopted,” not realizing these people were lineal descendants of those listed on the 1906 roll. The timing of this maneuver by the tribal CDIB department, however, caused months of consternation not only for the OTC but also for the OGRC, who were trying to figure out what voting requirements would be used for the November referendum election. This one issue, in fact, caused the commission to go in circles for months trying to figure out how they might best handle the voting requirements. On August 18, 2005, another business meeting turned into a discussion about the supposed fraudulent names:
Commissioner 1: What are we going to do about these two hundred names?

C2: It is not our job to do anything about it.

Maker: You need to include a process for people who want to dispute certain names on the 1906 roll. One way to do this would be to post the list in various places and give people a certain amount of time to come up with evidence against certain names.

C3: That list of the fraudulent names is totally arbitrary; it is not based on any real proof.

Maker: I have heard that there is enough evidence on file at the BIA to sufficiently document that these people were not Osage. You all need to stop going in circles around this issue and just take a vote. Then you must get started getting stuff done.

C3: What about putting it in the constitution that they need to be of Osage blood and letting the new government, with its own court system, enforce the idea?

C2: What about adopted children of Osage? Our tribe used to adopt children, didn’t they?

C4: You can be ethnically Osage, but that does not make you an Osage citizen. The two need to be separated.

Maker: I used to think this issue of blood was dead, but it has been brought back. It is going to take strength to fix, but we are talking about the identity of the Osage Nation. This is the first time in 100 years that we can answer the questions of who is Osage. Should we just stick our head back in the sand? [August 18, 2005]

Later in the meeting, it was decided that anyone with an Osage CDIB card from the BIA, which was based solely on being a descendant from the BIA’s 1906 allotment roll, would have a vote in the November referendum election and thus a say in how citizenship ought to be determined. As Chief Gray put it at the end of the meeting, “the best approach is to include everybody, cast the widest net possible as to the direction of the tribe. You can't limit citizenship before you determine citizenship” (Jim Gray, August 18 2005).

Within this discussion, it is possible to follow the ways in which this issue of blood caused a great deal of anxiety during the reform process, ultimately consuming much of the reform commission’s time and energy. Central to this anxiety are a series of conflicting ideas about the role blood should play in determining Osage citizenship. Fundamental to Maker’s argument is the idea that blood is one, if not the, central component in determining not only Osage
citizenship, but also the “identity of the Osage Nation.” In this view, the roll is something that Osage have been waiting a century to fix and are now finally being given the opportunity. Maker was far from the only person during the reform process who felt this way. However, there were also other views, such as the one put forth by C2, that blood should not be made the central determining factor because of older Osage practices of adoption. A third view, put forth by C4, also discredited a purely biological understanding of Osage citizenship, arguing elsewhere that Osage citizenship was also about living in and contributing to the community at large. This and the following chapter provide a background to each of these arguments, their histories, and ultimately how they were written into the 2006 Osage constitution.

Pauline Turner Strong and Barrik Van Winkle (1996) call for research that explores blood quantum as a “discourse of conquest with manifold and contradictory effects, but without invalidating rights and resistances that have been couched in terms of that very discourse” (1996: 565). Blood was certainly a discourse of conquest for the Osage, as it was for other American Indians. Over the years it has served, at least symbolically, as a dividing line reworking perceptions of who counted as Osage. The rest of this chapter focuses on blood as a discourse of conquest, while the following chapter will illustrate the more complicated understandings of blood that surfaced during the 2004-2006 Osage reform process.

The Dangerous Power of Blood

Historicizing Race

While blood is certainly a biological substance, it must be made sense of through the various institutions that surround it, including the Euro-American institution of race. Like all

3 Blood quantum is the percentage of blood one has based on inheriting half of one’s blood from the father and half from the mother. If a father was 1/4th Osage and the mother was none, the child would have an Osage blood quantum of 1/8th. If the Father was full-blood Osage and the mother was half-blood Osage, then the child would have an Osage blood quantum of 3/4th.
aspects of science, constructions of race rely on biological, social, and philosophical ways of knowing. Central to understanding the power of blood, then, is parsing out this institution of race for its various components. As the following sections will explore, the Euro-American institution of race relied on a vast assortment of objects and ideas including agriculture, Christianity, the “savage,” possession of property, colonization, the nation-state, the world map, evolution, human skulls, lead shot, the clinic, the novel, and U.S. federal policies.

Audrey Smedley (1993) argues that English interactions with the Irish laid the groundwork for race relations in the United States. After the invasion of Ireland, many of the English became frustrated with what they saw as Ireland’s total rejection of agriculture and blatant disrespect for God, order, structure and control. In the sixteenth and seventeenth centuries in particular, there developed a “growing image of the Irish as something less than human, as a people whose capacity for civilization was stunted” (Smedley 1993: 58). Such concepts of “savagery” became central to the development of ideas surrounding race. In particular, the English placed high value on the possession of property, linking it not just to what it meant to be civilized, but also, through the Protestant Reformation, to what it meant to be favored by God. As a result, the Irish rejection of private property was seen not only as a rejection of civilization, but also as evidence of their inferiority in the eyes of God (Smedley 1993).

These growing feelings of superiority were deeply rooted in the process of colonization, and the growth of the nation-state. The people Europeans encountered across the globe were seen as “nomadic,” “pagan,” and “orderless” in the eyes of European descendants. According to Robert F. Berkhofer (1978), colonialism grew out of the new economic and political order of the 15th century: “The rising spirit of nationalism and the emergence of nation-states in that area spurred exploration of the non-European world and divided the rest of the globe into national
spheres of colonization” (Berkhofer 1978: 4). As Europe began to map out the world around them, the world took on a drastically new shape. As James Scott (1989) argues, maps, such as those created during the colonial era, are never simply depictions of what exists, but are value-laden objects that mold the world into a certain way of being. Not only was the world mapped into spheres of control, but it was also engraved with concepts of civilization, marking off Europe from the rest of the world.

Nationalism, the growing global market, and Christianity all worked together to shape the concepts of difference that were the foundation of race. As Berkhofer argues in relation to Spanish perceptions of the new world, “Indians might, therefore, have the wrong or no religion, have misguided or no government…but they always stood in Christian error and deficient in civilization according to Spanish standards of measurement (Berkhofer 1978: 4). Steeped in this concept of Christian civilization, the “native” cultures encountered were likened to children and thought to be in need of modernizing. Working together, these ideas provided a central foundation for the science of race through the creation of both “the primitive” and “the civilized.”

**Racializing Indians through Science**

Through colonialism, concepts of cultural hierarchies were already present in America. However, it was evolution, stemming in part from the growing momentum of the Industrial Revolution, which turned these grand myths into science. Darwinism, and particularly its adaptation by Herbert Spencer into Cultural Darwinism, created the framework for much of this evolutionary timeline. According to Spencer and his adherents, each society was to be viewed as a solid entity whose progress could be measured by how well it is “ordered.” This order involved having a clear, codified and specific social organization. In this view, all societies are
seen to travel on the same path, however, some were seen as further developed than others (Latham 2000).

Central to the idea of race was the concept of blood, which was seen as literally transmitting racial qualities from one generation to the next. According to Melissa L. Meyer, the etymological link between blood and lineage goes back at least 800 years. “By 1200, ‘blood’ increasingly connotes lineage, descent, and ancestry in association with royal claims to property and power and presages modern conceptions of ‘race’” (1999: 235). Over time, race became more interwoven into European understandings of blood and blood relations. By 1800, the ideas surrounding blood relations were thus intricately interwoven with understandings of race, purity, and superiority (Meyer 1999).

Uli Linke (1999) also traces out the connections between blood and race. Building on the work of Michel Foucault, Linke argues that in early European history blood developed its potency and power from its connection to the female menstrual cycle and ideas surrounding reproduction. However, these ancient connections surrounding blood were reworked not only to stand for ideas of descent, heredity and genealogy, but as a method of naturalizing the concept of race. Central to this European idea of blood was the concept of the “natural” body. Blood, body and race were solidified as biological realities, existing outside any sort of social or historical understandings. “The material body was seized by a dissecting gaze that embraced not only the entire organism, not only its surfaces, but also its recesses, orifices, and hidden crevices…Assigned to the realms of nature and biology, the body was thus expelled from history” (Linke 1999: 157). Discoveries within the laboratory came to be seen as having an objective authority, independent of social understandings. Through such clinical observations, race was given a biological reality.
One of the central contributors to these understandings of a racialized body was geologist Samual G. Morton. Building on phrenological theories of his day, including those of the 18th century German physiologist and physical anthropologist Johann Friedrich Blumenback, Morton began the collection and classification of human skulls in 1830. Morton argued that the “interior of the cranium revealed brain size and that cranial capacity differed among the races” so “brain size and intelligence were correlated” (Bieder 1986: 64). Later Morton (1839) argues that this clear ranking of intelligence started with ‘the Black’ and moved up the scale from ‘Indian,’ ‘Malay,’ ‘Mongolian’ and at the pinnacle the ‘Caucasian.’

Using his vast collection of Indian skulls, Morton went on to show that no drastic change had occurred for centuries in either the shape or size of Indian crania. From this observation, he argued that mental capacity was not determined by society, but was innately biological and passed on from one generation to the next. As Robert E. Beider (1986) argues, “Morton shared with other phrenologists the assumption that the Indians’ rejection of civilization lay not in willfulness but in their mental inability, given the size of their brains, to absorb civilization” (73). By comparing the various weights of lead shot required to fill human skulls, Morton was able to locate older concepts of civilization within the context of the body.

From 1200 to 1900, the human body was gradually racialized. From changes in economy, religion, and world structure came understandings of modernity, which served to create differently shaped bodies, including the civilized European body and the primitive indigenous body. These bodies existed within the context of the growing field of biology as well as the economic, religious and political trends of the day. Over time, blood came to be the central

---

4 Blumenbach used craniometrical research to divide the human species into five races, which included the "Caucasian race" or "white race"; the "Mongolian" or "yellow race"; the "Malayan" or "brown race"; the "Negro," "Ethiopian," or "black race"; and the "American" or "red race."
symbol by which these biological, religious, economic, and political traits were passed from one generation to the next. Because of the profound differences established between the primitive and civilized body, blood mixing became a central quandary of early American colonialists and ultimately the means by which complete colonization seemed possible.

**Mixing Blood in 19th Century American Literature and Science**

Such theories as Morton’s on the impossibility of civilizing the Indian were highly debated, particularly when they involved perceptions of “mixed-blood” Indians. Unlike African blood, which had a “polluting” nature (Baker 1998), there was a great deal of debate about the impact of Indian blood, particularly when mixed with Caucasian blood. Such fears and confusion surrounding mixed-blood Indians is evident in the literature and science of the 19th Century. In Oregon Trail (1849), Francis Parkman describes several half-breeds as, “a race of rather extraordinary composition, being according to the common saying half Indian, half white man, and half devil” (362). William Scheick (1979) talks about this and other fictional characterizations of mixed-bloofs as representative of the ambiguous relationship Americans had with Indians and mixed-bloofs in particular. Fiction of the time strove to glorify the noble savage and at the same moment celebrate civilization’s victory over savagery. According to Scheik, this was most frequently accomplished by placing the Indian within the remote past. However, the existence of mixed-bloofs challenged such easy placements. “Whereas the full-blood Indian could be restricted to America’s prehistory or history, could be safely confined to the past, the mixed-blood Indian belonged very much to the present and, quite possibly, to the future of America” (Scheick 1979: 2). For American fiction writers of the 19th century, this ambivalence played out in the question of whether or not mixed-bloofs were an asset or a hindrance to western expansion.
One example that Scheick uses to illustrate the attitudes toward half-bloods during this period is Alexander Ross’ *The Fur Hunters of the Far West* (1855):

Half-breeds, or as they are more generally styled, brulés, from the particular colour of their skin, being of a swarthy hue, as if sunburnt, as they grow up resemble, almost in every aspect, the pure Indian. With the difference that they are more designing, more daring, and more dissolute….They are by far the fittest persons for the Indian countries, the best calculated by nature for going among Indians….They are vigorous, brave; and while they possess the shrewdness and sagacity of the whites, they inherit the agility and expertness of the savage. [quoted in Scheick 1979: 3]

In this example and pervasive throughout the literature of this time, half-bloods looked and behaved like Indians, but they lacked the communal dedication of full-blooded Indians. This “shrewdness” was also seen in ambiguous terms. When it was employed in favor of projects of ‘civilization,’ such as treaties or missionary work, it was glorified. However, when it was used against trading companies or other Euro-American projects, it was seen as a fatal flaw (Brown 1985).

In a similar fashion, Robert E. Bieder (1980) surveyed philanthropic, political, and scientific literature during the early 19th century for discussions of mixed-bloods. Bieder’s primary argument is that mixed-bloods were used as pawns in the debate about whether humans were all one species (monogenesis) or multiple species (polygenesis). Taking race to its extreme, Morton and other polygenists argued that human populations constituted separate species with entirely different biological compositions. Because the leading definition of species included the barren nature of any mixed offspring, polygenists had to make sense of the growing mixed-blood population. J.C. Nott, a Southern physician writing in 1843, argued that, “while the progeny of two species (i.e. hybrids) did not live as long as either parent and were more prone to disease, they were also intermediate in intelligence between the two parent stocks” (Bieder 1980: 23). Thus, while polygenists argued that the mixing of species violated the “will of God and the
natural structure of the species,” they linked higher intelligence with even small quantities of white blood.

Early monogenesists, meanwhile, used this argument about the effects of interbreeding on intelligence to argue for interbreeding as part of the civilization effort. One such argument came from Thomas Jefferson in an 1803 letter to Benjamin Hawkins about the Creek Indians:

In truth, the ultimate point of rest and happiness for them is to let our settlement and theirs meet and blend together, to intermix, and become one people. Incorporating themselves with us as citizens of the United States, this is what the natural progress of things will of course, bring on, and it will better to promote than retard it. [Jefferson quoted in Bergh 1907: 363]

Building on such ideas, New England Scientist Samuel Williams wrote in 1810 that it only took three generations for the Indian to be bred out because of the Indian’s cream-colored skin. Likewise, traveler Timothy Flint reported on his experiences in the South that the general consensus among white southerners in 1826 was that the only possible way to civilize the Indian was through inter-breeding. Flint supported this position by arguing, “in effect, wherever there are half-breeds, as they are called, there is generally a faction, a party; and this race finds it convenient to espouse the interests of civilization and Christianity” (Flint quoted in Bieder 1980: 19). Here, even more than with the polygenists, there was a strong connection between white blood, civilization, and Christianity.

Both the scientific and fictional literature of the 19th century struggled to make sense of the impact of mixing Indian and white blood. Within these writings, blood became a powerful signifier of various physical and mental states separating the civilized from the savage. Furthermore, these discussions illustrate that while the exact nature of the mixed-blood Indian was ambiguous, certain physical, mental, spiritual and economic deficiencies were seen as being non-civilized and thus Indian. In exploring the middle ground between the Caucasian and the Indian, 19th century writings in science and literature further solidified these categories and traits
as being passed through the blood. These ideas became foundational to federal policy, eventually working their way into indigenous ways of understanding.

**Blood and Policy**

By the 19th century, conceptions of blood and race were already interwoven into U.S. federal Indian policy. As part of several treaties, including the 1825 Osage treaty, mixed-bloods were singled out and given property within the new reservation areas. The Chippewa treaty of 1826 stated that, “half-bred5, scattered through this extensive country, should be stimulated to exertion and improvement by the possession of permanent property and fixed residences” (Kappler 1972: 268). Central to such practices was the idea that because of their white blood, mixed-bloods were more capable of adapting to private property ownership. Conflating blood-based understandings of race with the possession of property, 19th century treaties enforced a very particular notion of what it meant to be civilized and thus what it meant to be Indian.

These connections between property, labor, and civilization go back at least as far as the writing of John Locke. Locke was a 17th century English philosopher who is credited with codifying the principles underlying modern governance, which greatly influenced documents such as Thomas Jefferson’s Declaration of Independence. In his *Second Treatise of Government* Locke states that what separates the Indian from “those who are counted the civilized part of mankind” is that the latter invested the land with labor, thus making it their property (2002: 14). “He that, in obedience to this command of God, subdued, tilled, and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him” (Locke 2002: 15). In addition to providing justification for the colonial

---

5 The term “half-breed” originated in English common law and referred to two siblings who shared only one parent. Within the colonial situation the term half-breed, like blood, began to take on racial connotations, referring to any person of mixed racial descent (Meyer 1999).
takeover of Indian land, so that the land could be given “value” through labor, this logic also formed the basis of the various “civilization” efforts imposed upon the American Indian. It was believed that if Indians could be persuaded to invest labor into their own individual property, they would join civilization and give up their communal title to the land.

In July of 1832, the federal Congress created the Commissioner of the Bureau of Indian Affairs, which was charged with directing and managing federal Indian policy. The first man to hold this office was Elbert Herring. In the first Annual Report of the Commissioner of Indian Affairs, Herring argued that the only solution to the “Indian problem” was for Indians to assimilate into white culture, particularly in regards to private ownership of property. This assimilation was seen as necessary for the “preservation of peace and tranquility” in the United States (Annual Report 1832: 163). In outlining his case for assimilation, Herring argued, “On the whole, it may be a matter of serious doubt whether, even with the fostering care and assured protection of the United States, the preservation and perpetuity of the Indian race are at all attainable, under the form of government and rude civil regulations subsisting among them” (Ibid). The Euro-American values of property ownership, order and peace were seen as directly threatened not just by tribal structures and ways of life, but by the Indian race itself.

Out of this and similar sentiments grew the U.S. federal government’s policy of allotment. Allotment, it was argued, would create American citizens by allowing each Indian to become a

---

6 Locke explains that “Nor is it so strange, as perhaps before consideration it may appear, that the property of labour should be able to overbalance the community of land. For ‘tis labour indeed that puts the difference of value on everything...” (2005: 18).

7 Joel Pfister (2004) explores at length the process by which Euro-Americans attempted to “individually incorporate” Indians into U.S. culture, particularly at the Carlisle Indian school. He argues that white reformers and Indian educators frequently referred to their desire to “Americanize,” “civilize,” and “individualize” their students. Pfister goes on to say, “Assimilationist reformers used the category of individuality to reencode relations of dependence, such as routinized daily work, not just as desirable but as relations signifying independence” (2004:12). In this way, Euro-Americans attempted to “Kill the Indian in him, and save the man,” as the famous quote by the director of Carlisle states in 1892 (Pfister 2004: 20).
civilized contributor to American society through investment in privately owned property, ideally through farming. As Francis Paul Prucha (1984) states, “It was an article of faith with the reformers that civilization was impossible without the incentive to work that only came from individual ownership of a piece of property” (224). The division of tribal lands was also seen as central to the break-up of tribal structures, which were blamed for retarding Indian peoples’ ability to adopt civilized lifestyles. M. Annette James (1992) argues that by taking control of membership through the creation of rolls, the goal for allotment was not only to create a limited group of people that could claim Indianness, but also to do away with, ultimately, the Indian population all together. By insisting on the individual ownership of land, as well as the destruction of tribal governments, the goal was to turn Indians into individualized American citizens.

In 1884, the Commissioner of Indian affairs wrote about the problems of determining who was Indian for the purposes of allotment. “I think it would be for the benefit of all to exclude persons of less than one half Indian blood, and to retain all who are regularly adopted, if Indians, and to add the children of such, but to discourage or prohibit any further adoptions by Indian tribes, especially of whites” (Annual Report 1884: XXVII). Through his focus on Indian blood, the Commissioner of Indian affairs wanted to limit the people who were able to claim Indian ancestry, thus also limit the federal government’s responsibility to its promises made in treaties. While the rolls created for allotment did not mandate the exclusion of persons of lesser blood or even those whom the tribe had adopted, it did create a new standard for determining membership. In almost all cases, Indian nations have used the rolls created for the purposes of allotment as a baseline for citizenship. Proving lineal descent from these rolls has become the standard minimal requirement for tribal membership, with many more tribes requiring a minimal
blood quantum relation. In both types of cases, a blood relation to someone listed on the roll has become the standard.

Shortly after the passage of the Dawes General Allotment Act in 1887, which authorized the President of the United States to divide tribal lands for individual ownership, it became apparent that allotment was not going to succeed in making each new Indian landowner a farmer, as the humanitarians had hoped. Many Indians were unable to farm because of age or involvement in school while others simply had no desire to farm. Furthermore, many Indians were either selling their lands or having them taken away through fraud or inability to pay taxes.

In 1906, Congress passed the Burke Act, which postponed the point at which Indian individuals would receive complete control over their lands until the end of the trust period. In his 1906 Annual Report, Commissioner Leupp explained his reasoning for the passage of this bill:

Like his white neighbor, the Indian is of more than one sort, ranging from good degrees of intelligence, industry, and thrift to the depths of helplessness, ignorance, and vice. Experience has proved that Indians of the former class do better when allowed to run their own business than when the government tries to run it for them, but that citizenship and the jurisdiction of the local courts are of no advantage to Indians of the latter class...Such conditions made plain the need of some law which would enable the Indian Office to manage the affairs of the helpless class with undisputed authority, but, on the other hand, to remove from the roll of wards and dependants the large and increasing number of Indians who no longer needed any supervision from a bureau in Washington. [Annual Report 1906: 27-31]

Commissioner Leupp then discusses how the Burke law postpones the acquisition of citizenship until the end of the process. However, as Leupp goes on to say, “to nullify the injustice which such a general provision might inflict upon Indians capable of taking their place in the States as citizens a very comprehensive proviso confers authority on the Secretary of the Interior to terminate the trust period by issuing a patent in fee\(^8\) whenever he is satisfied of the competency\(^9\)

---

\(^8\) A patent in fee means that the land was owned outright and no longer had any federally imposed restrictions on its use or sale.
of an allottee to manage his own affairs” (1906: 31). Competency, as it became known, was tied up with not only citizenship and land, but also the earlier concepts surrounding civilization including Christianity, education and farming. The federal government decided to maintain control over lands of those they viewed as still “too Indian” to manage their own affairs. While the central goal was still the complete assimilation of the Indian population into the general American citizenry, the immediate effect was to mark certain characteristics as competent and others as incompetent or still Indian.

One of the most powerful illustrations of how blood, incompetence, Indianness, and guardianship were being interwoven during this period is the circuit court decision in Mosier v. United States (1912). The court held

The question, then, to be decided on this branch of the case is: Does the mere fact of citizenship destroy the allegation of the indictment that Hezel Gray was on December 28, 1909, an Osage Indian under the charge of an Indian superintendent, and an Indian over whom the government, through the Interior Department, exercised guardianship? There is certainly nothing inconsistent in being an Indian and a citizen of the United States at the same time. The word “Indian” describes a person of Indian blood. The word citizen describes a political status. If as a matter of law and fact the government is exercising guardianship over an Indian who is also a citizen, it is not for the courts to say when the guardianship shall cease. [emphasis added, 117 C. C. A. 162, 198 Fed. 54]

In this case, the Osage woman Hazel Gray was sold liquor, which the federal government considered a crime because of her status as their ward. While Gray was a U.S. citizen, she was more importantly “of Indian blood” and a thus viewed as incapable of consuming liquor in a responsible manner. Of central importance here is the effort the federal government was exerting in establishing their own definition of Indianness, not as a person politically affiliated with a tribal nation, but as a member of a race incompetent to manage his or her own affairs.

---

9 Competency became the legal phrase meaning that the Indian had been deemed capable of handling their own affairs and could thus be issued a patent in fee.
It was not long until blood too was written into the official criteria for establishing competency. During that same year, the federal Congress also passed the Clapp Act (59 PL 154), which appropriated money for the allotment of the White Earth reservation and many other reservations not yet allotted. Because the 1826 treaty with the Chippewa, mentioned above, had encouraged the civilization of mixed-bloods through the individual control of land, the Clapp Act made a unique stipulation for the White Earth reservation:

That all restrictions as to the sale, encumbrance, or taxation for allotments with the White Earth reservation in the state of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed...and as to full-bloods said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs ... [59 PL 154 1907: 1034]

However, nowhere did the Clapp Act describe who it was that qualified as a “mixed-blood” nor was there a legal roll listing the blood status of the White Earth population (Hilger 1998). To solve this dilemma, the BIA turned to physical anthropology. As David L. Beaulieu (1984) discusses, from 1915-1916 two anthropologists were brought onto the White Earth reservation to physically examine the Chippewa people. These scientists used methods such as anthropometric measurements, hair and scalp samples, and the scratching of the skin in order to determine who was full-blood, mixed-blood, and non-blood for the purposes of discrediting land allotment claims and determining who was “competent” enough to sell their land and pay taxes (Beaulieu 1984).

In 1914, one of the scientists, Dr. Ales Hrdlicka, published a paper claiming that he could scientifically distinguish between those of pure Indian and mixed-race descent by comparing measurements with his analysis of skulls and other physical features of full-blooded Indians. While neither of the anthropologists brought to the White Earth reservation had any substantial experience with the Chippewa people, they claimed that by using the Pima, a tribe who had reportedly killed all non-full-blood Pima children, they could apply these measurements to all
Native American people. One of the most popular measurements was the skin reaction test, which Hrdlicka discussed at length in his 1916 article “Popular Picture of Indian Upset by Investigation. Eagle Beak Nose Belongs Not to Redman but to Fiction”:

An interesting test developed by the writer during the preliminary work and one which proved of much diagnostic value, both as to blood status and as to the general health of the person, consisted of drawing with some force the nail of the fore-finger over the chest, along the middle and also a few inches to each side. This creates a reaction consisting of a reddening, or hyperemia, along the lines drawn. In the full-bloods the reaction as a rule is quite slight to moderate, and evanescent, or of only moderate duration; in mixed-bloods, unless anemic, it is more intense as well as lasting. [quoted in Beaulieu 1984: 298]

Such tests were used in multiple court cases to determine not only an Indian’s competence level, but also their claim to land allotment10.

In 1916, the BIA sent field agents out to do in-depth field reports on various reservations. Unlike other reports that focused on needs for education or tuberculosis treatments, the Osage report focused on the need for a blood-based distinction in handling tribal affairs. Throughout his report, Agent Vaux deals with the stark contrasts between the “full-bloods” and the “part-bloods,” in issues ranging from the boarding school, the value placed on money, and the part-bloods’ ability to conduct their own business affairs.

Broadly speaking, the full-bloods are uneducated in the ways of the white man as respects their ability to conduct their business affairs. A very considerable number of them can not speak English, and but a few can read and write in that language. They appear to be in many respects very trustful of those in whom they have confidence, and in certain

---

10 One such case went all the way to the Supreme Court. In the 1914 case of United States v. First National Bank (234 U.S. 245) the court rendered an opinion about the meaning of “mixed-blood” in the Clapp act. In this case the government was arguing that “mixed-blood” meant more than half white, while “full-blood” meant anyone having over half Indian blood. If this was the case, then the three Indians, Bay-bah-mah-ge-wabe, O-bah-baum, and Equay-zaince, would not have been eligible to declare themselves mixed-bloods and thus would not have lost their land in mortgage to the bank. However, the court argued that the original legislation did not say half-blood, but simply mixed-blood. “The conviction is very strong that if Congress intended to remove restrictions only from those who had half white blood or more, it would have inserted in the act words necessary to make that intention clear” (234 U.S. 245 1914: 261-262). Thus the court upheld that mixed-blood followed the “one-drop rule” of racial purity, meaning no matter how little white blood someone had they were still of “mixed-blood” status.
directions are easily led. Mixed-bloods, on the other hand, are in very great many instances shrewd business men of ability, and as competent to conduct their affairs as other residents of the United States. Yet under the allotment act of June 28, 1906, all are treated exactly alike. [Annual Report 1917: 341]

In summing up his report, Agent Vaux recommends that “a distinction be made between the incompetent full-bloods and the part bloods, and that the latter be given their full share of tribal property and be allowed to do with it as they see fit, while greater effort be made fully to protect the former” (Annual Report 1917: 350). The following year that is exactly what the BIA commissioner did.

Because of the tedious and slow process of individually determining the competency of each Indian, as well as the observations of extreme difference among groups such as the Osage, Commissioner Sells reluctantly turned to blood as a more “efficient way” of assigning American citizenship to competent Indians. As Sells writes,

While ethnologically a preponderance of white blood has not heretofore been a criterion of competency, nor even now is it always a safe standard, it is almost an axiom that an Indian who has a larger proportion of white blood than Indian partakes more of the characteristics of the former than of the latter. In thought and action, so far as the business world is concerned, he approximates more closely to the white blood ancestry. [Annual Report 1917: 3]

In 1917, Sells issued a statement of policy that gave patents in fee to all adult Indians under one-half Indian blood, allowing them to sell all their land. Indians over half-blood could also be declared competent “after careful investigation,” but they were unable to sell their last 40 acres, which was to be used as a homestead (Annual Report 1917: 4). Sells goes on to discuss the importance of this policy,

This is a new and far-reaching declaration of policy. It means the dawn of a new era in Indian administration. It means that the competent Indian will no longer be treated as half ward and half citizen. It means reduced appropriations by the government and more self-respect and independence for the Indian. It means the ultimate absorption of the Indian race into the body politic of the Nation. It means, in short, the beginning of the end of the Indian problem. [Annual Report 1917: 5]
While such “far-reaching” policy did not have the desired effect of ending the federal government’s responsibility to Indian people, it did further solidify blood as a central component of what it means to be Indian. Building on long established ideas of paternalism, the federal government instituted policy that officially conflated blood and competency (i.e. being civilized). The federal government assumed that those with half or more white blood were capable of being white, i.e. valued their private property and understood the U.S. political and judicial systems.

During the 20th century, the federal Indian policy continued to include some blood quantum requirements, as is illustrated in the federal Register,

While eligibility for benefits under some federal statutes is limited to tribal members with a certain blood degree, and the right of non-tribal Indians to organize is limited to those with 1/2 or more degree Indian blood, federal law imposes no general blood degree requirement for tribal membership. Moreover, under the federal regulations for determining eligibility as a tribe, a blood quantum requirement is not included in the criteria. While blood degree may be some evidence of social and cultural cohesion and maintenance of tribal relations, it is most definitely not conclusive as to the existence of tribal relations. [1983: 78]

While Indian nations within the continental United States were all eventually recognized as having the inherent right to determine their own membership, colonial ideas surrounding blood and biological relation took hold not only in determining access to federal programs, but also in structuring the ways in which Indian tribes understood themselves.

This conflation between blood and Indianess, through the institutions of race and competency, continues to be extremely powerful among many Indian people. As I showed with the discussions during the reform, many Osage felt that there needed to be some mechanism for limiting membership because of the rights associated with tribal membership. However, the need for Indian blood goes much deeper than a selfish desire to limit access to goods promised to tribal members. While the fear of whites again stealing what belongs to Indian people is no doubt very potent, conceptions of blood were far more complicated. Through the colonial
process, Euro-American ideas of blood relation were incorporated into many peoples’ understandings of what it meant to be Indian. Science, literature and policy all worked on Indian people and their understandings, as the following section will illustrate.

**Colonial Impacts**

By analyzing the discussions that took place during the reform process, it is possible to see some of the direct effects these policies had on Osage understandings of self. These comments should not be read as simple statements of concrete fact, however, but rather as manifestations of the fluid nature of identity. By focusing on how notions are always untidy and in flux, we as anthropologists are able to move away from a reliance on essentialized understandings of culture toward a way of understanding what Joseph Dumit (1997) calls “objective self fashioning.” Dumit defines this as the process by which, “we take facts about ourselves—about our bodies, minds, capacities, traits, states, limitations, propensities, etc.—that we have read, heard, or otherwise encountered in the world and incorporate them into our lives” (89). This section will focus on following the ways in which European understandings of blood were worked into some Osage understandings of self.

Euro-American understandings of race and blood were perhaps most evident during the 2004-2006 Osage reform process in the discussions that tied certain physical characteristics to Osage identity. Through informal discussions, it became clear that some Osage were reading the Euro-American institution of blood directly onto the body. One example of this occurred in a conversation I had during the November 19th referendum vote:

I am one of those people that is biased about blood quantum. When I see people that are $1/4^\text{th}$ or $1/8^\text{th}$ I do not see them as really Osage. I am $1/4^\text{th}$ black, but I don’t identify as black. I am $1/4^\text{th}$ white but I don’t go around claiming that I am white. If we were a tribe like the Omaha that did not have anything, then we would not have so many people claiming Osage identity. I am prejudiced against people that do not look Indian and this is only slightly lessened by getting to know them. [Personal communication, November 19, 2005]
In addition to skin color, dark straight hair and a myriad of other physical and personality traits were attributed to being Osage. One of the largest compliments that could be given to an infant’s parents was that the child “showed Indian.” Also, side comments were frequently made about a person who supposedly dyed their hair or spent a lot of time in the sun, and thus was not really as Indian as they appeared.

Circe Sturm (2002) talks about similar connections between blood, color, and race among the Cherokee in her book *Blood Politics*. Throughout her work, Sturm shows us how ideas of blood and physical traits are associated with being Cherokee, and also how these ideas are connected with notions of authenticity and culture. Sturm argues that this sort of racial thinking leads to the idea that “as the Cherokee Nation progressively ‘whitens,’ it runs the risk of losing its distinct racial and cultural identity, the primordial substance of its national identity. In the eyes of the general public, the Cherokee Nation would no longer be a ‘real’ Indian tribe” (2002: 100). This linkage between culture and race was also compelling to some Osage.

In a quote taken from a video made by three Osage youth during the summer of 2004, it is possible to trace out the direct links being made between culture and blood.

Being Native, I think, is already in you when you are born. It is in your blood; it courses through your veins. I have heard of stories of people that want to be native and they sign up for these tribes. I guess you can register to be some type of Indian if they want to be? I don’t understand that because you can’t just sign your name on a piece of paper to be Indian, its not like that, you are born into it. It comes with a special reverence and spirituality that is just innate. It’s almost automatic. [“How, We Are Present,” 2004]

In addition to reverence and spirituality, some Osage saw several other cultural characteristics as being innately Indian. While I was talking with an Osage man he argued,

Indians just need to be treated differently. It did not matter where they grew up. I don’t care if they were raised in New York City; they still need to be shown how to do things that a white child would just understand naturally. That is how the Indian is, all he likes is to be accepted. The white man is about competition. The Indian mind works in a circle, not in the linear fashion of the white man. [Personal communication, March 20, 2006]
These bio-cultural ideas were also connected with understandings of authenticity. The following excerpt provides an example of the sorts of connections being made between blood, culture and authenticity:

I do believe, though, that our chief should be at least a quarter Osage and more. This is who represents our tribe. I know the Osage that are 1/32 and 1/64, and I'm not saying they're not Osage. But they weren't raised around traditional Osage who knew our ways and who lived in an Osage home. They don't understand this. I saw a picture of all the tribal chiefs in Oklahoma and about 3 quarters of them all looked white. It just doesn't seem right. [http://osagegovernmentreform.invisionzone.com: accessed November 17th 2005].

As evidenced by this example, the logic is that those people with lower blood quantum, or who simply looked white, were not as Indian as those with a higher blood quantum. This connection between blood, race, physical characteristics, tradition and spirituality, and mental abilities is similar to earlier Euro-American understandings of blood and race. These excerpts illustrate that for some Osage, blood was the substance by which not only Osage race was passed on, but also a whole host of physical, mental, and cultural affinities.

After hundreds of years of being told that Indians’ difference was located in the body, many Osage made sense of this difference through the Euro-American institution of blood. Many of these ideas were buttressed by the idea that if nothing was done about the blood quantum, Osage would cease to exist as a tribe. As one tribal elder told me, “If the full-bloods just play it by ear we are going to get bred out” (Personal communication March, 20th 2006). Perhaps the best articulation of this idea can be seen in an interview I conducted during the Sovereignty Day celebration:

I would want there to be a line and then it would make us as a people want to marry our Osage people…I would want that, I would want them to live here and for them to be at least 1/4th or 1/8th. Because I don't want to be known as the white Osage, blond hair blue eyed. Compared with other tribes, our council looks white to me. Why do we recognize them as a tribe, they all look white, they don't look Indian, they don't look Osage. They all look white, so why are we as the United States of America recognizing these people when they’re not anything. [Personal communication, February 4th, 2005]
Here and elsewhere during the reform process, some Osage articulated that blood was the central characteristic guaranteeing tribal status. Once Osage blood was understood as the fundamental substance necessary to make someone Osage, survival of the blood became fundamentally linked to the survival of the nation.

This fear of termination, however, also led many people to question the fundamental nature of blood, by saying things like, “Blood is a BIA genocide policy” (Personal communication, February 4, 2005). This opinion was further articulated at an OGRC community meeting held in Pawhuska, Oklahoma:

To create a blood quantum is to set the date for when the tribe goes out of existence. Blood quantum is a federal government method of defining Osage so that responsibility no longer belongs to them past a certain point. So why do we want to mimic any destructive system of membership that was created to destroy itself? The Bureau of Indian Affairs is in the business of going out of business; we are in the business of ensuring the future. It is our inherent right to determine our membership and our responsibility to ensure it lasts for as long as an Osage draws a breath. [April 22, 2005]

The argument here, like the argument for a blood quantum above, is centered on the fear that the Osage tribe will one day be told by the federal government that it no longer exists. Because delegates from the Osage tribe made several trips to Washington D.C. to ensure the tribe’s federal recognition, this fear is not without legitimacy. The power of this idea was so potent that it was used in both the arguments for and against a blood quantum.

For those emphasizing the fundamental power of blood, the continued existence of the tribe depended on the continued existence of Osage blood. These people argued that if a blood quantum was not instituted, people would continue to marry outside of the tribe, diluting the blood even further. However, those arguing against a blood quantum pointed out that such a reliance on a blood quantum was what was going to mark the end of the tribe. Unlike a lineal descent approach, quantum creates a point at which the Osage tribe would cease to exist. The
fundamental argument here is whether blood, particularly high degrees of blood, was a necessary part of what makes one Osage.

Another lasting legacy of the colonial process on determining Osage citizenship was through the use of BIA created rolls. Many Osage rejected these rolls on the basis that they were frequently inaccurate. During one of the early OGRC business meetings, Jerri Jean Branstetter, one of the commissioners, told a funny story about her blood quantum. She said that when she had gone to work for the BIA she had been listed as a full-blood. However, she explained that she had annoyed some of the people in the office and so they went in and whited-out her blood quantum and put her down as half-blood. When she inquired about the change, they explained that her grandfather’s estate was currently being probated and so her father’s Osage identity was being investigated. When she pressed the issue again several months later they agreed that her father’s Osage ancestry was no longer in question. They once again used white-out, this time listing her as 119/128th because of one Frenchman they found in her genealogy several generations back. None of her other sibling’s quantums were ever changed.

Likewise, stories were told of Osage chiefs and councilmen who had convinced those working at the BIA to raise their blood quantum as listed on the rolls. Many people thus saw blood quantum as a political tool that some used to gain authority. For many people such stories have discredited the authority of blood quantum record. In many cases people talked about how blood quantum had been misrepresented at the time of allotment either because of cultural understandings of what it meant to be a full-blood or for practical reasons of wanting to be able to sell their allotment with BIA approval, which was not allowed for someone with more than 50 percent blood quantum.
Conclusion

Through these debates about the rolls, as well the desire to look Indian, and the fears of termination, it is possible to see some of the direct impacts of the colonial period and its focus on Indian blood. Importantly, the federal government never directly mandated a blood quantum for the Osage. Instead, like many aspects of colonization, the Euro-American institution of blood was effective because of the informal circulation of facts through science, literature, and indirect policy. Within this chapter I have diffracted (Haraway 1997) these discourses surrounding the Indian body through the arguments of various Osage during the 2004-2006 government reform process. Through their statements about what they believe should constitute an Osage citizen it is possible to see some of the ways in which these Euro-American discourses have been incorporated into various Osage bodies.

By insisting on the logic of Indians as a race, rather than as a political group, and periodically threatening termination, the federal government has ensured that few tribes will risk a complete rejection of blood. Importantly, even when directly incorporated into their own understandings, these racially based articulations of Osage identity were an inversion of Euro-American hierarchies. Within these contexts, Osage blood has come to be highly valued, not scorned or looked down upon. In the next chapter, I will turn to Osage histories of adoption and blood to better understand how colonized people negotiate notions of self. Rather than understanding colonial policies and logics as over-determining, the following chapter will illustrate the complex maneuverings that often occur within the colonial context.
CHAPTER 4
MEMORY IN THE BLOOD

It is not only a matter of what history does to the body, but what subjects do with what history has done to the body. [Feldman 1991]

When Europeans came to the American continent, they brought with them their understandings of blood. Over time, Euro-American ideas about evolution, race, Christianity, and savagery became embedded in the notion of blood, giving it symbolic and material potency. As I will show within this chapter, however, most Osage did not simply accept these Euro-American understandings of blood, but used their experiences to make sense of this substance and its relational powers. By looking closely at formal and informal debates over citizenship during the 2004-2006 Osage reform process, as well as the histories surrounding these debates, I will investigate how various Osage incorporated differing ideas about blood into their notions of self. By 2006, the experiences surrounding Osage blood were entangled with and supported by connections to the Osage clan system, adoption, class hierarchies, residence, culture, land, headrights, and lineal descent.

Audra Simpson (2002) offers a useful framework for thinking through such material. Building on the work of anthropologists Michael Jackson and Lila Abu-Lughod, Simpson presents radical empiricism as an alternative to the pitfalls of both the objective and subjective approaches to anthropology. Radical empiricism “attempts an understanding through listening, observing, entering into a conversation with one another through an attempt at engaging what was commonly misunderstood and misconstrued – experience” (Simpson 2000: 125). Such an approach allows for an investigation into the power-laden nature of knowledge without discounting the multiple and changing ways in which people experience their world. In this vein, this chapter will ask how various Osage people articulated their hopes and fears surrounding Osage blood and how these various articulations were solidified into the citizenship
criteria in the Osage Nation’s 2006 Constitution. This is not an attempt to create a unified or coherent idea of Osage identity, but instead to show the multiple ways in which people internalized, challenged, or modified biological conceptions of being Osage. As I follow the experiences surrounding Osage blood and how they are incorporated into people’s lives, it is possible to gain insight into the complicated ways in which colonial notions are reworked. In this case, Osage blood is most frequently understood as a basis for Osage relation, which at once builds upon, but is also outside Euro-American understandings of belonging.

Adoption

In discussing anthropological findings of the day, Bronislaw Malinowski (1954) argues that an origin myth “conveys, expresses and strengthens the fundamental fact of local unity and of the kinship unity of the group of people descendant from a common ancestress . . . the story of origin literally contains the legal charter of the community” (116). For the Osage, a very different sort of legal charter is at work than the ones Malinowski wrote about, with “people descendant from a common ancestress.” While there cannot be said to be a single Osage origin story, John Joseph Mathews (1961) wrote down one story told frequently:

When the newly-arrived-upon-earth children of the sky, represented by the Wah-Sha-She, the Water People, the sub-Hunkah, the Land People, and the grand division the Tzi-Sho, the Sky People, came upon the Isolated Earth People, the indigenous ones, the four groups formed a tribal unit, and were anxious to lead the Isolated Earth People away from the earth-ugliness of their village, saying that they were thus taking them to a “new country.” [53]

In addition to citing the Osage concept of “moving to a new country” outlined in chapter two, this origin story is important because it does not attempt to create a single lineage for the Osage people, but talks instead about four separate groups being brought together. Significantly, concepts of a unified biological descent are not present in this origin story, or within the tribal organization that was later created. This Osage origin story does not privilege a single shared
body or a unifying substance, but instead a process of unification through a shared change in lifestyle.

According to La Flesche (1939), an individual was Osage by virtue of membership in one of the Osage fireplaces, which were inherited from the father. However, a central aspect of this system was the ability to adopt. La Flesche documents various ceremonies, including a process by which a dá-gthe (war captive) becomes a Shó-ka (ceremonial messenger) and a member of the tribe:

The dá-gthe becomes a member of the family of his captor and of his gens. He can marry within the tribe, and because of his ceremonial office (trial Shó-ka) he is respected and honored and is always welcome at the ‘table’ of every family in the tribe. He is clothed as well as fed by the families of the tribe and is regarded and spoken of as Ó-xta, one who is a favored person. [La Flesche 1939: 83-84]

According to Louis Burns, an historian of Osage descent, the Shó-ka were valued for their impartiality in disputes. “Shó kas not only ran errands and carried messages, but they also arranged marriages, mediated disputes, and acted as an impartial spokesman. Of course, for these services the Shó ka was rewarded with gifts” (2004: 214). In talking about Osage land policies, Burns argues that adoption was one of the primary ways for Osage to acquire land. “Their practice was to adopt alien individuals and to either merge with whole groups or to force them to move out of the desired area” (2004: 89). In his text on customs and myth, Burns talks at length about the ceremony surrounding adoption and its symbolism of a “new birth.” He argues that adoption was extremely common, leading to rapid population growth during periods of geographic expansion and warfare (1984). One recorded example of such a merge occurred around 1812, when five lodges of Missouris, around 100 people, fled an ongoing war with the Sac and Fox, and joined the Osage (McGee 1897). According to Willard H. Rollings (1992), when outsiders were adopted they were placed into one of the twenty-four clans, which meant
that if they had children, their children would be considered members of the clan, and thus of the tribe as a whole, in the same way as other Osage children.

While practices of Osage adoption were still active during the 2004-2006 reform process, adopted individuals were no longer able to participate in general Osage politics. The above and similar histories, repeated frequently during the reform process, led to many debates about how the Osage Nation should determine citizenship. Drawing on this history, one community member explained that he felt there should be some mechanism for adopting children not of Osage blood:

I reminded people before that in times past, Osage on the battlefield didn’t kill children; they brought them home and adopted them. A lot of our Osage people are descendants of those encounters. Some people recognize that. My parents always told me there were people who were Osage that their ancestors were taken in a battle when they were children. In my own mind I didn’t have any conflict if that was the case... If you adopt a child, like Korean or Vietnamese children, they become citizens of the United States by their adoption and it doesn’t matter where they are from. [Personal Communication: June, 27 2005]

Like many other Osage, this speaker used the histories told to him to make sense of the future of the Osage Nation. In his case, Osage adoption had been something of the Osage past and thus was seen as an important part of the Osage future.

A large part of the desires for Osage blood stemmed from a need to have some mechanism for establishing boundaries around Osage citizenship. As one man said at a Bartlesville community meeting on April 28, 2005, “When you use the words ‘zero blood quantum,’ that means you just included everybody in the world as a tribal member.” This need for exclusion, however, is quite complicated. While some argued that tribes such as the Cherokee were so successful because of their large numbers, others feared such an open policy of inclusion. As part of their effort to collect as much information about government reform as possible, the OGRC staff set up a webpage, which included a discussion forum with topics such as blood and
residency requirements. To a posting on how increased numbers of members would be better for
everybody in the tribe, one person responded, “Please define what an Osage is. Do you REALLY
want to sell out, make everyone a member, blacks, whites, Joe dokes down the road just to have
more numbers? To have a strong government = numbers, hmmm? Or is that just to get more
money from the government, so that we appear to be this huge nation. I will have to think on that
one” (http://osagegovernmentreform.invisionzone.com: accessed August 3, 2005). This debate
then turned into a discussion about whether or not those with higher blood were the most
deserving of tribal and federal benefits.

There are some families that go around here and say that they know they are not Osage.
But they said they sure will use what we give them. I believe not all are like that, but I just
feel that when you have a tribe and membership that it should be by blood. Yes, they did
adopt a lot in the Osage Tribe. I just don’t think that it is right that they get a vote or
anything when our own Osage children don’t get much because the adopted ones and
people that were on by fraud get the same as an Osage by blood. I am not saying people
can’t feel like they are Osage. It is different to feel than to actually be an Osage by blood.
I have several friends that are really not Osage, and I feel that they are taking away from
my children. [http://osagegovernmentreform.invisionzone.com: accessed November 17,
2005]

While there is much at work in these expressions, the primary emphasis is that to be Osage is to
carry the biological (racial) fluid of Osage blood. By this reasoning, those that have been around
the Osage tribe may or may not be Osage, but they are certainly not as Osage as those with high
levels of Osage blood. One person who came from an adopted family wrote the following in
response:

Personally, I don't think it's not quite as easy as saying "Only the Real Osage" and not
anyone whose family were adopted in. Maybe the question should be adopted-in when and
why? Osage always adopted people when needed to "fill the ranks" essentially. If
someone was adopted in who was originally Potawatomi or Pawnee or any other tribe, but
their family has been part of the tribe since coming to Oklahoma, does that mean that
family isn't Osage? My family, the Labadies, has always grown up as "Osage" even
though Frank Labadie, my great-great grandfather was French and Indian but possibly not
Osage at all, but married to a Potawotami . . . My great-grandfather got hauled off to
Carlisle, where he had English beat into him because he only spoke Osage, Potawotami,
and French when he went there. He and one of the Tinkers got hauled back every time
they ran away to go home to the Osage. One of my great-uncles argued the legal case before the US Congress that kept the Osage from being terminated in the 50’s . . . It was only as an adult I found out that we were "adoptees" too. Knowing that didn't change that Wakonda is God, and my inlonpa tells me "I love you inthadsi" at night, or the way things just make sense at the dances every summer. Do I have the answers about "who should be Osage?" Nope. It's a complicated question when you get back to the period before oil and land had provided the obvious incentive of greed to the question. Do I care about the money involved? Not a hang. Am I a starry eyed new-age back to nature nut? Nope again. I live in the real world where I enjoy my family and my truck, and work long hours for another tribe taking care of the same kind of problems that beset our tribe. Real people are who I enjoy, with our real history and traditions and relations and Inlonschka, not candy-coated stories. How do I think it should be decided? I hope all the Osage who vote on it will pray a lot on it. Then I'll live with the decision of the people, because it is my tribe's decision, even if that means we get kicked off the rolls, although of course I hope not. Inlonschka zhani. Hope that helps people see that there might more to "adoptees" than looking for handouts. Gahgoonah. [http://osagegovernmentreform.invisionzone.com: accessed November 16th 2005]

Central to this and other debates about the issue of adoption are two interrelated issues: blood and financial gain. For certain Osage, both those adopted and those who cited the Osage practice of adoption, the need for Osage blood did not quite make sense. For others, blood has become the fundamental substance that defines Osage identity.

After the OGRC wrote the constitution, they completed another round of community meetings where they discussed its contents. During these meetings, one of the main areas of contention was the clause that read, “The Osage Nation Congress shall enact laws not inconsistent with the constitution prescribing rules and regulations of governing membership, including application and appeal procedures, loss of membership, and the adoption of members” (Osage Nation Constitution 2006: 2). At the meeting in Greyhorse, Oklahoma, several of the community members wanted to know what was meant by the adoption of members.

**Lawyer for the OGRC:** What was intended by that provision is that the tribe has historically had a practice of adoption. All tribal cultures have done some form of adoption. And with that in mind I think that the intent was to leave it to the elected officials to determine and establish what that is, when it’s appropriate, when it’s not appropriate and what process would be used.
**Audience1:** This is in direct violation of Article 6, Section 2, under membership. If you’re not a lineal descendant of the 1906 then you’re not eligible. There’s no provision to adopting [sic] members.

**Lawyer:** That’s why that’s there is to leave the Congress to establish a means by which there might be adoption. I’m not saying they’re going to. I think it was in that vein of understanding that the traditions of tribal cultures are to adopt certain people into their body for whatever reason.

**A1:** Certainly I can understand ceremonially adopting. But for the purposes of membership, I disagree with that.

**A2:** With regards to adoption, years ago they adopted some people in and then all of a sudden they wanted all the rights of the Osage as far as sharing the mineral estate and all these things. That’s when the old council abolished that idea of any outsiders or anyone that was not a descendant into the tribe. [February 21, 2006]

Here and in other community meetings, it was apparent that for some Osage, to be

“ceremonially” part of the tribe was one thing, but many people desired that there be a biological connection in order to receive the full benefits of tribal resources. In these cases, the power of blood was intricately connected with money, services, and/or control. It was felt that if there were no biological limitations put on tribal membership, then the resources of the tribe would be too divided and that “real Osage by blood” would not get as much because of all the non-blooded individuals seeking assistance. Some felt that blood made sense because it linked current tribal benefits with people who were descendants of those that suffered the most persecution for being Osage.

Audra Simpson (2000) tells a series of stories about how blood and citizenship are entangled within Kahnawake notions of belonging. These stories serve to illustrate the ways in which blood, in fact fifty per cent or more Kahnawake blood, has become the primary means of determining membership, but that its authority is not fixed. Like all aspects of lived experience, the power of blood is constantly under negotiation. “These narratives” she concludes, “illustrate that Mohawk nationhood is shaped through what people say to each other, by what they say
about each other – they illustrate how ‘place’ in the world is staked out and guarded through the defining moments of shared experience and the words that then give shape to this experience” (Simpson 2000:135). Similarly, the discussions during the 2004-2006 Osage reform process were an attempt to make sense of the various facts that would define Osage place, and, while not all Osage agreed, these discussions were eventually solidified into the wording of the 2006 Osage Constitution.

Euro-American blood-based configurations, whether they take place within U.S. federal policy, 19th Century American Literature, or scientific understandings of race, were no doubt very powerful in shaping Osage understandings of self. However, as Allen Feldman (1991) describes in his discussion of violence in Northern Ireland, “It is not only a matter of what history does to the body but what subjects do with what history has done to the body” (177). Therefore, while the previous chapter explored Euro-American understandings of blood, this chapter will instead focus on how various Osage made sense of these configurations, reworking meanings of blood so that it represented a system of relation rather than a system of exclusion.

**Reworking Blood**

**Telling Osage History**

Osage historians do not map any of the above ideas surrounding blood directly onto the historical Osage body, but instead rework these ideas to fit their own experiences of being Osage and how this changed through interactions with Europeans. All histories tell particular stories about past events, privileging certain experiences and interpretations while ignoring others. Thus, these Osage histories must be read as attempts at reworking the historical body of the Osage, and the mixed-blood in particular. By looking at these histories, it is possible to gain some insight into how Osage experiences of self changed through the colonial process, particularly in the period leading up to the allotment of the Osage reservation.
Born in 1895, John Joseph Mathews was the first published historian of Osage descent. In his last historical text, he wrote at length about the early interactions between Osage and Europeans, who were referred to as *I’n-Shta-Heh* (Hairy Eyebrows) by the Osage, who had the practice of shaving off all facial hair. According to Mathews, there was little change in Osage lifestyle from the mid 17th century until the mid 19th century, except in the economic organization of the tribe. Certain trade goods including beads, tattoo needles, blankets, and the horse came to be highly valued. As Mathews explains, these trade goods were “new and interesting, if not greatly superior to the needles and awls made of wing bones and leg-bone splinters and quills. Nor was the trade blanket superior to the buffalo robe; as a matter of fact it was inferior” but as he goes on to say, acquiring them took far less effort (1961: 304).

Mathews notes that at the beginning of the nineteenth century there developed a noticeable change in appearance among the Osage. “There were young pale-faced people now whose trail you would know from the many footprints, since toes on the left foot would not be pointed in the absolute direction in which the walker was traveling” (1961: 307). Interestingly, his various references are not only to skin color, which was so important to Europeans at the time, but also to things such as changes in smell, body hair, and walking habits. Mathews also mentions that white fathers continued to live with the Osage, adopting their habits and ways of life. Their acceptance within the tribe relied primarily on whether or not they had taken the proper, tribally sanctioned steps for marriage:

Some of them [European men] had lived with the Little Ones long enough to be honored with the name “grandfather,” which meant that they had earned that name by having been formally married to their Osage wives by the tribal formula. Those who had taken widows to the sumac bushes or to the buck brush and became fathers and eventually grandfathers could never be honored by that name “grandfather” and would remain in the lower of the two social classes. This taboo applied to both the Osage men and women as well as to the white man. [1961: 308]
According to Mathews, interaction with Europeans led to the development of two social classes, those that participated in tribal practices and those that did not. Those that did, even those not born to Osage parents, were considered part of the tribe like all other members. Those that did not were seen as being of a lesser social class. Since this marriage ceremony required official naming and adoption into the tribe, it was the process of being placed within the clan structure that was of central importance to establishing belonging and acceptance within the tribe. Even in the face of such noticeable biological differences, it was this breach of clan protocol, not biological difference itself, which was of central importance to the Osage people.

Those who did not participate in Osage customary practices, the lower social class as Mathews referred to them, were more likely to be drawn to non-Osage partners, thus furthering their isolation from tribal ways:

When the traders and officials and the explorers and the royal adventurers lured women to their robes by presents, these women were chiefly widows whose chances of remarriage were not too bright, or girls of the second class whose immediate ancestors had mated in the sumac or the tall grasses under the Moon Woman, without benefits of formality. Those girls couldn’t lose what they didn’t have, social standing, but they could gain a few baubles… [1961: 308]

According to Mathews, it was this social class that was eventually formed into what is known as the “Half-Breed band.” In 1870, when the Osage were convinced to sell their Kansas reservation and purchase land in Oklahoma, BIA Agent Gibson “unofficially added, for the convenience in signing the bill, an apocryphal band, the mixed-bloods, but here he was still calling them the ‘Half-breed Band’” (Mathews 1961: 694). Importantly, this “apocryphal band” of mixed-bloods was socially ostracized not because they had white blood, but because they had chosen not to follow tribal practices. In this particular historical moment, blood came to signify tribal belonging, but not in the European sense of biological purity. Instead, blood signified the
complex way in which certain individuals fell outside the clan structure of tribal membership and were left without a place in existing tribal politics and ways of life.

Throughout his book on Osage history, Burns also argues that blood was not the primary boundary-making device for Osage citizenship, even when it was the term being used by various Osage people. Residence and culture are highlighted, in contradistinction to blood, as the traditional and thus authentic ways of determining Osage citizenship:

There were two groups of Osage-Euro-American mixed-bloods. One of these groups tended to live apart from the traditional Osage. They were very much like any French in habit and in their lifestyle. The other group tended to live with the full-bloods, and they followed the traditional Osage lifestyle. All mixed-bloods of the latter group were counted as full-bloods in population reports, and they were considered to be full-bloods by the true full-bloods. [2004: 326-327]

Burns goes on to make a very similar argument to that of Mathews, which held that it was adoption into the Osage structure, not blood, which was the primary means of determining who was labeled a mixed-blood and thus not fully Osage. While these sorts of categories are no doubt reductionistic in their simplicity, this history is interesting for the ways in which blood is being reworked. While there were likely more than two simple groups, this idea of the “Half-breed Band” has certainly taken on authority through time.

Within these histories, the “Half-breed Band” continued to grow in numbers and eventually, because of their frequent ability to speak multiple languages and interact with both whites and Osage, gained a great deal of political force among the Osage. These abilities led to the creation of two political factions, the mixed-bloods and the full-bloods. According to several Osage tribal historians, it was the issue of allotment that fully polarized these two factions, with the mixed-blood faction favoring allotment, and the full-blood faction opposing it (Wilson 1985; Burns 2004; Warrior 2005). As Dennis McAuliffe (1994) argues, in 1881 the Osage set up a two-party democracy consisting of the mixed-bloods and the full-bloods. Rather than falling
along strictly biological lines, however, these parties represented the different factions among the Osage tribe, the “Civilization Party” and the “Non-Progressives.” McAuliffe describes these two factions in the following way:

The Progressives favored allotment, for they had grown more American than Indian in outlook and were attracted to allotment’s promise of U.S. citizenship, private land ownership, and recognition as being ‘civilized.’ But not all the mixed-bloods favored allotment. The French Osage—descendants of the early traders who had married into and moved in with the tribe—were as hard-core as the full-bloods in their opposition to allotment or any change of the Indian way of life. [McAuliffe 1994: 226]

Once again, it is possible to see how the histories of self-identification at once complicate Euro-American biological conceptions of Indian identity and reinforce certain connections among blood, culture, and authentic Osageness. What we have within each of these histories is a remapping of the European substance of blood. While European biological understandings were caught up with notions of civilization, land ownership, and Christianity, the Osage reworked these biological metaphors toward their own notions of belonging. Full-blooded Osage were reworked not as lacking white blood or civilization, but as having a place within the tribal structure, and as participants in tribal culture. While mixed-blood status was not strictly dependent on biology, it was still being associated with non-Osageness and thus Americanization. These experiences complicated Europeans’ understandings of blood and, at the same time, reinforced them.

100 Years of Federal Control Over Osage Citizenship

The battle against allotment ended with a favorable vote by the Osage population and the passage of the 1906 Act on June 28th (34 Stat. 539). This act allotted the 1,470,057-acre Osage reservation and dispersed $9,000,000 among 2,230 people listed on the BIA’s Osage roll. Instead of determining membership by blood or residence, the BIA used the commercial corporation model of headright shares to determine who had a say in tribal politics and who
could run for office. Under this system, Osage born after July 1, 1907 could only participate in the tribe if they inherited a share in the mineral estate. Furthermore, in the mid 20th century, the weight of the individual’s vote became dependent on the percentage of the headright he or she held.

As the numbers of Osage descendants without voting rights within the tribe grew, more people began challenging the 1906 Act’s system of membership. In the 1960s, some of these unallotted individuals formed a group known as the Osage Nation Organization (ONO) who argued that the 1881 constitution had never been legally abolished and was thus still in effect. In terms of membership, this meant that the Osage Nation could determine for itself who would be voting members of the tribe. The goal of this movement was two-fold. First, the group wanted to reestablish the Osage Nation through its 1881 constitutional government. Secondly, they wanted to change membership from the imposed 1906 headright/royalty system to a citizenship of all Osage descendants who held over 1/4\textsuperscript{th} Osage blood, regardless of their status as headright holders.

Given the destructive nature of the racial blood-quantum system, it is surprising that Osage, or any other Indian people, would argue for this system as a way of determining membership. However, as illustrated above, the process through which blood became a powerful signifier for the Osage was far from straightforward. The terms half-breed and later mixed-blood did not simply imply a person of mixed descent. Instead, the terms originally marked a lack of participation in tribal marriage practices and thus signified a lower class status. With more opportunities opening up for those people who could speak multiple languages or had practical knowledge of Euro-American practices, these alienated mixed-blood Osage slowly started taking
over tribal politics, again changing the meanings associated with the terms mixed-blood and full-blood.

These sorts of re-figurations are central to understanding the ONO movement and other desires for a tribal blood quantum requirement. As the last section explored, high levels of Indian blood continued to be associated with the preservation of tribal life-ways, which is logical in that if both parents are Osage, then they are far more likely to raise their children in Osage culture. Many perceived the blood quantum requirement as a way of encouraging people to marry within the tribe, which was seen as the easiest way of maintaining a distinct Osage culture throughout multiple generations. It was the ONO movement that brought these concerns to the table.

In an interview I conducted with Charles H. Lohah, one of the leaders of the ONO movement, he said that ONO stood for, “Oh NO, we’re not going to put up with this anymore.” Lohah went on to discuss the movement: “It got pretty raw. There’s a whole bunch of fraudulent enrollees from 1906, so one time we were denounced by what we called the ‘so-called tribal council’ as being a group of full-bloods and near-full-bloods. So we started blasting the tribal council as no-bloods and near no-bloods” (Personal Communication March 11, 2006). As Lohah explained, the ONO movement was further motivated by money owed to the tribe by the United States federal government from when they were living in Missouri.

The Osage Tribal Council (OTC) wanted the money from these claims to be paid through the headright system, which meant that all those born after June 1, 1907 would not receive a share unless they had inherited it from a deceased relative. But, as Lohah argued, “Missouri was long before headrights were ever dreamed of, and since there were so many fake enrollees, we thought it ought to be distributed to Indians, especially those around here. So anyway, we fought
to keep it from being paid. Of course, that didn’t make us a lot of friends” (Personal Communication March 11, 2006). Because the ONOs not only wanted to expand membership to those without a share in the mineral estate, but also wanted to instate a 1/4th blood quantum, they were unable to gain widespread support for any of their proposals. Without support from the majority of people of Osage descent, they were unable to lobby Congress for a change in the membership requirements.

In 1978, this effort to delegitimize the OTC led to *Logan v. Andrus*, which ended up reaffirming the legislative authority of the OTC. The court refused to consider the question of membership because all of the plaintiff-appellants were shareholders and thus unable to make a case for non-Shareholders (640 F.2d 269 [1981]). The issue of tribal membership was again challenged in the 1990 case of *Fletcher v. United States*, as was discussed in Chapter 2. From this lawsuit the court mandated a reform process, which resulted in a tribal membership based on the descendants of the federal government’s 1906 allotment roll. Because the final outcome was a negotiation between the BIA and the plaintiffs of the case, the 1906 roll was chosen without the consent of the Osage population as a whole, except as a final up or down vote of the entire constitution. In 1997, however, the 10th Circuit Court of Appeals reversed Judge Ellison’s ruling on the basis that the OTC had sovereign immunity and could not have its general powers stricken by the U.S. court system. This ruling ended three years of National Council governing and reinstated the OTC as the general governing authority, with tribal membership limited to only those who held a headright or portion of a headright (Warrior 2005).

Within these histories, it is possible to see that there have been many different institutions that have attempted, with various degrees of success, to mold the body of the Osage. While European Americans were trying to create civilized, Christian landowners, the Osage were using
clan adoptions and marriage ceremonies to bring European Americans into the body politic of the tribe. Later, as the headright system took more and more authority, some Osage attempted to upset this colonial system with blood-based understandings of the body. These blood-based experiences did not simply turn the racial hierarchy on its head, but also built on earlier notions associating clan membership and cultural preservation with full-blood status. By 2006, residence, descent, cultural affiliation, and the shareholder system were each caught up in the debates surrounding Osage blood.

**Vehicle of Connection**

One of the central goals of the 2004-2006 Osage reform process was to find a method of creating a boundary around the Osage people, a task both mandated and complicated by the colonial situation. In the period immediately before 1906, the Osage used a clan system to create a boundary between themselves and other groups. On the surface, this system was created through the biological relationship between a father and his children. However, a central aspect of this system was the ability to adopt, bringing in those not biologically related. According to Osage histories, however, neither this clan system nor the government structure of the Osage was static. Like all aspects of Osage life, these cultural practices changed with the needs of the people. In this way, Osage belonging was not bounded in any finite way through time, although adherence to the current cultural practices was certainly central.

In 1881, when the Osage wrote their first constitution, they did not include any qualifications for Osage citizenship. The 1881 Constitution does provide a small amount of information about Osage citizenship. In article I, section 2, it states that:

> Whenever any citizen shall remove with his effects out of the limits of this Nation, and become a citizen of any other government, all his rights and privileges as a citizen of this Nation shall cease; Provided, nevertheless, That the National Council shall have power to re-admit by law to all the rights of citizenship any such persons who may at any time
desire to return to the Nation, on memorializing the Nation Council for such readmission.  
[Constitution of the Osage Nation 1881: 1]

Such a statement shows that in 1881 Osage citizenship was seen as both exclusive and bounded within the reservation territory. However, nowhere did this constitution bind Osage citizenship in any specific way.

Through the creation of the 1906 roll, the federal government insisted on defining the Osage as a bounded group of people. This list was so static that even children born days after the cut-off date could not be added as Osage citizens. After 25 years it was assumed that all Osage would be competent enough to manage their own affairs, ending the need for the Osage Tribe altogether. Furthermore, in 1917 the federal government adopted blood as a way of determining who was competent to manage their own affairs and was thus, in their minds, no longer Indian. As Commissioner Sells writes in that year’s Annual Report: “It is almost an axiom that an Indian who has a larger proportion of white blood than Indian, partakes more of the characteristics of the former than of the latter. In thought and action, so far as the business world is concerned, he approximates more closely to the white blood ancestry” (Annual Report 1917: 3). Thus, in 1917, Sells issued a policy that gave patents in fee to all adult Indians under one-half Indian blood, which allowed them to sell all their land and become full U.S. citizens. Indians over half-blood could also be declared competent “after careful investigation,” but they were unable to sell their last 40 acres, which was to be their homestead (Annual Report 1917: 4). This federal policy officially instituted blood as a means of determining who was and was not considered Indian, although in the end, it did not directly effect how Osage membership was determined.

While the Osage succeeded in extending their government beyond those first 25 years, they were still tied to the boundary-making device of headright ownership. Only through inheritance of a headright could anyone not on the 1906 roll become an Osage citizen, and even
then they had to be a biological descendant of someone listed on the roll. Through the implementation of these rolls the federal government inserted blood relation as the central means of establishing boundaries around Indian communities. Furthermore, through allotment of land and ideas of competency they attempted to argue that being Indian was a racial rather than a political identity. In 2004, when the Osage succeeded in gaining control over their membership, they had little choice but to create some new, concrete boundary around citizenship. Almost 100 years after the creation of the rolls, blood had come to be seen by most Osage as the central tool for determining Osage belonging.

During the 2004-2006 reform process, some Osage argued that creating a blood quantum requirement would be a good way of establishing a solid barrier against those that were not Osage, or “as Osage.” Based on the colonial division of the Osage into the mixed-blood and the full-blood parties discussed above, some people expressed a fear that mixed-blooded Osage would again control the tribe. As one woman said, “They’ll out-vote us. Those that have that 1/100th of blood quantum and really love their heritage, will out-vote us because there will just be so many more of them” (May 9, 2005). For some Osage, a blood quantum did not so much represent racial purity or financial gain, but was part of a longstanding political divide. This divide, built out of cultural difference and solidified in the debate over allotment, was a strong motivating force for some Osage during the 2004-2006 reform process. However, many people also used Osage history to argue that being Osage was more than or different from having a certain amount of Osage blood. As a local man told me during one of the interviews I conducted during the Sovereignty Day celebration, “Everybody from the 1906 roll and their descendents in my view should be part of this tribe. It is important to remember that Indian nationhood is not a racial or ethnic matter, it is a political status. So blood quantum should be irrelevant” (Personal
communication, February 4th 2005). Here and elsewhere throughout the reform, Osage blood was understood in a complex way. The people rejected a blood quantum, blood as a finite substance, even as they embraced a descent system, blood as connector.

In addition to this articulation of the political nature of Osage citizenship, there were several other dangers associated with racial or blood-based citizenship that were discussed throughout the 2004-2006 reform process. Some people articulated this along cultural lines. As a woman told me during the Sovereignty Day celebration, “To me blood has very little to do with it…We have people that live away from here who are more Osage than some people that live right here in the community, because those people are recognized as Osage, culturally” (Personal communication, February 4th, 2005). This idea was further explained in another interview later that day,

My idea of what’s an Osage is somebody that goes to the church, helps out at the In-lon-schka and wants to learn the language. And we’ve got a tribe of around 18-20,000 Osage, and we don’t have but 180 that want to learn the language. Then you look at all these people that say they’re Osage, but they never help out drum keepers, and then you never see them in a church, you hardly ever see them at a hand-game, but yet they’re wanting blood quantum. If they want a blood quantum, they ought to practice what we do. But instead just a few of us are trudging on trying to keep it going. To be an Osage, you have to have 3 things. You have to have land base, then you have to have language, then you also have to have culture (Personal communication, February 4, 2005).

These experiences of Osage identity built on earlier understandings of Osage belonging. If being an Osage in the 19th century meant being part of a clan and being married in an Osage ceremony, then, for some people, being Osage in the 21st century must also be defined along cultural lines.

Of the 1,650 people who voted on this question in the referendum election, only 236 (14.3 percent) were interested in having a minimum blood quantum. Instead, the majority of Osage voting on the referendum supported the use of the 1906 Osage Allotment roll for the base membership of the tribe. Part of the danger seen in the blood criterion, of course, came from the
fact that few people with a lower blood quantum would vote for kicking themselves off the tribal roll. As one man explained to me during the Sovereignty Day celebration,

I am only 1/64th, but being Osage has been part of my personal identity all my life, ever since I was old enough to describe it in words. Two years ago I entered the circle [at the In-lon-ska dances]. I was named by Uncle Harry and I entered the circle. There has been some discussion that membership might be limited to persons of a certain blood quantum, that would, I can tell you, that would be devastating to me personally, to have somebody tell me that I am no longer an Osage. I might be able to come back and dance as a guest if I wanted to be invited. I had a heart attack last year and I was not able to be here, but I plan on coming in June. I don't want any more bad news folks. I am an Osage, I have always considered myself an Osage and I would like to be buried as a member of this tribe. [Personal Communication: February 4, 2005]

Interestingly enough, although this man was arguing for Osage citizenship to be determined through descendancy from the 1906 roll, his desire to be considered Osage was articulated through a connection to Osage culture rather than any political or even descent based understandings of being Osage.

These arguments against blood quantum, however, were rarely a total rejection of racial understandings of Osage identity. In fact, some of these same people expressed a wish that they did have a higher blood quantum. After a meeting a woman told me, “I wish I had been born with a quarter or more blood, but I wasn’t. This is not something I had any control over. This does not make me any less Osage than other people. I should not be removed from the rolls for this” (Personal Communication: March 26th, 2006). Further, some people embraced the idea of blood without seeing it as a solid racial category. For many Osage, the idea of shared blood was more a metaphor of connection than an exclusionary racial category. As one man put it on the additional comments section of his OGRC questionnaire, “The most extraordinary thing about my Osage blood is the knowledge that I am related to every other member of the tribe. To exclude individuals because of their degree of blood is contrary to the idea of tribal membership and a certain path to the ultimate disappearance of the Osage Nation.”
Here and in other examples, the symbolic medium of blood was seen as uniting Osage descendants rather than dividing them along racial lines. Pauline Turner Strong and Barrik Van Winkle (1997) find similar reworkings of the concept of blood when analyzing various American Indian fiction authors, including N. Scott Momaday’s ‘memory in the blood,’ which has been labeled as racist by some critics. “Momaday’s ‘memory in the blood’ becomes a refiguring of “Indian blood” that makes it a vehicle of connection and integration—literally, a remembering—rather than one of calculation and differentiation” (562). Momaday articulates blood memory as a comprehension of the connections between your family/Tribal Nation and yourself. For Momaday this comprehension resides in the blood itself and is something that exits outside Western ways of knowing.

This concept of blood memory was powerful enough to resonate directly with some Osage. As Veronica Pipestem, a young Osage shareholder, explains,

Those of us who participate and strive to understand our traditional ceremonially ways of life have felt this same feeling at times. This feeling of being surrounded, almost smothered, by that which is right in front of us and inside of us but escapes articulation. This is the essence of blood memory...Blood memory is elusive because it is so large and it is manifest in so many different things and we are only able to catch tiny glimpses of it at any given time because of its vastness... Blood memory is subversive because it claims a set of stories and beliefs about the world as belonging to a particular group of people. It is, essentially, claiming that something is an Indian “thing” and the reader, as an outsider, wouldn’t understand. It limits what is knowable about a particular group of people, like the Kiowas, to Kiowas because they possess a particular type of blood memory that the rest of us do not.  [Unpublished paper, November 9, 2005]

Blood memory is thus knowledge of Indianness that cannot be quantified. As Chadwick Allen (1999) argues, Momaday’s “blood memory boldly converts the supposedly objective arithmetic of measuring American Indian blood into an obviously subjective system of recognizing narratives–memories–of Indian indigeneity” (111). Through the use of blood memory, blood ceases to function as a taxonomic system of disappearance and instead represents the possibility of connection.
This concept was also articulated in terms of the need for a connection to the Osage community. One Osage girl explained her thoughts this way:

It is hard since Indians do get benefits from the government everyone might just be like, well, I am Indian. But, I think it is just really your tribe. If your tribe accepts you as part of the tribe, if you are in the community, if your family is Indian, then you're Indian. You don't have to be a certain amount or you don't have to look a certain way...If you are in a tribe, people really want you to be dark skinned and dark hair, because that is what people know of a certain ethnicity. They want you to fit in a box. They are small-minded...People think that your skin is who you are. Your genes are who you are, right? If you have Indian genes in you, then you are Indian, but there are all these plastic surgeries now. I mean, is Michael Jackson still a black man? It is a really interesting question. Lets say somebody really liked Indians and there was a new procedure to make you look just like an Indian. Does that make them Indian? I don't think so. No, it is deeper than that for sure. (Personal communication, July 2004)

Or, as another man explained, simply “being Osage is more of a state of mind; it is being part of a community” (Personal communication, February 4, 2005). Such articulations illustrate the complicated ways in which Osage belonging was understood during the 2004-2006 reform process. Very similar to the Osage histories told above, these people understood Osage identity as being part of the Osage community.

However, this idea of community did not always fit conventional notions of a geographically bounded space. Many people argued throughout the reform process that a person should not have to live on the reservation in order to been seen as part of the Osage community. This debate became particularly vocal around the issue of a residency requirement, districting, and absentee ballots. One of the spaces where this argument played out was on the OGRC online message board. In response to many of the arguments in favor of local control, one person wrote:

How wrong this line of thinking is! Do not think that because those of us who do not live in one of the districts do not see or feel the impact of the Tribal political system. Many of us have family members or close friends in the districts. We know the impact on them FROM them! Don't think because we are not THERE that we don't care. We are Osage too. Don't think that we don't care about the survival of our people because we don't live among them. For many of us, this was not a choice WE made. The choice was our parents'
or grandparents' and our roots took hold where we were. That is not a bad thing in and of it's self. For some of us, ignorance of who we are is the problem. For the rest of us, trying to find a way to be a part of the Nation when time and distance separates us is the problem. In this age, the degree of technology available to us makes it easier to be there and be active participants without having to be physically present to achieve the goal. I am Osage. I am proud to be Osage. I do not live in one of the districts but my heart is there. My family ties are there. My bloodline ties me ever and forever there. You cannot exclude or ignore me because you don't see me. I am one of you. WE ALL are of one Nation. We ALL have voices and concerns and we must ALL be heard. You do not belong to an exclusive club. We are a race of people that will cease to exist if we exclude any one of us. [http://osagegovernmentreform.invisionzone.com: accessed November 12th 2005]

Here, as in many of the viewpoints expressed throughout the reform process, we see an extremely complex set of assertions working together. What is being articulated here is a racial experience of Osage identity, but not one based on the exclusionary criteria that are typically associated with ideas of race. Instead, these sorts of racial experiences were based on connections to a past that could not be broken by distance or marriage outside the Osage community. This use of blood, as a metaphor of connection, a connection stronger than any geographical or cultural ties, was ultimately what won out in the 2004-2006 Osage reform process.

Shortly before the final vote on the 2006 Osage constitution, the Osage News, a publication written and published by Chief Gray and his staff, printed a short advertisement alerting people to the upcoming vote. Nicely summarizing many of the feelings about being Osage it said, “Being a member of an American Indian Tribe is something special. It is something you cannot buy, nor is it something you can trade for. You must be born with it” (2006: 1). This concept of an inborn connection was ultimately articulated through lineal decent. By creating a line of connection between those listed on the 1906 roll and current tribal members, lineal decent also worked to connect a group of people separated by geography, culture, and racialized characteristics.
Constitutionalizing Blood

With only a couple of weeks left before the absentee ballots of the draft constitution had to be sent out for a final vote, the Osage Government Reform Commission (OGRC) still had not decided how to define Osage citizenship with the 2006 Constitution. The commission had devoted a year to collecting information from the Osage population through various means, including: hosting over 40 community meetings throughout the reservation, across Oklahoma and with Osage in California and Texas; a phone survey; 2,000 questionnaire responses; and a referendum vote. However, it was still not clear how citizenship ought to be determined. While 86 percent of the voters in the 2005 November referendum had said that they wanted the 1906 allotment roll set as the base roll, 80 percent selected: “Membership of people on the base roll to be subject to challenge by the new government if it is proven that fraudulent measures were used to establish membership into the tribe.” Both of these referendum questions had arisen from input the OGRC had received, including from several vocal people who argued that the 1906 roll contained somewhere between 100-400 names of people who did not have Osage blood, but had been put on the rolls because they had been adopted into the tribe or used fraudulent means, such as bribery.

The commissioners had to find a way to deal with this disparity between the two referendum question findings. After weeks of writing and rewriting the constitution, the commissioners had the following debate about how they could at once establish a base roll and also have the base roll be challengeable:

**Commissioner 1**: I want to talk about membership. I am hearing a lot of people saying they are scared of the purging of the rolls and I am afraid that this will lead to a lot of “no” votes on the constitution.

**C2**: My main concern is that we need to put a time limit on how long these disputes could go on.
C3: We should not frame it from the standpoint of assuming that there are fraudulent people, even though there are.

C4: The fraud question on the referendum would have been tossed out, had it come up in a research design class. It was too leading.

C5: The 1906 roll includes the only Osage alive at that time. They might have been considered fraudulent then, but they are members now. We should leave this up to the new government.

C6: This version, which was created during the writing retreat, does not establish a base roll, which is what leaves room for the new Congress to force people to prove they have Osage blood.

C1: We need to establish a base roll, then; it would stop a lot of misery.

C6: If we establish a base roll it will be very hard to challenge those on the roll who do not have Osage blood.

C7: We can’t right this wrong; too much time has passed.

C1: My worry is that we will kill the constitution based on this one issue alone. [January 23, 2006]

The final constitution, ratified by Osage voters on March 11, 2006, solidified Osage citizenship in a very particular way. Section 1 of the article on membership set the base membership roll as “those persons whose names appear on the final roll of the Osage tribe of Indians pursuant to the Act of June 28, 1906” (2006:2). Setting the base roll meant that even if it was proven that someone on the base roll did not have Osage blood, his or her enrollment could not be challenged. However, this does not mean that biological conceptions of being Osage were not included within the membership criteria of the constitution.

Section 2 of the article on membership stated that the qualification for membership this way: “all lineal descendants of those Osage listed on the 1906 roll are eligible for membership in the Osage Nation.” In effect, this clause reset the biological clock, giving all those on the roll a unique connection that had to be passed down biologically in order for the family members to maintain membership. This need for lineal descendancy from the 1906 roll defined Osage
citizenship as something uniquely biological, even if it did not trace this biology back to some sort of original Osage blood. However, Section 4 of the article on membership gave the Osage Nation Congress the ability to create laws regulating the adoption of members, which left the door open for membership outside of lineal descent.

**Conclusion**

This and the previous chapter illustrate that being Osage did not mean any one thing to everybody, but was a complex mix of emotions, historical facts, ideas about biological substances, genealogical connections and lived experience. While all identities are composed of varying sets of complex ideas, only occasionally is any identity subject to the open scrutiny witnessed in the 2004-2006 Osage reform process. Because of the unique intersections of this particular colonial moment, the Osage reform process opened the category of “Osage” for public debate. It was within this debate that certain articulations of colonial policies, local histories, authorized and unauthorized stories, biological “facts,” emotions and personal experiences were hardened into the membership criteria included in the 2006 Osage Constitution.

Rather than seeing these stories as providing some ultimate truth about Osage identity, they are intended to provide a series of situated perspectives from which to view some of the ways blood was being incorporated into the experience of being Osage. Such an approach builds upon scholars such as Joseph Dumit (1997), Sarah Franklin (1997), Donna Haraway (1997) and Bruno Latour (1993), who have resisted the notion of the ideal “witness” constructed within western scientific discourse as objective and neutral, and thus invisible. Instead of trying to discover an ultimate “truth,” these authors create new sorts of witnesses who are situated. They use these situated perspectives to expose various boundaries around nature, culture, objects, subjects, and science in order to open up a space from which to trace out realities-in-the-making, experiences. By looking in depth at how various Osage talked about themselves and those
around them, my goal has been to shift the focus of analysis to a more nuanced understanding of where their ideas about blood and belonging came from, how they were reworked in the Osage context, and what sorts of impacts these ideas had on the 2006 Osage Constitution.

By looking at how blood was being talked about during the Osage reform process, it is possible to understand the complex and varying ways in which colonial understandings of the Indian body have been reworked and incorporated into some people’s experience of self and community. These understandings of blood are particularly important for Native nations today, because blood has become one of the most common boundary-making devices for citizenship in tribal Nations. It is the possession or lack of this substance that is currently being used to establish belonging, and the rights, privileges and obligations that accompany belonging. These discussions of blood help us understand how for some Osage, blood is configured as a fundamental substance, without which the Osage will no longer exist. However, in the 2006 Constitution, blood is not configured as a finite substance, but as a connecting link for a group of people spread out over the United States and even the globe.

Within this dissertation I am arguing that debates about Osage citizenship during the 2004-2006 reform process were deeply intertwined with colonial understandings of the North American Indian body. When Europeans colonized America, they brought their biological understandings with them. These racial understandings of the Indian body were not, however, directly accepted by the Osage, but were instead reworked to signify those who participated in tribal practices. As the colonial process continued, these Euro-American ideas of the racialized Indian body took on more force through the creation of limited resources, particularly during allotment and the continued threat of termination. Over time, the racial idea of blood took on metaphorical meaning, connecting Osage or separating them, depending on how it was used.
In 2006, when the voting Osage population agreed to a constitution that defined citizenship through lineal descent, they joined a host of other indigenous groups whose membership was defined not by territory, as in the case of most nations across the globe, but through a shared biological substance. While such configurations are extremely powerful to many people for a whole host of reasons, blood-based systems of citizenship cannot be separated from the continued colonization of indigenous populations today. While colonialism can too easily be seen as all determining, this chapter has shown the colonial situation is far more complex and full of negotiation. The very act of having to create a bounded conception of citizenship illustrates the power of the current world system. Defining the Osage as something other than a citizen within a Nation has become virtually unthinkable. However, within these constraints the Osage have found a creative solution, based on neither race nor land, but their own experience of relation.
CHAPTER 5
THE LIFE OF OSAGE SOVEREIGNTY

If our struggle is anything, it is a struggle for sovereignty, and if sovereignty is anything, it is a way of life...It is a decision—a decision we make in our minds, in our hearts, and in our bodies—to be sovereign and to find out what that means in the process. [Warrior 1994]

In the literature on North American Indian nations, there exists a wide range of debates regarding the term sovereignty. Many people ask how sovereign tribal nations can exist within settler states. What does it mean to be sovereign? How can tribes assert more sovereignty? Is sovereignty even the proper term in which to talk about the relationship between Indian nations and the federal government? During the 2004-2006 reform process, the Osage people were engaged in their own external and internal debates about sovereignty. The Osage-authored U.S. Congressional bill that instigated the reform process, entitled “An Act: To reaffirm the inherent sovereign rights of the Osage Nation to determine its membership and form of government” (emphasis added, Public Law 108-431, 2004) is a perfect example of the complexities and paradoxes associated with asserting sovereignty within a colonial context. While the previous chapters have considered what was at stake in determining Osage membership and the form of government, this chapter will investigate the concepts of sovereignty that surrounded the reform process.

The meanings and practices of sovereignty are always under negotiation. Because sovereignty is fundamentally tied with questions of power and authority, it is a central frame in which to explore the current colonial situation among American Indians. This chapter will discuss the period from 2004-2007, focusing on the speeches delivered by tribal officials, the articles written in local newspapers, and the debates over the meaning of sovereignty among various Osage. Looking at sovereignty in the context of Osage experience, it is clear that current definitions of sovereignty as an all-encompassing domination over a territory are not sufficient to
understand what sovereignty means and how it is working within the lives of indigenous people today. Within the colonial context of the United States the Osage are forced to operate within a nation-state system, which does not have a clear place for them. Calls to sovereignty within this context therefore work in particularly interesting and unexpected ways. In writing about negotiating the nation-state system among the Kahnawake Mohawk reserve in Canada, Audra Simpson states,

> These are more than imposed structures of domination, or structural traces of colonialism that Mohawks must somehow battle within, or articulate through – whether that is ‘creatively’ (as in resisting, subverting or signifying) or passively (as in being assimilated). These are ‘homegrown’ cultural expressions that engage with the state but are in no means defined entirely by that state” [2003: 41].

She goes on to say, “…the people of Kahnawake do not resist, they are. And the way in which they are can be at times vexing, demanding, resistant, acquiescent and in all ways complex” (2003: 53). While the Osage are certainly located in the middle of a large colonial nation-state structure, their experience is also too complicated to be summed up as either assimilation or resistance. This chapter will explore these complexities and how they are articulated through conceptions of sovereignty during and immediately following the 2004-2006 Osage reform process.

**Histories of Sovereignty**

The most common origin story currently in circulation about sovereignty begins with the 16th century French jurist and political philosopher Jean Bodin. As Alexander Murphy (1996) argues, “Concerned with promoting peace by validating the power of the French king against rival claimants, Bodin championed the idea that a state’s ruler had absolute authority within his own realm, subject only to the divinely inspired laws of nature” (85). Central to this story of sovereignty is the idea of an absolute authority within a territory. However Murphy’s story never strays far from its own Eurocentric origin. Murphy continues his story about sovereignty
by following it through its European trajectory, bringing in other populations only when they encounter the European nation-state system.

Furthermore, many of the definitions of sovereignty insist on the importance of statehood. For example, Hurst Hannum (1990) argues, “One principle upon which there seems to be universal agreement is that sovereignty is an attribute of statehood, and that only states can be sovereign” (15). The state too, we are told by Stuart Hall (1984) has a European origin. “Out of clans and tribes of early Greek civilization emerged a surprisingly ‘advanced’ form of state – the city-state or polis” (2). After Greece came Rome, then France, Spain and England. Here and elsewhere the state becomes fundamentally juxtaposed with clans or tribes. As Hall says, “Clans and kinship groups in pre-history, semi-nomadic peoples today or even settled tribes with a very simple form of social organization, have all constituted what we would now call society, without possessing a state (emphasis added, Hall 1984: 1). While the goals of such stories are to understand sovereignty and the state as historical constructs, rather than innate or natural structures, such Eurocentric histories also work in powerful ways. These narratives of sovereignty create a hierarchy between those with history and those without, between the simple and the complex, and ultimately between the primitive and the modern.

In writing a history of “primitive governments,” Lucy Mair (1977) argues that the primary difference between these and “western nations” is their use of technology. “The development of more complicated and efficient ways of doing things is a matter of discoveries and inventions which simply cannot be credited to the superiority of certain total populations over others. But the possession of a complex technology is what enables the state to control, and to a large extent organize, the lives of populations of many millions” (emphasis added, 10). Even as Mair argues against the assumed inferiority inherent in these models of governments, she reinforces non-
European governing structures as simple, inefficient and “rudimentary.” As Mair rightly illustrates, much of this political theory is derived more or less directly from early European thought:

The seventeenth-century philosopher Hobbes contrasted the state of nature, in which every man’s hand was against his neighbor, with civil society, in which authority had been surrendered to a sovereign ruler…This was a logical rather than a historical argument; it followed from Hobbes’ assumptions about human nature that if there were [sic] no supreme authority there could only be a war of each against all. But he did refer to ‘savage people in many places of America’ whose condition did support this. [1977: 11-12]

This focus on the difference between the “state of society” (Europeans) and the “state of nature” (everyone else), while no longer so openly connected within the histories of sovereignty and the state, is still an underlying current of much of this scholarship. By continually juxtaposing the European sovereign state with the rest of the world’s lack thereof, even the best intentioned authors fall into the trap of defining Europe as authentically modern.

In his treatise on modernity, Bruno Latour (1993) discusses these very divisions. He argues that modernity necessitates having a pre-modern to juxtapose against itself. Western thought, Latour argues, does not “claim merely that they differ from others as the Sioux differ from the Algonquians, or the Baoules from the Lapps, but that they differ radically, absolutely, to the extent that Westerners can be lined up on one side and all the cultures on the other...,” (emphasis added, 1993: 97). For Latour, a central aspect of this European thought is the separation of nature and society into opposite poles, with Europe representing all that is society. To understand how these sorts of divides unfold within discussion of Osage sovereignty, it is now important to turn to the Osage history.

**Situating Osage Sovereignty**

According to Louis F. Burns (2005), at the time of European contact in 1673, the Osage lived in permanent villages and controlled the territory in much of what is now Missouri,
Arkansas, Oklahoma, and Kansas. As Burns describes, “Osage land title was held by occupation, conquest, and the ability to enforce one’s own claim…Enforcement of Osage territorial claims were violent, graphic and effective” (2005: 89). Gilbert C. Din and A. P. Nasatir (1983) describe Osage governance during this and later periods through sources such as Washington Irvine, who traveled through the West in the 1830s. Din and Nasatir write,

> Osage society was complex and consisted of many subgroups. The Osage divided their people into two halves or moieties, each of which was further divided into phratries, clans, and sub-clans…The real governing body of the tribe was the council of elders, which in mock humility the Osage called the Little Old Men. These men were the top social, political, and religious leaders of the tribe. [12]

If sovereignty is defined as supreme legitimate authority within a territory (Philpott 1995), then there can be little doubt that the Osage were a sovereign body at the time of contact. For many Osage, sovereignty is seen as something existing outside of and prior to the formation of the United States. The *Declaration of Sovereignty and Independence by the Osage Nation*, which was signed by the Osage Tribal Council on February 4th 2005, states, “We declare further that our inherent rights as a sovereign nation predate the [United States] Constitution.” Frequently various Osage would talk about their sovereign rights as existing even earlier. In an interview I conducted during the Osage Sovereignty Day Celebration one woman told me, “I believe that we Osage have been sovereigns over our dominion from our first forefathers. Our right we hold from God and nobody has the right to take that away from us. And anybody that wants to argue our sovereignty, I say, go to God” (Personal Communication: February 4, 2005). In Chief Gray’s speech given during the Osage Sovereignty Day celebration, he emphasized the importance of sovereignty:

> We gather today to celebrate an important time in Osage history and to consider what our future will be. Over 100 years ago, a man named Wa-Ti-a-kah, my forefather was sent to this land, and he said, “There is something in the land that will ensure that our children will never starve.” Many of us thought that to be oil…. Today, I know what he meant—the sovereignty of the Osage Nation, and that is what will sustain us. Only recently, our
inherent sovereign rights that form the core of who we are as a nation, the rights to
determine our citizenship and form of government have been reaffirmed by Congress. We
celebrate that freedom that legislation gives us today… Exercising our tribal sovereignty in
the areas of self-governance will make us more accountable to our people and make us
more informed to make better decisions as a nation. That is why this moment must be
acknowledged. For after today the Osage themselves must move back and take their
sovereignty.” (Gray 2005:1)

Within this speech it is clear that for Chief Gray asserting sovereignty means emphasizing that
the Osage have the right to determine their own affairs. For Gray and many other Osage,
sovereignty is thus about accountability, self-governance, and ultimately, about the process of
regaining control.

This sovereignty, however, is far from straightforward. Because the Osage exist within the
middle of the United States, which claims ultimate sovereignty over its entire territory, Osage
sovereignty must also be understood as a statement of dissonance. For the Osage to assert their
own pre-existing sovereignty is, at least in part, a challenge to the very coherence that is said to
constitute the United States. In order to better understand how the Osage were using the concept
of sovereignty, the rest of this chapter will map out its patterns of diffraction (Haraway 1997).
By looking at the colonial policies and their supporting arguments as well as the ways in which
various Osage talked about sovereignty during the 2004-2006 reform process it is possible to
map out what is really at stake within assertions of Osage sovereignty.

The disjuncture between U.S. and Osage claims to sovereignty is perhaps best illustrated
by the doctrine of discovery, which was one of the fundamental elements used to establish U.S.
sovereignty. According to Newcomb (1992) the doctrine of discovery originated from the Papal
Order of 1451. In this Order, the Pope declared war on all non-Christians and sanctioned their
conquest. “[I]n the bull [Papal Order] of 1452 Pope Nicholas directed King Alfonso to ‘capture,
vanquish, and subdue the saracens, pagans, and other enemies of Christ,’ to ‘put them into
perpetual slavery,’ and ‘to take all their possessions and property’” (Newcomb 1992: 18). Later,
Alexander VI issued a papal document, the *Inter Cetera* of May 3, 1493, which gave Spain the right to conquer the lands ‘discovered’ by Columbus and any future lands. Central to the document was the assertion that all ‘discovered’ peoples would need to be "subjugated and brought to the faith itself" leading to the promulgation of the “Christian Empire” (Newcomb 1992: 18). Thus began the doctrine of discovery. So long as other Christians did not already inhabit the land, it was the European ‘duty’ to take it over and ‘civilize’ its inhabitants.

In *Johnson v. McIntosh* (1823) a unanimous United States Supreme Court ruling cited this doctrine of discovery as its central justification for extinguishing Native title to land.

> [D]iscovery gave an exclusive right to extinguish the Indian title of occupancy… Although we do not mean to engage in the defense of those principles which Europeans have applied to Indian title, they may, we think, find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them…the Tribes inhabiting this country were fierce savages whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness…[Johnson and Graham’s Lease v. William McIntosh 21 U.S. 543, 5 L.Ed. 681]

Such generalizations about the “wild” and “savage” nature of the Indian populations inhabiting America can be found throughout federal policy. In this case, as in many others, the Indians’ apparent lack of government structure is seen as ample excuse for European, and thus U.S., pilfering of Indian lands. Building on Hobbs, and other European philosophers, Euro-Americans were able to ignore the existing political structures of native populations and claim the land and all its inhabitants as wilderness.

The consequence of continuing to create the separation between these sovereign structures derived from Europe and those existing in the rest of the world is that it becomes impossible to sustain any argument for non-European sovereignty. Because the Osage tiered governance structure does not come out of the European tradition of sovereign states, these historical narratives of European sovereignty work to deny the possibility of preexisting Osage sovereign
authority. If Euro-Americans had to admit that the Osage were a settled group of people who used agriculture and who had a highly sophisticated governing system, the U.S. government would be left with little justification for their rendering of all Indians as “domestic dependents.”

In the frequently cited case of the Cherokee Nation v. Georgia (1831), Chief Justice Marshall rendered the majority opinion for the court, arguing that the Cherokee Nation was not a foreign nation, but instead a “domestic dependent nation.” He went on to support his ruling by stating, “They occupy a territory to which we assert a title independent of their will…Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward of his guardian” (30 U.S. 1). This rationale later led to the Court decision Lone Wolf v. Hitchcock (1903), which declared that Congress has “plenary authority” over tribes, which includes the ability to “abrogate the provisions of Indian treaty” (187 U.S. 553). From this conception of plenary power came the current environment in which the U.S. Congress is seen as having the right to create any sort of Indian policy it pleases, including termination, without input from the people or nations being affected.

However, even within these early court cases, and certainly within the treaties that preceded them, American Indian sovereignty could not be denied. Central to the act of creating a treaty is the acknowledgment that both parties involved are sovereign. As Burns (2005) writes, “One indisputable fact stands out in the relationship between the American Indians and the nations of Western Civilization. The American Indians had owned, occupied, and exercised sovereignty over land for at least ten thousand years before Columbus stood on American soil” (147). In making treaties with Indian nations the European colonizers were acknowledging this sovereignty.
Because of their geographical location and control over their territory, the Osage did not enter into any treaties until 1808. Shortly after the United States purchased the Louisiana Territory from France, a delegation of Osage were sent to Washington D.C. to meet with President Jefferson and Secretary of War Henry Dearborn. At the meeting Dearborn promised, among other things, “All lands belonging to you, lying within the territory of the United States, shall be and remain the property of your nation, unless you shall voluntarily relinquish or dispose of the same. And all persons citizens of the United States are hereby strictly forbidden to disturb you or your nation in the quiet possession of said lands” (quoted in Wolferman 1997: 57).

While this promise, like many promises, was quickly ignored, it does illustrate that in the beginning, the U.S. government recognized Osage sovereignty.

The seven treaties from 1808-1839 at once acknowledged and whittle away at Osage sovereignty and land. It was within these treaties, as well as within BIA attempts to dismantle the Osage governing structure, that sovereignty was being negotiated. While the federal government attempted to erode Indian sovereignty through treaties, legislation, policy, and court decisions, the Osage tried various tactics to maintain their control. When it became apparent that neither the treaties nor the BIA agents were going to acknowledge Osage rights to self-governance, the Osage went directly to Washington D.C. and even formed a governmental structure more recognizable to the U.S. government1.

The U.S. Supreme Court members were not uniform in their opinions about the exact nature of Indian nations’ sovereignty. Following their 1831 ruling on “domestic dependents,” the U.S. Supreme Court held a year later that the Cherokees were a nation existing outside the

---

1 In 1881, after successfully negotiating for their annuity payments to be paid directly in cash, the Osage decided to form a democratically elected three-part government modeled directly from the Cherokee, who had created the model based on the United State’s governance structure.
jurisdiction of the State of Georgia. Chief Justice Marshall wrote, “The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial” (Worcester v. Georgia 31 U.S. [6Pet.] 515, at 559 [1832]). After the treaty-making period, however, the federal government switched to a policy of assimilation and then termination. Hoping to do away with the “Indian problem” by turning Indians into lower-class American citizens, the federal government forced education, farming, private landownership, and Christianity on indigenous peoples. When these efforts were not successful, the federal government decided that the tribal organizations were keeping Indians from full assimilation, so at the end of the 19th century they began terminating their relationship with these organizations altogether. The Osage narrowly escaped termination by agreeing to pay their own BIA operation costs.

In the 1960s federal policy started moving away from termination toward self-determination. The largest part of these changes was the Indian Self-Determination and Education Assistance act of 1975 and the Indian Health Care Improvement Act of 1976. These Congressional bills began the process whereby Indian nations could take over aspects of federal programs, including delivering their own health services and organizing their own schools. However, many Indian leaders were wary of the federal government, suspecting that it had simply found a new name for termination. The bill was well short of Nixon’s original plan for a full Indian takeover of services and instead allowed the tribes to make “contracts” to control various aspects of their programs. According to Prucha,

The twofold policy of the government was asserted in the preamble to the law: the United States recognizes its obligation to respect ‘the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities’; and Congress declared its commitment to ‘the maintenance of the federal government’s unique and
continuing relationship with and responsibility to the Indian people’ through a self-determination policy that would provide an orderly transition from federal domination to effective Indian participation in planning and administering programs. [1984: 380]

Indian self-determination thus became something different from traditionally understood sovereignty. Because of the promises made in previous treaties, few Indian tribes saw any benefit in doing away with their relationship to the federal government. This, then, is the complicated nature of Indian sovereignty today. Rather than the exclusive or even supreme authority to control everything within a territory, Osage and other American Indians are now fighting for what can better be understood as layered sovereignties.

**Layered Sovereignties**

In 2007, the State of Oklahoma observed its centennial and asked the Osage to join in the celebration. In response, Chief Jim Gray issued a statement that spoke of the last hundred years of statehood and the suffering experienced by the Osage people, including the erosion of their language, culture, land and sovereignty. He concluded, however, by saying that,

> We Osage are mindful that we share this great land with others and it always has been our wish to live in harmony with our neighbors–both on the reservation and in the state. We hope that the government-to-government relationship between the Osage Nation and the State of Oklahoma will be mutually beneficial and will be based on mutual respect…The Osage Nation is prepared to commemorate the last 100 years of history, but we look forward to a bicentennial of Oklahoma’s statehood that we can truly join in celebration of progress for the Osage Nation, the State, and our mutual development” (Gray 2007: 18)

While the traditional definition of sovereignty does not include ideas of mutual respect, for Osage leaders this is the foundation of their understanding of sovereignty today. Instead of desires for exclusive jurisdiction within a territory, what is most frequently articulated is a government-to-government relationship based on overlapping authorities. Many other authors dealing with indigenous politics have talked about this layered characteristic as being a
fundamental aspect of tribal sovereignty (Biolsi 2005; Wilkins and Lomawaima 2001; Cattelino 2004; Lambert 2007). As Lambert explains,

[T]ribal sovereignty operates in a landscape populated by multiple, overlapping, and competing sovereignties…When tribes, states, and the federal government spar over who has control over certain resources, a process of moves and counter moves is set in motion. For a good many conflicts in Indian country, these moves and countermoves cardinaly define tribal sovereignty as a process of negotiation. [2007: 211]

This emphasis on layered sovereignties is hardly unique to Indian tribes, but occurs throughout the United States as well as internationally. In the United States, most land is subject to the laws of the federal and state. When tribal lands are present this merely adds another level of sovereignty onto the territory. In the case of the Osage, as well as many other tribes, the tribal government was the first authority over the territory, with the federal, state, county and municipal governments layered on top. Ideally, each co-exists simultaneously and exercises its respective governmental powers independently, but in conversation with one another.

Central to the Osage Nation’s call for layered sovereignties is the existence of the Osage reservation. Unlike all other tribes in Oklahoma, the Osage still have a federally recognized reservation territory, which means they can control any area they own within that territory, rather than only the land still held in trust. Control here can mean the ability to disregard state taxes, to have a smoke shop or casino, or as Chief Gray has recently done, to deny state inspectors the right to enter a grocery store owned by the tribe. For 100 years the Osage reservation has gone

---

2 Shortly after the end of the treaty making period in the 1870s the U.S. Congress began the creation of reservations. Central to the creation of these areas was the federal government’s paternal belief that it needed to take care of the land for the Indian people, fearing that they would otherwise lose the land. These reservations were thus owned by the federal government and held in trust for an Indian tribe or individual. Trust land today is most frequently land that has been held in trust since the allotment of the reservations. As was discussed in chapter three, Indians with half or more blood were not seen as competent of managing their own affairs and so their land was held in trust by the federal government. Most land within the Osage reservation is no longer held in trust, but is owned by individuals. While it is possible to reenter lands into trust, the BIA has made it a cumbersome process. Thus, all other tribes in Oklahoma are limited in their authority to lands that have remained in trust or have gone through the reentry process.
relatively unacknowledged. Until recently, the Osage did not have the infrastructure necessary, or the finances available, to act on much of its jurisdictional authority within the reservation. With the rise of Osage taxation and gaming, as well as the 2004-2006 reform process, the status of the Osage reservation has become a central aspect of the debate over Osage sovereignty.

Because the Osage have not acted on all of their reservation prerogatives until recently, many people (particularly the non-Osage residing on the reservation) not only do not understand the authority with which the tribe is empowered, but deny the existence of the reservation. For example, the Oklahoma Tax Commission refuses to recognize its own lack of jurisdiction on the reservation. In 2001, the Osage Nation filed a suit against the Oklahoma Tax Commission and individual tax commissioners, seeking “an injunction restraining the State of Oklahoma from levying and collecting income taxes upon the income of the Nation’s members who are employed, earn income and reside within the Nation’s reservation” (Pitchlyn 2004a: 3). The case went to the Northern District Court of Oklahoma where the State of Oklahoma brought a motion requesting dismissal, arguing that such actions could not be brought against the State in federal court. The judge sided with the Osage Nation, but the case was immediately appealed to the Tenth Circuit court of appeals where it still awaits decision on whether or not the case can be heard. If the State of Oklahoma fails in its stalling tactic and is forced to try the case in federal court it will likely be forced to acknowledge not only the status of the reservation, but its inability to tax those who work and reside within that territory.

There are two recent opinions that support the status of the Osage reservation. The first is a 2005 opinion rendered by the National Indian Gaming Commission (NIGC). Before opening a casino in North Tulsa, the NIGC had to agree that the area was still part of a recognized
reservation. In their opinion of the Osage reservation’s status, the NIGC cited previous Department of the Interior documents to prove the continued recognition of the Osage reservation. Among the documents supporting their case were the Act of June 5, 1872, ch. 310, 17 Stat. 228 (An Act to Confirm to the Great and Little Osage Indians a reservation in the Indian Territory), the 1906 Act, which allotted the reservation, and a 2004 lease agreement approved by the BIA. For many tribes, allotment was intended for the purposes of eradicating the reservations, but the Osage case is recognized as different. In addition to purchasing the reservation in Oklahoma with money from the sale of their Kansas lands, the Osage also negotiated to keep the mineral estate under the reservation held in trust.

One of the documents cited in the NIGC opinion is a report of the Solicitor General Nathan R. Margold written to the Commission of Indian affairs on December 17, 1935. Concerning this document the NIGC says,

The Solicitor determined that the lands are ‘Tribal lands within the reservation boundaries’ and further noted that ‘[s]o far as I am advised no act of Congress has severed these lands from the reservation. In the absence of such Congressional action they not only remain within the reservation but also qualify as ‘Indian country’ under the rule that ‘Indian country’ remains such until the Indian title is extinguished unless other wise [sic] provided by Congress. [Coleman 2005: 5]

Other documents include a 1997 Oklahoma Gubernatorial Proclamation which stated that “[w]hereas, the Osage reservation covering all of Osage County is the only federally recognized reservation remaining in Oklahoma”…(quotes in Coleman 2005: 6), as well as a 1992 map of Indian Land published by the U.S. Department of the Interior. Thus, the NIGC letter concludes, “Based on the above documents, we understand that at least some offices within the Department

---

3 The NIGC was founded in 1988 by the federal Congress under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq). The act set out to provide standards by which tribes could be held accountable when conducting gaming on Indian Lands. The purpose of the NIGC is to enforce those standards.

4 See chapter two for a description of this period.
of the Interior have concluded that the Osage Nation reservation has not been disestablished …Please advise us immediately if your office disagrees with our understandings of the status of the tribe’s reservation” (Coleman 2005: 7). The Department of the Interior did not issue a response and the casino opened in North Tulsa on non-trust reservation land.

Another recent opinion on the Osage reservation status was issued in Quarles vs. U.S.A. et al., U.S. District Court for the Northern District of Oklahoma, where Chief Judge Eagan determined that “Osage County is ‘Indian country,’ as defined by 18 U.S.C 115 (CV-0913-CVE-PJC 2005). Notably, neither the BIA, as a party, nor the U.S. Department of Justice, as counsel for the BIA, made any objection to this determination by the Court. However, as was evident in the case of the Oklahoma Tax commission, just because the Osage reservation is acknowledged does not guarantee that the state of Oklahoma is always going recognize the sovereign authorities of the Osage Nation, or even uphold its agreements with the Osage Nation. While there are many different areas that could be used as examples in exploring the tribal-state relationship, from cross deputization of the Osage Nation police force to Osage Child Support Services to debates about who has authority to make environmental laws over the territory, I will examine the case of the tobacco compacts to illustrate the complex nature of this relationship.

Tobacco Compacting

Compacting between states and Indian tribes is a relatively recent practice, originally created to control gaming on Indian territories.\(^5\) Compacting allowed a compromise between the sovereignty of the state, which did not want to have unregulated gaming within its territories, and the sovereignty of the tribe, who wanted to increase their revenues and be further recognized as a

\(^5\) When Congress passed the Indian Gaming Regulatory Act in 1988, it created three different classes of gaming. To enter into Class III gaming, which was considered the traditional casino-style gambling, tribes had to create a compact with the state.
legitimate governing authority within their territories. According to Bays (2002), tobacco compacts developed out of the gaming precedent. “Once gaming exposed the geopolitical barrier—and the comparative tax advantage—shielding Indian country from state civil-regulatory authority, Indian entrepreneurs began opening smoke shops” (Bays 2002: 189). The resulting loss of tax revenue prompted the state to attempt to regulate the wholesalers, forcing smoke-shop owners to purchase from out-of-state wholesalers. The problem remained, however, that sovereign immunity prevented the state from enforcing its tax collection in Indian country, no matter who made the purchase (498 U.S. 505).

The state, which was losing millions of dollars in tax revenue, turned to compacting as a possible model for regaining some of these funds. To support this process and protect its own interests and the interests of non-tribal smoke shops, the Oklahoma legislature in 1992 passed a tax law that stopped the taxation of retailers and instead placed the burden on wholesalers. Any untaxed cigarettes coming from wholesalers were now labeled as contraband and subject to seizure. This law also recognized the ability of Indian country smoke shops to import tobacco from out of state and gave the smoke shops a 75 percent break from the state tax rate (Bays 2002).

Pressure to sign these compacts came primarily from smoke shop owners, who were growing weary of acting outside state law and were eager to take advantage of the new tax break.6 However, tribes also benefited from these agreements through taxation of the shops, which created a new financial base. Through these compacts, the tribes were able to establish more authority over their territory and gain further recognition from the state. In response to

---

6 As Bays explains, “state legislation created incentive for smoke shop operators to lobby their tribal governments to sign tobacco compacts…Prior to 1992 smoke shops were essentially unregulated, untaxed, and unduly harassed. After 1992, smoke shops began to gain legitimacy, and many grew and expanded” (Bays 2002: 191).
criticism that the tribes were “selling out to the state,” Bill Anoatubby, the Governor of the Chickasaw, replied “this government-to-government compact is the most reasonable method of settling disputes. This is a true exercise of Tribal sovereignty” (Associated Press 1992: 10B). For many tribal leaders, compacting became a way to assert sovereignty, not as exclusive power, but in terms of collaborative control. Wilma Mankiller, Principal chief of the Cherokee Nation, argued for compacting in just these terms. “Some may say the Indians would be giving up something, but I say we are dealing from a position of strength. I think it would be a nice legacy to lead the first step toward collaboration” (quoted in Bays 2002: 191).

In 2003, however, these compacts began to expire. Chief Grey worked with other tribes to negotiate a single new compact with the State and all tribes. Oklahoma’s Director of Finance, Scott Meacham, ignored these requests and refused to meet with tribes (Osage News 2006a). The tribes were outraged. Not only were State officials refusing to meet with tribes as a whole, but they were also supplanting the negotiated compact process with a single take-it-or-leave-it offer. After the Choctaw and Chickasaw Nations negotiated their own compacts, other tribes, including the Osage, began to vie for the best position. The Osage were able to extend the exception rule for tribes living near the border to fit 12 of their 15 smoke shops.7 This meant that these shops were only paying the State at a rate of 6 cents per pack of cigarettes compared to the 86-cent non-exemption rate. Complicating these agreements was State Question 713, which raised tobacco taxes to $1.03 a pack but also eliminated sales tax from all tobacco sales. This not only cut the margin of the Indian smoke shops, but was also a breach of tribal contracts.

Meanwhile, Meacham was unable to live up to his promise to the weary Republican Oklahoma Congress that the tobacco tax would lead to a large financial increase for the state.

---

7 Because the States bordering Oklahoma had lower tax rates, those smoke shops near the border were able to negotiate a lesser rate to stay competitive.
Feeling the pressure to do away with the retail-to-retail sales, the Oklahoma Tax Commission adopted emergency rules late in 2005 that required wholesalers to sell the same number of cigarettes to smoke shops as they did in 2004, with only an additional 10 percent. While there were some exceptions made for expanding businesses, the procedure was cumbersome. The result was that many tribal smoke shops lost business or had to shut down (Hinton 2006a). Early in 2006, 26 tribal leaders from the Osage, Muscogee Creek and Cherokee Nations met and attempted to build cohesion in order to stand up to the state. Chief Gray made a presentation on the failure of the compacting process where he referred to it as “Meacham’s Mess” in reference to the State Treasurer. “This has created a full-fledged political mess,” Gray said. “It’s a clear indicator that this isn’t about cigarettes; it’s about compacts and sovereignty” (quoted in Ruckman 2006a: 8).

In several letters to Oklahoma Governor Brad Henry, Chief Gray requested to not sign the emergency tax laws because they violated the existing compact and imposed unilateral legislation (Gray 2006). When this request was denied, the Osage took the Oklahoma Tax Commission to federal court on charges that the new rules broke the compact as well as the “United States constitution through the restriction of the commerce, and breaking of the contracts clause of the Constitution” (Osage News 2006d: 4). While several State judges sided with the tribes and Tobacco retailers, suspending their application in those situations, the U.S. district court ruled that Gov. Henry needed to engage in arbitration with the Osage to settle the dispute.

From this condensed history of tobacco compacting in Oklahoma, it is possible to get a sense of the complex relationships between the sovereignty of the state and the sovereignty of the tribal nations. While the tribes are working for a relationship built on compromise, the State of Oklahoma’s most recent actions reveal a determined resistance to abiding to their own
agreements. Playing to the interests of groups such as the Quick Trip Corporation, the State has shown complete disregard for the sovereignty of the tribal nations. As a result, by 2007 the tribal stores have gained almost half of the cigarette market, but according to state records are only paying 12 percent of the taxes collected. Until the state decides to work with the tribes, rather than against them, the tribes are going to continue to find creative ways to utilize the state’s lack of jurisdiction.

**Delineating Sovereignty From Within**

During the same period that the Osage were involved in these external negotiations with the State, they were also engaged in their own internal debates about what sovereignty ought to mean. While the 2004-2006 reform process began with a call to reform membership, it quickly became clear that larger reforms were needed. Throughout the Osage population, there were widespread calls for more accountability, sustainable economic development, and cultural revitalization. Central to the 2004-2006 reform process then, was not just the assertion of sovereignty, but the act of defining what exactly this sovereignty would mean.

Shortly after the Osage Government Reform Commission (OGRC) had been appointed, Leonard Maker, the head of planning for the tribe, addressed them, speaking on the commission’s job in educating the public about sovereignty. “Most of our people don’t understand sovereignty; it’s not part of their daily life. They say, ‘it’s a nice phrase but what does it mean to me’…I think that’s one of the tasks of the commission, to make sure that people are aware of what sovereignty is and why it’s important” (OGRC Business Meeting March 21, 2005). Maker then went on to describe the tangible results of sovereignty, such as the tribe being the largest employer on the reservation, the opening of the new casino, and tribal programs in areas such as education and housing. In an interview I conducted with him a year earlier, Maker also emphasized the lack of knowledge about the meaning of sovereignty and he concluded by
saying, “All these things are part of sovereignty, the ability of our tribe to meet the needs of our own people, in a way that is special to us” (Personal Communication July, 20 2004).

In the first round of community meetings, Maker explained to the public what sovereignty meant to the Osage:

‘Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own form of government,’ which is as broad a statement as you can make in terms of federal law as to what this tribe’s right is. That means we can do whatever we want. We don’t need the Secretary to approve it; we don’t need the President to approve it; it’s ours; it’s yours to determine what your government wants to be . . . It is also an idea that this is an expression of Osage sovereignty. It’s up to us to not have other people telling us what to do. [Tulsa May 05, 2005]

This opinion that sovereignty was, at its most basic, the right for Osage to decide Osage fate, was frequently mentioned throughout the reform process. One young Osage said in another community meeting that the recent law, “basically takes all the handcuffs and all the shackles off us as a tribe…We’re creating a government; a new one. We get to pick it; we get to decide what it is. It is our decision, nobody else’s” (Skiatook, May 12, 2005).

This desire to take control was not limited simply to the creation of a new government. During an interview I conducted with Osage Tribal Councilman Mark Freeman about the government reform, he said, “We need to get started working on that and get a determination of our sovereignty in that water on the Osage reservation. We need to step up to the plate on our reservation status. By not fighting for it in the past we’ve allowed the state to take over some things; we’re going to have to take them back” (Personal Communication May 23, 2005). Some Osage, however, were afraid that the tribe might not yet be ready to take over all aspects of their sovereignty, especially when the issue of compacting the minerals was brought to the table.

These Osage argued that the tribe was losing money in many of their enterprises, most notably the Palace Grocery store, and thus was not yet prepared to take over full control of the mineral estate.
At an Osage Shareholders Association (OSA) meeting where Chief Gray was presenting on compacting the mineral estate in order to provide better monitoring of the wells, one woman argued, “According to the article that came out in the Tulsa paper, the Osage Tribe is not really in compliance with [the National Indian Gaming Commission] on some things they haven’t done. If they’re not capable of handling this and getting all their ducks in a row, why should we trust the council now to manage the minerals?” (August 29, 2005). While the Chief responded that the negotiations with the NIGC were just part of the process of negotiation, many fears about Osage readiness for full self-government continued. Mixed with these fears were the deeper anxieties about the loss of the mineral’s protected status if the tribe wrested control from the BIA. As another woman explained in the same meeting, “If you take the contract from the BIA, what protection do we still have and is it still in restricted funds? Because once you take it out of the BIA, it loses all restrictions” (August 29, 2005). Chief Gray responded by saying,

The law of self-governance has been on the books since the 1970s. Over the years tribes who have engaged in taking over these BIA programs, part of the critical elements of this bill ever getting passed to begin with and a significant issue for all the tribes who have compacted over half of the BIA budget now, is the trust relationship has not changed. This is a negotiated management agreement between the tribe and the federal government… The benefits of self-governance are not fear, but hope. You have to have faith in yourself and faith in your other tribal members to assume that we can bring the tools and resources together.

The Osage Tribal Council decision not to compact minerals did not abate these anxieties. Instead, with the passage of the 2006 Osage Nation Constitution and the assertion of fuller autonomy, these fears continued to manifest. Because of the long history of threatened Osage termination, many Osage continued to worry that the federal government was using “self-determination” as a means to get out of the Indian business for good. Thus efforts by Chief Gray to establish more authority were frequently met with concerns that the federal government would soon cease to recognize the need for the trust relationship.
A parallel desire intertwined with the concept of sovereignty was cultural revitalization. For many Osage, asserting sovereignty meant revitalizing the culture and saving the language. At a business meeting in June, Osage Reform Commissioners discussed the role of sovereignty and the reform process in revitalizing culture. C1 was discussing how he felt that few people he knew, particularly the younger people, really cared anything about the reform. C2 responded that he had had the opposite experience. His daughter had pinned him to the wall about getting this done right and his son had also expressed the importance of the reform. For them it was not just about the vote, but also about being a part of the Osage Nation through the practice of various cultural activities. He went on to say, “It is more than a vote, it will revitalize culture and give all Osage a place to come home to, something to belong to.” C2 then spoke on how much a sense of community could help by giving people a sense of belonging. C3 agreed and said, “Group identity helps people to their core” (OGRC Business Meeting July 11, 2005).

**2006 Osage Constitution and the Community Backlash**

Since federal legislation has limited the abilities of the Osage to determine their form of government and membership criteria for almost a hundred years, the very act writing of the 2006 Osage Constitution was an act of sovereignty. Furthermore, the contents of the constitution speak to understandings of what this sovereignty means. The primary section in which sovereignty is discussed is Article II, which lays out the territory and jurisdiction of the Osage Nation.

Territory is defined as the Osage reservation and all other lands under federally-restricted status title to which is held by the Nation or the People, or by the United States in trust on behalf of the Nation or the People, and any such additional lands as are hereafter acquired and similarly held by the Nation or the People or by the United States on behalf of the Nation or the People. Territory is defined as, but is not limited to, air, water, surface, sub-surface, natural resources and any interest therein, notwithstanding the issuance of any patent or right of way in fee or otherwise, by the governments of the United States or the Osage Nation, existing and/or in the future. [Osage Nation Constitution 2006: 2]
The Constitution then goes on to describe the Osage Nation’s jurisdiction as extending “over all persons, subjects, property, and over all activities that occur within the territory of the Osage Nation and over all Osage citizens, subjects, property and activities outside such territory affecting the rights and laws of the Osage Nation” (Osage Nation Constitution 2006: 2). This section concludes by saying that “Nothing in this Article shall be construed to limit or impair the ability of the Osage Nation to exercise its jurisdiction within or without its territory based upon its inherent sovereign authority as a nation of Osage People” (emphasis added, Osage Nation Constitution 2006: 2).

Article IV, the Declaration of Rights, outlines Popular Sovereignty as, “All political power is vested in and derived from the Osage People. All government of right originates with the Osage People, is founded upon their will only, and is instituted solely for the good of the whole” (Osage Nation Constitution 2006: 3). This section continues the statement concerning sovereignty by saying that, “The Osage People have the exclusive right of governing themselves as a free, sovereign, and independent nation as done from time immemorial.” (Osage Nation Constitution 2006: 3). From these excerpts it is clear that the Osage Constitution is taking a strong stand as to the strength and breadth of it own sovereignty. The strength of these statements did not go unnoticed within the surrounding community.

Shortly after the passage of the 2006 Osage Constitution, a group of ranchers and Osage Country landowners began expressing their displeasure with the Osage Nation’s jurisdictional claims within the constitution. In a meeting with Representative Frank Lucas, one resident of the area said, “I understand all politics are local. Here in Osage County we have a unique situation. This is the Osage mineral reservation underground. We’re worried about possible conflict of interest with the Osage constitution asserting sovereignty over the area of the reservation. We’d
Lucas responded that the bill that granted the Osage sovereignty only gave the Osage what the other tribes in Oklahoma had, but that he was not sure about the reservation question.

For a little over a year these complaints remained quelled, but in late May 2006 the Osage Nation Congress began reviewing a Natural Resource bill, quickly prompting controversy among some Osage Country residents. The News Examiner-Enterprise reported that Dick Surber, representing the Osage County Cattlemen’s Association, saw the bill as an attempt by the Osage Nation to take over the entire reservation. Surber was quoted as saying, “We look upon this as an opportunity to state our position once and for all: that we are not under the jurisdiction or supervision or control of the Osage tribe” (quoted in 2007: News 431). While the bill was quickly tabled, it had already unleashed “vitriolic and deafening objections” throughout Osage County (Bigheart Times 2007b: 1).

In addition to fears about harsh environmental laws, there were a whole host of concerns ranging from land loss to taxation to complete lawlessness. Much of this was based on misunderstandings about what it would mean for Osage Country to be officially treated like a reservation. These misunderstandings quickly swelled and affected many interactions between the Osage Nation and non-Osage residents, including denying the Osage Nation police’s authority in issuing state tickets, even though cross-deputization had been in place for 11 years. When Chief Gray declared that state inspectors no longer had authority with the Osage-owned grocery store, many people worried that the tribe would soon allow no state representatives within the reservation boundary altogether.

One of the more interesting places to follow this debate was the Osage Shareholders Association webpage. Because the recent assertions of Osage sovereignty had stirred some
shareholders to fear that their headright would not be protected, there was a strange bond created between this minority Osage viewpoint and the non-Osage community backlash to sovereignty.

In July of 2007 one Osage, who actively argued against the current administration’s policy of exerting sovereignty, posted the following editorial from the Daily Oklahoman by a non-Osage landowner:

Jim Gray, principal chief of the Osage Tribe, continues to make it clear that he wants Osage County to be considered off limits to the state government because he contends the entire county is a tribal reservation. Gray backed a bill in the tribe's legislature that would have allowed the Osage to create and regulate environmental standards throughout the county. The bill, which got derailed, would have applied to anyone who lives or does business in Osage County and would have given tribal court final say in settling disputes. More recently, Gray told state consumer protection inspectors to stay away from a tribe-owned store in Fairfax because the store is located within the Osage reservation. He wrote to the state Department of Agriculture, Food and Forestry to say that unless federal or Osage laws dictate otherwise, no state agency is allowed to enter the store "or any other tribally licensed business located within the Osage reservation for the purpose of enforcing state law and regulations." Guess that means Gray won't mind if the Highway Patrol stops enforcing the speed limits on the winding highways that run through Osage County. Or if the Department of Transportation removes from its maintenance list any roads and bridges in the county that need repair. Or that he won't be calling his county commissioner or any other county office seeking assistance if a water pipe bursts or another public works project needs attention. Gray wants the tribe to stand alone. It seems to us he ought to be careful what he wishes for. [www.osageshareholders.org 2007]

In response to this posting, several people on the forum expressed outrage that any Osage would take the side of the “backward and superstitious” whites. They argued it was instead time to “civilize” the white population and educate them as to what Osage sovereignty would really mean. To these and other accusations another poster argued,

What's being ignored, by our leadership and those that follow, is that we are a little bitty fish in a big pond and we don't yet know if we even have any teeth. I don't think anyone here is saying that we shouldn't strive for sovereignty, inasmuch as the Yankee government in Washington will let us exercise it. What is being questioned is the hap-hazard, bull(-calf) in the China-shop-way this administration is going about it. It seems that the reality of our situation has been lost in the fervor of what we know to be right. [www.osageshareholders.org 2007]
This and other posts illustrate the sorts of limitations that the colonial situation has created among the Osage. For some Osage, fears about possible ramifications have become more important than “what we know to be right.” Even while Osage sovereignty is accepted as a fundamental truth, the possibility that the federal or state governments will actually recognize this seemed unlikely to some.

In a similar vein, the original poster attempted to clarify his own fears by saying that, “…But it [sovereignty] also comes with a price, that being that we have special rights and privileges that can be put in jeopardy when mistakes are made…” (www.osageshareholders.org 2007). This response echoes many of the concerns expressed during the reform process, particularly during discussions about compacting. Perhaps even more powerfully than the above fear that Osage sovereignty will not be recognized, this fear shows the power of continued colonialism among the Osage. In addition to doubting Osage competence, this posting illustrates the priorities among some Osage to put “special rights and privileges,” which here most likely refers to Osage Mineral Estate proceeds, above concerns for greater Osage autonomy. These people frequently argue that the current Osage administration is not competent enough to actually pull off sovereignty and thus it is better to leave things alone for now.

However, not all Osage posting on the Osage Shareholders Association webpage agreed with taking such a conservative approach. To the above postings one person responded, How sad it is that you perceive yourself, and all Osage, in such a sad pathetic light! Seriously, I really feel bad for you. It can't be comfortable to live such a diminished, marginalized existence. Did you go to a government boarding school? Did they, the U.S. government, do this to you? It doesn't have to be this way. God isn't white and the whites aren't gods. They’re no better than we Osage. They aren't 100 feet tall and they do eventually die just as everything else in this world does. Formerly oppressed native peoples can and do move beyond the mental artifacts which make them prisoners in their own skins. You can as well. Kick that hateful little white-man right out of your head! [www.osageshareholders.org 2007]
Fears about Osage sovereignty claims were further brought into question a month later when Senator Coburn held a community meeting. News Channel 8 ran a story on the meeting, which included quotes from interviews taken before and after the meeting. The story began with a quote from rancher Dick Surber, “For the last hundred years this has been Osage County, Oklahoma . . . Private property is the most sacred right we have” (Kinny 2007: www.ktul.com). After a few less confrontational excerpts from the actual meeting, the story concluded by saying, “Senator Coburn says sovereignty is determined by the U.S. Congress, not the treaty, but the tribe should not apply pressure. ‘The thing is, if they press the sovereignty issue the risk is they lose sovereignty because the Congress will change it, so they are walking a tight line” (Kinny 2007: www.ktul.com).

Many Osage who attended the meeting expressed concern by the representation of the meeting in the news broadcast. As one young Osage wrote, “I was at this meeting. Tom Coburn was asked repeatedly about this issue during the meeting and clearly stated he did not know enough about the issue to comment on it. Then he obviously marched outside to talk to the cameras about the subject. After I saw that story on TV I wondered whether or not Channel 8 attended the same meeting as I did” (www.osageshareholders.org 2007). One of the central statements made by Coburn during the community meeting was that the federal government did have to uphold the treaties. Another Osage who attended the meeting said that he disagreed with both the coverage and the fears it reinforced.

If Mr. Coburn is talking "holding up the treaties” then he is somewhat recognizing our sovereignty, albeit to a conservative (to which he is very conservative) extent. Also, I agree and understand all too well that the US government has a lot to do with determining our issues. So, any hint from a very conservative senator acknowledging our sovereignty to some extent is some gain for the Osage. [www.osageshareholders.org 2007]
The meeting, its news coverage, and the concerns it raised among the Osage, are typical of the complex ways in which debates about sovereignty are currently taking place within the colonial context.

**Conclusion**

Rather than understanding sovereignty as some sort of fixed power, it must instead be seen as a series of articulations that are neither straightforward nor consistent across space or time. In defining sovereignty strictly in terms of its connection to the European state system, political theorists have reinforced the subjugation of indigenous people. By insisting that indigenous governments were less complex, these theorists provided the foundational groundwork for justifying colonialism in America. In looking at sovereignty not as a fact that does or does not exist within a space, but instead as a knowledge system used to reinforce or argue for authority, it is possible to begin to understand the use of the term sovereignty across the globe today.

Understanding the meaning of Osage sovereignty today means following it through the speeches, court cases, arbitrations, community meetings, news representations, and online message boards. It means seeing sovereignty not as one bounded object, but a series of negotiations that are taking place among various Osage and their surrounding communities. Sovereignty for the Osage Nation has come to mean the act of taking control over Osage affairs in as many ways as they are allowed given their current colonial situation. This control is not the sort of absolute power that theorists typically associate with sovereignty, but a layered and interconnected relationship with the state of Oklahoma and the federal government. While finding compromises has certainly become an intricate part of this sovereignty, creative avoidance has also become necessary, especially when dealing with a state government which not willing to keep its promises. As Chief Gray and the Osage Nation continue to act on the sovereign authority outlined in the 2006 Osage Constitution, they will encounter those
attempting to deny their sovereignty or limit its meaning to particular situations. These limitations, like its layered nature, are central to sovereignty across the globe. It is only through continuous articulations and negotiations of sovereignty that it takes on the appearance of being a concrete fact.
CHAPTER 6
OBSTACLES TO COMMUNITY BASED REFORM

The Harvard Project on American Indian Economic Development has argued that a central element of creating a successful economy within Indian country is to directly involve the citizens in any government reform effort. As Stephen Cornell et. al. (2004) outlines:

[G]overning institutions must be viewed as legitimate by the First Nation’s citizens if they are to be effective. This means institutions have to match citizens’ ideas of how authority should be organized and exercised; otherwise, citizens are unlikely to view the institutions as their own and are unlikely to support them. This suggests further that the process of institution building has to find ways to directly involve First Nations’ citizens. [emphasis added: 19]

This ideal of community involvement was certainly integral to the official information circulated during the 2004-2006 Osage reform process. As the Osage News reported shortly after the Osage Tribal Council formed the Osage Government Reform Commission, “The goal of the Commission is to provide a means through which a government will be established that reflects the will of the Osage People” (2005c: 2). The ordinance that created the commission also used similar wording and listed a series of activities including the development of informative materials, a website, news articles, community meetings, workshops, symposia, and surveys as a way to solicit the desires of the greater Osage community.

Such simply stated ideals, however, overlook the complexities inherent within community-based reform. Few populations, American Indian or otherwise, have much practical knowledge about the intricate details involved in governing structures, much less the time and interest to invest in creating a governing document. Community meetings are frequently long meandering affairs that must negotiate between informing the public and trying to collect their conflicting opinions. Information about the reform process must compete with rumors, which result from legitimate confusion, fear, as well as competing political goals. Because government reform is inherently political, any change in the structure of power is bound to cause malcontent. The
writing of any document, particularly an important legal one, becomes challenging when attempted in a group. The 2004-2006 Osage reform process provides valuable insights into some of the central problems that develop within community-based reform, particularly when it is completed in a short period.

Despite the difficulties of the reform process, the Osage were successful in passing a constitution by a two-thirds margin. However, the road to reform was not as smooth as that margin might suggest. From informal conversations, public statements, and online blogs, it is possible to see that there were legitimate complaints as well as unfounded rumors circulating during the reform period, complicating the process of drafting a constitution. There were moments during the reform that most of the people active in the reform, including myself, were convinced that the process would not succeed. There are, in fact, those who still argue that it did not. My goal here is not to determine the ultimate success or failure of the 2006 Osage Constitution; this can only be known with time. Instead, I will focus on the main obstacles that the reform process encountered, so that future reformers, Osage or otherwise, might better understand their potential challenges.

**Constitutional Convention vs. Reform Commission**

In 2004, Leonard Maker, the Head of Planning for the Osage Tribal Council (OTC), was put in charge of developing a plan for government reform. The OTC had recently written legislation to enable a reform process and was lobbying the federal Congress in order to get this legislation passed. In an interview I conducted with Maker during the summer of 2004, he talked at length about his plans for the reform process: “The best solution is obvious, it is a constitutional convention, where you have delegates who come representing the various groups of Osage on the reservation. Traditionalists, non-traditionalists, people who don’t live on the reservation, shareholders, non-shareholders, young people, old people, all have the opportunity
to participate” (Personal Communication July 20, 2004). However, by the time I talked with him again in December, shortly after the passage of the reform legislation, the official plan did not include a constitutional convention. Instead, it called for the creation of the Osage Government Reform Commission (OGRC) whose ten members were to be appointed by and accountable to the Osage Tribal Council.

When I asked Maker about this change, he explained that some of the tribal council were afraid that a constitutional convention would not get the job done within the short timeframe. Because the OTC’s four-year elections were coming up the following June, many people felt that the reform process had to happen before there was another election by the shareholders. The primary fear was that if the shareholders wanted to prevent the government reform, they could simply vote in people who would not fund the reform process and the necessary elections. Whether or not this fear was legitimate, it was strong enough to mandate that there would be a very short 16-month period for the reform process to be completed.

Maker claimed that in addition to worrying about the timing of the reform, some on the tribal council expressed doubt that a random selection of Osage would be knowledgeable enough to write a constitution. Furthermore, they also felt the need to maintain some control over the reform process. As Maker told me in an interview: “Through the plan, they were delegating substantial authority to these members of the commission. And then the commission itself had to be people that the council had to be comfortable with” (Personal Communication, May 12, 2005). They eventually decided to adopt a process whereby they each nominated two Osage, briefly discussed their capabilities, and then held a vote. From this process, the top ten were appointed to the commission. At least one member of the tribal council, however, expressed frustration with the process, saying that they had not taken enough time to make their selections.
This complaint, that there was insufficient time during various parts of the process, continued to be a central area of contention throughout the reform proceedings.

However, this decision by the OTC did not entirely quell the push for a constitutional convention. In many of their early meetings and informal discussions, the reform commissioners debated the possibility of hosting a convention. At one of these meetings, Maker responded:

That’s why I laid out some guidelines in the plan so whoever got on the commission would be guided in a sense. Down the road, it’s already there; the milestones are already there. We’re not going to argue about whether or not we are going to have a constitutional convention. Those decisions were already made by the council when they decided to go down this road [May 23, 2005].

Others outside the reform process also called for a constitutional convention. This issue came up during an OGRC meeting with all the Osage Nation program directors. In addition to community meetings, the OGRC occasionally held meetings with the employees of the Osage Tribe, many of whom were Osage, since they would be the most affected by any change in the governing structure. In November, the OGRC scheduled a referendum vote, which would let the Osage voters decide on a few of the key issues within the constitution, such as membership. During a meeting discussing the referendum questions, one of the program directors said that these questions should have been created within a constitutional convention rather than by the commission themselves. To this, one of the commissioners responded, “We are having this referendum vote in lieu of a constitutional convention because of the deadline we were given to get this process done. Our alternatives have been to give people surveys, public forums, and this referendum. And then in February, there will be a vote on the ratification of the constitution that will contain these elements, although maybe not exactly as written here” (November 07, 2005).
Even after the passage of the constitution, there were those who continued to call for a constitutional convention, particularly among a group of mostly shareholding Osage, who used the Osage Shareholders Association (OSA) as their primary forum. Members of this group had a range of problems with the reform process, including low voter turnout, critiques concerning the distribution of absentee ballots and other election materials and, of central importance, a fundamental disagreement with the way in which the mineral estate was incorporated into the Osage constitution. While some of these concerns were related to genuine problems arising during the reform process, the reactions within the OSA were magnified by several factors. Perhaps above all, it must be understood that the Osage shareholders had spent the last hundred years with a complete monopoly over Osage politics. In 1994, they had lost this monopoly through a court ruling, but regained it through an appeal. Thus, the OSA’s reaction to the government reform process cannot be separated from their political motivations of wishing to

---

1 Osage shareholders are all Osage who have a share in the Osage mineral estate. In 1906 when the reservation was allotted, the mineral estate was kept intact. The proceeds from the sale of oil and gas were divided evenly among all 2,229 people listed on the 1906 Osage roll. Current law requires that this share in the mineral estate can not be given away until one dies and then it can only be given to other Osage. It is possible for non-Osage to have a share in the mineral estate (a headright) for their lifetime, but afterwards the headright has to return to a lineal descendent of the 2,229 people listed on the 1906 Osage roll. Many people today only have partial shares in the mineral estate because their parents’ or grandparents’ shares were usually divided among multiple siblings. Additionally ¼ of all headrights left the tribe before laws were in place forbidding non-Osage to pass the headright on to other non-Osage.

2 The November 2005 referendum vote had 1,670 voters and the March 2006 ratification of the constitution had 2,182. While the total number of people who were eligible for an Osage membership is estimated to be between 12 and 16 thousand, in February of 2006 there were only 5,755 people with Osage membership cards, many under the voting age (Osage News 2006b). Part of the reason for the low number of membership cards was that it was new process, most people only having Certificate Degree of Indian Blood cards from the Bureau of Indian Affairs. Another reason was that many people of Osage decent had moved away from the reservation and lost all contact with the tribe. In comparison, 55.3 percent of the voting-age population turned out for the 2004 American federal election and 37 percent for the 2002 election (Federal Election Commission 2007).

3 In February of 2006, shortly before the passage of the 2006 Constitution, the Osage Shareholders Association sent out a mailing to all Osage Shareholders. In the letter they listed seven reasons why people should “Vote No For A Better Future” including “insufficient protection of Tribal membership,” “insufficient protection of the Osage Mineral Estate,” “more power to the government at the expense of the people,” “more power to the chief,” “more power to the tribal courts,” “less power to the National Congress,” and “lack of popular participation in the reform process.” Under each of these they included a short explanation. On the first of March the OGRC responded with their own mailer with the same seven categories and their response. See appendix 1 and 2.
maintain control of the Osage government. However, these political motivations were also complicated by colonial based fear. In addition to fighting to maintain their control over Osage politics, this group also had to fight the federal government to maintain the OTC’s status as a federally recognized tribe.

In 1906, when the OTC was set up, the federal government thought that it was creating an end to the “Indian problem.” In 25 years, it imagined that the Osage people would be incorporated into American culture and would no longer need to have a tribal governing body to manage Osage affairs. Even while Osage shareholders fought this incorporation through various extensions of their trust relationship, more and more Osage fell outside the shareholding system. By the time the federal Congress was persuaded in 2004 to give the Osage the same rights as other tribes to determine their own membership and form of government, they had created a complex problem for the Osage in terms of how the system of headright shares would be preserved while allowing for a government that met the current needs of all Osage people. This impasse illustrates the continuing colonial impacts on the Osage people today. Fear of change, in particular, threatened to stagnate all reform efforts, letting few conversations stray far from the protection of the mineral estate. The colonial process had created circumstances that made many Osage people fear any government reform as a path toward termination.

On the Osage Shareholders online forum, these fears led some Osage to call for a constitutional convention, arguing that merely amending the 2006 Constitution would not be enough to fix the perceived problems. Furthermore, some of these people worried that the bar for creating amendments to the constitution was set too high. As the constitution states, “Every petition shall include the full text of the proposed amendment, and be signed by qualified electors of the Osage Nation equal in number to at least twenty-five (25%) percent of the
electorate.” However, since the electorate consists of every person with a membership card in
the Osage Nation, which in 2007 had exceeded 10,000 card carrying members, only 2,182 of
whom had voted in the last election, many people found the possibility of an amendment by
petition unlikely. Thus, some members argued for a constitutional convention. As one observer
on the shareholder’s website wrote:

[T]he United States was governed under the Articles of Confederation first. It wasn’t
working so it was scrapped for something better. The question is then do we have an
Articles of Confederation on our hands. In my opinion, we have a poorly written
document that first serves the executive office, puts the people second with a weak
legislative branch and finally puts the headright holders at the very end. Relegating
management of their mineral estate to people appointed by an executive that is elected at
large [sic]. Why try and fix something so dysfunctional? Why not scrap it and sit down
and think through something new, something more empowering to the people and more
protective of the interests of the headright holders, with regard to the management of the
resources they rely on. [Osagehareholders.org 2007]

In addition to arguing for a constitutional convention, this quote illustrates some of the other
concerns that developed around the 2006 Osage Constitution, particularly within the OSA.

Because the constitution was written in a large group with a tight time deadline, its wording was
occasionally awkward. As one Osage wrote in a letter to Chief Jim Gray and the Osage tribal
council:

I write to you as an Osage citizen and a voting member of the Mineral Estate. I have
recently acquired a copy of the proposed Constitution for our new government. I am very
concerned about lack of skill and word craft exhibited by this document. A Constitution
should be a very carefully worded blueprint for how we want our government to be
organized and administered…This Document is so long and poorly worded that I have
been studying it for nearly a week and am still very unsure as to what it says, and even less
sure, what it means. I don't know how anyone could be expected to read it in a voting
booth and make an intelligent judgment as to its worth. I fear its only salvation would be to
start after the flowery preamble and examine every Article with an eye toward discovering
the basic concept trying to be expressed. Then having a competent person rewrite it in a
simple, legally correct way that will stand the test of time and the Court system. [February
8, 2006]

Since most of the people responsible for writing the 2006 constitution had no legal training the
document did not fit some understandings of what a constitution should look like. Another
central point discussed frequently within the OSA was the authority given to the executive branch. As the above letter continues, “As a member of the Mineral Estate I am very concerned with how the Mineral Council is intertwined with and subjugated by the new Tribal government in the Proposed Constitution” (February 8, 2006). Because the mineral estate was placed within the larger Osage Nation, the Chief was given the authority to veto any law passed by the mineral estate that violated Osage Law. Furthermore, the Congress could pass laws concerning the environment or other areas that would affect the mineral estate so long as it did not violate the Constitution. The relevant section of the constitution reads, “The right to income from mineral royalties shall be respected and protected by the Osage Nation through the Osage Minerals Council formerly known as the Osage Tribal Council and composed of eight (8) members elected by the mineral royalty interest holders” (Osage Nation Constitution 2006: 16). If shareholders felt that their royalties were not being respected, they could go to the Osage court; however, the executive department appointed the judges, which lead some shareholders to remain suspect that their perspective would be heard. Thus, rather than trying to address their issues with the Constitution, this group of Osage continued to call for a constitutional convention, even after the ratification of the constitution.

While it is certainly true that the 2006 Osage constitution was not perfect, the fears articulated by the OSA were more complicated than simple grievances with how the reform process was conducted. Colonial-based fear played a large role in bringing various elements of the constitution into question. Because the Osage shareholders had been fighting to maintain their control against both the federal government and the growing group of non-shareholding Osage for almost a hundred years, some shareholders saw the 2006 Osage Constitution as just the latest attempt to destroy the mineral estate. Because some shareholders felt that both their
wealth and their power were threatened, any problem with the 2006 Constitution was seen as fatal. These shareholders wanted, above all, to protect the mineral estate. Thus we can understand the potency of their reaction against the 2006 Constitution; they wanted ensure that nothing would change with the mineral estate. Any problem with the reform process was used by the Shareholders Association as evidence that either the Osage were not competent enough to control their own affairs or that someone – non-Shareholders, the federal government, Chief Gray – was trying to break apart the Osage mineral estate. These fears manifested in powerful ways throughout this reform process, as the rest of this chapter will explore.

Community Meetings

Instead of a constitutional convention, the commission was given the task of hosting a series of community meetings across Oklahoma, Texas, and California to solicit information from various Osage. These community meetings were intended to serve the dual purpose of informing the public about the reform process and also gathering opinions about what Osage wanted from government reform. The commissioners described these community meetings as both the most challenging and rewarding part of the reform process: “It was rewarding really getting a feel for what people wanted…When you think about it, the most challenging was the parts that were the most rewarding. It was really challenging to sit through some of those town meetings and just be hit up side of the head every once in a while with criticism and with negative statements. I hadn’t dealt with that much criticism before” (Personal Communication July 11, 2006). These meetings provided a forum for Osage to discuss government reform, but they were also the main venue to challenge what was seen as wrong with the reform process.

The government reform commission attended over forty community meetings, each of which lasted approximately two hours. Occasionally their job was easy, such as when people had prepared their comments and even researched solutions to the issues the reform was trying to
address. More frequently, those in attendance had not yet had the time or motivation to investigate the what they wanted and what options were available. Frustrated with the progress of one community meeting, a man complained:

**M1**: I get tired of hearing all these people talk about losing their headrights or blood quantum. I want to see something happen. I’m 33 years old and we’ve been talking about this as long as I can remember.

**Commissioner 1**: What do you want to happen?

**M1**: I want this to hurry up.

**C2**: Talk to us. Tell us what you want. We don’t know if you don’t talk.

**M1**: You’re talking about this government. Not all of us are understanding the various governments that you’ve got listed on this one sheet, the constitution versus what you’ve got now?

**C3**: Resolution.

**M1**: Right. So how can we tell you what we want when we don’t know what it is? I don’t have anything to say. I know a constitutional government is made up of three branches, but that’s pretty much all I know about it. So how can I talk to you about something if I don’t even know about? [Skiatook Community Meeting, May 12, 2005]

The gap between what is needed from the community and what the community actually has to offer is perhaps the biggest problem that must be addressed in any community reform effort. While the general Osage population is certainly well educated and informed about many issues, few community members came into the reform process with much information about the intricacies of governmental theory. General populations rarely have such background knowledge and thus a central goal of any reform effort must be education.

The OGRC realized early on that this would be one of their largest challenges and set to work circulating an information packet. However, they were not able to mail out this packet about the reform process until September 2005. In the meantime, the community did not step

---

4 There were many reasons for the delay in the distribution of the packet. As will be discussed later, the primary problem involved the Osage Government Reform Commission taking ownership for the reform process. They
up to educate itself about governing structures. The OGRC’s frustration was expressed at the same Skiatook community meeting when a Commissioner addressed another community member who had said that they did not have enough information:

**Commissioner:** And I would like to ask, A1, do you vote in the state, county, or presidential elections?

**Audience:** Are you talking to me? Yes.

**C:** Yes? Ok, how did you learn about this?

**A:** Tonight?

**C:** No, about voting and your right to vote.

**A:** Well, (laughs)

**C:** How do you decide how you are going to vote?

**A:** Well, information I collected.

**C:** Right. Come on, you need to get some information for yourself.

**A:** Right, right.

**C:** It is sort of like the same standards. [Skiatook Community Meeting, May 12, 2005]

While the OGRC did eventually succeed in circulating much information about governing structures and possibilities for government reform, many people felt that not enough options were made available within this literature. One example of this can be seen in the questionnaire circulated in October 2005. Question number two asked: “Are you in favor of a representative democracy with a 3 (Executive, Legislative, Judicial) branch form of government?” This was followed by question three: “If you answered ‘NO’ to question 2, what form of government do you prefer?” Within this wording, the three-branch form of government was the only real option

---

waited to receive materials and guidance from elsewhere rather than overseeing the writing of the material themselves. They also ran into problems because originally they envisioned that the packet would be mailed out as a brochure, but then learned that the Osage Tribal Council wanted the material to go out as part of their monthly/quarterly newspaper. Making the information part of the newspaper also greatly slowed down the process because it required layout and oversight from the OTC’s staff.
provided. Suggesting multiple options would have increased the involvement of the public, but it would have also risked that possibility that the public would become divided about the structure of the government, greatly slowing down the reform process. With this question, they received an 82.8 percent majority in favor of a three-branch system with only 7 percent offering another possible solution.

Another challenge of hosting community meetings is fortitude. The opinions expressed during community meetings are often presented within long speeches. While the government reform commission tried to address this problem by creating a time limit, it was not always easily enforced or desired. An Osage elder said the following within a 15-minute speech during the last round of community meetings, right before the ratification of the constitution:

This started with membership and voting, now today it exploded. It reminds me of the old Osage. The same thing they did back then, you’re doing it today. I have calls from California and Texas. They’re confused about this. They asked me questions how to vote. I said if you don’t know, vote no. I understand you met in California and Dallas and Houston. A lot of them are Osage. I was on the council 20 years. What this book [the draft of the constitution] talks about is the same thing as back then…That was before your time ‘cause you don’t remember the old days in the 50’s and the 40’s. They brought it up to the council and they voted it down. These Osage in different places are confused about this, what you propose. You got down here “propose.” That can be changed in 30 days. We don’t have 30 days. We had the voting right back then. I waited 45 years to get on the council. At that time I had my votes. Today you’re changing it. Everybody wants to be Osage, but don’t participate in our traditions and culture and language. They think you can learn the language in two days. You can’t do that. I can understand Osage better than I can speak it. . . . This proposal you got today has them all confused. I told them if you get confused vote no. I can’t see that’s going help us any better. It will make conflict among the people. All these young ones see a new thing coming along, but they don’t know a thing about it. You say the mineral estate is protected; it’s true; it’s going be here. There’s a lot of history about how it got here. You people don’t know. None of them in here don’t know; some of them do. My cousin over here, he knows a little bit. So does his dad and grandfather. This is getting out of hand. You confuse people. It’s confusing to all those Osage out in California. There’s a lot of history about Osage. 3,700 Osage are full-blood. By the time of 1906 there was thousands. When that Allotment Act came in the Osage didn’t want it but they got out-voted by mixed-blood. The 2,229 are all gone. I met some of them over time. They wanted to leave it as is. They asked me how I felt and I said I want to leave it as is with the tribal council and give it back to them. I understand that the elected chief wants sole authority; we voted him down. That’s ok. We went on. This here
you get people confused when you change things. When the time comes hopefully they’ll vote down the constitution. In Bill Martin’s day they voted it down. You people weren’t even around back then. Everybody wants to be an Osage. You get 1/16th, half, a quarter. Osage have been blessed. When they came in from Kansas there was more. You talk about the trail of tears. Cherokees had come up from Georgia and Tennessee. At that time a lot of people were the same way. A lot of good stories back then. I think all the elders ought to get together at one time and talk about what they know about it; about their families, what they told them back then. I think it would be good with the young ones coming on; they want to know. When that time comes you got this proposed program and you get them confused. I understand all of that – legislature, executive and judiciary. I’ve been to school. I have experience. I was 35 years in the world. I came back and was on the tribal council for 20 years. We went all over to campaign. My nephew talking over here, he’s got a good subject. My niece over here, related in some way. All of us in here from the Hominy area, we’re related. Billy-Sam he’s related too… [Homin Community Meeting, February 28, 2006]

Speeches of this length were common in community meetings, especially when a time frame was not enforced. However, the simple solution of enforcing a time limit can create further problems, particularly when it is customary within a community to speak in interrelated stories rather than in short sound bytes.

In addition to illustrating the manner in which some Osage communicated their information, this quote is also telling because of its conclusions. This elder argues that the old form of government was effective and that this new government has people confused. While, as I will later show, some of the referendum questions and the constitution itself could have been “clearer,” this issue of confusion was a tool being used by this speaker. As this speaker says, “you get people confused when you change things.” While this quote represented the view of only a small minority of Osage, the central message is one that will always be present within any reform effort. This elder was, above all, arguing that the status quo needed to be maintained, the old structure should not be changed. As a former tribal councilperson, this elder’s authority and prestige were tied up with the tribal council structure of government. Because he did not want to see any change, he used the inevitable confusion resulting from change as a reason that no
changes should be made. Change is no doubt always confusing, but it is also a fundamental part of community-based reform.

**Non-Shareholders**

Another central issue that developed early in the reform process pertained to the makeup of the Osage government reform commission. The original ordinance provided that “Four of the appointees shall *not* be owners of Osage headrights or hold any interest in Osage headrights” (emphasis added, Maker 2005: 2). However, the ordinance was amended and the final ten commissioners were all Osage headright holders. This change in law was a classic example of OTC governance. Laws were frequently made one week only to be completely changed the next week. This made doing business on the reservation or planning for the future very difficult and was a leading reason cited for changing the governance structure.

This move to include only Osage shareholders was likely an attempt by the OTC to appease its constituents. Since the Osage shareholders had elected the OTC, some of the council people felt that ultimately their responsibility was to the shareholder and not the Osage population as a whole. Putting all shareholders in charge of the reform process was likely their attempt to satisfy their electorate, showing that it was still shareholders who had ultimate control over the process. As is clear from the OSA, this effort was not enough to convince all the shareholders that the process had been in their best interest. At least one Osage shareholder went as far as to argue that the reform elections were not valid because the Osage shareholders had never voted for the reform process themselves. On the Osage Shareholders website he wrote:

I bet a lot of you remember the time when in order to vote in US, State and Local elections you had to be 21 years old. Then the 26th amendment was passed making it legal for those 18-20 yrs old to vote. Do you remember who voted for that amendment? It was voted for only by those 21 and older. Why? Because they were the only legal voters until they voted to allow the 18-20 yr. olds to vote. Can you see what has taken place in our elections. The only legal voters of the Osage Tribe are the shareholders. Now I ask you do you remember a vote that only shareholders, being the legal voters of the Osage Tribe, voted in to give
voting rights to those that are not shareholders? It never happened. So how did this take place? Some will say H.R. 2912, but that simply is not true. The vote for the constitution was not a valid vote either. All votes and elections since the election for the 31st Tribal Council have been bogus. Am I against non-shareholders voting? Am I against a constitution? No, not if there is a properly held election where the legal voters have the opportunity to freely make a choice. So far this has not happened. Does anyone think it is about time it does? [September 28, 2007]

In this and other postings, it is clear that for some shareholders the efforts by the OTC to appease its constituency were not successful. The Congressional law (H.R. 2912) that began the reform process spoke clearly as it related to membership:

Congress hereby clarifies that the term 'legal membership' in section 1 of the Act entitled, 'An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes,' approved June 28, 1906 (34 Stat. 539), means the persons eligible for allotments of Osage Reservation lands and a pro rata share of the Osage mineral estate as provided in that Act, not membership in the Osage Tribe for all purposes. Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own membership, provided that the rights of any person to Osage mineral estate shares are not diminished thereby.

While this makes it clear that the legal membership of the Osage Tribe does not have to be the Osage shareholders, it leaves membership up to the “Osage Tribe” to decide. However, it was not clear who the members of the Osage Tribe were that would have the authority to decide membership standards. While the OGRC debated this for many meetings, they ultimately asked the OTC to make the decision, and the OTC voted to allow all the descendents of the 1906 Act to vote in the intial elections, casting the widest net possible.

In most other ways, the OGRC represented a reasonable sampling of Oklahoma Osage. As Maker told the commissioners during an early business meeting, “You had different diverse backgrounds and I thought that was important. You all represent different groups. Unintentionally, that’s how this commission came about, we have younger persons; older people; elders; men; women; people who worked in government; outside of government. It was a good mix as it turned out” (May 23, 2005). These differences, however, led to some initial problems
with the group dynamics of the reform commission. Debates over large issues such as who could vote in the initial elections were further complicated by a group of ten people who had vastly different ideas of who it was that should constitute an Osage. Coming from such different backgrounds, they also had different ways of making their arguments, and multiple ideas about how their job should be completed. Some felt that they needed to complete all the tasks personally; others felt that they should leave most of the work to the staff; and still others argued passionately that other Osage should be brought in where needed. It was only through getting to know one another and by building up their trust of each other that they began to find compromises.

While the commission learned to work together, its lack of non-shareholders proved an area of much contention, particularly as younger people became active in the reform process. In an attempt to involve non-shareholders, the OGRC held a special community meeting. However, more shareholders than non-shareholders turned out at the meeting, curious what the non-shareholders would have to say. Because non-shareholders were frequently young adults who had not yet inherited a headright, they were generally living away from Osage communities because of school or employment. Furthermore, when they were around they were far more likely to have young children or other commitments that did not allow them to attend community meetings. Perhaps most importantly, these non-shareholders had been told for years that they needed to “wait their turn” to participate in tribal politics. Because the Osage system had privileged the oldest generation for so long, many young people had been alienated from tribal politics altogether. One non-shareholder pointed out at a community meeting, “You’re not going get young people involved in this because when older people come up here they sit and talk
about their headrights. All the younger people think well, I don’t have any business up there ‘cause I don’t have a headright” (Skiatook Community Meeting, May 12, 2005).

As the OGRC succeeded through a “get out the vote” campaign and other efforts to involve more of the youth, some Osage cautioned that this new reform process was contrary to the long-standing Osage tradition that subordinated Osage children to their elders. As one tribal elder told me in an interview:

To me they are offering it up to these young Osage, you know. Our people have always alienated our children. My children and everybody else’s children being in the culture…They seem to have the control over their children because that’s the way they were brought up. That is the way I was brought up. I’d hate to go against it, but here we’re telling our children, get out there and vote and take over, and shape this government the way you want it. We’re handing it to them on a silver platter. [Personal Communication November 19, 2005]

Within this quote, this elder goes as far as to say that alienating Osage children is part of Osage culture. In both the older governing structure with its Little Old Men controlling political affairs and within the Tribal Council structure, where usually one’s parents had to pass away before one could become active in tribal politics, younger generations were alienated from tribal governance. For this tribal elder, the ability of older generations to maintain control over their children was a fundamental part of being Osage. For him, the inclusion of younger generations, like many changes implemented by the reform process, went against long standing practices and was thus met with some resistance. In these reactions, it becomes impossible to untangle the various fears that were at work during the 2004-2006 reform process including: losing the mineral estate altogether, general confusion, loss of control (over the mineral estate and/or the tribal practices), and change in practices more generally.

**Lack of Ownership**

Another central obstacle facing the reform commissioners was their lack of initial investment in the process itself. Because Maker and the OTC had handed them a carefully
crafted plan, the commissioners had little control over the process, particularly at first. Some of the reform commissioners went as far as to joke that Maker had already written a constitution, which he would hand over to them when it was time. This joke reveals the sense in which some of the reform commissioners felt like the reform process was outside of their control. The lack of control over the initial reform process led to some resentment among the commissioners and also confusion about what exactly their role was. Early on, Maker recognized that this had become a problem for the commission, explaining to me in an interview:

One of the first issues was that the commission itself was unaware the extent to which they had been authorized to carry out the project… I think there was uncertainty for about a month on their role, and to a certain extent they are still trying to decide whether or not they are a policy making body or whether they are a hands-on management entity. The fact that they did not have a staff for a while also added to the confusion. [May 12, 2005 Personal Communication]

This lack of ownership by the commission became particularly evident when the OGRC began putting together what was originally termed the “June Packet,” which instead was issued through an edition of the *Osage News* distributed in September. Even from a brief survey of the headlines in this *Osage News*, it is clear that Government Reform was just one of the many topics covered5. However, the overwhelming amount of material in the issue was only one of the many problems associated with the “June Packet.”

---

5 This September issue of the Osage News contained these headlines: Osage Nation Enters New Era of Self-Determination, Why We Need Government Reform, Got Input? Osage Citizens Participate in Government Reform, Thoughts on Being Osage, Thoughts from a Government Reform Commissioner, Nation-Building 101, Ordinance Establishing the Osage Government Reform Commission, Learning from the Past as We Envision Our Future, Planning Office Report: Planning the Government Reform Project, Concerned about the Future of the Mineral Estate?, 12th Annual Standing Bear Pow Wow, Agreement by Chiefs Proposed, ITMA And NCAI Lead National Workshop On Trust Reform & Cobell Settlement Legislative Initiative, Osage Chief Shares Lead on National Indian Trust Reform Effort, Testimony of the Intertribal Monitoring Association on Indian Trust Funds, New Exploration and Development Agreement Between Tribe and Amvest, Osage Million Dollar Elm Adopts North Tulsa School, Osage Tribal Membership Department Needs Correct Address Information, Consider Advertising in the Osage News!, Osage Nation Historical Dates & Political Events, Constitution of the Osage Nation (1881), Notice of Referendum, Opening of Tulsa Million Dollar Elm Brings Praise, Bartlesville Casino Site Selected; Survey Work Begins, Osage Nation District Court provides Justice to All, Osage Housing Authority Breaks Ground on New Multi-family Apartment, Women in Agriculture Conference, Transportation Improvement Program, Osage Nation, USA, BIA, IHS – Who’s Who, New Osage Business Formed, Osage Tax Commission Director Continues to Serve,
When several members of the reform commission began drafting the June Packet it quickly became clear that the group did not yet have the trust necessary to delegate work. In a business meeting immediately prior to the May 12th 2005 community meeting in Skiatook, Oklahoma several of the group members were accused of trying to do all the work themselves and of excluding others from participation. This small group had wanted to get the process of writing the packet materials underway, but others felt they had not gone through the proper channels to take the work on themselves. This divide was further complicated by group differences in education, residence on and off the reservation, racial phenotypes, and their connection to Osage cultural practices. This lack of trust stopped the writing of the June packet altogether and led some members of the reform commission to turn to Leonard Maker as the primary author.

On June 20th 2005, the reform commission held a business meeting in which it was discussed:

**Commissioner 1**: Our next item on our business meeting is the June packet. Anybody have any input?

**C2**: It was my understanding we would all receive copies of what was going in by email. I didn’t receive anything. So I think we have to table that issue until Leonard gets back. He was going to prepare them and deliver them to us and we don’t have them.

**C1**: So the June packet, we will table that until our next meeting or when Leonard gets back. We’ll move forward then to the survey.

**C3**: I did bring some possible questions. I think that whatever’s going on we have to start working on it whether it’s in groups or whatever. It’s going to need to go on. I think it’s
something we can be working on while other things are going on. [OGRC business meeting]

This seemingly mundane negotiation was actually a turning point for the reform commission, as they began to take ownership of the reform process and build trust within the group.

When Hepsi Barnett, the program coordinator for the OGRC, arrived in the summer of 2005, the commissioners still had not taken full responsibility for the process. In an interview I conducted with her a year later, Barnett described this period:

I think the most challenging aspect of working with the commission was initially there was no ownership over the process. This was something they had been asked to do and they were presented with a plan [the ordinance] and...when I got there they were spending the majority of their time trying to interpret what the plan meant them to do. Not what it meant as a whole, but what it was that they were supposed to do next…I told them, “Because it has us on a time frame that is really accelerated and we are already behind, let’s go ahead and make some adjustments. Let’s look at where we want to be in the end and let’s back track to where we are now and see what has to get done and then change the calendar accordingly.” That step right there created a sense of ownership that ended up being sort of the turning point, I felt like, for the commission. [Personal Communication July 30, 2006]

Before this, the commission spent their meetings going in circles about various issues ranging from what sort of food should be served at an upcoming community meeting to whether or not the process was even possible within such a short time frame. As they began to take control of the process themselves, they stopped asking questions of each step and instead focused on how to best accomplish their goals of creating a constitution based on community feedback.

Taking ownership over the reform process also required breaking into small groups, which would be entrusted with various tasks, including drafting questions for the survey or articles for publication. Early in the process, one of the commissioners suggested breaking into groups, but was severely reprimanded when the small group tried to report back to the larger group. The initial lack of trust among the reform commissioners caused some to suspect those meeting in a small group of trying to seize control of the entire process. A central component of any
commission-based reform process is not only the creation of smaller project groups, but also the development of trust to make the group work acceptable. This primarily takes time, but it was also something that the project coordinator had to actively work to create. In spending more time around each other, particularly the concentrated time of travel, the commissioners eventually grew to trust one another.

The final issue with taking ownership of the reform process was accepting the terms of completion, namely the short time frame. When this topic again arose in late September, one of the commissioners talked about how he had a problem with the process and the short time frame in particular. He felt that it was unreasonable to have a democratic process within such a short timeframe. Another commissioner turned to him and said, “You can’t beat a dead horse though” and then continued by saying that they had all agreed to try to make this process happen. Even with all of its constraints, she said she was going to see it through to the end. The conversation then turned to a debate over the possible benefits that more time would afford to the reform process. Several of the commissioners agreed that they probably would not get much more diverse feedback with more time and that the quickness of the process had actually created a “sense of energy around the reform” (OGRC Constitution Writing Subgroup Meeting, September 21, 2005). While Barnett certainly played the largest role in building group dynamics among the commissioners, this process also just took time. The commissioners had to have the time and space to get to know each other and the process of reform itself.

**Writing As a Group**

Even after the commissioners had taken ownership over the reform process, the actual writing of the Constitution was still an extreme challenge. Barnett compiled a very rough constitution by bringing together all of the documents submitted by the general Osage public, and drafts written by the OGRC drafting committee. Many of the sections had multiple
possibilities and little was in a final written state. Working with this very rough document, the commission dedicated over 30 working hours in full commission meetings drafting the constitution. In between each session, Barnett and the lawyers for the OGRC spent countless hours compiling the OGRC’s decisions and smoothing over some of the rough edges. The entire drafting process took place within the span of three weeks, with several of the sessions including 5-6 hours of debates, ranging from simple word choice to more complicated discussions of how the judicial branch should be organized.

From the very beginning of the reform process, several Osage had expressed an interest in writing the preamble and they had each submitted their drafts to one of the commissioners who had agreed to compile their efforts into a single draft version. At the beginning of the meeting slated to draft the preamble, the aforementioned commissioner stated:

On the first couple of paragraphs, I wrote that more in the form of poetry than following grammar and I sent it to some poets and to writers and none of them really had a problem with it…they all thought it was very well put together and they understand that if you’re going to put the restraints of grammar you’re going to lose a lot of feeling and a lot of meaning. [Preamble Writing Meeting, January 30, 2006]

Later in the meeting, however, it became clear that, much like the rest of the constitution writing process, each word was going to be scrutinized by everyone present, including myself:

**P4:** Somehow you’ve got to get from ancient tribal order to the treaties to the 1881 constitution.

**P7:** I think if you take out the word “value” and remove from “here to there.”

**P4:** You don’t want to say “evolution.”

**P7:** Just take what you just did.

**P4:** So it would be “acknowledging our ancient tribal order”?

**P7:** Yeah, that would work.

**P6:** Do you feel like we need to put the treaties in? My way of thinking, the treaties weren’t necessarily great things that we did. We had to do them.
P9: They were as great as the 1906 Act; we had to do it as well.

P8: I think we can treat most treaties as being documented withdrawals. You’re basically documenting your freedom to withdraw defensively to another point. It’s a continuing battle.

P4: I understand if we’re not going to put in the 1906 Act. We’re just going to acknowledge the constitution and our own form of government?

P9: Now we can say something about the formal parts of our treaties from previous century and how they provided us with the opportunity to write the new constitution; or something like that.

P7: Would it read well if we took the “ing” off “acknowledging”?

P8: I think that goes with “giving thanks for their strength.” The trouble with that is that “acknowledging” might be the only way we can start this next part. We’re going to acknowledge that 1881 constitution and acknowledge some other things. It depends on how we can come up with this next…

Jean: Can we end it with “giving thanks for their wisdom and strength” and then add “acknowledging our ancient tribal orders” in the next sentence.6

P6: That’s the way it was and [P9] changed it.

P7: You can start a new sentence with “We give thanks.”

P4: I want to say that through this constitution, I would just start with how it was done where it says “paying homage.”… [Preamble Writing Meeting, January 30, 2006]

This excerpt is typical of the problems that develop when trying to write any document as a group. While it was helpful to discuss larger concepts in groups, the actual writing becomes very challenging and, above all, time consuming to deal with as a group. In the above dialogue, the writers are not only dealing with larger issues, such as how to acknowledge the 1906 act, but also with small writing details. Each of these 30 hours of negotiated drafting involved equally

---

6 While my primary role in the 2004-2006 reform was to document the process, from time to time I was also a participant. In addition to sending in a questionnaire about the reform process and voting in all of the Osage elections, I, on rare occasions, also gave advice. Sometimes this advice was solicited and taken seriously and other times it was neither. My participation in the process was certainly far less than most of the other Osage actively involved in the reform process, but it is worth mentioning.
grueling discussions, with countless hours spent by Barnett and the lawyers compiling and recompiling this information between each meeting.

**Communication**

The problems drafting the constitution and late delivery of the “June Packet” were not the only problems the OGRC encountered in trying to communicate with the public. Because of confidentiality issues, the OGRC could not gain access to the Bureau of Indian Affairs list of addresses for Osage Certificate Degree of Blood (CDIB) cardholders. Instead, they had to compile their own list of Osage names and contact information for circulation in the monthly/quarterly newsletter *Osage News*. The Osage Membership department had compiled another list of people who had recently applied for the new Osage membership cards. However, both of these lists left out a significant number of Osage who had not been in direct contact with the tribe. Through their webpage and community meetings, the reform commission attempted to solicit this information, but despite their efforts, many Osage were still not reached because they had never provided the tribe with their contact information. Communications mailed to those for whom addresses could be found included several newsletters dealing with the reform, postcard reminders of the referendum and ratification votes, and a questionnaire soliciting Osage opinions about the reform.

The most critical problem faced by the reform commission concerned the November referendum elections. Since the reform process was on such a tight deadline, some of the absentee ballots, including one of the commissioner’s, did not reach them until after the vote. This was partially related to the quick turn-around time, but also to unusually slow mail. It took over a month for some absentee ballots to reach their destination. While all of these people could have voted if they had shown up in person, many people could not travel to Pawhuska for the vote. Additionally, the election company who sent out the absentee ballots forgot to meter the
return envelopes, causing even more consternation and confusion when the election company started mailing out stamps.

Such problems compromised some community support for the reform, rousing suspicions that the reform proceedings were being handled unprofessionally or that certain Osage people were purposely being alienated from the voting process because they did not live on the reservation. The OGRC overnighted absentee ballots to anyone who reported theirs missing, but some people felt that this was not enough to mediate the situation. One very active contributor to the Osage Shareholders Website wrote the following in response to the reform process:

There was no communication to many of us. There were serious problems with the absentee ballots in the Nov. election. My name was lost, so I could not vote. When I called the OGRC about this, no one returned my calls or emails. I finally got HB [Hepsi Barnett], one time when she accidentally answered her phone. She was totally unprofessional, rude, abrupt, totally unconcerned . . . .In a well run operation she would have taken my name, looked into the problem, found out the number of people affected, issued a statement of what happened, how it was corrected, and an apology. None of this happened. "Been pretty messy" true, and not something to laugh at…Delegation of responsibility, open communication, better organizational skills, and a realistic timeline would have prevented this. [Osagehareholders.org June 25, 2006]

To the extent that Barnett came off as abrupt, it may have been due to overwork. Because the reform commissioners were unpaid and had other responsibilities, most of the work of implementation fell to the OGRC staff. Frequently, Barnett only had the assistance of one to two other staff members. This posting, while it lashes out at the program coordinator perhaps unfairly, does list the necessary ideals of any reform process: “Delegation of responsibility, open communication, better organizational skills, and a realistic timeline.” Many of the commissioners, and Barnett in particular, were continually berated, even while they worked exhaustedly to make the reform process run as smoothly as possible. In addition to the legitimate problems with the timeframe, lack of staff, and control issues, these attacks frequently turned personal in nature, and were more cruel than helpful.
These personal attacks are closely related to another central problem of communication that must be addressed in any political setting: the circulation of rumors. While rumors frequently contain misinformation, not all rumors are necessarily false. As Luise White (2000) argues, rumors are “not events misinterpreted and deformed, but rather events analyzed and commented upon” (58). I would argue that the rumors during the Osage reform process were at times misinterpretations, but certainly not always. Rumors can be created out of confusion, but their goal is almost always political. If you can further confuse people, it becomes easier to guide them in your direction. Even if rumors are unsuccessful in convincing people, they make people stop and think; they force people to question.

When Chief Gray, for example, was attempting to hire a group to monitor oil well production on the Osage reservation, a rumor quickly spread that Iran was going to take over Osage oil. At an OGRC business meeting, one community member expressed her fear:

He’s [one of the people who owned the monitoring company] on the board for Chevron. He’s also Iranian. He’s on the Iranian USA council. And they made statements, things like they wish the United States government would be more lenient to Iran and that we weren’t doing the right thing. That’s like implicating our oil wells. They would have total control. They want to put their computers over every one of our wells and they would have total control and we wouldn’t have any control. That sounds like a lot of pressure from a foreign country that could be very dangerous. We’re ready to bomb them and they’re trying to get into our oil wells and get control over them. [September 26, 2005]

While this rumor was based on a series of stretched connections, it was still a powerful enough rumor to end Gray’s attempts hire a monitoring company. This and other similar rumors during this period were successful not because they were accurate, or because they were based on well thought out logic, but because they played off peoples’ fears and forced them to question every aspect of any process.
Another popular rumor during the reform process surrounded the purging of Osage rolls. There was a group of people listed on the 1906 roll who the Osage leaders at the time said were not of Osage blood, some of whom they argued had been put on the roll fraudulently. During the 2004-2006 reform, these issues were brought up several times, and some people believed that this reform period was the time in which the Osage needed to act on these issues. As Leonard Maker argued in one OGRC business meeting, “I used to think this issue of blood was dead, but it has been brought back. It is going to take strength to fix, but we are talking about the identity of the Osage Nation. This is the first time in 100 years that we can answer the questions of who is Osage. Should we just stick our head back in the sand?” (August 18, 2005).

This issue was further complicated by the 2005 November referendum vote, which had two contradictory questions. Because of the complexity of the issues surrounding Osage blood and citizenship, the OGRC spent many meetings struggling over how to word the referendum questions. Since they had heard so many people request that the 1906 roll be used as the base membership roll, they included this as question 1. However, many people had also talked about wanting to get rid of the supposed fraudulent enrollees. While 86 percent of the voters had said that they wanted the 1906 allotment roll set as the base roll, 80 percent selected “Membership of people on the base roll to be subject to challenge by the new government if it is proven that fraudulent measures were used to establish membership into the tribe.” Question 2 caused much confusion on its own because it was not clear to many people who this would really affect. Some people even said that they thought this would only apply to new enrollees, even though the question talks specifically about the base roll.

Using the feedback provided in the questionnaire as well as the referendum results, the commission decided to write a constitution that set the base membership roll as “those persons
whose names appear on the final roll of the Osage tribe of Indians pursuant to the Act of June 28, 1906” (2006:2). Section 2 of the article on membership stated the qualification for membership as, “all lineal descendants of those Osage listed on the 1906 roll are eligible for membership in the Osage Nation.” Building on the confusion from the referendum questions a rumor began to circulate that this wording would allow for the Osage congress to purge the membership rolls because of the words “are eligible.” This rumor began with a posting on the Osage Shareholders webpage, which argued against the proposed Osage constitution because it “is so loosely constructed and poorly worded that we don't know exactly how it could be interpreted in the future” (Osagehareholders.org March 8, 2006). The author of the posting supported her assertion by giving the following example:

A typical provision might read as follows, "all lineal descendants of the base (1906) membership roll shall constitute the citizenry." In the case of the proposed Osage Nation Constitution, such descendants are "eligible" for membership, just like I am "eligible" to attend Harvard Medical School or "eligible" to marry George Clooney. The National Congress is vested with the authority to establish eligibility criteria, and we have no idea what that criteria is or could be in the future . . . it could involve blood quanta or residency. Who really knows? [Osagehareholders.org March 8, 2006]

The author is, in fact, citing a conversation that had taken place at the Osage constitutional writing retreat two months earlier. At this retreat, the reform commissioners, staff, and various Osage lawyers and community members gathered to write the final draft of the Osage Constitution. During the discussion of citizenship criteria the following debate ensued:

**Participant1:** I was thinking that “the right to”... let’s think about that. “Shall have the right to,” “Shall be eligible to be members of the Osage Nation?” So then it’s not just in the door. It’s also you’re in the door, but maybe it turns out you never should have been in the door.

**P2:** Shall have the right to apply for membership of the Osage Nation.

**P1:** I think “apply for” means that’s what you get; that’s up front; that’s getting in the door. What happens if somebody’s already in the door. We’ve got a membership roll now.

**P3:** “Is eligible?”
P1: Yeah. Is eligible.

P3: Have a right.

P4: Shall be eligible to enroll.

P2: “Are eligible.” Take out “shall have.”…

P1: It says the base membership is the 1906 roll. And then the next one is all lineal blood descendants are eligible for citizenship.

P4: Of those

P2: Of those Osage

P1: Absolutely. So if you’re an adoptee and you’re an original allottee, you’re a member. If you’re a descendant of an adoptee who’s not of Osage blood, you’re not eligible, the way it’s written. Because it’s limited to all lineal blood descendants. No, it’s not. So what you’re saying there then is… [emphasis added, January 6, 2006]

Within this debate, P1 is arguing for a way in which the future Osage Congress could deny membership to people without Osage blood, even if they were lineal descendants of someone on the 1906 roll. Because 100-400 of the 2,229 people listed on the 1906 roll were considered fraudulent by the OTC at the time of allotment, there were some Osage who felt that now was the time to right this wrong. P2, P3, and P4 did not agree. They felt like the only way the constitution was going to have popular support was if all lineal descendants of the 1906 roll were guaranteed citizenship.

At a writing session on January 23, the reform commission was again trying to determine how the membership clause should be written. Although these later meetings were open to the public, the OGRC, their staff, and myself (with my video camera) were generally the only ones in attendance due in part to a lack of interest and in part to a lack of widespread notification of the meetings. Again, the commission was concerned to represent both desires on the referendum questionnaire: the desire to use the 1906 roll to determine membership and the desire to address concerns about fraudulent members. One of the commissioners argued that the second question
about fraudulence was not a good question because many people did not realize that it pertained to the 1906 roll. Many people thought it was about those who had been fraudulently enrolled after 1906. This discussion was intertwined with a debate about the need to set the base roll. Another commissioner argued that the easiest way to allow for the Congress to deal with fraudulent members was by not setting a base roll. If no base roll was set, then the Congress would be able to determine membership however it pleased. Several members of the reform commission then argued that it was necessary to set a base roll because they did not think that this issue should keep coming up every time there was a change in the administration. Still another person argued that there needed to be some means for challenging enrollment. The following debate ensued:

**P4:** But that won’t satisfy because if they have any uncertainty they’ll vote no. If we go to them and say we’re not doing it, but the new government might do it, they’re going to vote no. So should we say “to challenge an enrollment is limited to new enrollments?” How are we going explain that to the people?

**P5:** This is my understanding, one of the reasons to use “eligible for” and not establish it as a base roll was that it would be very difficult once you establish it as a base roll because we’ve already said that’s your base roll. Everything is derived from there and it would be almost impossible to challenge. And that’s what he [P1 above] was urging us to do. If what you want to do is challenge that, you can only put that they are eligible. They too are eligible; those people on that 1906 roll are eligible for membership. The base roll establishes them, as they are the base membership of the tribe. Everything flows from there.

**P2:** We talked about that a long time ago, how many people were actually challenged?

**P5:** About 244, there were a lot of descendants that were on there that we challenged back then.

**P6:** And a lot of those were Osage.

**P4:** Some of them were. But I don’t know. We would have to do a lot of research to determine how many were fraudulent…

**P2:** I just don’t want to lie to somebody and tell them, I just want to know in my own mind how we feel about “to challenge suspect enrollment.” I can understand that on new enrollments, but that would just be it. As long as we’re honest with them say yeah, they
can go back and challenge the 1906 Act with this; but chances of ever being successful then are slim.

**P4:** If we established that [1906 roll] as the base roll, that seems to be something we’ve done on our own.

**P5:** In other words that may be something we just have to live with; I can live with it. [OGRC drafting meeting, January 23, 2006]

Within this discussion, P4 argues that the constitution must be clear in order to pass. If people are uncertain about the membership criteria now or in the future, P4 feels like they will vote against the constitution. P5 continues the earlier argument against determining a base roll; once a base roll is set there can be no challenges to the membership criteria or the descendants of the 244 people that P5 feels were fraudulently listed on the 1906 roll. P6 is not convinced that those people were all fraudulent because at least some of them had been fully adopted into the tribe long before allotment. P4 agrees and argues that they should just go ahead and set the base roll even though the referendum vote called for the ability to challenge the base roll. P5 concludes the argument by saying that they should set a base roll.

As a result of this and other discussions about membership, the OGRC and its staff decided to proceed with setting the base roll, mostly to ensure that the constitution would pass. However, because their final draft still included the word “eligible”, some community members held onto the idea that it would still be possible to challenge fraudulent members and thus purge the rolls. While the reform commissioners argued they had used the term eligible to accommodate the descendents of the 1906 roll who did not want to become members (such as those enrolled in other tribes), some people still doubted the intensions of the commission. A small group of Osage used the word eligible to argue that the constitution allowed for the purging of the rolls and that the entire constitution should therefore be rejected. Many commissioners felt that this rumor of a purge was being used as a ruse to defeat the constitution.
Even though much discussion against the constitution’s membership clause took place on the Osage Shareholders website, it was not strictly a shareholder issue. There were some shareholders that supported the purging of the rolls and others that rejected it. The issue was more closely related to geographic area, but not even location was a good indicator of the dividing lines. Obviously, those people who worried that they would be kicked of the rolls were the ones that objected the most to this wording of the constitution. However, even some of those who were completely confident about their own status as Osage felt like it was simply too much work to go back and determine who was Osage and who was not. Many people just wanted to avoid a witch-hunt; feeling like it was not a productive use of time.

At several community meetings, the membership clause of the proposed Osage constitution was brought up and addressed. In a community meeting in California, an Osage community member and the OGRC lawyer talked at length about the membership clause:

**Community Member:** The verbiage in the proposed constitution talks about the base roll. “All lineal descents… are eligible for membership” as opposed to, “are considered members.” I guess my question is that this leaves membership up to some decision by the subsequent persons who are elected to congress as opposed to being predetermined as a constitutional right.

**OGRC Lawyer:** Your attention is drawn to the word “eligible.” The key to that is just because you’re entitled to membership by law, it doesn’t mean you have to be a member if you choose not to be. Although the people decided they wanted dual membership, most tribes will not. So many people that have a right to have Osage membership and to be an active part of his process must make a decision; whether to give up their membership in another tribe in order to do that. The fact that you are eligible for membership does not require that you be a member; that’s an election you have to make.

**CM:** The other side of that is that conceivably the congress could somehow determine that I am not a member or certain people who are lineal descendants for whatever reason are not going to be members.

**OL:** As long as you are a lineal descendant, which is the qualification of Section 2, the congress can’t change that. The people would have to amend this constitution to change that. Congress will not have the authority in and of itself to change the standards for membership.
CM: As an attorney I’d have to bow to your experience for that interpretation. [Carlsbad California community meeting, February 17, 2006]

No matter how many times the commission and its legal staff argued that it was not going to be possible to purge the rolls within this constitution, the rumor never lost its strength. A central part of this was no doubt the continued fears associated with roll purging. However, it is also likely that certain people continued to stir up this issue as a way of trying to discredit the new government and Chief Gray in particular. Even a year after the passage of the 2006 Constitution, there were still frequent calls for amendments to change the words “eligible for membership” to the “right to membership.” The fears associated with this purging of the rolls can clearly be seen in the following post on the shareholders website:

While we are talking about roll purging would seem a good time to make sure everyone is aware of what our Constitution says about our membership rights. It says that the 1906 roll shall be the base roll for membership in the tribe and that all members and decedents of 06 roll members are "Eligible" for membership. It is important to remember that in the referendum we overwhelming voted for the exact same wording on the membership question except for one very important part. The referendum question stated that this same group of people had the “Right” to membership. I believe that this was a bait and switch tactic that was done with a purpose in mind. But what does the change mean? The word “eligible” allows the Congress, with the mere passage of a law requiring but seven votes and the Chief’s signature, to set our membership requirements any way they may choose so long as those chosen are decedents of 06 roll members. The criteria used could be anything, blood quantum, residential geography, or even a selected group of family surnames. HR 2912 very clearly gave us the right to set our own membership, so any legal challenge to this type of roll purging would be fought in our tribal courts, which could only use this same Constitutional wording as its guide, and would surely find it as being legal. Other parts of the Constitution membership section allows for the challenging of whether 1906 members were properly enrolled, so the “right” to membership wording would not stop those that can be proven as being fraudulently included on that roll from being removed. The “eligible” wording is only useful for removing those that have a legitimate claim to membership, but are no longer wanted by those in power. [September 10, 2007]

Here, it is not just the descendents of the supposed fraudulent members who could be targeted, but everyone. Such fears, while clearly based on the confusing wording in the referendum questions and final constitution, take the rumor of roll purging to the next level. By insinuating that the current administration is going to use the “eligible wording” to start removing any
members they please, this internet posting attempts delegitimize the constitution and bring the current administration into question. After an annual meeting among Osage in California, the following was posted on the shareholders website:

We hear from Calif the the [sic] chief dodged the question about Roll Purging & Mr Supernaw reports the chief "indicated that he thought the word “right” would force descendents to enroll." All I can say is that he is either flat out lieing [sic] or he is really, really stupid. I have the right to vote, but no one makes me. I have the right to own a gun, but no one makes me. We have all sorts of "rights" but whether one takes advantage of these rights is an individuals [sic] choice. The chief must believe that we are ignorant. He needs to go. Anyone willing to help start a recall petition?

While Chief Gray’s argument against amending the constitution clearly falls apart here, there is something more at work within these rumors. Chief Gray has clearly stated on multiple occasions that he has no intent of purging the rolls, however, people are not reacting against actions or even statements, so much as fear. Because the base roll has been set as the 1906 roll, it is unlikely that roll purging would be constitutional even with the word “eligible.” Importantly, the above statement does not end with a desire to amend the constitution, but instead a recall of Chief Gray. The rumor of roll purging is powerful not because it is a reality, but because it brings both the constitution and current governing officials into question.

Unlike the rumor about Osage oil, the rumors concerning the purging of the rolls pointed to a deeper truth. There were Osage who wanted to see the fraudulence of the 1906 roll investigated, and who wanted to instigate a blood quantum and/or a residency requirement. However, these people were clearly in the minority. While many of the OGRC were convinced that their membership clause would not allow this, the word ‘eligible’ was not strong enough to appease community fears. However, it was more than legitimate fear that caused this rumor to continue even without any actual threat of roll purging. This rumor was clearly part of the deeper politics that are always at work within community-based reform.
Conclusion

The Osage Government Reform Commission was assigned a very large task that was to be completed in a very short period. They were not only required to write a constitution, but they had to design a process to involve the widely dispersed and often uninformed Osage public. Because they were a diverse group of people it took time before they were able to build enough trust to begin the process. This lack of group cohesion was furthered by a lack of ownership in the process by many of the members. Community meetings were an extremely challenging venue where the information that was collected often had to be sifted through and translated into components that could be directly included in the constitution. Further, these community meetings often involved personal attacks and other trying challenges for the reform commissioners. The OGRC did eventually build a strong trust of one another and was able to work toward the common goal of creating a constitution that they felt would benefit all Osage and reflected the feedback they had received.

Because of the small staff there were periods when tasks were completed in a rush, the staff or the companies whom they hired made mistakes, and communication was insufficient. Better organization, more small group work, and a larger staff would all have improved the reform process. Because the OGRC decided to write the constitution as a group, they had to work tirelessly to make a document that was coherent, well written, and an accurate reflection of the views that had been expressed in the community meetings and questionnaires. Even with all of these struggles, the OGRC was able to write a constitution that passed by a 2/3rd margin of the voting Osage. The success of the process was primarily do to the trust the reform commission was able to build within itself, their legitimate desire to write a constitution reflecting the desires of the Osage people, and the Osage Tribal Council’s ability to allow the commission to work independently.
Even after the implementation of the new government, there continued to be a group made up mostly of Osage shareholders, but also a few other Osage, who were not satisfied with the reform process. Rather than seeing the 2006 Constitution as an end to government reform, they hoped to continue the reform process, either through amendments or a constitutional convention. Rumors were a particularly important tool used by those who were unsatisfied with the reform process, shareholder or otherwise. By building on the confusion inherent in community-based reform, these rumors were less about spreading misinformation than about bringing the new government into question. Uniting those who were upset about changes in the mineral estate and Osage politics, those who feared any change, those who did not want the rolls to be purged, and those who were upset with the current administration, the Osage Shareholders website became a forum for discontent. By following the postings on this site, it becomes clear that while some of the complaints voiced are based on legitimate concerns, many also stem from what seems on the surface to be irrational fears. A look at Osage colonial history, however, reveals the genesis of many of these fears. By examining both Osage history and the current situations within other American Indian nations today, it is not difficult to believe that the Osage mineral estate could be dissolved, the rolls could be purged, and a small minority of Osage could take control of the tribe. While none of these actions are currently likely among the Osage, none of them are outside the realm of possibility.

Because of the large change in power that took place during the 2004-2006 reform process, these grievances with the 2006 Osage constitution are likely to remain potent. When the “process of institution building” is organized to “directly involve First Nations’ citizens,” as suggested by the Harvard Project on American Indian Economic Development, many complications can arise, as the Osage case illustrates. Community based government reform is time-consuming; many
citizens lack knowledge about government structures; and the experience of colonization has left a legacy of division and suspicion that seems to afflict even the most transparent efforts to build an effective and equitable governing structure. Ultimately, this chapter illustrates that community based government reform efforts cannot escape the political environments in which they take place. The way forward for the Osage, it would seem, is to not get caught up in these fears, but instead to focus their energies on rebuilding the Osage Nation, whatever future reforms or compromises this might necessitate.
CHAPTER 7
CONCLUSION

In this dissertation, I have told various stories of nation building, negotiation, and endurance. At every turn, the Osage have met the colonially imposed obstacles with cunning and fortitude. Building on older ways of being as well as discourses more recently in circulation, the Osage first officially declared themselves a nation in 1881. By 1906, however, the Bureau of Indian Affairs insisted that they were instead the Osage Tribe of Oklahoma, whose job was only to manage the mineral estate and whose life span was limited to 25 years. The Osage refused again and again to be subsumed by the larger American population, and continued to insist on their inherent sovereign rights. In 2006, the Osage were able once again to declare themselves a Nation. This dissertation is ultimately about what this declaration means, how various Osage and non-Osage people understand it, and how the negotiation of sovereignty and the rebuilding of an indigenous nation occurred at the beginning of the 21st century.

The colonial process has taken its toll on the Osage. By the time the federal Congress was persuaded in 2004 to give the Osage the same rights as other tribes in the continental United States (to determine their own membership and form of government), the United States had created a complex problem for the Osage. The Osage Government Reform Commission (OGRC) was left with the dilemma of how to appease the shareholders while creating a government that met the current needs of all Osage people. While the federal law passed in 2004 clearly states that the rights of any person to their Osage mineral estate shares can not be diminished (H.R. 2912), many Osage shareholders still worried that the new government would affect their proceeds from and control over the mineral estate. Rather than putting their energy into researching information for the government reform process, these Osage shareholders...
insisted that the focus remain on issues surrounding the mineral estate. In an exit interview I conducted with Hepsi Barnett, the coordinator for the OGRC, she argued:

We could not get away from this issue with government reform, we couldn’t. Ok, it was like, lets put this issue to rest, your shares are protected, they were protected by the federal government, they are protected by this constitution. So they are protected, end of story. In my mind there were so many other issues that I felt like, now we can move on, we can really wrestle with some of the finer details of how to make this three branch system Osage. But we never got there and so in terms of the influences, that was the elephant in the room all the time. Regardless of how much education we attempted it was difficult to not always have the conversation come back to that. [July 30, 2006 Personal Communication]

Barnett’s commentary illustrates that the mineral estate system was one of the most powerful continuing colonial impacts on the Osage people during the 2004-2006 reform process. Because the system imposed by the BIA in 1906 created a group of Osage who benefited financially and also had clear control over the Osage government and the mineral estate in particular, some members of this group became staunchly opposed to any change that would alter these vested interests.

This desire to maintain the status quo was also interwoven with a more general fear of change. This fear arose most powerfully in the debates and rumors that circulated about the reform process. Like all community reform efforts, the Osage process was far from perfect, yet the severity of the reaction to proposed reconfigurations of Osage citizenship and nationhood can only be understood within the context of the Osage’s long history of colonialism. For some Osage, change has become intricately associated with the federal government’s efforts to terminate its relation with Indian tribal nations. Because the federal government has repeatedly attempted to end its trust relationship with the Osage, some Osage have come to assume that any change will ultimately lead to this end. All change, even that implemented internally, has come to be viewed as highly suspect by these Osage.
In addition to fear, colonialization has created several other impasses for the Osage people, namely the criteria that can be used to determine citizenship in the Osage Nation. Because the Osage Nation exists within a larger nation-state, its membership cannot be based on birth within a territory or an application procedure that is open to anyone interested. This is partly related to the large influx of non-Osage who have moved onto the Osage reservation, but it has deeper roots in the United States government’s desire to define Indians biologically, rather than territorially or by other means. In 1884, the Commissioner of Indian affairs wrote about the problems of determining who was Indian for the purposes of allotment: “I think it would be for the benefit of all to exclude persons of less than one half Indian blood, and to retain all who are regularly adopted, if Indians, and to add the children of such, but to discourage or prohibit any further adoptions by Indian tribes, especially of whites” (Annual Report 1884: XXVII). Through his focus on Indian blood, the Commissioner of Indian affairs wanted to limit claims to Indian ancestry, thus also limiting the federal government’s responsibility to treaties and its various Indian focused programs.

While the Osage have never instituted a blood quantum, most Osage today have accepted that being Osage means having Osage blood. While this desire for Osage blood was most frequently associated with being a lineal descendent of someone listed on the 1906 roll, in its more acute forms it means having at least one birthparent with a minimum of one half Osage blood. Up until the allotment of the reservation in 1906, the Osage population contained many people who had been adopted into the tribe. This group included white spouses as well as large groups of other American Indian peoples. Being considered Osage had as much to do with residence and life practices as it did with being conceived by other Osage. With the allotment of the reservation, this changed. Because of limited resources, as well as the powerful racial ideas
of Indianness in circulation, being Osage became more and more associated with having Osage blood.

In 2006, the Osage created a constitution that defined citizenship through lineal descent. While the Osage Constitution left open the possibility for adoption in the future, only lineal descendents of those Osage listed on the 1906 roll were able to vote in the 2006 elections. This insistence on a blood relationship is another lasting legacy of the colonial process. However, it also shows that the Osage have not directly internalized Euro-American understandings of race, but have reworked blood to fit their own notions of relation. The Osage are using blood to connect a group of people separated by geography, culture, and racialized characteristics. Rather than a finite substance that can be overpowered when mixed, Osage blood is now enacted within the 2006 Constitution as an interminable substance. Instead of simply a means of exclusion, blood has also become a vehicle for connection.

Through my investigations into Osage history and the 2004-2006 reform, it quickly became apparent that the Osage have never been passive victims of the colonial process. Many Osage have continued to be active in the process of fashioning their own future, particularly during the implementation of the 2006 Constitution. Using their history of embracing change, many Osage saw this reform period as a way to again “move to a new country.” Insistence on Osage sovereignty in both the 2006 Constitution and the negotiations with the state of Oklahoma indicates that the Osage are at the beginning of a renaissance. In building a government structure that is not centered on the mineral estate but on programs that serve all lineal descendents of those Osage listed on the 1906 roll, the 2006 Constitution greatly changed the trajectory of Osage life and identity. Rather than having a government structure that frequently made a law one week to completely overturn it the next, the Osage government must now learn how to make
laws that will last. Rather than operating as a small tribal council primarily concerned with maximizing proceeds from a mineral estate, the Osage government must now take over the full responsibilities of a tribal nation.

Without money from casinos, the 2004-2006 reform process would not have been possible—there would have been no funds to pay for the staff of the reform commission, the mailings, or the elections. Because the proceeds from the Osage Mineral Estate were distributed among the shareholders, only a very small percentage of that money could be used for running the Osage Tribal Council (OTC). Prior to casino income, the OTC was completely dependent on funds from the federal government and other granting institutions for the running of programs such as social services, the health clinic, education, Osage language revitalization, the cultural center, and various economic development programs. When funding came from grants, such assistance occurred for only short periods of time. Influxes of funds from casinos (as well as a growing tax base from tobacco, license plates, etc) meant that important social and educational programs could be funded more consistently and serve the needs of far more Osage.

The old tribal council structure, however, was not fit to manage these growing programs. Because the OTC was a resolution-based system, with laws changing each week, it was not able to provide any consistency for tribal programs. Without checks to their authority, the OTC also frequently micromanaged these programs and appointed close relatives or friends to positions they were unqualified for. Since the tribal council structure was designed around the mineral estate, these programs were often argued to be outside the OTC’s jurisdiction. Finally the OTC did not represent the people being served by these enlarged programs and was viewed as an inappropriate governing agency for the Osage Nation. Thus in multiple ways, it was gaming that enabled the Osage to “move to a new country.”
As the Osage invest their money in new businesses, they will hopefully find even more sustainable ways to move away from their dependence on the federal government and non-profit foundations. By continuing to insist on and believe in their inherent sovereignty, the Osage can build a community that meets their own needs. Sovereignty for the Osage Nation has come to mean the act of taking control over their own affairs in as many ways as they can negotiate, given their placement within a larger nation-state. This control is not the sort of absolute authority that theorists typically associate with sovereignty, but a layered and interconnected relationship with the state of Oklahoma and the federal government. This sovereignty is about building better economies and healthier communities.

A central goal of this research has been to understand the histories of contested politics at work within the 2004-2006 Osage reform process. Rather than seeing Osage citizenship and nationhood as static phenomena, I have inquired into many of the complex motivations behind fashioning ideas of self among the Osage. Within questions of citizenship, it quickly becomes apparent that there are vastly divergent ideas about what the qualifications should be, even though the majority agreed to a simple blood linkage. It is also clear that these ideas of being Osage, while built into the citizenship criteria of the 2006 Constitution, also exist independently of this or any legislation. Similarly, the many ideas about the shape of the governance structure and the reach of its sovereign authority illustrate that the passage of the 2006 Osage Constitution was just the beginning of debates about what the Osage Nation should become.

For centuries, anthropologists and political theorists dealing with American Indian populations have focused their research on collection, purification, and classification. These disciplines have created frozen categories of what it means to be an American Indian, often locating this reality in a mythic past. More than anything else, I hope this study offers a new
path forward for anthropology, American Indian studies, and political theory. Rather than seeking transcendental truths, I have shifted the focus of study to the ways in which various peoples’ notions of truth are circulated. Rather than working to create or solidify categories of being Osage, I explore the ways in which various notions of Osage citizenship and sovereignty are constructed and maintained, as well as how these categories are always under debate among the Osage themselves. My goal has been to free the Osage from limits of classificatory schemes, including my own, and open up the full range of possibilities for an Osage future.
APPENDIX A
VOTE NO FOR A BETTER FUTURE

VOTE NO FOR A BETTER FUTURE

Why Vote No on the Proposed Osage Nation Constitution? This may be the most important decision you make as a citizen of the Osage Nation.

- Insufficient Protection of Tribal Membership. The proposed Constitution does not create a presumption that lineal descendants of 1906 Act allottees are members of the Osage Nation. Rather, Tribal members must bear the burden of establishing membership through unspecified criteria.

- Insufficient Protection of the Osage Mineral Estate. The Osage Mineral Trust is not addressed until Article 15. Even there, it is buried in the middle of other provisions relating to hunting, fishing, and natural resource management. The powers of the proposed Osage Minerals Council and the Osage Nation Congress are extensively intertwined. The document endeavors to "ensure that the rights of members of the Osage Nation to income derived from that mineral estate are protected," without recognizing the special legal or political status of the Osage Mineral Estate as a matter of federal law.

- More Power to the Government at the Expense of the People. A Constitution, by definition, defines and limits the powers the government may exercise. However, this Constitution proposes to give the Osage government more power than it has ever wielded before. In fact, it ordains a government of virtually unlimited powers. Article 18 provides that, "adoption of this Constitution does not constitute an agreement on the part of the Osage Nation to limit the exercise by the Osage Nation of any right or power it may otherwise be entitled to exercise."

- More Power to the Chief. The Constitution endows the Chief with the broad power to appoint key tribal officers, including the Tribal Treasurer and members of the Osage Nation Judiciary. The Constitution specifically exempts such political appointees from the merit-based employment and anti-nepotism policies that apply to all other tribal employees.

- More Power to the Tribal Courts. Under this Constitution, the Osage Nation judiciary (who may or may not be Osage) can strike provisions of the Constitution that it finds are invalid or offensive. In other words, the Osage Nation Judiciary can amend this Constitution in its sole discretion.

- Less Power to the National Congress. The governing body of the Osage Nation, styled as the Osage Nation Congress, is the branch of government most directly accountable to the people. Yet, the Congress is scheduled to meet only twice per year for 24 consecutive days each session. This schedule not only is impractical and burdensome, it shifts the balance of power in favor of the Executive and Judicial Branches of government, who presumably will operate and render decisions throughout the year.

- Lack of Popular Participation in the Reform Process. By its own admission, the Osage Government Reform Commission has endeavored to remain impartial and detached throughout the Constitutional process. The Commissioners were appointed in part because they were not tribal employees, nor related to seated Tribal Council members. The Commission refused to retain the counsel of Osage lawyers on the belief that an Osage lawyer could not be impartial. However, the continued emphasis on impartiality and detachment is what we question most. When a Nation is determining the blueprint for its own destiny, impartiality and detachment have no place in the process. We must withhold our approval until there is a document in place by the Osage people, and for the Osage people.

To find out more, please visit http://www.osageshareholders.org.
APPENDIX B
DEAR OSAGE PEOPLE

Dear Osage People,

While many of you may have already voted on the Proposed Osage Nation Constitution, we feel it is important for everyone to see responses to the points of the recent letter from the Shareholders' Association. The italicized text is quoted from their letter and our responses follow. Thank you for taking the time to consider the following responses.

**Insufficient Protection of Tribal Membership**

The proposed Constitution does not create a presumption that lineal descendants of 1906 Act allottees are members of the Osage Nation. Rather, tribal members must bear the burden of establishing membership through unspecified criteria.

Response:

By a plain reading and understanding of Sections 1 and 2 of Article III entitled “Membership,” there is clearly a presumption established that “all lineal descendants of those Osages listed on the 1906 Roll” are eligible for membership in the Osage Nation.

Since the consensus desire of the Osage people is that dual membership for the Osage people who desire to also be members of other federally recognized tribes should be permitted, and knowing that many tribes do not permit dual membership, it would be presumptuous of us to declare that all those that are eligible are in fact members of the Osage Nation. Under our Constitutional design each eligible person will make a choice as to whether or be admitted as a member through a process that should be established by the Osage Nation Congress and/or their appointed Enrollment or Membership Committee or Agency. This is the sole purpose of our use of the term “eligible” in connection with the qualifications for membership.

**Insufficient Protection of the Osage Mineral Estate**

The Osage Mineral Trust is not addressed until Article 15. Even there, it is buried in the middle of other provisions relating to hunting, fishing, and natural resource management. The powers of the proposed Osage Minerals Council and the Osage Nation Congress are excessively intertwined. The document endeavors to “ensure that the rights of members of the Osage Nation to income derived from that mineral estate are protected,” without recognizing the special legal or political status of the Osage Mineral Estate as a matter of federal law.

Response:

At Article XV, Section 4, “the government of the Osage Nation” has “the perpetual obligation to ensure the preservation of the Osage Mineral Estate.” There can be no greater statement of protection of the Mineral Estate than “perpetual” (which means forever) protection. Every provision of the proposed Constitution is significant and necessary for the proper framing and foundation of the new government. The Constitution is about the form and design of the government, and addresses the Mineral Estate as a valuable natural resource using language that is taken from the Osage Allotment Act. The mention of the Mineral Council in a provision in the middle of the document, among other provisions, does nothing to reduce or hinder the protections to be provided to the Council and the royalty interests the Council is elected to administer.

The rights of the shareholders to royalties from the Osage Mineral Estate are protected as a matter of Federal law and regulation in the Osage Reorganization Act, PL 108-431, Section 1 (b) (1), 118 STAT. 2669. In recognition of these federal protections, the proposed Constitution prohibits “the creation of any law or ordinance pertaining to the mineral royalties from the Mineral Estate that acts in conflict with Federal law and regulations.” Thus the fears of the shareholders are misplaced in their focus on the proposed Constitution, and should more appropriately be directed at any change that might occur in the temperament of the U.S. Congress on these issues. Although these provisions of the proposed Constitution are not legally necessary for the reformation of the Osage government, they appear is written for the purpose of assuring all Osages of the intent of the proposed Constitution to comply with the law of the U.S. Congress in that regard. Even if the proposed Constitution did not specifically address these rights, federal
law would not be altered simply by their omission from the proposed Constitution. It is clear that only the U.S. Congress can enact legislation that would alter the Mineral Estate royalty interest rights.

More Power to the Government at the Expense of the People

A Constitution, by definition, defines and limits the powers the government may exercise. However, this Constitution proposes to give the Osage government more power than it has ever wielded before. In fact, it ordains a government of virtually unlimited powers. Article 18 provides that, "adoption of this Constitution does not constitute an agreement on the part of the Osage Nation to limit the exercise by the Osage Nation of any right or power it may otherwise be entitled to exercise."

Response:

There is an apparent misunderstanding by some of the Reserved Powers provision (Article XVIII) which serves to limit the power of the newly formed branches of government to those powers described in the proposed Constitution. The powers that are not enumerated and vested in the newly created branches of government are thus reserved for the sovereign Osage Nation. The Osage Nation, as referenced throughout the proposed Constitution refers to the Osage People as a whole. All reserved powers are thus reserved to the care and the will of the Osage People. Indeed, the essential structure of the new government as established by the proposed Constitution is designed to be a government of the People, by the People and for the People. As such, any subsequent growth or expansion of the powers of the branches of the government can only occur through an expression of the will of the Osage People through amendment of the Constitution. Through the proposed three branch system of government, including the system of checks and balances that is included, no branch is empowered to grow and expand at the expense of another branch of government, nor at the expense of the Osage People without their consent.

Moreover, as a result of a long line of case decisions, the legal reality is that tribal governments can only exercise those sovereign powers that are not inconsistent with federal law. The struggle to expand and exert tribal sovereignty is an ongoing process and a tribal constitution that does not self-impose limits on those powers clearly signals the intent that the tribal government and the people to be governed are to enjoy the full range powers that are available to them. That expression of a broad sovereign authority is a good thing, not something to be feared.

More Power to the Chief

The Constitution endows the Chief with the broad power to appoint key tribal officers, including the Tribal Treasurer and members of the Osage Nation Judiciary. The Constitution specifically exempts such political appointees from the merit-based employment and anti-nepotism policies that apply to all other tribal employees.

Response:

There is no question that under the proposed Constitution, the Office of the Principal Chief is vested with greater power than the Osage People have witnessed for the past 100 years. In fact, since the 1906 Act was imposed on the Osage, the Osage Chief has been, for all practical purposes, merely a ceremonial position with no independent authority in the operation of the business of the Osage government. The Chief has been given no vote in the decisions of government, all of which are currently made by the Council, except for those rare occasions when the Chief or Assistant Chief is invited to vote for the purpose of breaking a deadlock in the Council’s decision making process.

Under the currently proposed Constitution, the Office of the Principal Chief will be strengthened so that the office will serve more in a leadership role and not merely as a voice that delivers the messages and decisions of the Council. In addition, the authority of the Principal Chief to make appointments is not, as many seem to fear, absolute. All key appointments made by the Principal Chief, such as the appointments to the Judiciary and the Office of the Treasurer, are subject to the consent and approval of the Osage Nation Congress. The only exception to this consent and approval of appointments is in the right of the Chief to
make Executive staff appointments that serve at the pleasure of the Executive and are typically asked to resign when a new Executive is elected. In other words, these particular staff do not enjoy the privileges and protections of a merit based system and thus are not subject to those policies.

**More Power to the Tribal Courts**
Under this Constitution, the Osage Nation judiciary (who may or may not be Osage) can strike provisions of the Constitution that it finds are invalid or offensive. In other words, the Osage Nation Judiciary can amend this Constitution in its sole discretion.

**Response:**
Do not be confused by the wording of Article XXI, which does not imply that the Osage Judiciary will find any portion of the Osage Nation Constitution to be unlawful. This is a traditional provision that ensures that any unforeseen failure of a single provision to meet constitutional scrutiny would not diminish or damage the remainder of the Constitution. It is also written in a fashion that would support the argument, and current holdings of the federal courts, that only a tribal judiciary might have the authority to interpret a tribal constitutional provision. Nothing in the proposed Constitution would empower the Court to amend the Constitution, nor to modify any constitutional provision. The process for constitutional amendments is provided in Article XX of the Proposed Constitution.

By definition, the judicial branch is only there to interpret the laws that are enacted by the Osage Nation Congress. If we do not provide a judiciary with these powers, it will be likely that the courts of other sovereigns (state or federal) will assume these powers in the absence of an independent Osage Judiciary.

The proposed Constitution does provide that the Chief Justice and Chief Judge must be Osage. Additional judgeships do not require that the appointee be an Osage, but if an Osage is the most qualified, they will be appointed to serve. Most importantly, whomever is appointed should be well qualified.

**Less Power to the National Congress**
The governing body of the Osage Nation, styled as the Osage Nation Congress, is the branch of government most directly accountable to the people. Yet, the Congress is scheduled to meet only twice per year for 34 consecutive days each session. This schedule not only is impractical and burdensome, it shifts the balance of power in favor of the Executive and Judicial Branches of government, who presumably will operate and render decisions throughout the year.

**Response:**
Even though the Congress is only in regular session for these limited periods, there is also available to the Congress the use of special sessions when needed. It is expected that all of the preparation for enacting laws will be done through legislative committee(s) in the interim between the scheduled sessions. Moreover, the role of the three branches is clearly defined in the Proposed Constitution. The day-to-day operating of the government is a function of the Executive Branch and does not rely on Congress being in session in order to conduct the business of the Nation. Rather, under the traditional design of this democratic form of government, the Osage Nation Congress will enact laws during sessions; the Executive branch will implement that law by seeing that those laws are faithfully executed, administered and enforced within the capacity provided by the Constitution for that branch; and the Judicial branch will interpret the laws and the Osage Nation Constitution when necessary to resolve conflicts and issues that come before the court.

Without the laws enacted by Congress, the Executive branch has no law to execute and enforce and the Judicial branch has no law to interpret. The People absolutely maintain a voice in their government since the People choose members of Congress and their Principal Chief and Assistant Principal Chief at the polls. In addition, the Chief Justice and Associate Justices must stand for retention by a vote of the People after their initial term. Although the Justices are initially appointed and confirmed, the People elect the Principal
Chief and Congress who are responsible for all such appointments and confirmations. This ensures that the appointment and confirmation process make all of the elected officials accountable for their actions in filling these positions with capable and dedicated individuals.

**Lack of Popular Participation in the Reform Process**

By its own admission, the Osage Government Reform Commission has endeavored to remain impartial and detached throughout the Constitutional process. The Commissioners were appointed in part because they were not tribal employees, nor related to seated Tribal Council members. The Commission refused to retain the counsel of Osage lawyers on the belief that an Osage lawyer could not be impartial. However, the continued emphasis on impartiality and detachment is what we question most. When a Nation is determining the blueprint for its own destiny, impartiality and detachment have no place in the process. We must withhold our approval until there is a document in place by the Osage people, and for the Osage people.

**Response:**

The Osage Nation Government Reform Commission was appointed in March of 2005 and charged with gathering an understanding of the will of the Osage People as to the form of government desired. In our role as Commissioners, we have conducted a process that has aggressively solicited input from all the Osage People. The Osage Government Reform Commission has held more than 25 Community Meetings with Osage People in Oklahoma, California and Texas; weekly or bi-weekly Business Meetings; and a number of committee meetings all open to the general Osage public and designed to solicit input from Osages on the issue of government reform. In addition, a nationwide survey and professional phone poll were conducted for the purpose of specifically determining the type of government wanted by the Osage People. Finally to ensure that the information gathered by the Commission through the various mediums represented the will of the Osage People, a referendum was conducted and all Osages, 18 and over, had the opportunity to vote on the basic structure and form of government. Based on the results of the referendum, an overwhelming majority of Osages voted for a three branch system of government with an executive, a legislative and a judicial branch that includes a separation of powers between the branches.

Valuable input was collected and documented and an understanding of what the People desired was gained from each of the various approaches. No one who wished to express their views and ideas for the reformed government has been excluded from the process.

The reform process itself has been extremely important in our ability as a Reform Commission to craft a proposed Constitution that assembles the broad range of opinions and ideas of the Osage People in a single document designed to reform the Osage government. At this point, it is impossible to determine whether the proposed Constitution would be substantively different if: i) every Osage provided more input; ii) the process were extended over several years, rather than months; or, iii) Osage lawyers were used to advise the Commission. Essentially, given the same input, regardless of how often or over what period of time it was collected, there is no reason to think that the result would be significantly different.

Consider, if you will, that this imperfect document may, in fact, be perfect for the Osage People for it firmly establishes who is Osage and provides a structurally sound foundation for Osages to self-determine the future of the Osage Nation. Minor details can always be amended in the future. Self governance is the very basis of tribal sovereignty, and the proposed Constitution is a true expression of Osage sovereignty. Lastly, we must remember the choice we make directly affects the Osage Nation’s greatest natural resource, our children, whose futures depend on our actions now. Please take the time and effort to make an informed decision when you vote. Voting is the new Osage tradition.

Ka-Koh-Na,
The Osage Government Reform Commission
LIST OF REFERENCES

Alfred, Taiaiake

Allen, Chadwick

Anderson, Benedict

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior.

Associated Press

Bailey, Garrick A.

Baker, Lee D.

Barcham, Manuhui

Bays, Brad A.

Beaulieu, David L

Bergh, Albert E

Berkhofer, Robert F. Jr.
Bieder, Robert E.


Bigheart Times

2007b Osage Rez or Osage County. June 7, 1.
2007c Osage Road Plan Could Be Rejected. June 14: 1,10.
2007e Rez Question Hot, But 100 Years Old. July 12: 1,12.
2007g R-E-S-P-E-C-T. July 26: 4.

Biolsi, Thomas


Biolsi, Thomas and Larry J. Zimmerman


Brown, Jennifer


Burns, Louis F


Callon, Michel


Cattelino, Jessica


Clifford, James

Coleman, Penny J

Cornell, Stephen

Corrigan, Philip and Derek Sayer

Davis, Kirby Lee

Deloria, Vine Jr.

Dilworth, Leah

Din, Gilbert C. and Abraham P. Nasatir

Dumit, Joseph

Federal Election Commission

Federal Register
1983 Federal Acknowledgement of Narragansett Indian Tribe of Rhode Island. 48:6177–78.

Feldman, Allen
Franklin, Sarah

Garouette, Eva Marie

Gillham, Omar
2007a The state's tribes are selling more cigarettes but paying the state less than officials expected to receive. Tulsa World. February 25: A1.

Gray, Jim

Haraway, Donna

Harmon, Alexander

Hall, Stuart

Hannum, Hurst

Hanson, Thomas Blom and Finn Stepputat

Harper, David

Hilger, Mary Inez
Hinsley, Curtis M  

Hinton, Mick  

Hinton, Mick and David Harper  

Hinton, Mick and Omer Gillham  

Ivison, Duncan, Paul Patton and Will Sanders  

Ivy, Marilyn  

Jackson, Donald  

James, M. Annette  

Jefferson, Thomas  

Kappler, Charles J.  

Keith v. United States  
1899 Supreme Court of Oklahoma OK 78. 58 P. 507. 8 Okla. 446.
Kinney, Elizabeth  
2007 Osage County Ranchers Worried Over Wording In Osage Nation Constitution. 

La Flesche, Francis  

Lambert, Valerie  
2007 Choctaw Nation: A Story of Indian Resurgence. Lincoln: University of Nebraska Press.

Latham, Michael E.  

Latour, Bruno  
1993 We Have Never Been Modern. Cambridge: Harvard University Press.

Lewin, Sam  

Linke, Uli  

Mair, Lucy  

Maker, Leonard  

Malinowski, B.  

McAuliffe, Dennis Jr.  
McGee, W.J.  

Meyer, Melissa  

Morgan, Lewis Henry  

Murphy, Alexander B.  

Newcomb, Steve.  

News Examiner-Enterprise  
2007  Cattlemen’s group voices concerns over proposed Osage environmental bill. May 29: News 431.

News.OK.com  

Olney, Richard  

Osage News  
Paley, Julia  

Parkman, Francis and David Levin  

Philpott, Daniel  

Pitchlyn, Gary  

Povinelli, Elizabeth A.  

Price, Marie  
2006 Gov. Henry announces that the state the Tribes cannot come to an agreement. Osage News. February 3(2):8,12.  

Prucha, Francis Paul  
1975 Documents of United States Indian Policy. Lincoln: University of Nebraska Press.  
1984 Great Father. Lincoln: University of Nebraska Press.

Red Corn, Louise  

Rollings, Willard Hughes  

Roseberry, William  
Rose, Nikolas  

Ruckmsn, S.E.  
2006c Tribes are Unhappy with Seat at Table. April 19: A9.  

Scheick, William J  

Scott, James  

Sells, Elijah  
1865 Before the Indian Claims Commission, No 9, The Osage Nation of Indians, Petitioner vv. The United States of America, Defendant, Request for Findings of Fact.

Shoemaker, Nancy  

Simpson, Audra  

Smedley, Audrey  

Strong, Pauline Turner and Barrik Van Winkle  

Sturm, Circe  
Surber, Dick
2007  

Thompson, Charis
2005  

Thornton, Tony
2007  
Is Osage County a reservation? July 8: http://newsok.com/article/3078624. Tulsa World
2006  

Tsing, Anna Lowenhaupt
2005  

United States, Appt., v. First National Bank of Detroit, Minnesota
1914  
234 U.S. 245

United States v. Lucero
1869  
1 N.M. 442,438.

Vaughan, Alden T.
1982  

Walker, Chrissy
2007  

Warrior, Robert
1994  
Tribal Secrets. Minneapolis: University of Minnesota Press.
2005  
The People and the Word. Minneapolis: University of Minnesota Press.

Wilkins, David E and K. Tsiania Lomawaima

Wilson, Terry P
1985  
The Underground Reservation: Osage Oil. Lincoln: University of Nebraska Press.
1988  
The Osage. New York: Chelsea House Publishing.

Wolferman, Kristie C.
1997  
The Osage in Missouri. Columbia: University of Missouri Press.
BIOGRAPHICAL SKETCH

After graduating as the Outstanding Graduate in Photojournalism at Ohio University in 2002, Jean Dennison accepted a Fellowship to pursue her Ph.D. in anthropology at the University of Florida. In 2004 she produced “City of Murals: an Imaging in Authenticity,” for partial completion of Masters of Arts and began her dissertation research on the 2004-2006 Osage Government reform process. The Wenner-Gren Foundation for Anthropological Research and the National Science Foundation funded this research. In 2005 she published a review article in Visual Studies entitled, Visualizing Anthropology. Her paper’s “Our Heritage, Our Future: Archaeology and the Interessement of Desires” and “Moving to a New Country: Osage Negotiations of Colonial Limitations” have been accepted for publication in edited volumes. Dennison has taught six courses in visual/cultural anthropology and Tribal Administration at the University of Florida and The Evergreen State College. Dennison’s areas of interest include: science studies; visual anthropology; language enrichment and youth media; the Osage Nation; and North American Indian subjectivities, citizenship, sovereignty and Nation building.