ABSTRACT

GODWIN, KELLY GLENN. Pan-Identity Deferred: How the Supreme Court Shaped American Indian Panethnic Identity in the Civil Rights Era. (Under the direction of Dr. Kimberly Ebert).

Panethnicity refers to the dynamic social phenomenon of different ethnic, racial, tribal, religious, or national groups constructing new identities that move beyond current ethnic boundaries. Research on panethnicity has focused on the formation of panethnic groups. While it is well established that formation varies from group to group due to a multitude of different cultural and structural factors, there has been little focus on panethnicity sustainability and decline. In particular, there has been a lack of research on how external forces can influence the sustainability and ultimate decline of a group’s panethnic identity.

Utilizing a content analysis of 35 majority opinions issued by the Supreme Court, I examine how the Court impacted the development and sustainability of a panethnic identity amongst American Indians during the Civil Rights Era. I find that, during this time of growing pan-Indianism as evidenced by the emergence of the Red Power Movement, the Court encouraged tribalism over Indianism, indicating that the Court seems to have been deferring the growth and sustainability of a pan-Indian identity during this time period. These findings help to expand our knowledge on the sensitive nature of panethnic identities in regards to social manipulation by external forces such as the U.S. government. Overall, this study demonstrates that the U.S. government can use the interpretation of the law as a tool to shape and direct minority group identities that has the potential to have dire consequences for the political power of these groups.
Pan-Identity Deferred: How the Supreme Court Shaped American Indian Panethnic Identity in the Civil Rights Era

by
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INTRODUCTION

The idea of American Indian\textsuperscript{1} identity presents a unique look at how a state-imposed political categorization of multiple heterogeneous groups into a single ethnicity evolved and transformed into an identity. This identity was eventually adopted as a signifier of unity amongst a group of people who have shared a similar set of experiences. Initially, the categorization of Native American tribes into the socially constructed group ‘American Indian’ was imposed based on European perceptions of similarities, and was largely used to further the colonization efforts of first Europeans and later the United States (Cornell 1988; Cornell and Hartmann 2007; Blauner 1972; Nagel 1995). Hence, as with most racial groups, the emergence of American Indian panethnicity is fundamentally based on the forced imposition of an identity, which in conjunction with similar experiences of marginalization fostered a sense of commonality amongst tribes. While the development of this identity is based on shared experiences and histories, it is also based upon the social manipulation of ethnicity by outside forces in pursuit of controlling a sub-population of people in order to accomplish their own set of goals and interests (Cornell and Hartmann 2007; Javernpa 1985; Cornell 1988). The outside force shaping identity in this case was the United States government. Thus, this begs the question of how the U.S. government manipulated and shaped the continuation and sustainability of a panethnic identity amongst American Indians. I am particularly interested in the role the United States Supreme Court played in influencing and directing the development of a pan-Indian identity given the substantial amount of influence the Court has had upon how the United States interacts with groups of color (Olzak and Shanahan 2003).

\textsuperscript{1} I will be using the terms American Indian, Indian, and Native Americans interchangeably throughout the duration of this paper.
Understanding racial formation within the United States involves conceptualizing race as a dynamic and fluid social construct that changes and shifts depending upon historical circumstances (Omi and Winant 2015). Studying race as something that is continually changing based upon the relationship between micro-level and macro-level processes allows us to consider internal and external forces shape racial identity. In the United States, racial formation has been an inherently political process where all groups of color have gone through similar processes of having racial identities externally imposed upon them by various governmental entities. These external impositions have impacted both the social structure within the United States and cultural representations of minority groups both within groups and within society as a whole. However, while minority groups have gone through similar processes of being placed into an arbitrary category based upon appearance, the formation processes of how these groups understand and identify themselves has varied (Cornell 1988; Okamoto and Mora 2014; Omi and Winant 2015). Investigation into why group formation processes differ has primarily included exploration into panethnic identities, which is a term that references the dynamic social phenomenon of different ethnic, racial, tribal, religious, or national groups coming together to organize and construct new institutions and identities beyond current ethnic boundaries (Okamoto and Mora 2014; Okamoto 2003; Cornell 1988; Espiritu 1992; Keyes 1981; Lopez and Espiritu 1990).

Extant literature on panethnicity suggest that formation processes vary from group to group due to different cultural and structural factors impacting how panethnicity is cultivated (Lopez and Espiritu 1990; Okamoto and Mora 2014). In the United States, this is particularly evident when you examine the difference between the emergences of panethnic identities amongst colonized groups who were forced into American society; these groups include
American Indians, Blacks, and Latinos (Blauner 1987). Colonization has been accomplished in different ways with each individual group (Blauner 1987). However, while there are differences in development patterns, it is clear that these identities are emerging as diverse responses to hegemonic ideas imposed by the dominant institutions in society (Okamoto and Mora 2014; Okamoto 2014; Nagel 1997; Nader 2002). Nevertheless, despite the diversity in development patterns, similarity of situation is one of the few commonalities amongst the groups as each of the three aforementioned groups has experienced colonialization and racial domination in different ways. Each of the three groups is remarkably heterogeneous, which in conjunction with variables such as time and place, has contributed to differences in the devastating experiences of colonization suffered, the character of racial domination, and the responses from each group (Blauner 1987:247). Essentially, each group has its own distinct history that has led to panethnicity emerging in different forms from group to group.

Amongst these three minority groups, the development of a panethnic identity amongst American Indians presents a unique case study for several reasons, including: Native Americans have been fighting off white encroachment for over 300 years, they were subject to genocide that very nearly resulted in annihilation, they were subject to removal from their lands, they are considered to be quasi-sovereign nations that are both within and apart of the U.S., their identity and ethnic organization is, in large part, determined by federal Indian policies enacted by the United States government for which the only recourse is to seek relief from the federal Court system, and only this group’s relationship with the U.S. has been primarily determined by the Supreme Court (Blauner 1987; Lopez and Espiritu 1990: 216; Wilkins 1997; Williams 2005).
The case of American Indian panethnicity is distinct in that it has waxed and waned depending upon the possibilities of cooperation amongst tribes (See Blauner 1987). Prior to the 20th century, tribes generally had limited opportunities to foster a pan-Indian identity due to concentration in different regions, geographical isolation due to the reservation system, lack of a common language, and diverse cultural practices (Blauner 1987; Cornell and Hartmann 2007). However, this changed in the 1950’s when an upsurge of racially based movements began transforming the political and cultural landscape of the U.S. by creating and forging new racial identities (Omi and Winant 2015). The goal with these new racial identities was primarily to challenge the dominant ethnic paradigm within the United States, institutionalized racism, and other inequalities perpetuated by the legal system and political arena. This transformation gave rise to new modes of political organization and confrontation that fostered a growth of a supratribal consciousness and a sense of unity amongst American Indians (Omi and Winant 2015; Cornell 1988). Previously, this type of political mobilization had not been available to American Indians as recourse to address political, social, and legal issues negatively effecting tribes (Cornell 1988). Thus, one area of particular interest amongst American Indian panethnic scholars is the “resurgence” of American Indian identity and culture within the United States that manifested during the Civil Rights Era (See Nagel 1997; See Cornell 1988).

With the decline of the Civil Rights Era, also came the decline of political unity amongst American Indians (Javernpa 1985; Johnson 2007; Cornell 1988; Churchill and Vander Wall 2002; see generally Wilkins and Lomawaiama 2001; see generally Wilkins 1997). Previous research has attributed the waning presence of panethnicity amongst American Indians to two primary factors: 1) pan-Indianism was a decentralized political
movement that had accomplished its goals and was no longer needed (Javernpa 1985; Johnson 2007); and 2) there was a perceived lack of common interests amongst American Indians, making it hard to maintain a sustainable collective identity across tribal lines (Javernpa 1985; see generally Okamoto and Mora 2014; see general Lopez and Espiritu 1990). These perspectives, while looking at the idea of identity from a tribal and Indian perspective, do not look at how external influences played a role in the decline of the panethnic identity of American Indians. Currently, Stephen Cornell (1996; 1998) has completed the closest research to this idea by offering a comprehensive examination of Indian political identity. Cornell (1996; 1998) explored how the U.S. government, the very entity that forced this identity upon tribes in the first place, may have manipulated and shaped the sustainability of Indian political power; however, his study paid little attention to a pan-Indian identity. In light of the fact that tribal identity is closely tied to a tribe’s status as a quasi-sovereign nation, which refers to a tribe’s ability to govern itself, the best place to begin exploring the federal government’s influence on the continuation and durability of pan-Indianism is the Supreme Court. The Supreme Court, as the final interpreters of the law, is the branch of government that has the most influence on tribal rights.

The Supreme Court’s impact upon pan-Indianism merits investigation because the Court has essentially been defining and redefining the parameters of the relationship between American Indians and the United States government for nearly 200 years. In considering that this relationship is directly connected to a tribe’s identity as a quasi-sovereign nation, two research questions emerged to guide this project. These two questions are: 1) How has the Supreme Court shaped panethnic identity among Native Americans? 2) Has the Supreme Court reinforced or undermined panethnic identity among Native Americans?
To address these questions, I use 35 majority opinions from the Supreme Court involving American Indians from 1950-1979 to examine how the Court framed Indian Identity during a time period where a pan-Indian identity was on the rise. Specifically, I searched for concepts and themes that represented either the encouragement of tribalism (identifying along tribal lines) or Indianism (identifying supratribal lines). In my search 15 themes emerged from my analysis. In completing my search, I looked both for how the Supreme Court framed statements related to identity and for descriptive elements that provide insight into why the Supreme Court may have chosen to frame identity as either pro-tribalism or pro-Indianism. I find that the Court encourages tribalism over Indianism, indicating that the Court appears to have been inhibiting the growth and sustainability of a pan-Indian identity during this time period.

These findings contribute to our current knowledge of panethnicity by considering how external forces can influence the sustainability and ultimate decline of a group’s panethnic identity. In particular, these findings shed light on how sensitive panethnic identities can be to social manipulation by external forces such as the U.S. government. Through the use of the law, the U.S. government has been able to play a role in shaping and molding panethnic identities amongst minority groups in a seemingly benign way that may actually have grave consequences for the political power of these groups. I will discuss the broader significance of these findings in the conclusion.

BACKGROUND

In this section, I offer background information on two topics that are both integral for understanding this study. The first section deals with the complicated relationship between American Indians and the Supreme Court, and it details how the Court has had a significant
impact upon American Indians in general. The second section details the rise of pan-Indian identity in the Civil Rights era, which provides additional context for the project.

*American Indians and the Supreme Court*

In the United States, there are over 550 federally recognized Indian tribes. While each of these tribes possesses their own distinct identity, they are all considered to be quasi-sovereign nations that are both a part of and separate from the United States (Medcalf 1996). This quasi-sovereign status is derived from the inherent sovereignty tribes had as self-governing groups, which predates the Constitution and the United States of America (Wilkins and Lomawaima 2001). Thus, tribal sovereignty exists “outside” of the Constitution. The extra-constitutional status of Indian tribes is also conveyed through the wording in the commerce clause, in which the drafters of the Constitution recognized Indian tribes as separate and distinct nations from the United States. However, tribes only preserved their sovereign status if they established a relationship with the federal government, which for most tribes was accomplished either through the federal government recognizing a tribe as a sovereign nation by entering into a treaty with the tribe (1776-1871) or by the federal government acknowledging a political relationship with a tribe through a congressional or presidential act (1871-1978) (Wilkins and Stark 2011). However, while these processes established the unique status of Indian tribes as sovereign nations, they did little else. Essentially, both of these processes were initially thought to be a temporary solution to a temporary problem (Getches, Wilkinson, and Williams 2004). Most tribal-federal relationships were formed for the sole purpose of acquiring land in the United States expansion westward, and while the agreement struck between the two parties solved whatever geographic area was currently at issue, it provided little instruction as to the actual
parameters of this relationship (Wilkins 1997; Getches, Wilkinson, and Williams 2004). The actual terms of this paradoxical relationship have been left up to the interpretation of the Supreme Court. Consequently, it goes without saying that the Supreme Court has had a large, and often devastating, impact upon the legal status of American Indian tribes.

The decisions from Supreme Court cases involving Indian tribes have significantly shaped both individual tribal identities and the identity associated with Indian tribes collectively. The Supreme Court has addressed a number of issues related to American Indians, including: land issues, resource issues, Federal criminal jurisdiction issues, state jurisdiction issues, and tax issues. However, the Court has in actuality been either directly or indirectly shaping the contours of tribal sovereignty. Throughout its opinions, the Court has continually identified Indians as a “distinct people,” implying the idea that there is a certain commonality amongst tribes (Deloria 1996). This idea of a pan-Indian ethnicity has been further reinforced by the Court’s uniformity in decisions related to tribal autonomy. Until the late 1960’s and 1970’s, the Court consistently ruled against tribal autonomy. While these decisions had a devastating impact on tribal sovereignty, they also had a unifying effect in a sense. All Indian tribes were being unfairly treated in the same way (See Jarvenpa 1985).

However, as alluded to earlier, the Supreme Court began to hand down contradictory rulings regarding American Indians in the 1970’s, with some of the rulings being distinctively pro-Indian decisions, and other decisions blatantly diminishing tribal sovereignty. These contradictory rulings diminish the idea of a pan-Indian identity, and instead implicate a shift towards treating Indian tribes on an individual basis rather than a collective basis. Additionally, affording some tribes more autonomy than other tribes has the potential to create a hierarchy amongst Indians. Also, given that the Court is bound by the doctrine of
**stare decisis** (past precedent) this is a curious outcome that invokes the questions of how the Court legitimated its contradictory rulings and why it made the rulings in the first place.

**American Indians and the Rise of Pan-Indianism**

Beginning in the 1940’s, the United States federal government enacted a series of laws aimed at terminating the unique sovereign status held by federally recognized American Indian tribes (Wilkins and Lomawaima 2001). This period would last until the 1960’s, and has come to be known as the termination and relocation period in the history of federal Indian policy (Wilkins and Lomawaima 2001; Lopez and Espiritu 1990). During termination and relocation, the U.S. sought to assimilate Indians into mainstream American society by dissolving the political relationship between tribes and the federal government, which included eliminating reservations, tribal governments, and most traces of tribal life. Congress, in conjunction with the Bureau of Indian Affairs (B.I.A.), developed a criterion in order to identify what tribes appeared to be satisfactorily acculturated into mainstream society, and thus no longer in need of the federal government to act as a trustee on their behalf as a tribe. From this criterion, Federal lawmakers terminated over 100 tribes, seized over 1.36 million acres of tribal lands, and the forced the relocation of approximately 12,000 individuals into urban areas (Wilkins and Lomawaiama 2001; Johnson and Hamilton 1995).

The stresses arising from both the impending devastation and the current instability of termination policies created a great deal of political unrest amongst tribes, which would be the spark needed for tribes to forgo organizing along tribal lines to protest injustices in favor of developing inter-tribal alliances (Lopez and Espiritu 1990; Jarvenpa 1985; Thomas 1968; Lurie 1971). From these alliances, a pan-Indian identity spanning across tribal lines materialized, therefore transforming the previously externally imposed category of “Indian”
into a meaningful identity that was embraced from within (Lopez and Espiritu 1990; Jarvenpa 1985). Thus, the convergence of political unrest created by termination and relocation era policies with the climate of activism emanating from the Civil Rights Movement of the 1950’s and 1960’s created ideal conditions for the emergence of supratribal identification, intensification of Indian political activism, and a period of amplified “Indian pride” (Lopez and Espiritu 1990; Nagel 1995). Supratribal identification, Indian political activism, and an increase in Indian pride reflect a growing resistance to the status quo amongst Indians that led to challenges of current Indian-White relations and the institutions and values of American society (Cornell 1988). Beginning in the 1950’s and taking root in the 1960’s, this mounting push for large-scale changes became increasingly focused on the idea that Indians should articulate their own destinies as opposed to being at the mercy of the federal government (Johnson 2007; Cornell 1988). It was this unified opposition against the encroachment of both the current administrative apparatus dictating federal Indian policy and the institutions and prevailing cultural patterns of mainstream American society onto Indian culture that led to the emergence of several prominent pan-Indian organizations manifesting the importance of Indian identity as a consciousness and an important basis of action (Cornell 1988; Wilkins and Lomawaiama 2001).

The phrase “Red Power” has often been used to describe the driving force fueling the widespread activism and unity amongst American Indians in the 1960’s and 1970’s (Deloria 1969; Johnson 2007). This increased sense of unity amongst American Indians has also been described as an “articulatory movement,” which refers to the widely shared goals and patterned actions in the absence of a clearly identified leader and/or spokesperson (Lurie

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2 Additionally, the Red Power Movement has also been referred to as the Native American Civil Rights Movement.
The Red Power Movement is seen as the overarching movement behind several notable advocacy groups geared towards American Indian activism including the American Indian Movement (AIM) and the National Congress of American Indians (Johnson 2007). The AIM is of particular notoriety as it was a short-lived pan-Indian social movement that was comprised of volunteer Red Power activists and is considered to be an extension of the Red Power Movement. The AIM was particularly influential in mobilizing American Indians and organizing activist events; some of these more notable events include: the occupation of the federal Bureau of Indian Affairs building in Washington, D.C. in 1972, the occupation of Wounded Knee in 1973, and the Longest Walk protesting broken treaties in 1978. However, unfortunately, this sense of increased unity was short lived and had largely fallen off by the 1980’s, effectively reducing the idea of Red Power to a slogan referencing a bygone era (Javernpa 1985; Johnson 2007; Cornell 1988; see generally Wilkins and Lomawaiama 2001; see generally Wilkins 1997).

The decline in the Red Power Movement has been addressed by several scholars, with some attributing the decline to the movement having accomplished its goals and no longer being a necessity (Cornell 1988; see Wilkins and Lomawaiama 2001). This vein of research has focused on the impact of Indians achieving symbolic reform, however, some scholars have seen this as having a negative consequence as these reforms afforded Indians very little actual power (Cornell 1988). Consequently, others have suggested the Red Power Movement faded out due to the dwindling effectiveness of American Indian advocacy groups, with a particular emphasis being placed on the short lived success of the AIM coming to an abrupt halt by 1978 (Johnson 2007; Stotik, Shriver, and Cable 1994; see generally Cornell 1988). Repression by the Federal Bureau of Investigation and the U.S.
government is thought to have contributed significantly to the eventual demise of the American Indian Movement (Stotik, et. al. 1994). By the end of the 1970’s, the AIM was largely considered to be dead as a social movement, with majority of its influential members either being deceased, in jail, or in hiding in attempts to evade arrest by the FBI (Churchill and Vander Wall 2002).

The U.S. government’s use of repression tactics against American Indians during this period is worth considering when discussing the Red Power Movement, pan-Indianism, and the U.S.’s ability to influence Indian identity. As mentioned earlier the American Indian Movement was a pan-Indian social movement dedicated to seeking redress against the federal government for wrongs committed against American Indian tribes and peoples (Johnson 2007). The AIM was considered to be a successful social movement during the late 1960’s and 1970’s, which was demonstrated by the role the movement played in several successful protests, demonstrations, and occupations that forced the government to acknowledge the group’s existence (Deloria 1985). The AIM’s first real taste of success against the U.S. government came in 1972 with the Trail of Broken Treaties that resulted in the occupation of the Bureau of Indian Affairs (BIA) in Washington, D.C. (Stotik et. al. 1994). This occupation resulted in the government agreeing to: 1) not prosecuting those involved in the occupation, 2) beginning a process of reform in dealing with American Indians, and 3) responding to the AIM’s ideas on how the government should reform it’s dealings with American Indians (Weyler 1982; Stotik et. al. 1994). However, following the occupation of the BIA, the government soon reneged on all of these promises, which resulted in the AIM taking more militant actions in order to have their voice heard. This led to the AIM’s 1973 occupation of Wounded Knee (a town on the Pine Ridge Reservation in South
Dakota and also the site of Wounded Knee Massacre in 1890) (Deloria 1985). The occupation resulted in a 72 days violent siege between the Federal Bureau of Investigation (FBI) and the AIM, which ultimately generated more negative effects for the AIM than positive effects (Deloria 1985; Wilkins 1997). While the occupation ended due to negotiation between the government and the AIM, the results proved disastrous for the AIM.

The U.S. government’s contributions to the repression of the AIM on its face does not appear connected to the Supreme Court’s ability to influence Indian identity. However, the AIM’s demise does say something about how the government was responding to demonstrations of pan-Indianism during that time period. In considering the trajectory of the AIM’s success as a social movement, a picture does begin to emerge that demonstrates the U.S. government’s reluctance to respond favorably to aggressive assertions of a pan-Indian identity.

THEORETICAL FRAMEWORK

Panethnicity in the United States

Understanding the decline of panethnicity among American Indians in the United States requires us first to unpack the meaning of race and the racial formation process in the United States. Traditionally, race was thought of as a concrete means of identifying a person based upon their biological makeup, however, in more contemporary times race has come to be seen as a dynamic and fluid socially constructed concept that is determined by social, economic and political forces (Omi and Winant 2015). Race also demonstrates and symbolizes ongoing social conflicts within society by referring to different types of appearances and how they are classified based upon the historical and social context. These kinds of classifications also lead to the creation of a racial order or hierarchy that is
continually undergoing change depending upon the continuity and reciprocity between micro-level and macro-level social processes (Omi and Winant 2015). Thus, it logically follows to consider racial formation as a socio-historical process in which racial identities are continually being created, altered, and destroyed depending upon what hegemonic ideals are currently presiding over society (Omi and Winant 2015; Blauner 1987). Or more simply put, racial identities are imposed by dominant social groups and state institutions from macro-level social processes while also being reinforced from the racial group itself as both manifestations of self-identification and also opposition to dominant forms of classifications (Omi and Winant 2015). In the United States, the process of racial formation is seen clearly when we look at the three minority groups who were forced into racial categories for colonization purposes; this is distinguishing these groups from other groups who have immigrated into the United States (Omi and Winant 2015). As mentioned earlier, the three colonized minority groups in the U.S. are American Indians, Blacks, and Latinos, with each of these groups experiencing different forms of colonization and racial domination, giving them each a unique history (Blauner 1987).

Considering the responses of these three minority groups to colonization efforts also requires us to contemplate how ethnicity fits into the picture. Ethnicity and race are often thought of as being interchangeable terms however, there is a difference between the two concepts. Ethnicity, being a little harder to define than race, has no absolute definition, but a few common themes do emerge within the literature, including: a claim to kinship, a claim to a common history, and a claim that certain symbols represent the group’s identity (Weber [1968]1978; Cornell and Hartmann 2007). Thus, in considering ethnicity within the United States we can situate ethnic identity as being a type of identity that falls under the umbrella
of race in a sense. All of the racial identities forcefully imposed by the United States onto different groups of people are actually multiethnic (Cornell and Hartmann 2007). We can see this clearly with each of the three aforementioned racial classifications: Latinos are comprised of Mexicans, Puerto Ricans, Cubans, and other similar groups; African Americans are comprised of groups such as West Indians and American-born Blacks, however these ethnicities function at a less salient level than the African-American racial category; and lastly, American Indians are comprised of a multitude of culturally diverse tribes. While these ethnic distinctions exist within racial categories, they are often overshadowed by racial designations for two reasons: 1) race more distinctly marks these groups of people as “others” who are radically different the in-group imposing the categorizations; and 2) these groups have been treated as unified groups for so long that they have embraced the identity.

Understanding how ethnicity relates to race provides a basis for understanding the phenomenon of panethnicity. Panethnicity is a concept that has been used to describe the unique and dynamic social phenomenon of different ethnic, tribal, religious, or national groups coming together to organize and construct new institutions and identities beyond current ethnic boundaries (Okamoto and Mora 2014; Okamoto 2003; Cornell 1988; Espiritu 1992; Keyes 1981; Lopez and Espiritu 1990). Panethnicity is similar to ethnicity and race, but it is not mutually exclusive with either. Panethnic identities are distinctly different from ethnicity and race because of the implicit diversity encountered when multiple subgroups come together on their own to form a larger group. It should be noted that while the process is similar to racial formation, racial formation occurs when an identity is forcefully imposed upon a group, whereas panethnicity occurs when subgroups willingly create a common identity. Additionally, panethnicity is characterized by a unique “inherent tension,” which is
necessary to both maintain subgroup distinctions while also developing a sense of cohesion and solidarity amongst the larger group (Okamoto and Mora 2014:221). This type of tension is well demonstrated when we consider panethnicity amongst American Indians, as one of the challenges in pan-Indianism durability lies between the balance between tribal identity versus Indian identity. Moreover, panethnicity also represents a type of social grouping that should be viewed as both a reflexive process related to ethnicity or nation and also as a developmental process that brings subgroups together through boundary construction.

Panethnic scholars have primarily focused on panethnic groups within the United States, with the common question being: why does panethnicity arise and flourish in some cases, but not in others? Understanding this question involves investigating panethnic formation and continuation. Panethnic identities, as with race, are created and maintained through both macro-level and micro-level social processes and the relationship between the two. On a macro-level, panethnic formation and continuity is related to what prompts different subgroups to come together to form a broader panethnic identity (Okamoto and Mora 2014). The literature suggests that cultural and/or political similarities are the main driving force in panethnic identification (McPherson, Smith-Lovin, and Cook 2001; Lopez and Espiritu 1990; Okamoto and Mora 2014). This idea of similarity breeding connection is further supported by the findings within the research that suggests panethnic identity is strongly associated with “a sense of linked fate” amongst subgroups (Okamoto and Mora 2014: 223; Wong, Ramakrishnan, Lee, and Junn 2011). On a micro-level, panethnic formation and sustainability involves what causes individuals to identify with a panethnic identity as opposed to their subgroup identity. Considering panethnic formation from this point of view involves taking a social psychological approach to evaluating the meaning
behind panethnic identities and how these meanings can vary based upon ethnicity, generation, shared cultural values, or common experiences of political and/or social issues dealing with race and ethnicity (Okamoto and Mora 2014). While the micro-level processes are certainly important in the panethnic literature, it has been suggested within the research that macro-level processes are more important for understanding panethnicity formation and sustainability (Lopez and Espiritu 1990; Okamoto and Mora 2014; Cornell 1988; Cornell 1990). Given that this study is concerned with macro-level processes and panethnicity, I will turn to this discussion next.

Macro-level investigations in panethnic identities have primarily focused upon structural factors and contexts connected to panethnicity formation and continuity (Okamoto and Mora 2014). This heavy focus on structural conditions is particularly important for understanding panethnicity formation due to the emergence of panethnic identities being intrinsically tied to the imposed racial categorizations discussed earlier (Okamoto and Mora 2014). These forcefully imposed identities provide a starting point for panethnicity boundary construction. However, in understanding the macro-level processes related to panethnicity sustainability, research has explored the idea of panethnic solidarity, which is a necessary element in panethnic continuity (Lopez and Espiritu 1990). Panethnic solidarity appears to be strongest when groups share structural similarities and common interests (Lopez and Espiritu 1990; Okamoto and Mora 2014; Cornell 1990). Understanding the development of panethnic solidarity involves taking a top down approach, beginning with considering how external forces such as the state impacts panethnic institutions and organizations, which in turn impacts local and structural contexts (Okamoto and Mora 2014). It is in these local and structural contexts where solidarity is primarily generated due to perceived structural
similarities and common interests. While scholars have investigated how institutions and organizations and local and structural contexts affect panethnicity sustainability, there has been limited focus on how the state impacts panethnicity sustainability beyond the role the state plays in panethnic boundary construction in regards to defining panethnic categories for legal purposes such as census records. In this study, I will examine how the state impacts panethnicity sustainability by exploring how the U.S. government impacts American Indian panethnicity in more intricate and less obvious ways.

Research on panethnicity formation and continuity has primarily been limited to only Latinos and American Indians (see generally Lopez and Espiritu 1990; see generally Okamoto and Mora 2014). Exploration into panethnicity formation and sustainability with Latinos and American Indians has typically centered on panethnic boundary construction and panethnic solidarity generated by institutions and organizations and local and structural contexts (Okamoto and Mora 2014). Investigation to the impact of the state on panethnicity sustainability has generally been limited to the state’s involvement in the creation of panethnic categories for census purposes, the creation of policies and programs for specific panethnic identities, and the endorsement of panethnic cultural symbols and events (Okamoto and Mora 2014). This has been particularly well explored in regards to Latinos. Research on American Indian panethnicity sustainability and the state has been examined through the evolution of American Indian political opportunities over time and their abilities to act upon them (Cornell 1988). This line of research focused upon the political and economic relationships between American Indians and mainstream society in order to evaluate the political identity of American Indians. However, exploration into the political
identity of American Indians has not focused on the role the Supreme Court may play in shaping and manipulating identity amongst American Indians.

A study of the Supreme Court’s impact warrants study for two reasons: First, the United States government essentially created American Indian identity, thus they have had a substantial impact upon the development of a pan-Indian identity. Second, the Supreme Court is largely responsible for the parameters of the existing relationship between Native American tribes and the United States government. Thus, it makes sense to examine how the Supreme Court affected the sustainability of a pan-Indian identity.

*The Supreme Court and its Ability to Effect American Indian Panethnicity Sustainability*

For nearly 200 years, the Supreme Court, as interpreters of the laws made by Congress, has been utilizing the “rule of law” to delineate the precarious nature of the relationship between American Indian tribes and the U.S.; which essentially means that the Court has relied upon the influence and authority of law over society to justify its decisions (Wilkins 1997; Deloria and Wilkins 1999). Thus, the “rule of law” approach has allowed the Court to legitimately employ the law as both an instrument to civilize “culturally deficient” sets of individuals and as an “instrument of empire building,” with both goals being aimed at protecting and cultivating the interests of the ruling elite under the guise of paternalistic benevolence (Wilkins 1997: 9,15). However, the nature of how the law has been used to accomplish these goals has changed over time depending upon the historical and social context within which a decision is made (Wilkins 1997; Thompson 1982). As a result, the existing relationship between Native American tribes and the U.S. government has also changed over time, with one thing being constant: this relationship was continually being shaped and manipulated by the decisions rendered by the Supreme Court, effectively placing
tribes into positions of political and legal inferiority to the federal government (Deloria and Wilkins 1999; Goldberg-Ambrose 1994). Therefore, we can see the role of law is salient in the context of American Indian identity, particularly the political identity of Indians (Goldberg-Ambrose 1994).

The Supreme Court’s employment of framing devices has been instrumental in its ability to utilize the law as a tool to shape and direct the political identity of Indians while also keeping tribes in positions of subordination (See Wedeking 2007). However, little attention has been paid to how decisions are connected to the substantive content in the written opinion the Court issues (Wedeking 2007; Spriggs 2003). Exploring the use of framing in Supreme Court decisions allows for a more in-depth consideration into how the Court gives meanings to the issues it is presented with and how it makes sense of deliberations surrounding an issue (see Gamson and Modigliani 1987; Benford and Snow 2000; Goffman 1974). Legal actors frame their legal arguments by using certain words and phrases to emphasize one aspect of an issue at the expense of other aspects in order to justify their position on an issue (Wedeking 2007; Epstein and Kobylka 1992). Supreme Court justices, as both elite legal actors and strategic decision makers, employ these same techniques in framing their opinions. However, their use of framing has the potential to alter national policy in a way that no other legal actors can. Additionally, because of the prestige attached to their positions, the use of cultural and ideological foundations by justices in supporting their framing of an issue also has the ability to legitimize established institutional relationships that perpetuate inequality and repression (Roscigno, Cantzler, Restifo, Guetzkow 2015; Della Fave 1986).
As mentioned earlier, the Supreme Court exerts a great amount of influence over Native American tribes due to the unique federal-tribal relationship. Hence, it is not surprising that the Court has the ability to use the law in a way that reinforces certain conceptions of identity, while also excluding others. This has been particularly well demonstrated in the Supreme Court’s treatment of tribal sovereignty, which denotes a political connotation attached to the meaning of the word “tribe,” as it refers to a legally recognized entity. However, because tribal governments do not actually exist as entities wholly separate from the federal government, this being because they are quasi-sovereign entities that are both separate and apart of the U.S., it is easy to see how the Court actually can have a great deal of impact over what the word tribe means (Goldberg-Ambrose 1994; Resnick 1989). Thus, the Court’s definition of tribal sovereignty dictates how a tribe operates because it essentially defines what a tribe is, putting legal constraints upon the tribal group and dictating the material conditions in which it can evolve and change (Goldberg-Ambrose 1994). Consequently, the Supreme Court has been able to successfully contour “the tenuous parameters of the tribal-federal relationship” in such a way that preserves the United States political and legal superiority over Indian tribes by both controlling how the group can govern itself and how the group can define itself (Wilkins 1997: 4; Goldberg-Ambrose 1994).

DATA AND METHODS

Data Selection and Collection

To explore how the Supreme Court impacted the decline of pan-ethnicity amongst American Indians, I collected 35 Supreme Court majority opinions involving American Indians from 1950-1979. I used a qualitative approach to content analysis to analyze the 449
pages worth of data (Esterberg 2002). I considered several issues in assessing and selecting the data to adequately answer my research questions, including: type of data, time parameters, and selection of cases to use.

My two primary research questions are: 1) How has the Supreme Court shaped panethnic identity among Native Americans? 2) Has the Supreme Court reinforced or undermined panethnic identity among Native Americans? Drawing upon prior knowledge from law school, I decided to use Supreme Court opinions as my data source to answer these questions. A Supreme Court opinion is comprised of three parts: the syllabus, which is actually not considered a part of the official opinion as it is only a summary and brief overview of the case (essentially it is like an abstract for a case); the majority, or main, opinion, which is the Court’s official decision in the case; and concurring and dissenting opinions, which are issued when either a judge bases their decision on a different rationale than the main opinion (concurring opinions) or a judge disagrees with the main opinion (dissenting opinions). I decided to use only the majority opinions issued by the Supreme Court for the following reasons: majority opinions set forth the opinion of the Court (or at least the opinion agreed to by more than half of the members of the Court), they provide an explanation of the rationale behind the Court’s decision, and majority opinions are the only part of a Supreme Court opinion that has actual legal bearings (Baum 2013). Given that the Supreme Court is the final interpreter of federal constitutional law, majority opinions wield a great deal of power and have the potential to drastically change the way the law operates within our society, which in turn can have a large impact upon how society operates in general.
In terms of time frame, I chose the time period 1950-1979, as this is the time period when many movements concerning civil rights were occurring in the United States, including the Red Power Movement (Nagel 1995; Johnson 2007). The Red Power Movement is cited as beginning in the late 1960’s (Johnson 2007). However, I decided to include the 1950’s because Indian activism against termination and relocation policies began to take place in the 1950’s. This early activism represents the beginnings of pan-Indianism, which fully manifested itself in the 1960’s and 1970’s. This decision is justified as the Red Power Movement has often been associated with chronicling the waxing and waning saliency of panethnicity amongst American Indians (Javernpa 1985; Johnson 2007; Lopez and Espiritu 1990; Nagel 1995; Cornell 1988; see generally Wilkins and Lomawaiama 2001). Thus, this 1950-1979 period was to investigate how the Supreme Court impacted the decline of panethnicity amongst American Indians as it traces the rise and decline of pan-Indianism.

In order to determine how to select the majority opinions, I compiled a list with major cases related to Native Americans that corresponded with the time parameters. This list contained 27 cases. After creating this initial list, I began searching for additional opinions related to American Indians that were issued during this time period that were less prominent. In conducting this search, I used Westlaw, which is an online legal research service that contains a database of all Supreme Court opinions ever issued. My initial search yielded 15 additional Supreme Court opinions, for a total of 42 opinions. However, seven opinions were eliminated from this list due to the following reasons: five of the opinions turned out to be memorandums ruling on requests to file amicus briefs; one opinion was a ruling consolidating two cases; and one opinion was not related to American Indians. Thus, after eliminating seven opinions, I was left with 35 majority opinions spanning across three
decades. Table 1 in the Appendix lists all of the cases I used, the year of the case, the case’s citation, the tribe involved, whether the case had a successful or unsuccessful outcome, and whether or not Indianism or tribalism was encouraged.

Data collection involved downloading each case opinion from Westlaw as a PDF file onto a computer. The source I used is not a free and publicly available source for obtaining Supreme Court opinions; however, because of my affiliation with the university, I was able to easily access them.

Data Analysis

The data were analyzed using NVivo, a qualitative data analysis software package. Through content analysis, I sought to identify patterns in how the Supreme Court framed Indian identity in its majority opinions, which included searching for concepts and themes that either encouraged tribalism (encouraging tribal identity) or Indianism (encouraging panethnic identity) with heightened attention to the contexts within which the encouragement of each arose. After I imported the 449 pages of court opinion data into NVivo, I began utilizing an iterative process of coding, which included two phases: initial and focused (Charmaz 2006).

My “initial” coding focused on reading through the cases to look for possible patterns in the Supreme Court’s treatment of different tribes and the legal issues that were at question, and how the Court’s outcome may have varied based on different contextual factors. Specifically, during my initial coding, I examined patterns in how the Supreme Court encouraged tribalism or Indianism in such a manner that provide definitions of identity that have the potential to legitimate whether or not a tribe identifies along tribal lines or panethnic lines. As I completed my initial coding, I noticed that the Court differentiated how it
approached a tribe’s identity based on things such as: 1) whether or not a treaty was present, 2) the degree of negative treatment by the federal government in both historical and contemporary contexts, 3) the degree of a tribe’s assimilation into mainstream society, 4) the degree of sovereignty a tribe was afforded, and 5) whether or not a tribe resided on a reservation. Additionally, it is important to point out that these themes suggested a connection between a tribe’s identity and the tribe’s ability to govern itself as a quasi-sovereign nation. The emergence of these patterns was important because it allowed me think about how to complete a more focused coding of the data targeted at discerning whether some tribes were more successful in retaining tribal sovereignty than others based on structural elements.

The next phase of my data analysis was “focused” coding, where I went back through the cases and coded with more specific things in mind while paying close attention to what type of language the Court used in terms of framing statements related to identity. I used six overarching themes to guide the focused coding: 1) identity, 2) sovereignty, 3) Supreme Court outcomes, 4) treaty presence, 5) tribal hierarchy, and 6) type of legal issue. I paid particular attention to the theme of identity, which involved discerning whether or not a Court was promoting Indianism (panethnic identity) or tribalism (tribal identity). In coding for identity, I noted every phrase identified that appeared to promote Indianism or tribalism, thus some opinions have multiple codes for identity.

The remaining five themes focused on contextual elements. Sovereignty involved close examination of whether or not a tribe’s sovereign status was expanded or diminished. Since sovereignty refers to the ability of a tribe to rule itself, I thought it was pertinent to note how often the Court referenced expanding sovereignty or decreasing sovereignty, thus
some cases will possess multiple codes related to sovereignty. Supreme Court outcomes investigated whether or not a tribe had a generally favorable or negative outcome with outcome being tied to whether or not the tribe lost or retained governing rights as a quasi-sovereign nation; within some cases, both favorable and negative outcomes were present. Treaty presence paid attention to when a Court referenced a treaty in its decision making process. Tribal hierarchy involved noting when and how a tribe’s history and actions were used to justify a decision. In coding for this theme I focused on how whether or not a tribe’s history was depicted in a way that justified a positive or negative outcome (for example, if a tribe had suffered particularly egregious treatment by the U.S. government, then their history may have been used to support a favorable outcome for the tribe). In coding for the use of tribal history, I coded every instance I saw where tribal history was used to either justify a tribe’s circumstances or condemn a tribe’s circumstances. The last contextual theme I coded for was the types of legal issues presented in the case – issues related to land (includes proprietary issues, boundary issues, and compensation issues), resource (includes natural resource issues and hunting and fishing rights), tax, state jurisdiction, federal criminal jurisdiction, and Indian civil rights. Many of these cases involved multiple issues. In addition to these contextual elements, I also noted to what cases included long historical narratives about the federal-tribal relationship.

Figure 1 in the Appendix represents a matrix of the findings from content analysis completed utilizing NVivo. In order to interpret the matrix, you can look at a theme or issue coded along the first column on the right, and then follow across the rows to see how many times the theme or issue overlapped with other themes or issues. As is apparent in this matrix, Indianism and tribalism may have been coded more than once in a case, because
these terms were coded for each occurrence they were mentioned in the Court’s case opinion. Coding each time the Court addressed identity was important in demonstrating the Court’s patterns of identity treatment. The figure illustrates that some of the elements I coded emerged numerous times and frequently more than once in each case. For example, if a Court was diminishing sovereignty for a tribe, as it did with the Southern Ute tribe in United States v. Southern Ute Tribe or Band of Indians (1971), it frequently re-emphasized this diminishment of sovereignty throughout its opinion. It was important to code for each time these sorts of issues arose, because it also ties into how a Court used a tribe’s history and attributes to justify their decision and ultimately says a lot about the way the Court views a particular tribe’s identity. Indeed, in coding for these different elements there was frequent overlap between many of the elements, such as when a Court in emphasizing a tribe’s identity along panethnic lines may also reference their diminished sovereign status at the same time. Paralleling my coding strategy for diminished sovereignty, I also coded for each time sovereignty expansion was mentioned in each case, as that too ties into how a Court justified their decisions using tribal history and tribal characteristics, and it also re-emphasizes when a Court views a tribe along tribal lines.

FINDINGS

Findings illustrate the Court’s heavy emphasis on both diminishing sovereignty and encouraging tribal identities formed along tribal lines from 1950 to 1979. The emphasis upon these two concepts at first seems counterintuitive, given that generally tribalism is associated with more sovereignty and Indianism is associated with less sovereignty. However, as will come to be demonstrated, the Court frequently issued conflicting decisions regarding Indians, with some cases having more positive results for some tribes than others in terms of
tribal sovereignty and a tribe’s ability to govern itself. Additionally, with the exception of three cases, all of the cases either involved a single tribe or a band of tribes who have come together to form their own Nation (for example, this was the case with *Washington v. Confederated Bands of Tribes of the Yakima Nation* (1979)). Two of the three cases not involving a single tribe or band of tribes did not involve any specific tribe at all, but dealt with significant issues related to Indians. The third case not involving a single tribe or band of tribes was a consolidated case of multiple cases dealing with fishing rights in Washington State. The reason most of the cases only involve one tribe or band of tribes is that the federal government formed individual treaties with each tribe or nation. Thus, a lot of cases are actually resulting from a dispute over what a tribe’s treaty with the U.S. government actually means, and the cases that are not related to a treaty issue usually arise from how legislation related to Federal Indians affects a specific tribe. However, due to the doctrine of *stare decisis*, the decisions rendered still form a precedent for how other similar issues will be treated with other tribes regardless of the origin of an issue within a case. Next, I will be discussing each of the codes.

“Indianism vs. Tribalism”

While the Supreme Court never actually uses the terminology “Indianism” or “tribalism,” it does use a lot of language that signals whether or not it is promoting tribal identity or panethnic identity with specific tribes. The choice of whether or not the Court encourages indianism or tribalism is connected to how the Court makes sense of the situation at hand in order to arrive at a decision (Hall and Wright 2008; Gamson and Modigliani 1987; Goffman 1974). Typically, when discussing tribal identity, the Court tends to frame issues in a way that makes positive references to the tribe’s status as a sovereign entity and the tribe’s
positive relationship with the federal government. These references include emphasizing things such as a tribe’s treaty with the government, the importance of individuals within a tribe identifying along tribal lines, and the valid rights a tribe possesses to something such as land or hunting rights. Additionally, the Court will focus on the specific tribe at hand, rather than make broad, sweeping statements about Indians in general. One clear example of the Court focusing upon a specific tribe and their cohesion as a tribal unit is the Court’s reference to the Navajo tribe in *United States v. Wheeler* (1978). In this case, the Court frequently re-emphasized the Navajo’s sovereign status as a distinct and separate political community that never lost its *natural* rights as an independent government. The Court illustrated this by stating that when the Navajo exercises governing power over its tribal members “it does so as part of its retained sovereignty and not as an arm of the Federal Government” (*United States v. Wheeler* 1978:328). The deference the Court gives to tribes in this context is a clear example of the Court identifying a tribe along tribal lines, because it is speaking to that specific tribe’s rights, which are innately tied to the tribe’s identity.

Conversely, when promoting Indianism, the Court frames its opinion by making broad statements about Indians in general. This includes speaking to wide-ranging policies regarding Indians, rather than emphasizing a tribe’s unique relationship with the federal government. Additionally, the government will refer to Indian country in general, rather than a tribe’s specific reservation. Also, the Court will even go so far as to reference a tribe as a “band of Indians”, as they did with the Southern Ute in *United States vs. Southern Ute Tribe or Band of Indians* (1971). While this appears innocuous on first glance, addressing a group as a band of Indians weakens the group’s identity as a tribe because it implies the group does not have the same political status as other tribes. The court further reinforced this group’s
diminished identity by referencing the vulnerability of tribal identity with the Southern Ute tribe with the statement,

“The purposes of that provision were to destroy the tribal structure and to change the nomadic ways of the Utes by forcibly converting them from a pastoral to an agricultural people” (United States vs. Southern Ute Tribe or Band of Indians 1971: 1338).

The Court has also demonstrated encouragement of pan-Indianism over tribalism through referencing a tribe’s proclivity for assimilating into mainstream society in its opinion. One example of this was demonstrated in Delaware Tribal Business Committee v. Weeks (1977), where the Court utilizing the Kansas Delaware tribe’s decision to “dissolve their relations with their tribe [referring to the Delaware Indians] and become citizens of the United States” as a justification for not finding in favor of the Kansas Delaware tribe in a suit over the distribution of funds to the Delaware Indians (915). Assimilation was frequently referenced with tribes who no longer retained their tribal status.

The Supreme Court was more likely to encourage tribes to identify along tribal lines than it was to encourage tribes to identify along panethnic lines. This encouragement of tribalism indicates that external forces such as the Supreme Court can influence the sustainability and continuity of a group’s panethnic identity. From these findings, it appears the Supreme Court may have contributed to the fading of panethnic identity amongst Indians, but to what extent is impossible to know. This encouragement of tribalism also lays the foundation for considering if there was a specific type of tribe that gained more favorable status with the Court than other tribes, which will be discussed later.
“Sovereignty Expansion versus Sovereignty Diminishment”

Throughout these cases, the Supreme Court frequently addresses whether or not a tribe’s sovereign status is either expanded or diminished as a result of the rulings in the case. Overall, the Court tended to favor decreasing a tribe’s sovereign status, meaning it limited the ability of a tribe to effectively govern itself. In all cases, the Court continually emphasized that the Federal Government’s status as a sovereign entity always took precedent over a tribe’s status as a sovereign entity. For example, in United States v. Wheeler (1978), the Court expressly conveys that the Navajo tribe has the right as a sovereign entity to enforce their criminal laws against tribal members; however, it also explicitly states that it too has the right as a sovereign entity to prosecute tribal members for the same crime without invoking the issue of double jeopardy. The Court explicitly outlined the Navajo’s right to enforce criminal laws as a sovereign entity by stating,

“It is evident that the sovereign power to punish tribal offenders has never been given up by the Navajo Tribe and that tribal exercise of that power today is therefore the continued exercise of retained tribal sovereignty” (United States v. Wheeler 1978:323-324).

Yet the Court clearly expressed the fact that U.S. law reigns supreme by avowing,

“…were the tribal prosecution held to bar the federal one, important federal interests in the prosecution of major offenses on Indian reservations would be frustrated” (331).

Essentially, the government is quick to demonstrate that its law trumps all, states and tribes alike.
Overwhelmingly, the Supreme Court tended to favor encouraging a tribe’s status as a sovereign entity when it was also identifying a tribe along tribal lines as opposed to panethnic lines. Additionally, the Supreme Court also tended to promote a tribe’s sovereign status when it had tribal attributes to use in justifying the expansion of sovereignty. Frequently, when sovereignty was emphasized, the Court justified this increase with a discussion of a tribe’s tenuous relationship with the Federal Government, including forced removals and broken treaties. Interestingly, the Court did not expand tribal sovereignty in one case related to criminal justice issues, clearly indicating that tribes are not allowed to have an unfettered ability to police their reservations. Furthermore, tribal sovereignty was typically diminished when the Court had some sort of rationale to justify this, which typically included either a tribe’s relationship with the federal government being extinguished, a tribe appearing to have assimilated into mainstream society, or both. Overall, the concept of sovereignty is inherently tied to identity, as it relates to the tribe’s ability to govern itself as a quasi-sovereign nation. Thus, it is easy to how the Supreme Court impacted the development of pan-Indianism through expanding or decreasing sovereignty because sovereignty has such a dramatic impact upon how a tribe’s identity is constructed.

“Supreme Court Success”

Interestingly, the Supreme Court appeared reluctant to rule in favor of a tribe that appeared to assimilate into mainstream society. Instead, tribes who appeared to keep their economic and social activities primarily within the sphere of a tribe’s governing jurisdiction were more likely to have success with the Supreme Court than tribes who did not appear to keep economic and social activities essentially on the reservation. This finding was ascertained through the condemning tribal attributes codes. Paralleling this finding, the
Supreme Court also never completely ruled against a tribe who had appeared to maintain their tribal identity. Along this same vein of thought, success was most likely to occur when a tribe demonstrated characteristics that led the Court to distinguish the tribe’s identity along tribal lines as opposed to panethnic lines. Additionally, tribes who were seeking relief in regards to land claims tended to have the most success with the Supreme Court. Whereas, tribes involved in a case dealing with state jurisdiction issues tended to be the most likely to not have success with the Supreme Court. While the appearance of a certain type of legal issue having more success than others could be due to the fact there are just simply more disputes arising that involve that particular issue, this does not appear to be the true in regards to the cases I analyzed. In fact, the most frequent issue going before the Court was related to state jurisdictional issues, which is the type of issue that was least likely to succeed with the Court. However, this may have been due to many of the cases related to state jurisdictional issues were arising from Public Law 280, which is a law that enacted in conjunction with termination policies in order to hasten assimilation. Thus, given the success amongst tribes who have maintained their tribal identity, the connection between Supreme Court success and the Supreme Court’s impact on pan-Indianism becomes apparent.

“Tribes who entered into Treaties with the United States”

The majority of the cases examined in this study deal with a contested issue that has come about due to ambiguities in either treaties and/or agreements between American Indian tribes and the U.S. government. Thus, it is very often these treaties and/or agreements with the U.S. Government that give a tribe legal standing to bring suit. Usually, people think of the term “treaty” as being representative of all agreements between the U.S. and tribes; however, the United States technically stopped entering into treaties with tribes in 1871 due
to Congress prohibiting the formation of this type of relationship by statute. After this point Congress created essentially the same type of relationship with tribes via statute, which overall holds the same type of authority over tribes. However, when coding for this contextual element tribes were coded as having a treaty present only when the Court expressly mentioned it in their opinion. The point in distinguishing tribes who had entered into treaties with the U.S. government was to account for the fact that some tribes had longer relationships with the U.S. government than other tribes. However, it is important to keep in mind two things regarding federal-tribal relationships created by treaty: 1) some tribes did not possess valuable land or resources that the U.S. cared about, therefore there was no reason to enter into treaties with those tribes (Deloria and Wilkins 1999); and 2) this does not include the tribes settlers first encountered upon colonization. For example, the Pamunkey tribe (the tribe of Pocahontas or Matoaka) never entered into a treaty with the U.S., and as a result only recently became a federally recognized tribe in 2015. The importance of accounting for the presence of a treaty is significant in considering how the Supreme Court may have impacted the development of pan-Indianism, as there appeared to be a connection between tribes who had entered into the federal-tribal relationship via treaty and the expansion of tribal sovereignty. As demonstrated earlier, increases in tribal sovereignty are tied to the Court’s encouragement of tribalism, whereas decreases in tribal sovereignty is tied to the Court’s support of Indianism.

“Tribal Attributes”

Tribal attributes refer to whether or not a tribe exhibits favorable characteristics for being identified along tribal lines. During my initial coding, I noticed that the tribes that had success with the Supreme Court tended to be tribes that had resisted assimilation into
mainstream society while also complying within the parameters of their relationship with the federal government. I was able to ascertain this by examining the use of tribal histories in framing and justifying an opinion. For example, the Navajo tribe exemplifies many characteristics that are favorable to being recognized along tribal lines rather than panethnic lines. The Navajo were party to five of the cases I used, making them the tribe who appeared most frequently. In each opinion related to the Navajo tribe, the Court used details of the Navajo’s tribal history and also history of the Navajo’s longstanding relationship with the United States government to frame the opinion being issued. This was demonstrated in United States v. Williams (1959), where the Court applauded the Navajo’s development of a tribal government by stating “The Tribe itself has in recent years greatly improved its legal system through increased expenditures and better-trained personnel” (221-222). This praise for the Navajo’s development of tribal government demonstrates that there are certain tribal attributes that are considered favorable and beneficial in sustaining the federal-tribal relationship. For example, in this case it was a strong tribal government. Conversely, the Court condemned tribes who did not possess this type of cohesion and organization. This was demonstrated in Tee-Hit-Ton Indians v. United States (1955), where the court used the Tee-Hit-Ton’s less advanced stage of civilization as a means to frame their justification of finding that the Tee-Hit-Ton had no ownership rights to the land they occupied. Specifically, the court demonstrated a negative connotation associated tribes who refused to transition into an agricultural based existence, which is illustrated by the following statement,

“we agree, that the Tee-Hit-Tons were in a hunting and fishing stage of civilization, with shelters fitted to their environment, and claims to rights to use identified territory for these activities as well as the gathering of wild products of
the earth. We think this evidence introduced by both sides confirms the Court of Claims' conclusion that the petitioner's use of its lands was like the use of the nomadic tribes of the States Indians (287-288).

Essentially, a tribe’s refusal to comply within the specified parameters of the federal-tribal relationship, which involves tribes operating within the set bounds of a reservation, is not conducive to federal-tribal relationship because it demonstrates a resistance to U.S. influence on tribal identity. Additionally, it appeared from my analysis that the tribes who did not exhibit ideal “Indian-esque” characteristics tend to be situated east of the Mississippi River (with the exception of the Tee-Hit-Ton, who are located in Alaska). This could be a result of these tribes have been undergoing assimilation tactics for much longer periods than tribes west of the Mississippi River.

Accounting for the presence of tribal attributes is important to understanding the influence of the Court on the continuity of pan-Indianism as there appeared to be a connection between the use of “condemning tribal attributes” to justify a Court’s decision and the reduction in tribal sovereignty, which in turn is connected to whether or not the Court encourages tribalism or Indianism. This was demonstrated in Oliphant v. Suquamish Indian Tribe (1978), wherein the Court utilized condemning tribal attributes to justify the diminishment of tribal sovereignty. The Court illustrated this by stating, “Until the middle of this century, few Indian tribes maintained any semblance of a formal Court system” as a justification for why tribes do not possess criminal jurisdiction over Non-Indians who commit a crime on tribal lands (Oliphant v. Suquamish Indian Tribe 1978: 197).

Additionally, it is important to point out that in Oliphant v. Suquamish Indian Tribe (1978), the Suquamish tribe’s attempt to exercise criminal jurisdiction over a Non-Indian is an issue
that had previously not been addressed by the Court. In this case, the Court was quick to squash a tribe’s attempt to surpass the jurisdiction of the United States. In connecting these ideas back to the Supreme Court’s ability to impact pan-Indianism, we can see how tribal attributes can play a large role in whether or not the Court decides to encourage tribalism or Indianism based upon the Court’s reaction to certain types of attributes as compared to others.

“Type of Legal Issue”

Given that the very nature of Supreme Court opinions is to decide a legal issue, I include codes for the type of legal issue present in each case. Some cases only had one legal issue, such as *Peoria Tribe of Indians of Oklahoma v. United States* (1968), which dealt with a land issue related to compensation for ceded lands. There were also many cases that had multiple legal issues present, such as *DeCoteau v. District County Court for Tenth Judicial District* (1975), which included both a state jurisdiction issue and a land issue as it turned on whether or not a state had jurisdiction over the conduct of tribal members on lands that were identified as Indian lands in an 1867 treaty. I did not anticipate any connections between the legal issues at stake and how the Court chose to identify a tribe. While there is not a substantial connection in general, it does appear that tribes who are depicted along panethnic lines are more likely to be pursuing one or more of the following two legal issues: land issues, which include proprietary issues, boundary issues, compensation issues; and criminal justice issues. This was well demonstrated in the earlier discussed *Oliphant v. Suquamish Indian Tribe* (1978), where the tribe’s ability to govern itself was diminished and the legal issue was related to federal criminal jurisdiction. Conversely, tribes who are described along tribal lines tend to be pursuing one or more of the following three legal issues: resource
issues, which involve natural resource rights and fishing and hunting rights; state jurisdiction issues; and tax issues. This was exhibited in *McClanahan v. Arizona State Tax Commission* (1973), where tribalism was encouraged and the legal issues were related to state jurisdiction and tax issues. However, other than these basic associations, there does not appear to be any relationship between characterization of a tribe’s identity and the type of legal issue pursued. Overall, these were important to account for even though there were only basic associations, as the associations do shed light on understanding what may have motivated the Court to decide to encourage tribalism versus Indianism in different cases.

“*Inclusion of a Long Historical Narrative*”

Generally, all of the cases included some sort of historical background, as context is paramount in interpreting either the intent of the parties forming a treaty or congressional intent in statutes enacted relating to American Indians. However, during my initial read of the opinions I noticed that some cases had particularly long historical accounts and others did not. Therefore, during my focused coding, I also classified whether or not an opinion contained a long historical narrative. After classifying the cases, I then looked at the number of cases and where they fell chronologically. There were a total of 16 cases that included particularly long historical accounts. Chronologically speaking, most of these long historical narratives were attached to opinions issued in the 1970’s, with only two having come before 1970 and strangely, none of the cases from the 1960’s involved a long historical narrative. Even more curious is the increase in the inclusion of a long historical narrative after 1975. Between 1975 and 1979, out of the 16 opinions issued, 10 included a long historical narrative. Additionally, I noticed that long historical accounts were given more frequently in conjunction with unsuccessful outcomes than with successful outcomes. There were 10
unsuccessful cases with a long historical narrative, and only six successful cases with a long historical outcome. This connection between the presence of a narrative and case outcome also increased over time. Out of the 10 opinions issued between 1975 that included a long historical narrative, only two were attached to successful outcomes. However, despite the fact these connections can be made between case outcome and the presence of a long historical narrative, I could find no real connection between identity depiction and the inclusion of a long historical narrative.

DISCUSSION

Following the end of the Civil Rights Era, the panethnic identity that had emerged as a response to both the radical changes in social environment that characterized the 1950’s and 1960’s and the termination and relocation federal Indian policies had all but disappeared. In this study, I investigated the role of the Supreme Court in the decline of panethnicity amongst American Indians. My analysis lends support to the idea that the Supreme Court contributed to a decrease in panethnic identification amongst American Indians. Indeed, surveying whether or not the Court encouraged tribalism or Indianism more frequently reveals that tribalism was more likely to be encouraged than Indianism.

I attribute the encouragement towards tribalism as a response to the activism generated through the rise in pan-Indianism during this time period (Cornell 1988). Indian activism during this era represented a challenge to Indian-White relations, particularly the relationship between American Indians and the U.S. government. The Supreme Court’s approach to encouraging tribalism, the opposite of pan-Indianism, was a reaction that addressed the challenge to the dominant social structure through subtle suppression techniques. We can see this demonstrated by the court encouraging tribalism amongst tribes
who exercised their sovereign status without threatening the U.S. government’s supremacy, which was illustrated in *Oliphant v. Suquamish Indian Tribe* (1978). In *Oliphant*, when the Court denied tribal criminal jurisdiction over non-Indians, it was also sending a message to tribes about how they should behave in order to retain the ability to govern themselves; tribes were essentially warned not to attempt to exercise their sovereign status in such a way that threatens the supreme power of the U.S. (Williams 2005). During this era, the U.S. government responded to the increase in Indian activism in two ways: 1) the U.S. implemented a series of reforms that sought to accommodate Indian demands without undermining its own power and 2) the U.S. worked to suppress the most radical elements in Indian activism. The Supreme Court’s support of tribalism is related to the first of these responses. The series of reforms implemented to accommodate Indian demands included a change in federal Indian policy from termination and relocation to self-determination in 1970 (Cornell 1988; Nagel 1995; Johnson 2007). Self-determination gave tribes more political power in governing themselves and determining their futures. The Supreme Court’s encouragement towards tribalism, also began increasing in 1970, with 17 out of the 28 opinions issued from 1970-1979 supporting tribalism. While on the surface, these reforms and the Court’s support of tribalism appear to be beneficial for tribes, because it allowed them more political power in determining their own futures. Nevertheless, there was also a drawback with these reforms in that this increase in power was only related to individual tribes, not American Indians as a whole. Thus, the encouragement of tribes to focus upon their own individual tribal governments had a decentralizing effect on the increase in pan-Indianism and Indian activism that had been gaining momentum in the 1960’s and 1970’s (Cornell 1988).
The Supreme Court’s generally supportive response towards tribalism is one of several external forces that impacted the development of a panethnic identity amongst American Indians during the Civil Rights Era. While the Supreme Court is an undoubtedly strong external force given that it is the final interpreter of the law within the U.S., I argue that it may actually be one of the stronger forces due to the power it wields and its ability to reinforce social reforms. Thus, in trying to inhibit, or defer, panethnicity amongst American Indians, it makes sense that the Court would try to obfuscate their true intent by issuing a number of rulings that were for all intents and purposes pro-tribe. However, this idea is complicated by the fact that the Supreme Court handed down a substantial amount of opinions during 1950-1979 that encouraged Indianism. While no clear explanation emerges from the data regarding the cause for this discrepancy, one thing the data did reveal is that cases where Indianism was promoted involved tribes who did not have a treaty with the U.S. (See figure 1). Additionally, Figure 1 also demonstrates that Indianism was encouraged the most in cases dealing with land issues such as proprietary issues, boundary issues, and compensatory issues.

While there is no way to completely clarify why the Court supported Indianism in some opinions, while supporting tribalism in others, previous research on the impact of external forces on political identity amongst American Indians by Cornell (1988) does provide some insight into this incongruity by demonstrating how implementing reforms in response to challenges to the dominant social structure can be beneficial for the state. The two main advantages to implementing reforms are: 1) it is a decentralizing strategy (as mentioned earlier) and 2) it deflects conflict on the intergroup level to conflict on the intragroup level. The latter provides insight into what may have driven the Court to hand
down a mixture of pro-tribalism and pro-Indianism opinions during this time period. By bringing out conflict in Indian-Indian relations through mixed success outcomes, the Supreme Court would be effectively restructuring the political activity in ways that protect the U.S. government, while also giving the government control over radical actors and the speed and course of change.

CONCLUSION

Through this research, I demonstrated how the Supreme Court influenced the development of panethnicity during the Civil Rights Era. The Court encourages tribalism over Indianism, which suggests the Court appears to have been deferring the growth and sustainability of pan-Indian identity during this time period. The catalyst sparking the Court to exert control over American Indian panethnicity was the rapid growth in political power and unity amongst Indians that threatened to change the existing social structure in drastic ways. These findings can contribute to our overall understanding of how external forces can impact the development, sustainability, and decline of a group’s panethnic identity. From this, we can consider the sensitive nature of panethnic identities to social manipulation by external forces such as the U.S. government. Additionally, we can also begin to understand how the U.S. in shaping and molding panethnic identities amongst minority groups may utilize the law as a tool in an ostensibly benevolent way that has the potential to have dire consequences for the political power of these groups (Omi and Winant 2015).

Within the panethnicity literature, the “resurgence” of American Indian identity and culture within the United States during the Civil Rights Movement has been linked to the political mobilization of tribes (Nagel 1997; Cornell 1988). Thus, it makes sense that dominant groups would be concerned with dismantling one of the driving forces behind this
type of mobilization, which in this case was the development of a pan-Indian identity that crossed tribal boundaries. The decentralization of panethnicity growth and continuity accomplished through the suppression of radical activist groups and the institution of reform policies aimed at maintaining the current social structure thus led tribes to be more focused upon tribal issues rather than pan-Indian issues. With tribes focusing upon themselves, this weakened the strength of collective political power amongst Indians, thus resulting in tribes becoming embroiled in intragroup conflict in struggles for power (Cornell 1988). Thus in light of my findings, we can begin to connect how the Supreme Court’s encouragement of tribalism over Indianism actually resulted in a myriad of consequences all related to the decrease in political power and unity amongst American Indians.

My study has several limitations. First, my data is limited to only the cases that were granted review by the Supreme Court, thus leaving out consideration of the cases that the Court opted not to hear and how these denials may have also had an impact upon how the Court impacted the growth and continuity of pan-Indianism. This limitation relates to the idea that sometimes, when the Supreme Court opts not to rule on a case, they are still essentially ruling in a sense. However, this limitation could be addressed in the future by conducting a more in depth explanation of the cases the Supreme Court was considering, and not just the ones that the Court actually heard. This would allow us a more complete picture of how the Court was impacting the development of pan-Indianism. Secondly, my study does not look at the chronological connections between activist events and rulings during this time period. Making these kinds of connections could help to offer insight into why the Court issued both pro-Indian opinions and pro-tribalism opinions. Investigation into these events would require delving into media coverage from this time period to examine what activist
events were particularly salient and thus may have impacted the Court’s decision making process. Consideration of these types of chronological connections could begin to tell us more about the connection between how the Supreme Court was impacting pan-Indianism and the rise and decline in radical Indian activism. Lastly, my study is limited in that it does not consider the full picture of how the U.S. government has impacted the growth and decline of American Indian panethnicity. This limitation has implications for future research, as a comprehensive look at how the U.S. government has shaped and molded pan-Indianism could say something about the formal social control of a population by the state.

The idea of controlling a population of people through formal institutions of social control based upon race and ethnicity is an area that needs to be persistently studied in attempts to understand how the state can exercise this degree of power over a race/ethnic group. In particular, when there is the emergence of a panethnic identity from these groups, such as with pan-Indianism, researchers need to investigate both the formation and continuation of these identities and how these identities can be extinguished by formal mechanisms of social control. Additionally, scholars should also consider how the political power of a panethnic group plays into attempts to dismantle the group by external forces. In order to fully understand the connection between political power and panethnic identity decline, researchers should continue to explore different governmental actions affecting panethnicity, and also consider how these actions all relate to one another on a larger scale.
REFERENCES


Blauner, Robert.


Cornell, Stephen.


Deloria, Vine Jr.


Nagel, Joanne


Waters, Mary C.


**Cases Used**

*DeCoteau v. District County Court for the Tenth Judicial District, 420 U.S. 425* (1975).


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**Notes

**Arizona v. California did not directly involve a specific tribe, but it still involved riparian rights for tribes bordering the Colorado River.

**Morton v. Maneri doesn’t deal with a specific tribe, but it upholds the constitutionality of the BIA’s preferential hiring of Indians.

**Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n is the review of several consolidated cases dealing with fishing rights.
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