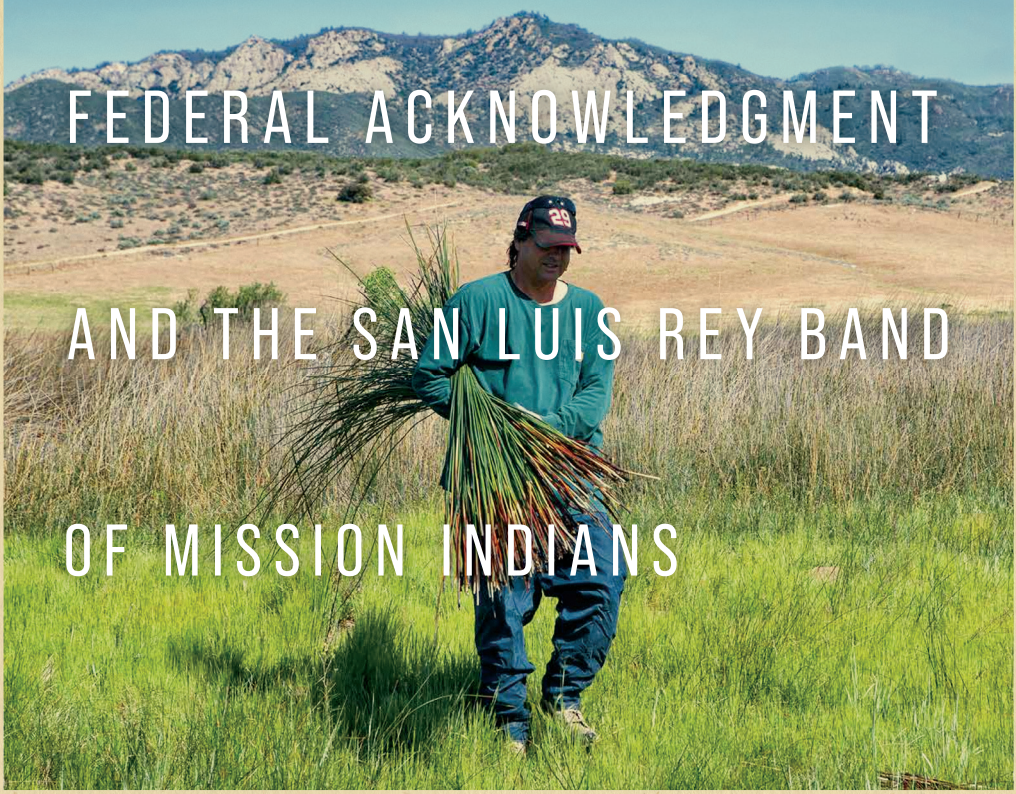
Olivia M. Chilcote

UNRECOGNIZED IN CALIFORNIA

FEDERAL ACKNOWLEDGMENT AND THE SAN LUIS REY BAND OF MISSION INDIANS



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CHARLOTTE COTÉ AND COLL THRUSH *Series Editors*

Olivia M. Chilcote

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Federal Acknowledgment and the San Luis Rey Band of Mission Indians

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FOR THE SAN LUIS REY BAND OF MISSION INDIANS

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First and foremost, I want to express my gratitude to the citizens of the San Luis Rey Band of Mission Indians and all our Luiseño ancestors. Whether tribal citizens directly participated in research for *Unrecognized in California* or not, our tribal community influenced my worldview and my understanding of who we are as Luiseño people. Thank you to the San Luis Rey Band of Mission Indians Tribal Council for facilitating my research and to tribal citizens who took the time to meet with me and to share their stories and perspectives as San Luis Rey people. I learned so much about our tribe's history, our values as a community, and our commitment to provide for our tribe and our families. I especially thank my mom, Marlene Moran Chilcote Fosselman, for inspiring my commitment to our tribe and for teaching me the importance of honoring our ancestors and knowing where I come from. All that I've accomplished is for her and for the Luiseño people of the San Luis Rey Band.

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UNRECOGNIZED IN CALIFORNIA

INTRODUCTION

An Uninvited Guest

On Tuesday, September 20, 2016, at about 5:15 p.m., I sat on a bench in front of the National Archives building in Washington, DC, after a long day of archival research. I scrolled through social media on my iPhone to pass the time before my ride arrived. As I scrolled, a news story shared by a colleague caught my attention. The headline read, "Smithsonian National Museum of the American Indian's Historic Unveiling of Gold Rush Era Treaty Held Secret by US Senate Leading to Ethnic Cleansing of American Indian Nations in California." I followed the link to a National Museum of the American Indian press release announcing the museum's upcoming unveiling to the general public, for the first time ever, of one of the eighteen treaties negotiated between California Indian Nations and the United States. The unveiling was scheduled to take place Thursday, September 22, 2016, from 9:30 to 10:30 a.m. Excitement ran through me as I realized that it was not even two days away. I continued to read the document for more details. I read, "The Treaty of Temecula is one of 18 treaties negotiated between the United States and American Indian Nations in California and submitted to the United States Senate on June 1, 1852, by President Millard Fillmore."[1] My heart skipped a beat. The National Museum of the American Indian planned to unveil the treaty that a captain from my tribe, the San Luis Rey Band of Mission Indians, had signed.

I knew I had to attend the unveiling. I also knew it must be more than pure coincidence to be in Washington, DC, at the very same time. The press release said tribal representatives from four nations affected by the treaty would be present to offer remarks. I immediately called my mom to tell her about the event and asked whether she had heard about it through any tribal council communications. She confirmed that no one from my tribe was aware of the unveiling even though our former captain, Pedro Ka-wa-wish, had been the first among the Luiseños to sign his X-mark.[2] My mom cried over the phone as she confirmed what I thought: my presence in

Washington, DC, at the time of the treaty unveiling was not a coincidence. "Olivia," she said, "you have to be there. You have to see it. You need to represent San Luis Rey because no one else will."

I had no idea if I could even attend the unveiling ceremony because I tried, unsuccessfully, to contact the National Museum of the American Indian about the logistics. Regardless, I arrived at the museum the morning of September 22 as an uninvited guest. I walked around the deserted sidewalks in front of the building for a few minutes until I saw some people enter through the glass doors. I followed. When I entered the foyer, an employee, who took me for a tourist, asked how she could help and informed me the museum was not yet open. I confidently said, "I'm here for the treaty event." She took out a binder with a list of invited tribal attendees and asked for my tribal affiliation. I said the San Luis Rey Band of Mission Indians, but she could not locate the tribe on the list. I told her the San Luis Rey Band's captain had signed the Treaty of Temecula, so she decided to take me near the space featuring the *Nation to Nation* exhibit, where the treaty would soon be displayed to the public. She informed me that members of the invited tribal delegations were viewing the treaty before its installation in the exhibit space.

After a few minutes, the woman told me to wait in a room set aside for guests and members of the invited tribal delegations. As the tribal delegations returned to the room, curators at the museum installed the Treaty of Temecula in the exhibit. Museum staff instructed everyone in the waiting room to head to the exhibit hall once the staff had completed the installation. A single light shone down on the treaty display case as we entered the dimly lit space. We gathered around the treaty, which looked small compared to the glass case in which it rested. The director of the National Museum of the American Indian, Kevin Gover, delivered opening remarks before he offered the floor to representatives from the Pechanga Band of Indians, the Agua Caliente Band of Cahuilla Indians, the San Manuel Band of Mission Indians, and the Ramona Band of Cahuilla to comment on the treaty and its significance.

Tribal leaders and representatives spoke powerfully about treaty making in California and nonratification's impact on California tribes. Mark Macarro, chairman of the Pechanga Band of Indians, recollected his experiences over the years in talking to other tribal people who insisted "Mission

Indians" were not like other Indians because they did not have treaties with the United States. As Chairman Macarro spoke, the Treaty of Temecula, negotiated within Pechanga tribal territory, served as a physical reminder that the California Indian experience is just as valid as any Native American experience in the United States. While listening to the speakers, I felt humbled to be part of the unveiling ceremony and thought about the event's significance. I beamed with pride for my California Indian identity, but I also grew deeply uncomfortable, surrounded as I was by the delegations of federally recognized tribes. Eyes lingered on me in the exhibit hall with curious looks. I felt out of place as I remembered that no one had invited me or my tribe to participate in the historic occasion.

As a symbol of tribal sovereignty, the treaty glaringly reminded me that the United States does not acknowledge the San Luis Rey Band of Mission Indians' inherent sovereignty as a tribal government. I wondered why the National Museum of the American Indian did not inform my tribe about the event and could not help but think my community's lack of federal recognition might be the reason. I looked at the treaty and saw the X-mark of Pedro Ka-wa-wish next to the X-marks of other Luiseño, Cupeño, Cahuilla, and Serrano signatories. One hundred sixty-four years later, I stood alongside the very same people.

My experience at the Treaty of Temecula unveiling illustrates the complexity and contradictions that characterize unrecognized tribal status in California. The eighteen treaties' nonratification set the tone for the federal government's long-standing uneven treatment of California Indian people and tribes. At the same time, the treaties became the key to strengthening collective California Indian activism in the early twentieth century, which ultimately led to contemporary tribal pursuit of federal recognition. The US government participated in treaty negotiations with the San Luis Rey Village in 1852, but the San Luis Rey Band is not a federally recognized tribe today. How did this divergence in legal status occur? How is California's colonial history connected to the San Luis Rey Band's decision to petition for federal recognition in the 1980s? And how is the San Luis Rey Band connected to a larger movement of unrecognized tribes across California seeking to widen possibilities for self-government and to secure claims to traditional territories?[3]

The status of federal recognition in California, the state with the most nonfederally recognized tribes in the country, brings to the fore questions about California Indian history and the federal government, the politics of Native American identity, and the problems with the Department of the Interior's proffered path to acquire federal recognition, which is known as the federal acknowledgment process. Federal recognition and the federal acknowledgment process are part of a long lineage of colonial policies and practices designed to establish the federal government's authority over Native communities. By pursuing federal recognition and undergoing the department's administrative process, tribes confront the United States' enduring power to define Indigenous identities on its own terms. Unrecognized tribes inevitably participate in nation-building efforts, by choice and by imposition, as they pursue federal recognition.[4] Even as unrecognized tribes persistently work through and against their legal status to assert inherent tribal sovereignty, the settler colonial structures of the United States function to disempower our communities.

This book builds upon existing studies and critiques of federal recognition policy to analyze the tensions and contradictions, as well as the limits and opportunities, of federal recognition for California tribes. In addition to being a resource on federal recognition in California broadly speaking, this book analyzes the San Luis Rey Band of Mission Indians' ongoing struggle to maintain a government-to-government relationship with the United States. An in-depth look at the San Luis Rey Band's experience exposes how contemporary movements to acquire federal recognition are rooted in histories of colonization and fights over land. The San Luis Rey Band's story presents an opportunity to understand why and how tribes petition for federal acknowledgment, what histories are brought to bear on this process, and how federal recognition across California is distinct from what has occurred elsewhere.

With San Diego County as home to more tribal governments and Indian reservations than any other county in the entire nation, the San Luis Rey Band's legal status acutely exposes the intricacies and tensions of nonfederal recognition. The San Luis Rey Band's status as the only unrecognized band of Luiseño people illuminates the divergent experiences of political groups located in the same region. Simultaneously, this book demonstrates how the

San Luis Rey Band asserts its inherent governmental powers and works tirelessly to ensure the tribe's continuity despite the lack of federal recognition. Without federal recognition or a reservation, the San Luis Rey Band has worked both diligently and creatively over time to maintain its community identity and to function as a self-determining tribal government.

The San Luis Rey Band of Mission Indians

The San Luis Rey Band of Mission Indians is the only unrecognized tribe in San Diego County and the only unrecognized band of Luiseño Indians. There are six federally recognized Luiseño Bands: La Jolla, Pala, Pauma, Pechanga, Rincon, and Soboba. Luiseño history started at Creation. Our worldviews and sense of place originate in our Creation narrative.[5] Luiseño people see Creation in every aspect of our landscape because we know the First People, Káamalam, exist physically through us and all around us in the form of plants, animals, geological features, celestial bodies, and more. For Luiseño people, Creation was the foundation of our inherent sovereignty.[6] After some Káamalam took human form, they spread out over the land in all directions and spoke different languages. This enabled people to distinguish who belonged where and to understand the boundaries between the Luiseño people and neighboring tribes such as the Kumeyaay or Cahuilla.

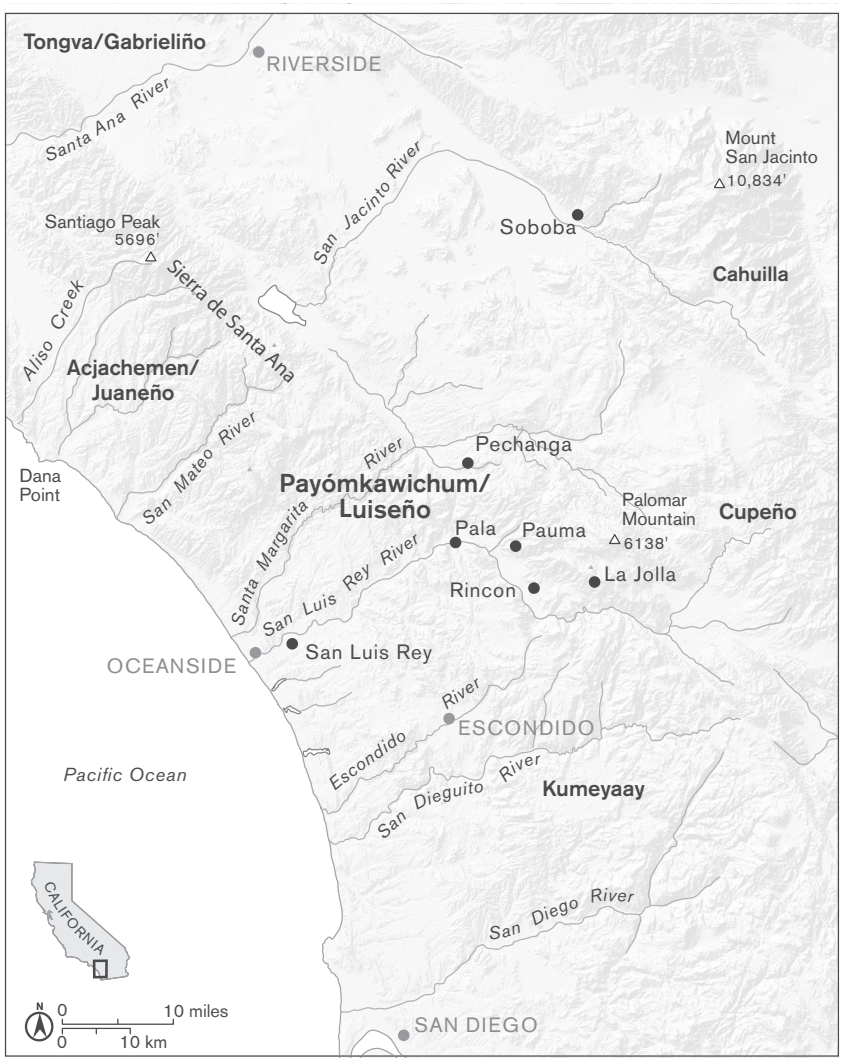
Luiseño people lived in settled and politically autonomous village communities throughout what is currently northern San Diego County and southwestern Riverside County, California. The San Luis Rey River connected Luiseño people and sustained our culture.[7] Each Luiseño village had a Nóot, a hereditary leader, who managed economic, religious, and political powers for their respective clans.[8] The Nóot's assistant, the Paxá', provided information to the community and undertook important ceremonial duties. A council of advisors also assisted the Nóot in the many activities necessary to maintain the community and to protect its land.[9] Kinship protocols and trade networks reinforced interconnected relationships among the numerous village communities. Successive waves of colonization from Spain, Mexico, and the United States disrupted Luiseño lifeways, but we are not passive people. The Luiseño and other Southern California tribes actively resisted and negotiated our changing circumstances as we shaped the course

of history. A "culture of resistance" rooted in tradition formed Luiseño responses to threats against our sovereignty, our lands, and our rights as Indigenous people.[10]

The San Luis Rey Band confronts legacies of colonization every single day through the power of naming and language, as evidenced by the very names "Luiseño" and "San Luis Rey Band of Mission Indians." Anthropologically, the term "Luiseño" is a language group identifier for Takic-speaking peoples associated with the San Luis Rey Mission in Oceanside, California.[11] While the names "Luiseño" and "San Luis Rey" come from the experience of Spanish colonial missionization and anthropological inquiry, Luiseño people describe ourselves as 'Atáaxum, or "People," and Payómkawichum, or "People of the West." The San Luis Rey Band of Mission Indians use Qéchyam (plural) or Qéchngawish (singular) to indicate their being residents of Qéch, the Luiseño village territory that surrounds and encompasses the place where Spaniards established Mission San Luis Rey in 1798.[12]

Contemporarily, the San Luis Rey Band's tribal territory includes the cities of Oceanside, Vista, Carlsbad, Encinitas, San Marcos, and Escondido; the unincorporated cities of Bonsall, Valley Center, and Fallbrook; and Camp Pendleton, a Marine Corps base. The tribal territory is composed of both urbanized coast and rural inland landscapes in San Diego County. Most of the more than six hundred tribal citizens reside in these areas today. Others live in the greater San Diego County vicinity and throughout California. Some tribal citizens live in other states across the nation and a few internationally, but the large majority remain within the tribal territory.

The San Luis Rey Band's political history and involvement with the federal acknowledgment process is a story that remains largely untold. This book provides the first in-depth analysis of how sustained colonization in California led to the tribe's federal recognition petitioning process. The San Luis Rey Band's contemporary pursuit of federal recognition is the most recent iteration of a long-standing effort to secure the tribe's rightful claims to land, resources, and respect in San Diego County. The San Luis Rey Band made the decision to petition for federal recognition through the federal acknowledgment process in the early 1980s, and the tribe's engagement is ongoing. Law professor S. James Anaya explains that Indigenous peoples "have employed a number of strategies, including those that enlist the law and legal process of the world beyond their communities" when defending



Luiseño/Payómkawichum tribal territory. Map by Ben Pease.

their lands, communities, and legal traditions.[13] This is precisely how the San Luis Rey Band employs the federal acknowledgment process.

For my whole life, federal recognition has been an ongoing tribal initiative with no clear end in sight. The research and methods featured in this book are situated in my connection and obligation to the San Luis Rey Band of Mission Indians.[14] As the daughter of a former tribal council member, I grew

up hyperaware of tribal politics and the importance of preserving a unique San Luis Rey tribal identity through stories and family connections. Tribal council meetings took place every Monday for roughly a decade at the dining room table in my childhood home. I vividly remember witnessing tribal governance and talking with my cousins about the possibility of being leaders in our community one day. The San Luis Rey Band started its formal recognition process before I was born, and, unlike previous generations, my parents raised me in a tribal community shaped by the language and political impact of contemporary federal acknowledgment policy. I grew up understanding that the San Luis Rey Band is the only unrecognized band of Luiseño Indians, a label that somehow made us different.

My tribal citizenship and active participation in the San Luis Rey Band of Mission Indians is an integral part of the story that follows.[15] The story of the San Luis Rey Band's history and engagement with the federal acknowledgment process demands to be told from our own perspective and on our own terms. Access to people, materials, and histories largely unavailable to others outside of the tribal community provided me with an exclusive opportunity to create something by and for the San Luis Rey Band.[16] A combination of oral history, in-depth interviews, and questionnaire responses enabled me to draw on the voices and perspectives of tribal leaders, including current and former tribal council members as well as general enrolled tribal citizens, instrumental to the petitioning process from the 1980s until the present. Moreover, my research would not have been possible without access to private collections of the San Luis Rey Band of Mission Indians that I conceive of as an unconventional "tribal archive."[17] The tribal archive consists of various documents, photographs, and correspondences kept by the tribal council and individual tribal citizens over the years. Most of these documents are unpublished and inaccessible to noncitizens and exist in boxes, closets, and file cabinets spread throughout homes and garages. Unrecognized tribes confront the power and oppression produced by the "official" archival record, especially in its omissions and exclusions, as they compile evidence to support federal recognition.[18] My utilization of materials from the San Luis Rey Band's tribal archive fills in blanks and reorients sites of historical meaning away from the colonial record of the United States.

Working in collaboration with tribal leaders, the needs of the tribal

community, and the politics of petitioning for federal acknowledgment influenced what is and what is *not* mentioned herein. Given the highly political nature of federal recognition, my research maintains its commitment to community-based needs and concerns about what is publicly shared. Theorized by Kahnawà:ke Mohawk scholar Audra Simpson as a method of "ethnographic refusal," the balance between "what you need to know and what I refuse to write" centers the San Luis Rey Band's sovereign authority to protect the community in the context of uneven power structures, histories of colonization, and land dispossession.[19]

Beyond being attentive to tribal concerns, the research conducted for *Unrecognized in California* renewed energy for the San Luis Rey Band's federal recognition campaign. Key correspondences between the Office of Federal Acknowledgment and the San Luis Rey Band, as well as the Department of the Interior's revision of the federal acknowledgment process regulations, took place throughout my study. My familiarity with federal acknowledgment policy led to my participation in a number of tribal events and initiatives: leading research for the Federal Recognition Working Group, presenting at both tribal and general council meetings, reviving and coediting a tribal newsletter, consulting with tribal citizens on archival research, attending meetings with the tribe's legal counsel, and attending meetings and coauthoring documents related to the federal acknowledgment process. To be clear, collaboration with the San Luis Rey Band did not begin or end with my research for this book. It has always been and always will be my duty to participate in my community and contribute in any way that I can. This book is one offering among many to the San Luis Rey Band.

Current State of Federal Recognition in California

The Office of Federal Acknowledgment reported in 2013 that eighty-one tribal entities in California had taken steps to initiate the federal acknowledgment process—a number almost quadruple that of any other state in the nation.[20] Yet, only one California tribe has secured federal recognition through the administrative process since its creation in 1978. The California Rancheria Act of 1958 initiated the termination of forty-six rancherias in California and eliminated their federal recognition. While many terminated

tribes in California have regained their federal recognition through congressional or judicial paths since the 1950s, others still demand that the US government restore their legal status as federally recognized tribes.

Placing California Indians at the center of the federal recognition debate magnifies the colonial underpinnings of tribal legal status across the state in ways that influence the livelihood and futures of California Indian peoples. Nonfederally recognized tribes in California contend with intertwined legacies of Spanish and Mexican colonization, California state–funded and United States federally funded genocide, Congress's refusal to ratify eighteen treaties, and tribal termination policy. From a precontact society of unparalleled environmental and cultural diversity composed of small, autonomous polities, to the destructive forces of successive colonial regimes, California Indians' distinctive history is incompatible with criteria for federal acknowledgment. Unrecognized California tribes are hindered in their campaigns for federal recognition when challenged to prove political and community continuity after over two centuries of colonial laws and practices that severely impacted tribal lifeways and governing systems.

The Death Valley Timbisha Shoshone Tribe is the only California tribe federally recognized through the federal acknowledgment process. Their federal recognition came into effect in 1983, just five years after creation of the administrative process. As of this writing, the assistant secretary for Indian Affairs had denied federal recognition to three California tribes: the Muwekma Ohlone Tribe of San Francisco Bay (petitioner #111, 2002), the Juaneño Band of Mission Indians (#084B, 2011), and the Tolowa Nation (#085, 2016). The Southern Sierra Miwuk Nation (#082) received a negative proposed finding in 2018, but a final determination is not yet effective because the tribe has requested and received multiple extensions to comment on the decision. The assistant secretary for Indian Affairs suspended active review of the Amah Mutsun Band of Ohlone/Costanoan Indians' (#120) petition in 2018 for technical problems with the petition and an ongoing tribal leadership dispute. The Fernandeño Tatavium Band of Mission Indians (#158) officially withdrew from the process in September 2021 after the tribe received a phase I negative proposed finding the previous year.[21] In July 2023, the Fernandeño Tatavium Band (now #403) submitted a new documented petition for review, which is open for public comment until April 2024.

A negative final determination is not necessarily the end of a petitioning

tribe's interaction with the federal acknowledgment process. Like the Juaneño Band of Mission Indians (#084B), the Juaneño Band of Mission Indians Acjachemen Nation (#084A) also received a negative final determination in 2011. Under the 1978 and 1994 versions of the regulations, tribes that received a negative final determination had the option to go through an appeals process with the Interior Board of Indian Appeals. Both the Juaneño Band of Mission Indians Acjachemen Nation (#084A) and the Tolowa Nation requested reconsideration from the Board of Indian Appeals.[22] As the Juaneño Band of Mission Indians Acjachemen Nation (#084A) continues to appeal the negative final determination, the tribe is putting together a new petition while the Office of Federal Acknowledgment awaits supplemental materials.[23]

Another setback unrecognized California tribes encounter is the federal government's perspective on what it calls splinter groups. A "splinter group" or a "faction" exists when a group within a given tribe decides to split from the community for the purpose of functioning on its own. For example, petitioners #084A and #084B are separate entities of the Juaneño Band of Mission Indians even though they originally began the federal acknowledgment process as petitioner #084. During their petitioning process in the 1990s, the Juaneño Band of Mission Indians split into separate tribal groups after internal disputes regarding tribal membership.[24] A splinter group can petition for federal acknowledgment, but splintering can be damaging because section 83.4 (b) of the 2015 federal acknowledgment process criteria explicitly states, "A splinter group, political faction, community, or entity of any character that separates from the main body of a currently federally recognized Indian tribe, petitioner, or previous petitioner" cannot be acknowledged "unless the entity can clearly demonstrate it has functioned from 1900 until the present as a politically autonomous community."[25] Often interpreted as divisiveness or the product of family politics, the splintering of unrecognized California tribes can be better understood in some cases as the continuation of culturally specific forms of social organization.[26] In other words, a group that splinters might be composed of lineages or family clans that operated as a distinct political community prior to colonization.

Previous versions of the federal acknowledgment process regulations considered any tribal group that submitted a letter of intent to petition to be a petitioner. That is no longer the case, because the 2015 federal

acknowledgment process revisions removed the letter of intent as a requirement. Now, a tribe is considered a petitioner once it submits a documented petition for the Office of Federal Acknowledgment's consideration. Change to the definition of a petitioner means the data presented on the Office of Federal Acknowledgment's website obscures the reality of how many tribes in California are actually pursuing federal recognition.[27] Dozens of unrecognized California tribes, like the San Luis Rey Band of Mission Indians, that are waiting on correspondence from the Office of Federal Acknowledgment or making slow but steady progress on their petition research are not included on the department's official website.

Not all tribal groups that submitted a letter of intent to petition between 1978 and 2015 represented ethnohistoric California tribes. A few California-based descendant organizations allegedly composed of Choctaw, Chiricahua Apache, and Lumbee people initiated the federal acknowledgment process. Only two such organizations based in California obtained a final determination by the assistant secretary for Indian Affairs. The Branch of Acknowledgment and Research, a previous iteration of the Office of Federal Acknowledgment, did not recommend the "Kaweah Indian Nation" and "United Lumbee Nation of North Carolina and America" for federal acknowledgment because Malcolm Webber, a non-Native man, had created the groups in the 1970s and 1980s. The proposed finding for Webber's Kaweah Indian Nation recommended against acknowledgment precisely because it was "a recently formed organization which did not exist prior to 1980" and because the "organization was formed under the leadership of a non-Indian."[28] In 2007, a Texas judge ruled that Webber and his Kaweah Indian Nation had admitted to selling tribal memberships for $400 in an apparent scam to defraud immigrants seeking US citizenship.[29] Some critics portray the federal acknowledgment process as a method for descendant organizations or Indian hobbyists to become federally recognized. However, as the Kaweah Indian Nation example demonstrates, that has never happened in the history of the federal acknowledgment process.[30] The amount of evidence required to prove continuous existence as a tribal government and distinct community makes it unrealistic that a descendant organization could secure federal recognition through the federal acknowledgment process, particularly considering how many long-standing and well-documented

unrecognized tribes have been denied recognition after going through the process. Still, concerns about the possibility of "fake tribes" acquiring federal recognition mar perceptions of the federal acknowledgment process and undermine legitimate unrecognized tribes' claims to tribal nationhood.

After decades of little to no progress and discouraging precedent, some tribes understandably forfeit, refuse to participate, or go around the administrative process altogether. Chief Caleen Sisk of the Winnemem Wintu disclosed that she refuses to participate in the federal acknowledgment process even though she believes her tribe deserves federal recognition, especially after so much has been taken from her community.[31] The Mono Lake Kutzadika'a Tribe, one of California Indian Legal Services' oldest clients, has worked to become federally recognized since the 1970s, through both the federal acknowledgment process and multiple unsuccessful congressional bills.[32] In March 2022, California state senator David Cortese (D-Santa Clara) introduced a bill urging the US Congress, the Department of the Interior, and the Bureau of Indian Affairs to reaffirm and restore federal recognition to the Muwekma Ohlone Tribe.[33] Chairman Val Lopez of the Amah Mutsun Tribal Band explained that his tribe had abandoned the federal acknowledgment process after dozens of meetings with the Office of Federal Acknowledgment had left him and his community uncertain and skeptical of the lengthy petitioning process. The federal acknowledgment process's bureaucratic element has always been a major cause of frustration among petitioning tribes. Instead, Chairman Lopez's community decided to focus on other tribal initiatives related to land restoration projects, such as the creation of the Amah Mutsun Land Trust.[34] The land trust seeks to revive traditional landscape management practices through educational and collaborative initiatives between tribal members, various organizations, state and federal agencies, and universities in central California. Unrecognized California tribes that ceased petitioning or pursued alternate paths to federal recognition still maintain their collective identities and work to determine what is in their community's best interests for future generations.

Prior to 2015, some unrecognized tribes bypassed the federal acknowledgment process by requesting that the Department of the Interior "reaffirm" federally recognized status. Three separate assistant secretaries for Indian Affairs reaffirmed federal recognition to three California tribes: the Ione

Band of Miwok (1994), the Lower Lake Rancheria/Koi Nation (2001), and the Tejon Indian Tribe of California (2012). The Muwekma Ohlone Tribe, denied federal recognition in 2001, brought court action against the Department of the Interior, claiming it had denied Muwekma equal protection and violated the Administrative Procedure Act (1946) when it required the tribe to submit a petition through the federal acknowledgment process while summarily federally recognizing Ione and Lower Lake Rancheria/Koi Nation.[35] The court eventually ruled that Muwekma was not similarly situated to Ione or Lower Lake because it did not maintain government-to-government interactions with the United States after 1927, the date the Office of Federal Acknowledgment found to be a point of previous federal acknowledgment for the tribal community (then known as the Verona Band).[36] The court also drew on precedent from *Miami Nation of Indians of Indiana, Inc. v. United States Department of Interior* (2001) and findings of the Department of the Interior to rule that Muwekma does not represent a terminated tribe and is rather a tribe that "faded away" after 1927.[37] The court's decision to affirm the Office of Federal Acknowledgment's rendering of Muwekma as a tribe that simply "faded away" not only recalled extinction narratives that espouse the inevitability of Indigenous disappearance but also relieved federal and state governments of any responsibility in the matter. Reaffirmation of a tribe's federal recognition has not been practiced since Assistant Secretary for Indian Affairs Kevin Washburn released policy guidance in 2015 explaining that the federal acknowledgment process is the only option available to tribes seeking federal recognition through the Department of the Interior.[38]

Terminated tribes are barred from pursuing the federal acknowledgment process, but since 1977 most terminated California tribes have successfully restored their federal recognition through Congress, the courts, or the Office of the Assistant Secretary for Indian Affairs.[39] Federal court rulings successfully restored twenty-four formerly terminated California tribes.[40] Dedicated tribal advocates like Tillie Hardwick (Pomo), Mary Tarango (Miwok and Nisenan), Greg Sarris (Coast Miwok and Southern Pomo), and many others have worked tirelessly to ensure their tribe's federal recognition is restored. Sacramento State University awarded Tarango with its President's Medal for Distinguished Service in 2023 for her role in securing the Wilton Rancheria's 2009 restoration.[41] A handful of California tribes

remain terminated and actively seek restoration of their federally recognized status.[42] Tribal life continues with or without federal recognition, and although tribes seek legal status, their ability to assert inherent tribal sovereignty is not tied to legal standing.

Nonfederally recognized tribes in California do have some level of recognition and power in the state. Approximately thirty state statutes currently utilize a definition of a "California Native American Tribe" as one that is nonfederally recognized so long as it is on the contact list maintained by the California Native American Heritage Commission. The California Environmental Quality Act, the California Native American Graves Protection and Repatriation Act, and the Traditional Tribal Places Law are a few examples of California statutes applicable to nonfederally recognized tribes included on the Native American Heritage Commission's contact list. Inclusion on the Native American Heritage Commission's contact list presents opportunities for nonfederally recognized tribes to enter into government-to-government relationships and assert their inherent tribal sovereignty.

Unlike unrecognized tribal members in other states, California Indians in nonfederally recognized tribes can access care via the Indian Health Service and participate in Tribal Temporary Assistance for Needy Families, a federal program.[43] The California Indian Basketweavers Association, in consultation with California tribal governments, crafted the Traditional Gathering Policy (2007), which secures gathering access on lands in California managed by the US Forest Service and the Bureau of Land Management for all California Indians regardless of enrollment in a federally recognized tribe. Nonfederally recognized California tribal members' ability to gather materials on federal land essential for basket weaving is vital to the continuation of our cultures regardless of legal status. In April 2022, when the University of California system announced a plan that provides free tuition for all California residents who are enrolled in a federally recognized California tribe, the Federated Indians of Graton Rancheria, a formerly terminated tribe restored via congressional action in 2000, created a complementary scholarship to cover in-state systemwide tuition and student services fees and campus fees for eligible California Indian applicants who are not citizens of federally recognized tribes.[44] Nonfederally recognized tribes in California have also made significant strides in securing ancestral lands through various

"land back" initiatives.[45] During the completion of this book, the San Luis Rey Band of Mission Indians secured almost thirty-seven acres of land in Oceanside, California, along the San Luis Rey River watershed, which includes Talone Lake. Without adequate funding sources or administrative capabilities to support long-term maintenance plans and possible taxation, unrecognized tribes can face challenges in land return efforts. Despite nonfederal status, many California Indians in nonfederally recognized tribes can pursue community goals of cultural resource protection, land management, health and wellness, and educational attainment. Even with the successes and determination of California's unrecognized tribes, pursuit of federal recognition continues to be a significant objective.

Forty years after the San Luis Rey Band of Mission Indians originally pursued the federal acknowledgment process, the community remains a functioning tribal government with a clear Native identity and history as a distinct Luiseño Band. The San Luis Rey Band's persistence as a tribe is not dependent upon the federal government, even though the United States unquestionably recognized the tribe in the past. Treaty relations with the United States, as indicated by Pedro Ka-wa-wish's X-mark on the unratified 1852 Treaty of Temecula, signify an important moment for the acknowledgment of the San Luis Rey Band's inherent tribal sovereignty. Subsequent federal-tribal interactions and the San Luis Rey Band's interconnection with other Southern California tribal nations indicates the historical longevity of the San Luis Rey Band's contemporary campaign for federal recognition. This book does not take the position that tribal nations "should" or "should not" seek recognition from federal or state governments. Rather, the intent is to draw attention to tribal legal status as a critical issue that immediately impacts nonfederally recognized California Indian tribes, as well as the ways in which struggles for recognition are deeply rooted in historical legacies of colonization. What follows is not intended to present a complete history of the San Luis Rey Band of Mission Indians; instead, I trace the historical context and illuminate key moments that pertain specifically to the tribe's legal status and pursuit of federal recognition through the federal acknowledgment process.

The chapters that follow begin with in-depth critical context on the origins and limitations of tribal sovereignty and federal acknowledgment

policy. Building on new and pathbreaking studies of federal recognition, the first chapter explains the intricacies of federally recognized status and how it can impact conceptions of Native American identity. An analysis of the 2015 changes to the Department of the Interior's acknowledgment process as well as long-standing critiques of it form the rest of the chapter. Whereas chapter 1 focuses on federal acknowledgement on the national level, chapter 2 discusses federal acknowledgment in California. An in-depth account of the colonial history of California illuminates why it is especially difficult and complex for unrecognized tribes in California to become federally recognized, and it underscores why the federal acknowledgment process criteria are often incompatible with the historical and contemporary realities of California's unrecognized tribal experiences. The chapter also examines contemporary challenges for unrecognized California tribes, including pushback against tribal casino gaming and the politics of Indigenous identity.

With a solid foundation of the federal recognition terrain established, chapter 3 transitions to the San Luis Rey Band of Mission Indians and focuses on the ways in which quests for federal recognition are deeply rooted in history. Starting with an account of Spanish and Mexican colonial influence on tribal composition, the chapter analyzes the historical context that led to the San Luis Rey Band's decision to petition for federal recognition. Events leading up to and surrounding the dispossession of the San Luis Rey Village resonate in the tribe's contemporary status as a dispossessed, nonfederally recognized tribe. The San Luis Rey Band's place within the network of Southern California Mission Indians uncovers collective histories that inform the San Luis Rey Band's conception of tribal status in a region today dominated by reservations.

Chapter 4, building on the historical framework set forth in the previous chapter, provides an account of the San Luis Rey Band's impetus to pursue federal recognition and a heretofore untold history of the tribe's engagement with the federal acknowledgment process. Original interviews, questionnaire responses, and materials from multiple archives, including the private collections of various San Luis Rey Band citizens, inform this chapter. The chapter follows the San Luis Rey Band's political activism from the 1920s through its participation in the Mission Indian Federation and in a water rights settlement act that originated in the 1940s California Indian claims

cases against the federal government. Recentering the unratified treaties as the motivating factor toward activism and collective identity for California Indians as a whole, this chapter elucidates how the San Luis Rey Band's participation in mid-twentieth-century events led to a decision to pursue federal recognition following the 1978 creation of the administrative process. The chapter then centers the San Luis Rey Band's petitioning process from the early 1980s to the present and addresses the nation-building that accompanied the effort. Chapter 4 underscores how the San Luis Rey Band's participation in the federal acknowledgment process is part of a longer effort toward tribal self-determination and an affirmation of inherent tribal sovereignty.

Absence of federal recognition does not prevent a tribe from exercising inherent tribal sovereignty, asserting Indigenous identity, or undertaking cultural revitalization. Chapter 5 offers a discussion of the ways in which the San Luis Rey Band works through and outside its legal status to enact sovereignty, maintain cultural integrity, practice self-determination, and assert connection to traditional territories. The first section of the chapter discusses the creation of the San Luis Rey Band's annual intertribal powwow. The powwow is an important event for the tribe, promoting community building, visibility, public service, and cultural renewal. The powwow also exemplifies how tribes can use the federal acknowledgment process for their own social purposes.

The second section of chapter 5 discusses the San Luis Rey Band's enactment of inherent tribal sovereignty with city governments and through the definition of a California Native American tribe as codified in state law. A California Native American tribe can be federally recognized or not, so long as the tribe is on the contact list maintained by California's Native American Heritage Commission. Over thirty different state statutes as well as various state agency policies and memoranda of understanding include unrecognized tribes in government-to-government consultation, as well as tribal liaison mandates based on inclusion on the Native American Heritage Commission's contact list. The San Luis Rey Band has utilized the broad definition of a California Native American tribe to develop a memorandum of understanding with the California Department of Parks and Recreation, to protect and manage dozens of sacred sites, and to create

cultural conservation easements as a form of land return. In the context of two crucial executive orders issued by California governors in 2011 and 2019, the chapter discusses how California can be accountable to nonfederally recognized tribes given the state's role in producing tribal legal status. It also explores how presence on the Native American Heritage Commission's contact list opens possibilities for official state recognition. The San Luis Rey Band of Mission Indians' assertion of inherent tribal sovereignty through the powwow and government-to-government relationships illustrates how unrecognized tribes continue to function as tribal governments and communities despite their legal status, while also working to assert their presence and connections to traditional territories.

As an ongoing story, the epilogue includes an account of an ongoing Luiseño intertribal initiative to protect Tómqav, an important sacred site integral to Luiseño culture and history. Luiseño intertribal politics came to a head during the protection effort. Even today intertribal work is far from over. While the San Luis Rey Band continues to maintain a government and collective identity, the tribe still faces encroachment on its traditional territory, erasure within San Diego County, and a lack of resources. Many challenges lie ahead as the community navigates its pursuit of federal recognition.

ONE

Federal Acknowledgment in the United States

The United States maintains an artificial hierarchy among Native American tribes by acknowledging, or recognizing, some tribes' inherent tribal sovereignty over others. Federally recognized tribes are inherently sovereign self-governing nations that maintain a government-to-government relationship with the United States. Nonfederally recognized tribes retain inherent sovereignty just like federally recognized tribes, but that sovereignty is not acknowledged by the United States. Terms used to describe tribes without federal recognition, such as "unrecognized," "nonfederally recognized," and "unacknowledged," refer to tribes without any formalized government-to-government relationship with the United States.[1] As of this writing, there are 574 federally recognized Native American tribes and Alaska Native tribal entities in the United States, with 109 of those located in California.[2] The exact number of unrecognized tribes is unknown, but in 2012 the US Government Accountability Office identified 400 nonfederally recognized tribes in the country.[3]

Over time, federally recognized status for Native American tribes and Alaska Native tribal entities developed specific meanings in the US legal system. From the eighteenth century to 1934, US government policy understood "recognition" in either a cognitive or jurisdictional sense.[4] A cognitive sense meant that government officials knew or understood that a group of Native peoples constituted a tribe. Jurisdictional understanding, on the other hand, signaled the formal acknowledgment of tribal sovereignty and the unique relationship between tribes and the federal government. Congress's passage of the Indian Reorganization Act in 1934 explicitly distinguished tribes and individuals as federally recognized or not, thus cementing the jurisdictional understanding of recognition across all bodies of government.[5]

Federal recognition of tribes' sovereignty creates a fundamentally political status that differentiates Native Americans from everyone else in the

United States. The United States and currently federally recognized tribes established their government-to-government relationships "by treaty or agreement, congressional legislation, executive order action, judicial ruling, or the secretary of the interior's decision."[6] According to the Department of the Interior, federal recognition

a. Is a prerequisite to the protection, services, and benefits of the Federal Government available to those that qualify as Indian tribes and possess a government-to-government relationship with the United States;
b. Means the tribe is entitled to the immunities and privileges available to other federally recognized Indian tribes;
c. Means the tribe has the responsibilities, powers, limitations, and obligations of other federally recognized Indian tribes; and
d. Subjects the Indian tribe to the same authority of Congress and the United States as other federally recognized Indian tribes.[7]

Federally recognized tribes are not intrinsically different from unrecognized tribes. Rather, colonial histories and interactions with the government, or lack thereof, produced tribes' varying legal statuses. In some cases, the United States purposely ended its government-to-government relationship with tribes in the 1950s and 1960s during a "termination era" of federal Indian law and policy. The US government terminated approximately 110 tribes' federal recognition across eight states after Congress passed House Concurrent Resolution 108 on August 1, 1953.[8] The California Rancheria Act of 1958 initiated the termination of 46 California tribes and rancherias. Termination severed relationships between tribes and the federal government, leading to almost immediate negative impacts on tribal autonomy, economic welfare, and community well-being.[9]

Without federal recognition, tribes are often landless, denied protections from federal laws designed to aid Native people and tribal nations, unable to access federal resources for education or health services, and limited in their ability to practice self-determination.[10] Unrecognized tribes and tribal members are also subject to intangible difficulties from critics who question cultural authenticity and suggest ethnic fraud. As a result, most tribes without federal recognition pursue the government-to-government relationship with the United States. Unrecognized tribes can acquire federal

recognition via congressional legislation, federal court rulings, or through the Department of the Interior's acknowledgment process, which uses seven criteria to determine if the United States recognizes a tribe's inherent sovereignty. The United States' federal acknowledgment of Native American tribal nations remains one of the most critical and long-standing issues confronting Native peoples.

Federal Recognition of Inherent Tribal Sovereignty

The United States recognizes tribes' sovereignty because tribal nations possessed government systems and powers long before Euro-American colonization.[11] Tribal sovereignty, or the right to self-government, is the most fundamental concept in the tribal-federal relationship. All tribes, regardless of federal recognition, retain inherent pre-Constitutional sovereignty. Felix S. Cohen, in his *Handbook of Federal Indian Law*, wrote, "Perhaps the most basic principle of all Indian law . . . is the principle that those *powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty that has never been extinguished*."[12] Native nations entered into treaties with European nations and later with the United States between 1778 and 1871. Treaties solidified each government's mutual recognition of the other's sovereignty. Article 1, section 8, clause 3 of the US Constitution, otherwise known as the commerce clause, reinforced tribes' nationhood status by authorizing Congress to regulate commerce with foreign nations and Indian tribes.[13]

At the same time, the United States actively eroded tribes' sovereign powers. Native American studies scholar Joanne Barker has pointed out that even as the United States recognized tribes' sovereignty, and therefore their territorial rights through treaty making, "national legislation, military action, and judicial decision" negated the very same tribal status and rights that those treaties allegedly represented.[14] Three influential Supreme Court rulings in the 1800s, known as the Marshall Trilogy, set enduring precedents that continue to shape the tribal-federal relationship. In *Johnson v. McIntosh* (1828), the high court ruled that a "doctrine of discovery" gave the United States the sole ability to extinguish Indian title to land, which meant that

tribes only had a "right to occupancy" instead of a right of ownership over their territories. In effect, the ruling "created a landlord-tenant relationship between the government and the Indian tribes. The federal government, as the ultimate landlord, not only possessed the power to terminate the 'tenancy' of its Indian occupants but also could materially affect the lives of Indians through its control and regulation of land use."[15] The *Johnson v. McIntosh* ruling directly contradicted the numerous treaties that recognized title to land and the authority of treaty signatories to negotiate in a nation-to-nation capacity.[16]

Cherokee Nation v. Georgia (1831), the second precedent of the trilogy, ruled that tribes are not considered foreign states but rather "domestic dependent nations."[17] Between 1828 and 1830, in an attempt to jurisdictionally control and disempower the Cherokee Nation, the state of Georgia passed a series of statutes that divided Cherokee territory, extended state law over the territory, invalidated Cherokee laws, and made it a criminal offense for Cherokees to act as a government.[18] The Cherokee Nation responded by filing an original action against Georgia in the Supreme Court of the United States. The Cherokee Nation's ability to bring such legal action hinged on whether it was a "foreign state" as defined by the Constitution. The high court denied it had jurisdiction to hear the case but found that the Cherokee Nation was indeed a state, or a distinct political society. However, the tribe could not be defined as "foreign"; instead, Chief Justice John Marshall deemed tribes to be "domestic dependent nations." Marshall described tribes' quasi-sovereign status in terms of the relationship between tribes and the federal government as that of a "ward to his guardian." While tribes remain subject to the paternalistic guardianship and supreme political authority of the US government right up to the present, the *Cherokee Nation* case recognized the existence of tribes' distinct sovereign status.

In the final case of the trilogy, *Worcester v. Georgia* (1832), the Supreme Court deliberated on the principle of inherent tribal sovereignty. Chief Justice Marshall's opinion for the court in *Worcester* underscored the logic behind inherent tribal sovereignty: "The Indian nations had always been considered as distinct, independent, political communities, and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self-government—by associating with a

stronger, and taking its protection."[19] Chief Justice Marshall's statement is problematic for the ways it describes Native nations as weak and inferior to the United States, particularly since alliances with tribes just fifty years earlier had played a crucial role in the Revolutionary War.[20] However, the language of the *Worcester* decision followed established precedent in international law recognizing that a government did not give up its inherent sovereignty when integrated into another sovereign.[21] Chief Justice Marshall also noted in *Worcester* that the United States' treaty relationships with tribes were evidence of tribal nationhood status. The principle of inherent tribal sovereignty set in *Worcester* remains integral to the contemporary relationships between tribes, states, and the federal government. Inherent tribal sovereignty is the basis of Native Americans' political-juridical identity that distinguishes Native American peoples and tribes from other citizens in the United States.[22]

Some Indigenous scholars and activists critique the concept of sovereignty as an unviable political objective because it is a product of Western legal thought not indigenous to the peoples of North America.[23] Kahnawà:ke Mohawk scholar Taiaiake Alfred famously questioned whether sovereignty is appropriate at all for Native nations in Canada and the United States. Alfred has argued that "sovereignty is an exclusionary concept rooted in an adversarial and coercive Western notion of power" and that, instead of seeking dependence through legal recognition, tribal nations should work to undermine and challenge the "myth of state sovereignty."[24] From a tribal perspective, Creators gifted Native peoples with innate "sovereignty" at the beginning of time. Native nations passed down tribal laws and diplomatic traditions from one generation to the next. Sovereignty via Creation indicates that tribes always retain original self-governing powers, but colonial governments intentionally seek to limit tribal nationhood and steal resources and lands to control Indigenous peoples and places.

Tribal governments retain inherent rights to self-government and the responsibility to exercise those powers to determine tribal futures and relations with human and other-than-human beings. Tribal sovereignty, defined by David E. Wilkins and Heidi Kiiwetinepinesiik Stark as distinct from the Western concept of sovereignty, is "the spiritual, moral, and dynamic cultural force within a given tribal community empowering the group toward

political, economic, and, most important, cultural integrity, and toward maturity in the group's relationships with its own members, with other peoples and their governments, and with the environment."[25] Many tribes preserve their own culturally specific versions of sovereignty while simultaneously considering the concept of sovereignty encoded in the US legal system to be important and useful despite its origin in Western legal thought.

Realities of Recognition

While all tribes retain inherent tribal sovereignty, there are clear distinctions between federally and nonfederally recognized tribes. The United States' federal recognition of inherent tribal sovereignty created a legal doctrine known as the trust responsibility. The trust responsibility is a cornerstone of federal Indian law that originates from the almost four hundred treaties made between the United States and tribes as mutual sovereigns. The Department of the Interior states that the trust responsibility "entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and federally recognized tribes."[26] The federal government charged itself with the fiduciary responsibility to protect tribal rights, lands, assets, resources, and a duty to carry out mandates of federal law related to Native American tribes and Alaska Native tribes and villages. Simply put, the trust responsibility means the federal government has a duty and moral obligation to fulfill its promises to tribes and to support tribal self-government.[27]

Native Americans are often hesitant to put faith in the trust responsibility given that the federal government broke treaties and used the trust responsibility as an instrument to fulfill its own interests, in ways harmful to Native peoples. However, the trust responsibility is also the means by which Congress created numerous programs and services to support Native American peoples and tribes precisely because of the government-to-government relationship. In the broadest interpretation of the trust responsibility, the federal government should be obligated to *all* tribes, given their retention of inherent tribal sovereignty. The Supreme Court has yet to rule on the extent to which the federal trust responsibility applies to nonfederally recognized tribes, but lower courts have ruled that a limited trust relationship

exists.[28] Precedent also exists for nonfederally recognized tribes to employ sovereign immunity—protection from most types of lawsuits—if the tribe can meet the federal common law definition of a tribe established in the 1901 Supreme Court case *Montoya v. United States*.[29] The Department of the Interior, however, maintains that federal recognition is a prerequisite for Native Americans to receive the federal government's services, protections, and resources.[30]

Federally recognized tribes have access to federal resources and programs that provide assistance, services, or funding opportunities related to housing, medical, education, employment, and land development. Federal Indian law expert Stephen Pevar has emphasized that "virtually every federally recognized tribe receives significant financial and technical assistance under one or more of these programs, and some tribes would suffer severe economic hardship without this assistance."[31] The various resources, grants, and programs federally recognized tribes can access are in most cases unavailable for unrecognized tribes. Unrecognized tribes are often disadvantaged and lacking support without access to federal assistance, which in turn limits their ability to practice self-determination. Nonfederally recognized tribes struggle to administer powerful modes of governance that support tribal justice systems, economic development, health and wellness initiatives, cultural revitalization, and educational programs. The COVID-19 pandemic exposed further inequities for nonfederally recognized tribes. Unable to access federal coronavirus relief funding, those tribal communities became even more vulnerable to hardship.[32]

When the United States takes land into trust for federally recognized tribes, that land then becomes immune from state taxation. Federally recognized tribes have enforceable power and exercise jurisdiction over their reservation, or trust, lands.[33] The government-to-government relationship with tribes extends to federal agencies such as the National Park Service and the US Forest Service that control tribally significant lands and natural resources. Federal agencies are required to consult with federally recognized tribes and provide for certain access and use rights not guaranteed to others through various collaborative and co-management agreements in addition to existing statutory and treaty rights. Alternatively, nonfederally recognized tribes have encountered issues with accessing sacred sites and performing

ceremonies on federal lands since federal agencies are not required to work with those communities.[34] Arlinda Locklear, lawyer and member of the Lumbee Tribe, has argued that unrecognized tribes have "second-class status in Indian Country" and are "vulnerable to the not-so-tender mercies of local and state authorities."[35]

Federal recognition also enables tribes to have ancestors and cultural items repatriated through federal statutes like the Native American Graves Protection and Repatriation Act (1990), to have control over the welfare of tribal youth in foster care and adoption proceedings through the Indian Child Welfare Act (1978), or to legally acquire and use federally protected items, such as eagle feathers, that are central to traditional religious and cultural practices. Without access to federal laws and protections such as these, unrecognized tribal communities' human rights are disregarded, as they are treated differently by city, county, and state governments, various professional organizations, and institutions like museums and universities.[36] Differing treatment of tribes sustains an arbitrary hierarchy among Native people that produces subjective and affective consequences for members of both recognized and unrecognized tribes.

Members of federally recognized tribes explained that "psychological validation" can stem from a federally recognized status because it is the most concrete way of legally defining Native American identity.[37] Unrecognized tribes, on the other hand, are frequently met with skepticism from the public, tribal citizens of federally recognized tribes, and government authorities who question cultural and political authenticity, as well as tribal or personal identity, and sometimes suggest ethnic fraud. As Deborah Miranda, professor and member of the Ohlone/Costanoan-Esselen Nation of California, has asserted, "My own identity as 'Indian' stares straight into the mouth of extinction. Who am I, if I'm not part of a recognized tribe?"[38] Equating membership in a nonfederally recognized tribe with extinction reiterates colonial narratives of vanishing Indians and places control of Native identity into the hands of the federal government.

Miranda's struggle and questioning of her own identity exemplify the power of governmental definitions of "Indianness" and the insidious ways that federal recognition policy influences Native American peoples' lives. Two citizens of the San Luis Rey Band of Mission Indians revealed, "When

I state which tribe I am from[,] people often say where are you from? Are you recognized? It makes me feel like our tribe is not looked upon from other [N]atives," and "I have never been accepted as being Native due to not being recognized."[39] Native people from unrecognized tribes do not think they are "less Indian" than Native Americans from federally recognized tribes. At issue is proving one's Native identity and perceived legitimacy on a continuing basis. Moreover, criticism of unrecognized tribal members' Native American identity often hinges on their phenotypical appearance as code for race. Deep-seated racist beliefs about Native Americans, often fueled by public attitudes that express anticasino and anti-Indian sentiments, impact unrecognized tribes and influence pursuits for federal recognition across the country.

Unrecognized tribes experience accusations of cultural and racial inauthenticity that undercut federal recognition's political meaning. When the United States officially acknowledges a tribe's sovereignty, federal recognition is detached from racialized notions of Native American identity and culture that constitute essentialism in anthropological discourse.[40] In practice, however, ideas about race and cultural authenticity are at the core of most recognition decisions.[41] American law and society scholar Renée Ann Cramer has found that unrecognized tribes with a large number of tribal members who appear phenotypically Black were subject to intense scrutiny and denied federal recognition compared to unrecognized tribes with phenotypically white tribal members.[42]

Cramer investigated how racial identity affected the Mowa Choctaws and their quest for federal recognition. The presence of African American ancestry within the tribe stirred public suspicions that the Mowa Choctaws were not "real" Indians, and critics believed the tribe did not deserve the privileges of federal acknowledgment. The Poarch Band of Creek Indians, on the other hand, had more Euro-American heritage than the Mowa. In Cramer's analysis, the Poarch Band's racial mixing with Euro-Americans did not create public outcry or skepticism as they pursued, and eventually attained, federal recognition. Anti-Blackness profoundly impacts the racial politics of federal recognition, as there are fewer stigmas around unrecognized tribes with members who appear white or stereotypically Native American. Histories of race mixing are the direct consequences of colonialism and enslavement

in the United States. In these situations, unrecognized tribes are portrayed as illegitimate or inauthentic Native American peoples trying to make a profit or access federal resources secured through political status granted to the "real" Indians.[43]

Legalization of tribal casinos likewise led to repercussions for nonfederally recognized tribes. Only federally recognized tribes are legally eligible to establish casino gaming facilities, prompting some interest groups and politicians to vocalize criticism and take action against unrecognized tribes pursuing federal recognition.[44] People continually refuse to accept casino gaming as an attribute of tribes' sovereign powers and also utilize the racist stereotype of the "rich Indian" to question whether tribal economic success leads to cultural loss and negates the need for tribal sovereignty altogether.[45] Critics who deny that gaming is an appropriate exercise of tribal sovereignty are effectively fostering antitribalism, which is the view that thriving tribes are a threat to the United States.[46] Anti-Indian and anticasino rhetoric obscures the ways in which efforts to gain federal recognition are grounded in tribal political status.

Backlash against tribal government gaming in Connecticut, for example, resulted in the rise of negative public perceptions toward unrecognized tribes and racist rhetoric about "casino Indians."[47] Cramer has argued that fears related to casino development "contributed to a backlash around gaming that has turned into a backlash against tribal recognition."[48] When federal recognition debates center casinos, sovereignty is conflated with "benefits" and "special rights" inaccessible to non-Natives. The "special rights" narrative, argues political scientist Jeffrey Dudas, is a discursive strategy used to cultivate resentment toward tribes' sovereign powers and to undermine tribal political, economic, and social gains.[49] Native Americans are thus racialized as a "minority" group instead of being regarded as part of the family of political, inherently sovereign nations. The sovereign status of tribal nationhood is eroded when "Native American" is considered a racial rather than a political classification.

A federally recognized tribal status can let outsiders know a tribe has certain federal rights, responsibilities, and power. Although federal recognition entails tribes' being subject to the plenary, or absolute, power of Congress, the pros of federal recognition outweigh the cons for unrecognized tribes

with few options for addressing the hardships and contemporary struggles they face. How federal recognition influences peoples' lives cannot be understated, and it is critical to understand why unrecognized tribes go through the available channels to gain federal acknowledgment for their tribal communities.

Not all Native people agree, however, that pursuing federal recognition is the best option. Antirecognition arguments are powerfully stated by many Indigenous peoples in the United States and Canada. In the United States, Choctaw scholar Brian Klopotek has cautioned that "recognition does not shield tribes from racism, colonialism, or other social forces," and it can actually undermine traditional cultures in regard to tribal governance and community boundary regulation.[50] Lenape scholar Joanne Barker has questioned what political purpose the federal acknowledgment process serves. Barker argues that federal recognition serves the political and economic interests of the United States to maintain power over Native legal status and rights.[51] As an alternative to federal recognition, Barker suggests, "perhaps Native governments and organizations should establish their own mechanisms for recognizing one another and financially and legally assisting in one another's efforts at land requisition and economic development."[52] Imagining possibilities outside of the colonial federal-tribal relationship has the potential to actualize Native claims to land and self-determination while strengthening bonds among Native peoples and tribes. Some Native Hawaiian activists and advocacy groups have worked diligently to prevent attempts to limit Native Hawaiian sovereignty to that of a federally recognized tribe. There are differing perspectives on federal recognition within the Hawaiian sovereignty movement, but Kanaka Maoli scholar J. Kēhaulani Kauanui has explained how the imposition of federal recognition would serve as a method to undercut Hawaiian claims to sovereignty and independent statehood under international law.[53]

Yellowknives Dene scholar Glen Coulthard, writing on the emergence of recognition for Aboriginal rights in Canada, argues that "the politics of recognition in its contemporary liberal form promises to reproduce the very configurations of colonialist, racist, patriarchal state power that Indigenous peoples' demands for recognition have historically sought to transcend."[54] Coulthard draws on the work of political philosopher Frantz Fanon to

recommend that Indigenous peoples "selectively 'turn away' from engaging the discourses and structures of settler-colonial power" and instead focus on how Indigenous self-realization, culture, and tradition can present emancipatory alternatives to colonial domination.[55] Audra Simpson, a Kahnawà:ke Mohawk scholar, posits that because North American Indigenous nations are "enframed by settler states," political recognition is "a technique of settler governance" to sustain Indigenous dispossession and colonial power.[56] Based on her research with the Kahnawà:ke Mohawk people, Simpson has advocated for a political alternative to recognition called "refusal," which demands that Indigenous political sovereignty be upheld and acknowledged, thus calling into question the legitimacy of the settler state's ability to "recognize" in the first place.[57]

Although the concept of federal recognition is tied to settler colonialism, unrecognized tribes nevertheless consistently seek a government-to-government relationship with the United States. As mentioned previously, unrecognized tribes can become federally recognized by congressional act, court ruling, or through the federal acknowledgment process. Except for terminated tribes that are not allowed to participate in that process, the administrative route to federal recognition is the most popular, with over 350 tribes across the country initiating the process since its inception in 1978.[58]

Development of the Federal Acknowledgment Process

In the 1930s, a combination of factors, including Native resistance to federal assimilation policies and the results of the 1928 Meriam Report, which outlined deplorable conditions on ninety-five Indian reservations, led the federal government to shift its policies on Native Americans.[59] In the midst of the Great Depression, President Franklin D. Roosevelt tasked Commissioner of Indian Affairs John Collier with finding a way to end federal policies aimed at assimilating Native Americans. Working with a team of lawyers, including the well-known federal Indian law expert Felix S. Cohen, and seeking comments from a series of tribal delegations, Collier's team introduced a bill for a new Indian policy in early 1934.[60] Congress passed the Indian Reorganization Act legislation in June 1934, thereby ending the 1887 General Allotment Act, which had led to the dispossession of over

ninety million acres of Native lands. The Indian Reorganization Act also aimed to decentralize the power of the Bureau of Indian Affairs and place it within local reservation governments instead. This "Indian New Deal" ushered in a new era of federal-tribal relations. The Indian Reorganization Act was intended to stabilize tribal governments, provide Native peoples with college education and technical training, allow tribes to organize as business corporations, and more.[61]

The Indian Reorganization Act's language is critical for understanding how the federal acknowledgment process developed. The Indian Reorganization Act stated that it served "all persons of Indian descent who are members of any recognized tribe now under federal jurisdiction, and all persons who are descendants of such members . . . residing within the boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood." In effect, the Indian Reorganization Act embedded the concept of nonfederally recognized tribes into federal policy. The Indian Reorganization Act's distinction between a cognitive and a jurisdictional understanding of federal recognition prompted all branches of the federal government to use an exclusively jurisdictional sense of the term "recognition."[62] Native American studies scholar Brian Klopotek has found that "the wording [in the Indian Reorganization Act] created a problem for bureaucrats in the Office of Indian Affairs, since they took it to mean they had to decide who was or should be under federal jurisdiction and just how to make that determination."[63] The Indian Reorganization Act pressured the Office of Indian Affairs staff to find procedures to determine recognized status.

Departmental officials eventually used definitions for a tribe derived from the 1901 Supreme Court case *Montoya v. United States* and refined by Cohen, who had worked on the Indian Reorganization Act.[64] *Montoya* defines a tribe as "a body of Indians of the same or a similar race, united in a community under one leadership or government and inhabiting a particular though sometimes ill-defined territory."[65] Building on the *Montoya* meaning, the "Cohen Criteria" used one or more of five considerations that Cohen had found within the body of Indian case law to decide whether an Indian group was a tribe or a band.[66] The criteria, as explained by Cohen, are as follows:

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

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

Ethnological and historical considerations, although not conclusive, are entitled to great weight in determining the question of tribal existence.[67]

The Office of Indian Affairs' utilization of the "Cohen Criteria" underscores the Indian Reorganization Act's role in setting the practical and ideological foundation for assessing a tribe's legal status.

Case-by-case recognition decisions made by the Bureau of Indian Affairs and the Department of the Interior's Office of the Solicitor gradually declined in the late 1930s.[68] By the 1950s, the federal government had shifted toward a policy of terminating the government-to-government relationship with tribes. Termination severed the trust relationship, denied tribal sovereign authority, rejected access to federal programs and services, and imposed state jurisdiction on tribal lands, to name but a few disastrous effects. Instead of acknowledging the political relationship between the federal government and tribes, the United States actively denied federal recognition. In the wake of the federal government's policy shift and the termination of approximately 110 tribes across eight states, Native American activists and organizations denounced the United States' negative treatment of tribal rights and sovereignty. Though termination was not officially renounced until 1970, federal policy gradually shifted toward supporting tribal self-government in the early 1960s.[69]

Native peoples and tribes voiced major concerns about the unevenness of tribal acknowledgment.[70] Klopotek describes a "federal recognition

movement" that began with regional efforts by various unrecognized tribes that eventually coalesced into a national undertaking.[71] It was not until the 1960s that "federally nonrecognized tribes began to consider themselves an interest group on a national level and to work together on shared issues of nonrecognition."[72] Over five hundred Native American people, including about twenty individuals from unrecognized tribes, met at the American Indian Chicago Conference in 1961. Participants produced the "Declaration of Indian Purpose" and developed crucial connections that placed recognition within a broader historical context. The American Indian Chicago Conference helped propel the federal recognition movement to the national stage. Additional Native American activists and Indigenous rights groups similarly denounced the United States' unevenness of tribal acknowledgment that had left some tribes federally recognized while others remained on the margins. Between 1962 and 1974 the Bureau of Indian Affairs and Congress recognized eight tribes, and Congress restored one terminated tribe's federal recognition.[73] Yet, many tribes remained hamstrung in their efforts to acquire a federally recognized status and without a formalized path to secure a government-to-government relationship with the United States. By early 1975, the Bureau of Indian Affairs had started to create a formal procedure for acknowledging tribes.[74]

In February 1975, a court case involving the nonfederally recognized Passamaquoddy and Penobscot tribes of Maine reached a final decision.[75] The tribes claimed that most of Maine had been illegally transferred from the tribes to the state in a 1794 treaty. The legal team for the tribes argued that the treaty with Maine was void because the Non-Intercourse Act of 1790 prohibited states from purchasing lands from Native peoples without consent from the federal government. Lawyers for the defense argued that the Non-Intercourse Act did not apply because the Passamaquoddy and Penobscot tribes were not federally recognized. To the surprise of many, the district court ruled in favor of the tribes and stated, "Congress had intended the 1790 law to apply to *all tribes*, regardless of their recognized status at the time of the transaction."[76] The significance of the *Passamaquoddy v. Morton* decision added to national conversations about nonfederally recognized tribes and made it clear that unrecognized tribes still had land rights under federal law. The case's outcome also prompted more tribes to seek federal recognition from the Bureau of Indian Affairs.[77]

Soon after the *Passamaquoddy v. Morton* decision, and in response to the 1973 armed occupation of Wounded Knee, South Dakota, Congress established the American Indian Policy Review Commission to examine the relationship between the federal government and Native Americans. The commission created eleven task forces to complete the undertaking, and Task Force 10 detailed the issues faced by unrecognized tribes. The commission's 1977 final report offered recommendations to institute standards for judging whether tribes can have a government-to-government relationship with the United States while also supporting the recognition of all tribes.[78] The American Indian Policy Review Commission's aspirational recommendations anticipated that "the words 'nonfederally recognized' and federally 'unrecognized' shall no longer be applied to Indian people."[79] The final report conveyed the need for an independent office to review tribal requests for federal acknowledgment under consistent standards.[80] Taken together, national intertribal activism and the *Passamaquoddy v. Morton* case illuminated the undeniable presence of nonfederally recognized tribes in the country and pushed federal officials to make changes.

Several bills intended to establish a congressional process and an independent commission for recognizing tribes were introduced after the American Indian Policy Review Commission released its final report. However, strong opposition from the Department of the Interior and federally recognized tribes contributed to the bills' failure to become law. Mark Miller explains that the Bureau of Indian Affairs "objected to losing control to an independent commission and to shouldering the burden of acknowledgment cases, a burden that recognized its culpability for failing to protect these tribes in the past."[81] External pressures prompted the Bureau of Indian Affairs to act, and on June 16, 1977, proposed regulations to federally recognize tribes appeared in the *Federal Register*.[82] Unlike later versions, the initial proposed regulations asked tribes to explain how they had become a federally recognized tribe and how they should continue to be treated as such by the United States. Public comment and a series of consultations on the proposed regulations compelled the Bureau of Indian Affairs to revise the proposed rule. An updated proposed rule appeared in the *Federal Register* on June 1, 1978, and invited a second round of public comments.[83] From the 1977 release of proposed regulations up to July 1978, the Bureau of Indian Affairs reported an "unprecedented" amount of interest: "a total of 400

meetings, discussions, and conversations about Federal acknowledgment with other Federal agencies, State government officials, tribal representatives, petitioners, congressional staff members, and legal representatives of petitioning groups; 60 written comments on the initial proposed regulations of June 16, 1977; a national conference on Federal acknowledgment attended by approximately 350 representatives of Indian tribes and organizations; and 34 comments on the revised proposed regulations, published on June 1, 1978."[84] Such high levels of engagement with the acknowledgment regulations' formation indicate just how critical multiple constituencies considered the process.

On September 5, 1978, the Bureau of Indian Affairs published the final rule in the *Federal Register*.[85] It included the original seven mandatory criteria on which the current federal acknowledgment process is based. The final rule went into effect in October 1978 and thus the Bureau of Indian Affairs' new Federal Acknowledgment Project began to implement procedures to federally recognize tribal existence and sovereignty.[86] A "Federal Acknowledgment Project," Klopotek observes, suggested a finite aspect to the recognition endeavor.[87] Limited staff and resources, however, turned the "project" into an ongoing activity with no clear end. The Federal Acknowledgment Project became the Branch of Acknowledgment and Research, which implemented the process until 2003. The Office of Federal Acknowledgment, an entity within the Office of the Assistant Secretary–Indian Affairs, took over administration of the federal acknowledgment process thereafter.

Pursuing Federal Recognition

The Department of the Interior's acknowledgment process utilizes seven criteria to determine if a tribe has maintained its government and community over time. Tribes that decide to pursue federal acknowledgment must create a petition that includes all the documents and materials necessary to meet the seven criteria, including copies of primary and secondary source materials referenced in the petition. The time required to research, write, and assemble a complete petition is significant, often a decade or longer. The supplemental documents combined with the narrative petition can run to a thousand or more pages. Originally, petitions and all supplemental

documentation had to be provided in hard copy, making the assembly of a federal recognition packet incredibly arduous. Even with the Office of Federal Acknowledgment's acceptance of digital materials, tribes often are still not equipped to manage such a massive undertaking without professional assistance and expertise. The cost to conduct necessary research and compile a petition can be hundreds of thousands and sometimes millions of dollars.

In theory, the federal acknowledgment process is supposed to be an objective and rigorous way to determine the validity of tribal claims to sovereignty. Instead, tribes, Indigenous rights associations, academics, and government officials have criticized the process for decades. The requirements for federal acknowledgment are considered flawed, inconsistent, and biased, primarily for relying on evidence created by outside observers, like anthropologists and historians, to judge Native authenticity and political authority. Certain kinds of evidence, such as oral history, that are fundamental to most tribes' understandings of community identity and history of political influence are not as highly valued as other forms of supportive evidence for recognition petitions and often require corroborating documentation. Moreover, the evidence required to meet the criteria is largely rooted in the colonial erasure and dispossession of the very same tribal nations now tasked with proving tribal continuity. Professor and archivist María Montenegro posits that "many of the documents required by the [Office of Federal Acknowledgment] have been destroyed, removed, or appropriated from these groups, or were created by and to meet the interests and epistemologies of entities and individuals who were not Native, and/or are frequently already held by the very [United States of America] government and federal agencies that are now requiring their production."[88] Stereotypical assumptions about Native "authenticity" also permeate the process and how the criteria are evaluated, making the federal acknowledgment process regulations inconsistent with the actual histories of many Indigenous communities, including those that involve racial mixing.[89] The concept of "fake tribes," which are few and far between, fuels public misconceptions about nonfederally recognized tribes, even in cases where there is outstanding evidence of tribal continuity.[90]

The burden of proof to meet the criteria is placed on petitioning tribes, but that burden has increased over the years in terms of the amount of evidence required and the standards for interpretation.[91] In practice, the process

of petitioning has proven to be excruciatingly slow, time consuming, and expensive. There are few resources available to help unrecognized tribes prepare their petitions, which adds to the amount of time the process takes and the efficiency of review.[92] Not only has the process itself been scrutinized, but the Office of Federal Acknowledgment staff have also been considered unqualified and charged with possessing too much power. The Office of Federal Acknowledgment staff's evaluation of evidence gives them "power to decide what constitutes proof of Indian identities and, more profoundly, what is legitimate knowledge about Indians."[93] One scholar even likened the process to "administrative genocide" because of the authority the Office of Federal Acknowledgment staff have in making such high-stakes decisions.[94] Additionally, debates since the late 1970s about the validity of administrative recognition have cast doubt on the legitimacy of tribes recognized through the federal acknowledgment process based on the argument that only Congress has the authority to recognize tribes.[95] From 1978 to 2023, the Office of Federal Acknowledgment made a determination in fifty-two cases: eighteen tribes acknowledged and thirty-four denied.[96] In the Office of Federal Acknowledgment's forty-five year existence, it has on average resolved about one petition per year.

The many difficulties tribes encountered while pursuing federal acknowledgment prompted revisions to the regulations in 1994 and 2015. The 2015 revisions to the process began in 2013 when the Department of the Interior circulated a "discussion draft" of proposed revisions to the regulations. After tribal consultations and public comment on the discussion draft, the department published a proposed rule in May 2014. The reform intended to address the "broken" process in terms of transparency, efficiency, and consistency. The push to improve the process and address long-standing critiques arose from the Barack Obama administration's efforts to strengthen relationships with tribes. Additional tribal consultations and public comment on the proposed rule took place throughout 2014.

On behalf of the San Luis Rey Band of Mission Indians, I attended a public meeting on July 22, 2014, in Brooks, California, about the proposed changes to the administrative process. The Department of the Interior staff scheduled a morning session for the public and an afternoon session for tribal consultation with federally recognized tribes. Feelings of pride and

excitement permeated the morning session as members of unrecognized tribes connected with one another and shared hope that changes to the process might finally lead to the federal recognition of California tribes. Anyone could attend the morning session, including federally recognized tribal members and representatives of states and cities, some of whom presented opposition to the changes and requested that additional comment meetings be held in Southern California. At the afternoon session, tension filled the room as nonfederally recognized tribal representatives and Department of the Interior staff clashed over federally recognized tribal representatives' unwillingness to let unrecognized tribal representatives participate. Nonfederally recognized California tribal leaders expressed frustration at having their inherent sovereignty disregarded and at being treated solely as members of the public. The nonfederally recognized tribal representatives at the afternoon session, myself included, were asked to leave. My experience at the public meeting brought the antagonism between federally recognized and unrecognized tribes into sharp focus.

The Department of the Interior released the final version of the revised federal acknowledgment process in June 2015. Some of the 2015 changes included instituting a phased review to allow for quicker decisions, enhancing transparency by adding all publicly available petitioning materials to the Office of Federal Acknowledgment's website, and modifying language in earlier versions of the criteria that tribes had struggled to prove. Two of the criteria, for example, required the petitioning tribes to provide evidence showing they constituted a distinct community and had maintained political influence from "historical times until the present." Proving continuity from as early as the 1600s in some cases made it excruciatingly difficult for tribes to provide enough documentation to meet the demands of the acknowledgment process. The 2015 updates replaced "historical times until the present" with "1900 to the present" to address the long-standing critique of that phrasing. Overall, the criteria did not undergo significant change in the reform process. Most modifications targeted the Office of Federal Acknowledgment's and the assistant secretary for Indian Affairs' transparency and efficiency in reviewing and making determinations on petitions.

The federal acknowledgment process's intent to recognize tribal sovereignty has not changed from one version of the process to the next, regardless

of modifications to dates or added transparency within the bureaucratic process. The process still holds tribes to a single model of tribal nationhood and places on tribes the burden of proof for documenting their autonomy and continuity. Historian Mark E. Miller has pointed out that federal recognition is contested "precisely because it involves definitions of what constitutes an Indian tribe, who can lay claim to being an Indian, and what factors should be paramount to the process of identifying Indian tribes."[97] In every petition submitted through the federal acknowledgment process, outside evaluators are tasked with finding the answers to vexed indicators of tribal legitimacy.

The abbreviated seven mandatory criteria for federal acknowledgment of Indian tribes are as follows:

a. The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.
b. The petitioner comprises a distinct community and demonstrates that it existed as a community from 1900 to the present.
c. The petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 until the present.
d. A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.
e. The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity.
f. The petitioner's membership is comprised principally of persons who are not members of any federally recognized Indian tribe.
g. Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.[98]

Petitioning tribes must meet all seven criteria to become federally recognized.

Review of petitions is a two-phase process that initially considers four of the seven criteria. If any of the four criteria reviewed in Phase I cannot be

met, the Office of Federal Acknowledgment will release a negative proposed finding as a way of streamlining the overall review process. If the initial four criteria are met, then the Phase II review of the remaining three criteria commences. If all seven criteria are found to be met, then a positive proposed finding is released. Petitioning tribes have the opportunity to comment on the Office of Federal Acknowledgment's findings prior to the issuance of a final determination. Both positive and negative proposed findings are given to the assistant secretary for Indian Affairs for a final determination on whether to federally recognize the petitioning tribe or not. Before the assistant secretary for Indian Affairs can make the final determination based on a negative recommendation, petitioners can challenge the proposed negative finding through a hearing before an independent judge in the Office of Hearings and Appeals.

Given the issues with the federal acknowledgment process and terminated tribes' inability to petition for recognition, tribes also pursue a political relationship with the United States judicially and congressionally. Many terminated tribes have successfully used court rulings and congressional acts to restore federal recognition. Since 1973, thirty-eight terminated tribes have been restored as federally recognized tribes.[99] Congressional acts restored fourteen of the thirty-eight, and federal court rulings restored the remaining twenty-four tribes.[100] Tribes never subjected to termination successfully pursued congressional recognition as an alternative to the federal acknowledgment process. Most recently, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017 federally recognized six tribes in Virginia. Congressional recognition requires significant work to gain the political support necessary to draft and pass legislation.

In a pathbreaking anthology on "sovereignty struggles" in the United States, scholars Amy E. Den Ouden and Jean M. O'Brien assert that tribal recognition is a human rights issue in line with the goals of the United Nations Declaration on the Rights of Indigenous Peoples.[101] According to Den Ouden and O'Brien, tribal pursuit of federal recognition, as a human rights issue with international relevance, should be understood "not as efforts to take

power from states or to imitate state-based legal systems but as contexts in which unrecognized tribal nations and communities envision, define, and defend their human rights."[102] Ongoing "sovereignty struggles," such as unrecognized tribes' pursuit of federal recognition, encompass "the political, cultural, and legal strategies, along with the conflicts, debates, and transformations, that unfold as tribal nations and communities engage with federal and state governments to assert the right to govern themselves and to determine their futures."[103] Similarly, Brian Klopotek contends that "in the struggle for indigenous survival and well-being, tribes seeking federal recognition are engaging in an inherently anticolonial and antiracist act. They hope that recognition will promote economic development, give them access to better education and health care, make the tribal unit a resource for its members, gain a land base, end speculation about their tribal legitimacy, and ultimately help the people survive as a tribe."[104] Some members of unrecognized tribes have further explained that securing federal recognition will provide a sense of justice after decades of federal oversight.[105]

Federal recognition remains one of the most pressing issues in the United States because recognition influences Native peoples' lives in ways that are fundamentally personal while also confirming an elevated tribal political status. Legal definitions of Native American identity are pervasive at the federal, state, tribal, and personal level, and membership in a federally recognized tribe serves as one important way to establish collective and individual rights. The challenges that remain hinge on whether legal categorization is suited to asserting tribal existence, as is done with the federal acknowledgment process, and if such an approach will ever fully account for the complex histories of colonialism across Native America.

TWO

The California Conundrum

In 2014, the United Nations selected Caleen Sisk, chief and spiritual leader of the Winnemem Wintu tribe in California, as one of five Indigenous leaders from North America to present at the Eighty-Fifth Session of the Committee on the Elimination of Racial Discrimination, held in Geneva, Switzerland. Chief Sisk's remarks addressed how varying legal classifications for tribes in the United States constitute a form of discrimination against unrecognized tribes. In a press release about her participation in the session, Chief Sisk stated, "The label of 'unrecognized' dehumanizes our tribes and puts us in a 'less than' category even though many of us, including the Winnemem, have a well-documented history as a tribe. Every step we take to try to support and revitalize our traditions, preserve our language, and practice our culture is blocked by this label."[1] The Winnemem Wintu also submitted a shadow report to the United Nations prior to Chief Sisk's visit. It outlined the tribe's history, the ways in which the US government interfered with the community's cultural and spiritual practices, and how the tribe's lack of federal recognition limits recourse to enact rights reserved for Native Americans under federal law.[2]

Chief Sisk's statements to the United Nations underscore the complex issues at play when Indigenous nations are subject to recognition from external colonial governments. Indeed, Chief Sisk's call to the international community drew attention to the pitfalls of recognition-based politics articulated by Indigenous peoples and scholars on the global scale.[3] The public presence Chief Sisk maintains, from the United Nations to her advocacy and activism around tribal environmental and cultural rights, brings much-needed political visibility to the status of federal recognition for California tribes and to the particular struggles California Indians from unrecognized tribes face on a daily basis. Although Chief Sisk's remarks and her tribe's actions are often specific to the Winnemem Wintu, she and her tribe express a sentiment about federal recognition that broadly resonates with other unrecognized tribes in California.

California is home to the most nonfederally recognized tribes of any state in the country and to the largest number of tribes that have taken steps to acquire federal recognition. The Native American Heritage Commission, the body within the California state government responsible for overseeing the respectful treatment of Native American remains and cultural resources, determined that there are over sixty nonfederally recognized California tribes.[4] Nonfederally recognized California tribes that decide to pursue or restore a government-to-government relationship with the United States confront the historical and contemporary realities of colonization in environmental, social, and cultural terms throughout the state. From a precontact society of small autonomous polities to the destructive forces of ongoing colonization, California Indians' unique history has shaped contemporary tribal legal status. The number of nonfederally recognized tribes in California is high precisely because over two centuries of colonial laws and practices attempted to destroy Native communities through genocidal violence, dispossession of ancestral homelands, and disruption to tribal governing systems. California tribes terminated by the United States in the mid-twentieth century still seek restoration of their federally recognized status, while other nonfederally recognized tribes pursue congressional recognition or undertake the arduous federal acknowledgment process.

Since the creation of that process in 1978, the Death Valley Timbisha Shoshone Tribe is the only California tribe to gain federal recognition in that manner. The assistant secretary for Indian Affairs acknowledged the Death Valley Timbisha Shoshone Tribe in 1982, and its new legal status went into effect on January 3, 1983. The early date of the tribe's acknowledgment is significant because not only was it one of the first such decisions in the country, but it also happened before the legalization of tribal gaming. Since congressional passage of the Indian Gaming Regulatory Act (1988) created the statutory basis for conducting gaming on tribal lands, the burden of proof required to meet the seven recognition criteria intensified as greater scrutiny and legal challenges to the federal acknowledgment process emerged.[5] Historian Mark Miller has claimed that the Death Valley Timbisha Shoshone Tribe's twenty-two-page petition "would not survive the [federal acknowledgment process] today."[6] The tribe's distinctive history also set it apart from most other unrecognized tribes in California that

struggle to prove continuity and descendancy under federal acknowledgment process criteria.

In 1933, the newly designated Death Valley National Monument subsumed the Death Valley Timbisha Shoshone Tribe's homelands. The tribe's persistent, and often antagonistic, relationship with the National Park Service and its engagement with the federal government over the tribe's land was well documented.[7] Documentation of the tribe's sustained interaction with the federal government and federal agencies served as critical evidence for its petition, which ultimately led to federal recognition. The Death Valley Timbisha Shoshone Tribe's maintenance of their village provided a major advantage that most other nonfederally recognized tribes in California cannot replicate. Miller writes that, "beyond having a core village, federal records, and good timing, the Timbisha Shoshones also faced few of the racial, cultural, or economic issues and challenges that many groups encounter. Because the band was small in size, was racially unambiguous, and spoke a native language, it did not engender organized opposition from either reservation tribes or from segments of the dominant society."[8] The tribe's historical circumstances and long-standing visibility as a distinct community facilitated the tribe's ability to successfully meet the federal acknowledgment process criteria.

Unrecognized California tribes that choose to petition through the administrative process are hindered in their quests for federal recognition because the federal acknowledgment process is incompatible with the California Indian tribal experience.[9] Histories of colonization in the state, the United States' uneven treatment of California Indian tribes, state- and federally funded genocide, and the denial of treaty ratification make it exceptionally challenging for California tribes to meet criteria for federal acknowledgment. Adding to the difficulties wrought by colonization are precarious claims to California Indian identity and the politicization of tribal casinos that complicate unrecognized California tribes' paths to federal recognition.

Contemporary Legal Status Rooted in Colonization

Sustained colonization in California is at the root of the federal recognition conundrum across the state. Archeologist Kent Lightfoot's book *Indians, Missionaries, and Merchants: The Legacy of Colonial Encounters on the California Frontier* begins with a candidly powerful question: "Why are some California Indian tribes recognized by the US government, although others remain unacknowledged?" The answer is not as straightforward as the simple question might suggest. Lightfoot stresses that any study about California Indian identities or federal recognition must take into consideration complex interactions and encounters with Franciscan missionaries, Russian merchants, Hispanic colonists, and American settlers, all of whom had different and sometimes competing colonial agendas.[10] Through the utilization of historical texts, Native narratives, and archeological fieldwork, Lightfoot found that the colonial projects of Russian merchants and Spanish missionaries had divergent outcomes in terms of federal acknowledgment for coastal tribes in central and Southern California. Lightfoot argues that Spanish and Russian colonial programs influenced California Indian "social forms and tribal organizations" in ways that factor into tribes' contemporary legal status.[11] Most of the tribes associated with nineteen of the twenty-one Spanish missions, for instance, are not federally recognized today. One can simply look at a map of federally recognized tribes in California and see that most are situated away from the historic route of Spanish missionization.[12] Tribal entanglement with Russian mercantile colonization, on the other hand, produced a different result as anthropological research in the twentieth century influenced the United States' allocation of trust land to California tribes.[13] In the aftermath of Spanish and Russian colonization, Mexican rule enabled tribal land dispossession, which accelerated once the United States took control.

Indigenous peoples in what is currently California were exposed to Europeans as early as 1542, but sustained contact between California Indians and Europeans did not occur until 1769, when Spanish Franciscan priests established a system of twenty-one missions for the Spanish Crown. The Spanish mission system is notorious for its destructive effects and the ways it fundamentally changed Native peoples' lives. Franciscan priests and Spanish

soldiers attempted to turn California Indians into Catholic peasants by means of social control, aggressive proselytization, and gendered violence. Drawing on stories from his father's experience as one of the Indians at Mission Santa Cruz, Lorenzo Asisara stated, "The Spanish Fathers were very cruel toward the Indians. They abused them very much. They had bad food, bad clothing, and they made them work like slaves."[14] Luiseño Pablo Tac, born at Mission San Luis Rey in 1820, made connections between death and Spaniards in his writings about Luiseño grammar and history.[15] Spanish colonialism also brought new pathogens, which led to population decline, as well as domesticated plants and animals that drastically changed the natural landscape, practices of Indigenous landscape management, and the relationship between California Indians and their land.[16]

Spanish colonizers imposed a relocation policy called *reducción* that disrupted traditional ways of life by removing many California Indians from their homelands and concentrating them at mission locales.[17] Spaniards removed tribes from their traditional villages throughout coastal California and forced them to live on mission grounds populated with Native peoples from various villages, often speaking different languages.[18] Demographic decline and runaways led the Spanish to recruit Native peoples from distant villages, which in turn contributed to mission complexes having an admixture of individuals from diverse backgrounds. This amalgamation of Native peoples produced new collective identities, political systems, and kinship ties as individuals from various village lineages converged at the missions.[19] Spanish officials applied the *reducción* policy differentially across the mission system, leaving some tribes more heavily impacted by relocation than others. Padres at Mission San Luis Rey and Mission San Diego, the southernmost missions in Alta California, practiced a modified form of *reducción* that enabled most Luiseño and Kumeyaay people to reside in their own villages instead of relocating to large mission centers.[20] As a result, the Luiseño and Kumeyaay people experienced a greater degree of continuity in traditional social and political organization.[21]

Data on population trends also reveals that the Luiseño and Kumeyaay communities did not experience the same steep population declines that occurred at other missions where *reducción* took place. Sherburne F. Cook has analyzed how the missions of Baja California and Alta California impacted

Indigenous populations. Cook underscores the ways that biological and nonbiological factors caused drastic demographic decline among Indigenous peoples at the missions. Cook outlines several factors, such as disease, violence, malnutrition, and low birth rates, that reflected the deplorable conditions Native peoples faced. He found that the Spanish priests' harsh practices, disease, and higher death than birth rates caused severe population decline.[22] Cook's study also offers evidence that Indigenous women experienced harsher conditions at missions because they received no prenatal care, Spanish priests often publicly shamed them for infertility or stillbirths, and priests forced unmarried women and girls to live in squalid conditions in the *monjerios*, or women's quarters.[23] Gendered experiences of missionization resulted in unequal sex ratios and a lower birth rate in many cases. Cook found higher population rates at the southern missions compared to those in the north, but he did not analyze the differences in depth.[24]

Addressing the phenomenon in her dissertation, anthropologist Florence Shipek analyzes population trends at the three southernmost missions: San Juan Capistrano, San Luis Rey, and San Diego. Shipek's analysis shows how the difference in policy—*reducción* at Mission San Juan Capistrano and modified *reducción* at Mission San Luis Rey and Mission San Diego—produced the population effects noted by Cook. Shipek found all three missions had lower death rates compared to the eighteen other missions to the north, but a more dramatic population decline occurred at Mission San Juan Capistrano. Of the three, Mission San Luis Rey had the lowest population decline, with an average "death rate below 50 per thousand."[25] With regard to sex and birth, the proportion of women and children remained relatively stable at Mission San Luis Rey in contrast to Mission San Juan Capistrano and Mission San Diego.[26] Compared to all other missions of the same period, Mission San Luis Rey's male/female ratio remained close to unity, baptisms outpaced deaths, and decent harvests occurred.[27] Living conditions at Mission San Luis Rey contributed to a stabilization of the Luiseño population and thus greater maintenance of precontact cultural systems.

Spanish colonization in California "ended" in 1821, but missionization's impacts remain very real for nonfederally recognized tribes. Colonization under Spain transformed California Indian political economies and created the conditions in which contemporary tribal communities struggle to meet

the federal acknowledgment process criteria.[28] Making matters worse, textual records that facilitated the Spanish colonial project, such as baptismal, birth, death, and marriage records, are primary sources of historical and genealogical evidence for recognition petitions. Unrecognized tribes are forced to use the very documents that supported colonization while also contending with the Office of Federal Acknowledgment's interpretation of those records, which can be inconsistent and counter to tribal perspectives.[29] Two of the three California tribes denied federal recognition through the federal acknowledgment process experienced Spanish missionization, and many others, including the San Luis Rey Band of Mission Indians, have yet to be federally recognized.[30]

Russian expansion into California began in the early 1800s and led to the 1812 establishment of a Russian settlement next to Metini, a Kashaya Pomo village near the town of Jenner in present-day Sonoma County.[31] Russian colonists founded the Fort Ross colony and practiced a form of mercantile colonialism that, unlike the Spanish version, did not utilize targeted enculturation or conversion of California Indians in the area. Cultural and social change transpired among the Kashaya Pomo due to Russian colonization, but Native peoples took advantage of the mercantile system's flexibility and exercised agency in making choices about whether to engage with Fort Ross or not.[32] Social developments arose among the Kashaya Pomo as formerly autonomous Indigenous polities consolidated under a single Russian-promoted chief called the Toyon.[33] Lightfoot has argued that the confederation of formerly distinct villages under one leader "represents one of the few native groupings in California that would be recognized by anthropologists as a real tribe—as, that is, a distinct social group with a common language and territory, and united under a single system of leadership."[34] A broad Kashaya Pomo identity emerged during the twenty-nine-year Russian colonial period that "eventually eclipsed peoples' associations with precontact polities."[35] Consolidation of Kashaya Pomo polities differed from the political disruptions many tribes experienced under Spanish colonization.

After Mexico won independence from Spain in 1821, a movement to secularize the mission system and emancipate California Indians took place. The Mexican government passed secularization legislation in 1833, and by 1834 local authorities in Alta California had begun to dismantle

the Franciscan mission system. California Indians used the transition from missionary control to civil administrators as a chance to leave the missions before the completion of full, legal emancipation in 1840. Many California Indians returned to their traditional tribal homelands in the vicinities of the missions or moved to growing cities in search of labor opportunities. In addition to offering emancipation decrees, secularization policy included "the legal obligation to distribute lands, livestock, buildings, and other communal property among the surviving Indian converts, under the supervision of state-appointed administrators."[36] Some California Indians acquired parcels of land from the Mexican government through land grants, while other Indians' claims never received legal title despite protests against non-Native encroachment.[37] Californios, the Spanish and Mexican colonists of the region, divided most mission wealth among themselves and their families.[38] Several Luiseño individuals received legal title to plots of land from the Mexican government, but Indians associated with Missions San Juan Capistrano and San Gabriel, by contrast, experienced less success securing legal title as Californios rapidly claimed former mission lands for themselves.[39]

Mexican land grants created a new rancho-based economy that largely relied on California Indian labor. Although not strictly followed, Mexican law dictated that rancho owners could not dispossess Indian villages within a land grant, but Native peoples lost the ability to claim their surrounding territories as a result. For many Indians formerly congregated at the missions, collective tribal identities emerged even as social and political ties to traditional villages and kinship lineages persisted.[40] Although California Indians readily resisted and negotiated Mexican control, the amount of land legally ceded to non-Indians created the conditions in which Native peoples would later become further dispossessed of their territories by the US government and its citizens. According to historian and archeologist Richard Carrico, "By the outbreak of the Mexican-American War in 1846, the Indian population was roughly divided into two segments. One group lived in and around the ranchos and served as [an] important extension of that cultural and economic unit. . . . A second group, by far the majority, lived in their often remote traditional villages and had only minimal contact with the Mexicans."[41] The Mexican-American War disrupted California

Indian communities, but Indigenous peoples played significant roles as the dynamics of power shifted.

The Mexican-American War ended with the signing of the Treaty of Guadalupe Hidalgo on February 2, 1848. The treaty stipulated that Mexican citizens residing in California would become citizens of the United States. Per the treaty, the United States agreed to respect and legally affirm Mexican citizens' property rights. Mexican law considered settled "Mission Indians" as citizens, which, in theory, would have conferred upon them all the rights and immunities of US citizenship.[42] In practice, however, that was not the case. The discovery of gold in California coincided with the conclusion of the Mexican-American War and ushered in a genocide against California Indians that intensified battles over non-Native ownership and acquisition of Indigenous lands.

The 1848 discovery of gold in California's Sierra foothills led to the largest migration in US history to that point. In one year's time, the non-Indian population in California surged from approximately twenty-five thousand to at least ninety-four thousand.[43] The influx of "forty-niners" to the northern portions of the state and hydraulic mining practices had disastrous impacts on California Indians and the environment. Land disputes led to violent interactions between miners and California Indians who inhabited contested sites. In Southern California, Euro-American settlers embedded themselves within existing systems of ranching and farming and made their fortunes not by mining gold but through dispossessing California Indians of their lands.[44] The invaders, "using new state laws and their rights as citizens, . . . quickly and bloodily transitioned California's land base from one controlled mostly by Native peoples into one almost completely controlled by Euro-Americans."[45] The gold rush period represented one of the most horrific state- and federally funded genocides of Indigenous peoples, and those migrants who arrived in California during this time did so at the cost of Native ancestral lands, traditional resources, and lives.[46]

The term "genocide" was coined by legal scholar Raphael Lemkin in 1944. Lemkin described genocide as "any attempt to physically or culturally annihilate an ethnic, national, religious, or political group."[47] The act of genocide is an ancient one, but Lemkin's new term came at a pivotal time when the international community needed a framework to describe Nazi

mass murder. Building on Lemkin's concept of genocide, the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide defined genocide as a crime under international law that includes "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group."[48] According to the UN convention, genocidal acts include the following:

a. Killing members of the group;
b. Causing serious bodily or mental harm to members of the group;
c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d. Imposing measures intended to prevent births within the group;
e. Forcibly transferring children of the group to another group.[49]

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

a. Genocide;
b. Conspiracy to commit genocide;
c. Direct and public incitement to commit genocide;
d. Attempt to commit genocide;
e. Complicity in genocide.[50]

Scholarly and public debate about whether genocide occurred in the Americas started in earnest in the 1990s and will no doubt continue.[51] Most scholars, however, agree that genocide took place in California during the nineteenth century.[52]

With an estimated precontact population of over 300,000, the California Indian population dropped alarmingly, from 150,000 in 1848 to just over 16,000 by 1910.[53] Not only did the State of California sanction frontier violence, but the federal government also largely funded the attacks on California Indians. As historian Benjamin Madley argues, "If state legislators were the main architects of genocide, federal officials helped to lay the groundwork, became the final arbiters of the design, and ultimately paid for most of its official execution."[54] The state passed twenty-seven laws that

were then used by the comptroller to determine the expenditures related to the extermination, or genocide, of California Indians.[55] By 1863, the federal government had given California over $1 million to reimburse the state for its militia expenditures.[56]

Settlers perpetrated genocide in California not just by frontier violence but through a variety of techniques. Legislators facilitated genocide through the law as they created an environment in which California Indians had few rights that would allow them to protect themselves or their land, culture, and livelihood. Two key pieces of genocidal legislation, California's Act for the Government and Protection of Indians (1850) and the federal government's California Land Act of 1851 (9 Stat. 631), facilitated non-Native settlement and land usurpation in addition to Indigenous disenfranchisement and enslavement.

In 1850, the California legislature passed "An Act for the Government and Protection of Indians" that set up a form of legalized slavery under the guise of apprenticeship. According to historian James Rawls, "Any Indian not employed could be bought from a county or municipal official at a public auction."[57] The 1850 law allowed "any white person" to bail an Indian out of prison, and in return the Indian had to work for the bailer until discharged.[58] White men who took advantage of the system were supposed to treat Indian laborers humanely by offering room and board in return for servitude. However, poor treatment of Native people could hardly be adjudicated since legislators passed laws that denied most Indians "the right to testify, serve as jurors, or work as attorneys—on an explicitly racial basis—against whites in California courts."[59] An 1860 amendment to the act set up a system for California Indian youth under the age of fifteen to serve an "indenture of apprenticeship."[60] California Indian boys under the age of fourteen could be indentured until the age of twenty-five and girls until the age of twenty-one.[61] Mass killings left many California Indian youth without parents, making them susceptible to indenture in the homes of non-Natives who had either directly participated in violence or benefited from the state's genocidal law and policies.[62] The 1860 amendment devastated Native families and youth, as it led to kidnapping, rape, and sexual abuse. In effect, the 1850 act and its 1860 amendment fractured tribal communities and contributed to the genocide of California Indian people. Section 2

of the 1850 act prohibited non-Native landowners from removing Native communities that resided on their property, provided a justice of the peace demarcated an area on which the Native peoples could continue to live.[63] Shipek has suggested that San Diego County may have been the only county in California to comply with that portion of the act. She found evidence in the San Diego County Court records and in federal reports on Mission Indians that county sheriffs determined Indian land use and gave tribal captains "worthless" paper to prove the extent and boundaries of their lands.[64]

Congressional passage of the California Land Act of 1851 (9 Stat. 631) superseded the 1850 act with regard to lands held by Indians.[65] In alignment with the stipulations of the Treaty of Guadalupe Hidalgo, the California Land Act established a three-person commission to recognize and confirm under US law all California land titles issued by the Mexican and Spanish governments. Any land for which claims were to be found invalid or not presented to the land commission within two years would enter the public domain and become available for homesteading and preemption. Section 16 of the California Land Act charged the commissioners with the duty of identifying the status of land tenure held by "civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians."[66] No report of such an inquiry has ever been discovered, leading scholars to question whether the commissioners carried out their duty to investigate or determine Indian land tenure.[67] The California Land Act did not specifically require Indians to present their land claims to the commission, so most did not. Under Mexican law, Indians in villages within a rancho grant could not be dispossessed, but those communities lost that right when they did not present their claim to the commission. For Indian village communities not within the boundaries of a rancho grant, the commission also ignored the tenets of Mexican law concerning legal use rights of settled villages.[68] The few California Indians who presented their claims to the commission often faced rejection due to insufficient documentation and found little success securing their land rights.[69] In effect, most California Indians lost rights to their land without confirmed title, thereby accelerating a process of land dispossession that benefited non-Native settlers.

Although the federal government had intended to make provisions for California Indians through the California Land Act, "the rush of events in California started by the discovery of gold in 1848 spelled the doom of any attempt to treat California Indian titles with the consideration that was accorded Indian titles in other parts of the United States."[70] Effects of the California Land Act paired with drastic demographic shifts due to the gold rush led to numerous land disputes. With an abundant source of public land available after 1853, newcomers set out to acquire plots of land, making local tribes without confirmed titles vulnerable to non-Native encroachment and settlement. Settlers quickly took the well-watered Indian lands and set in motion further dispossession of California Indian peoples and tribes.

One of those most infamous examples of the land claims act's role in land dispossession included the Cupeño Indians of Warner's Ranch. Three different Mexican land grants included portions of Cupeño territory, the last being granted in 1844 to Juan José (J. J.) Warner.[71] Warner's rancho grant subsumed a large portion of Cupeño territory, including their Cupa village, and the area became known as Warner's Ranch. Under Mexican law, Warner had been unable to evict the Cupeño people, as well as other small Luiseño and Kumeyaay village communities on the rancho. The hot springs near Cupa had a reputation for their curative properties, and an abundance of fresh water made Cupeño lands highly desirable. Warner eventually lost his ownership of the rancho grant lands as he tried to confirm them through the California Land Act. Throughout this process, the Cupeño, Luiseño, and Kumeyaay people remained in their village homes. At one point in 1875, the federal government patented the Agua Caliente reservation lands for the Cupeño Indians but rescinded it five years later through an executive order.[72] By 1880, former California governor John G. Downey had become the sole owner of most of Warner's former lands.[73] Unlike Warner, Downey sought to remove the Indians who lived on "his" land and filed a lawsuit to evict them. Downey passed away in 1894, but his descendants continued to pursue eviction. The case, *Barker v. Harvey* (1901), eventually reached the Supreme Court of the United States. In its ruling, the Supreme Court upheld lower court verdicts against the Cupeño Indians and determined that they had no rights to their land because they had failed to present a claim under the California Land Act.[74] The ruling led to the devastating removal of the

Cupeño people from their cherished homeland to the Pala Reservation in May 1903. *Barker v. Harvey*'s significance cannot be overstated because it served to alleviate the federal government's responsibility and willingness to support California Indian tribes without legal title to their land, as we will see with the San Luis Rey Band of Mission Indians.

The federal government's harsh treatment of California tribes is enshrined in its decision to refuse ratification of eighteen treaties made between 1851 and 1852. Three treaty commissioners, empowered by President Millard Fillmore, entered treaty relationships with approximately 139 tribes or bands representing approximately 25,000 California Indians.[75] The treaties demarcated tracts of land totaling 11,700 square miles (7,488,000 acres), or about 7.5 percent of the state, to be "set apart and forever held for the sole use and occupancy of said tribes of Indians."[76] Most California state legislators, heavily influenced by the attitudes of non-Native settlers, strongly opposed treaty ratification and made their disapproval known to the federal government. The gold rush absolutely influenced non-Native attitudes and accelerated settlers' desire for land. Settlers who wanted the land for their own use and resource exploitation balked at the amount of land promised to California Indian tribes.[77] Moreover, problems surrounding the legality of the treaties brought their validity under scrutiny.[78] The US Senate discussed and decided against treaty ratification in a secret session in June 1852.

Congress's disregard for the treaties it had sanctioned and funded just two years prior to nonratification exemplified widespread indifference to California Indian tribes. Archeologist Robert Heizer puts it this way: "Taken all together, one cannot imagine a more poorly conceived, more inaccurate, less informed, and less democratic process than the making of the 18 treaties . . . with the California Indians."[79] Denial of treaty ratification transformed the intended act of recognition into a disavowal of inherent tribal sovereignty. Treaty nonratification was a pivotal moment that continues to shape the contemporary legal and political conditions for California tribes.[80] The US Senate's refusal to ratify the California treaties not only undermined tribal sovereignty but also underscored the federal government's views on the status of aboriginal title in California. Legal scholars Bruce Flushman and Joe Barbieri contend that "the history of the subsequent refusal by Congress

to ratify these treaties not only suggests that nonratification extinguished existing Indian title in California but also raises doubts whether Congress ever recognized that Indian title existed in the state."[81]

The federal government made some effort to secure reservation lands for California tribes throughout the state in the nineteenth and early twentieth centuries.[82] The Hupa tribe resisted white encroachment and efforts to remove the community that led to the establishment of the Hoopa Valley Indian Reservation in 1864. By the 1870s, the federal government had officially set aside the Round Valley Reservation in Northern California and the Tule River Reservation in the central part of the state. In Southern California, President Ulysses S. Grant created the Pala and San Pasqual Reservations in 1870 by executive order. Pala was supposed to be for the Luiseño and San Pasqual for the Kumeyaay, but two years later protests by white residents influenced President Grant to rescind his executive order, leaving the Native peoples of San Diego County without reservation land bases. Thanks to the skillful guidance and actions of Native leaders like Olegario Calac, in 1875 President Grant used executive orders to establish nine reservations in San Diego County.[83]

After 1880, opposing governmental actions shaped California Indians' land acquisition. The Dawes Severalty Act of 1887, intended to break up reservations into individually owned allotments, was a method to assimilate Native Americans into US society. As the federal government actively sought to assimilate Native peoples into a system of private property, it also continued to establish reservations for California tribes. Congress had affirmed seventeen reservations in California by 1898, with fourteen of those going to "Mission Indians" in Southern California. Cahuilla/Luiseño historian Edward Castillo has described how the federal government's opposing tendency to break up tribal landholdings while simultaneously creating others "confused the Indians, created suspicion and distrust, and finally added to problems already facing various reservations throughout the state."[84] In part a response to the unratified treaties entering the public record in 1905, between 1906 and 1930 the federal government created several rancherias, or small plots of land ranging from five to one hundred acres, across sixteen northern counties for "homeless" California Indians.[85] However, the United

States failed to provide all California Indian communities with a reservation or rancheria. Many of those tribal communities are today nonfederally recognized, which illuminates the critical role land plays in structuring tribal legal status. The small rancherias were later major targets of federal termination policy in the 1950s and 1960s, leaving several California Indian tribes stripped of their federal recognition.

A final piece of the unrecognized tribal status puzzle in California lies within the interplay between anthropologists and government officials in the early twentieth-century establishment of federal tribal lands. Early colonial histories set the stage for anthropologists and government officials to interrogate tribes' cultural integrity. In the early 1900s, anthropologists like Alfred L. Kroeber and John P. Harrington studied California tribes extensively. Kroeber called precontact California Indian social and political structures "tribelets" to denote their "miniature" size compared to tribes on the Great Plains and in the eastern United States.[86] Anthropological findings that described California tribal organization using diminutive terms led to misconceptions that characterized California tribes as lesser and inferior to tribes elsewhere in the country.[87] Further, Kroeber and his colleagues at the University of California, Berkeley, did not conduct field research on tribes they considered severely impacted by Spanish missionization. When Kroeber encountered the Ohlone, for example, he considered them "extinct so far as all practical purposes are concerned" and did not study them as extensively.[88] Harrington, an anthropologist for the Smithsonian Institution and Kroeber's professional rival, undertook extensive interviews with tribes ignored by the Berkeley contingent. Harrington's field research produced a massive amount of documentation suggesting that communities like the Ohlone, Esselen, Chumash, and Tongva did in fact retain much cultural knowledge. However, Harrington published very little of his research about California Indians along the central and southern coast, and his notes did not become accessible to researchers until after his death in 1961.[89] Berkeley anthropologists studied tribes in San Diego County associated with the southernmost missions in much more detail than they had investigated other tribes along the coast subject to Spanish colonization. The modified *reducción* policy practiced at Missions San Diego and San Luis Rey, combined with the creation of reservations in the late 1800s, facilitated greater

maintenance of traditional Native culture and political organization that attracted anthropological inquiry.

Federal Indian agents then used the resulting anthropological documentation as a basis for how to interact with certain tribes.[90] Federal policy makers and the Office of Indian Affairs often ignored tribes that Kroeber and his Berkeley associates considered extinct. Put another way, US officials used anthropological information to justify *not* engaging with "extinct" or "unrecognizable" tribal groups. Anthropologist Les Field, who has done a significant amount of work with the Muwekma Ohlone Tribe, made the connection that federal Indian agents "used the available authoritative anthropological sources of the time . . . for information about accepted, legitimate groupings" of California Indians and that "rancherias were in most cases created for named peoples found in the anthropological literature."[91] The United States' inability to provide rancherias or reservations to all California Indian communities sealed those tribes' legal status as nonfederally recognized.

Generally, tribes not as heavily impacted by missionization, such as the Luiseño and Kumeyaay in San Diego County, received support from Indian rights activists and further reservation lands after anthropological studies on those communities, most of which are federally recognized tribes today.[92] Although Kroeber later revised his statements about "extinct" tribes, the damage had already been done, leaving California tribes rightfully aggrieved by UC Berkeley's legacy as an authoritative source on tribal existence as well as an agent of Native land dispossession.[93] Several anthropologists and archeologists who currently work with unrecognized tribes critically reflect on the ways anthropology as a discipline continues to influence the lived realities of California Indians as they advocate for collaborative research methods and offer to assist tribes in their respective quests for federal recognition from the United States.[94]

Challenges in California Indian Identity and Tribal Gaming

In addition to the colonial history that affects current tribal legal status and the ability to satisfy federal acknowledgment process criteria, other complex issues tied to Native identity and tribal casinos affect unrecognized

California tribes. In contrast to the experiences of nonfederally recognized tribes in the American South or the Eastern seaboard, anti-Blackness plays less of a role in debates over federal recognition in California.[95] California Indians in unrecognized tribes are not entirely immune from challenges to their Native identities, however. The federal acknowledgment process requires genealogical evidence to show how present-day members of a petitioning tribe are related to members of a historical Indian tribe or tribes. The requirement, which comes from criterion (e), expects unrecognized tribes to create genealogical pedigree charts and digital family trees through software like Family Tree Maker or RootsMagic. Unrecognized tribes usually hire certified genealogists or other trained individuals to consult and perform this genealogical portion of the petition research.

On occasion, genealogical consultants are unable to find tribal members' proof of descent from California Indian ancestors. In one extreme case, a genealogist found that 80 percent of tribal members descended from non-California Indian settlers who came to the region during the Spanish and Mexican eras of colonization.[96] The Office of Federal Acknowledgment also discovered discrepancies in genealogical information for members of the Juaneño Band of Mission Indians (petitioner #084A) when preparing a proposed finding against federal acknowledgment for the tribe.[97] Identity controversies sparked contentious debates and accusations within and between some unrecognized tribes, primarily located in Southern California.[98] Predictably, anthropologists and archeologists chimed in with their research, concerns, or support for the tribes and California Indians in question.[99]

Ongoing debates over California Indian identity are largely a product of misinformation on federal census rolls originally created for the California Indians Jurisdictional Act of 1928 (45 Stat. 602). Congress passed the California Indians Jurisdictional Act and thereby authorized the attorney general of California, on behalf of the "Indians of California," to sue the United States in the Court of Claims for taking without compensation the land promised in the eighteen unratified treaties. In an effort to distinguish who the Indigenous peoples of California were, the California Indians Jurisdictional Act required that a census be taken of the "Indians of California" who lived in the state as of June 1, 1852, and their living descendants.[100] Individuals seeking enrollment as an Indian of California had to fill out an application

that asked for their personal information, tribal connection, the treaty or treaties associated with their tribe(s), and ancestry. Those who successfully applied were entered on a census roll of the Indians of California, finalized in 1933, and by 1944 the case had been settled for $17,053,941.98 minus $12,029,099.64 in offsets for government spending on California Indians over the years. After statewide lobbying to distribute the settlement in per capita payments, the "Indians of California" received $150 each as compensation for the treaty lands lost.

After the establishment of the Indian Claims Commission in 1946, the "Indians of California" settled on a subsequent claim that provided compensation for the remaining land taken in California. On October 7, 1964, Congress enacted legislation to authorize the creation of an updated roll of California Indians to determine who could access per capita payments.[101] Censuses of the Indians of California are especially crucial because proof of descent from someone listed on the rolls makes members of unrecognized tribes or California Indian individuals who are not officially enrolled in a tribe eligible to receive medical attention from the Indian Health Service and to utilize Tribal Temporary Assistance for Needy Families, a federal program. Although the census rolls have an important purpose, they are also a source of tension for members of unrecognized tribes who fail to see how the federal government can "recognize" them as California Indians yet at the same time not recognize their tribe.[102] The fundamental difference is that the census rolls "recognize" individuals, whereas the federal acknowledgment process recognizes the sovereign status of an entire tribe.[103]

To apply to the 1928 California Indian census roll, applicants also had to submit an affidavit with two or more sworn witnesses as verification of an applicant's truthfulness. In theory, witnesses were supposed to be either members of the applicant's community or other reputable California Indian people. In practice, however, as Esselen genealogist Lorraine Escobar explains, "the affiant was not always a credible witness. Some were too young to have witnessed the facts as claimed by the applicant. And, persons who were outside of the Indian community were not likely to have personal knowledge of Indian parentage. In that case, it is more likely the affiant was swearing to the character of the applicant rather than having personal knowledge of the facts as stated."[104] One of the major flaws of the enrollment

process, then, was the absence of a method to verify an applicant's claims or a witness's testimony.

In some cases, non-California Indians with genealogical ties to early Spanish and Mexican settlers applied to the California Indian census rolls in 1928–33, 1944–55, or 1969–72. Given the initial enrollment period's concurrence with the Great Depression, perhaps inclusion on the census rolls provided non–California Indians with an economic incentive to apply. This would not be surprising considering non-Native settlers' history of appropriating Native identity when it benefited them in the form of resources or land. One cannot assume, however, that the non–California Indians who applied did so with malicious intent. Maybe the economic imperative drove some people's actions, but perhaps others did not know for sure if they had California Indian ancestry since they descended from families of early non–California Indian settlers who, for example, could have intermarried with California Indians. The politics of ethnicity in certain places, like the former San Juan Pueblo (present-day San Juan Capistrano), where Californio, Mexican, and Juaneño identities converged in complex ways, influenced participation with the 1928 California Indians Jurisdictional Act.[105]

Some tribes' use of the census rolls for enrollment purposes and the Bureau of Indian Affairs' reliance on the rolls to issue certificates of degree of Indian blood compound the problem.[106] The dilemma is that non–California Indian people who have these certificates or who can prove descent from someone on the rolls have used that information to indicate a "legitimate" Native American identity and a means to enroll, or try to enroll, in a tribe. Non–California Indians with these certificates can also use them as proof of identity for programs, services, scholarships, and other resources reserved for Native Americans. Anthropologists Brian Hayley and Larry Wilcoxon, as well as some tribes and Native individuals, have brought attention to groups of alleged Chumash and Tongva (Gabrieliño) people who took steps to pursue federal recognition and collaborated or consulted with agencies, scholars, and other institutions under the guise of California Indian identity.[107]

The non–California Indian identity phenomenon seriously impacted the Juaneño Band of Mission Indians' campaign for federal recognition. While there were multiple criteria the Juaneño Band could not meet in the federal acknowledgment process (for reasons associated with Spanish

colonization, as discussed earlier), the presence of non–California Indian tribal members created a huge rift within the community, leading to the removal of some tribe members, the creation of Juaneño "factions," and the calling out of individuals and their claims to Native identity on the public stage.[108] Turtle Mountain Chippewa professor Duane Champagne, who worked closely with unrecognized tribes in California for over two decades, has posited that "California Indians in unrecognized tribes 'are doing what they've done for the last 10,000 years[;] they form coalitions and alliances, and even within the coalitions each family tends to have autonomy.'"[109] In his statement, Champagne connects precontact California Indian culture to the "factions" that emerged as a result of the federal acknowledgment process. While there is truth to the connection, some "factions" may also be the product of false information documented on California Indian census rolls, as the Juaneño Band of Mission Indians example illustrates. The Death Valley Timbisha Shoshone Tribe successfully used the censuses of the Indians of California in their recognition petition, but as a result of the Juaneño Band of Mission Indians' experience, the Office of Federal Acknowledgment no longer considers the rolls as definitive evidence of California Indian ancestry.[110] The controversial outcomes of the California Indian census rolls contribute to the complexity of federal recognition in California, as the situation presents complicated questions regarding identity change over time, ethnic fraud, and the ways in which settler colonialism permeates Native California.

Beyond challenges to California Indian racial and tribal authenticity, unrecognized California tribes also face roadblocks to federal recognition related to the casino gaming industry. California tribes have long been center stage in advancing gaming to support economic development goals and assert tribal sovereign powers. The 1987 Supreme Court decision in *California v. Cabazon Band of Mission Indians* ruled that California did not have the right to regulate gaming on tribal lands and set the stage for congressional passage of the Indian Gaming Regulatory Act (1988). That federal law requires tribes to negotiate a compact with a state to operate Class III, or Las Vegas–style, gaming activities.[111] When former California governor Pete Wilson refused to negotiate compacts with most tribes in the 1990s, California Indians took matters into their own hands with

high-profile ballot measures to let California voters clarify the legal scope of gaming in the state.[112]

In 1998, Proposition 5 offered voters the opportunity to determine if a statutory change allowing tribal governments to operate slot machines should be approved. The measure passed in November 1998 with 63 percent of the vote.[113] Opponents of Proposition 5 almost immediately challenged its legality, and courts found the proposition unconstitutional in February 1999. California tribes came together to negotiate a single Class III gaming compact, applying to most tribes, with newly elected California governor Gray Davis, who, unlike his predecessor Governor Wilson, more fully supported tribal government gaming. At the same time, tribes worked to include a new proposition, Proposition 1A, on the March 2000 ballot. Proposition 1A proposed to change the California state constitution to allow slot machines and "house-banked" card games on tribal lands as well as put into effect the sixty-one tribal-state compacts.[114] California voters once again supported tribes and passed Proposition 1A with 65 percent of the vote. Proposition 1A's passage marked the first time ever that tribal governments successfully changed a state constitution.[115] Legalization of the most lucrative forms of gambling on California tribal lands changed the landscape of tribal gaming throughout the state and gave tribes immense political power. Opposition to tribal gaming bubbled over just a few years later in 2003, however, when Arnold Schwarzenegger replaced Governor Gray Davis in a recall election. Schwarzenegger's campaign platform called for an end to casino-owning tribes' involvement in state politics and demanded that tribes pay their "fair share."[116]

Despite public backlash against tribal gaming's success, casino developers routinely approached unrecognized California tribes with promises of funding their recognition petitions in exchange for agreeing to build a casino after the tribe secured federal recognition. As one citizen of the San Luis Rey Band of Mission Indians remembered,

> Every tribe was being approached for development. All of our neighboring tribes and so forth. There was a lot. We were coastal, so we were an attractive candidate. But we were nonrecognized, so there had to be, same thing with [the Juaneño Band of Mission Indians], there had to be a good enough deal

> where [the casino developer] would finance your recognition process on the condition that [the tribe] would use them as a development company for a casino. That was negotiated as a promise because you can't obligate a tribe to do anything. There's no recourse for it, so it was a risk. I was always dealing with those inquiries.[117]

While many unrecognized tribes like the San Luis Rey Band never made agreements, some did make deals with casino developers to fund their campaigns for federal recognition. One group, the Gabrielino-Tongva Indian Tribe, proposed casino development in Garden Grove and then later in Inglewood. A senior investor and the company he created to work with the tribe, Century Gabrielino Casino Development Co., LLC, provided financial backing to the Gabrielino-Tongva Indian Tribe until the relationship soured due to fraudulent activity.[118] A San Luis Rey Band of Mission Indians tribal citizen also revealed that the Juaneño Band of Mission Indians "did make a deal, and they were financed for their process, so they did submit a lot sooner than us in terms of the extent of the package they put together."[119] Partnerships created between unrecognized tribes and casino developers added to criticism from anticasino interest groups, such as Stand Up for California!, that were invested in halting further casino development and, by extension, the federal recognition of more tribes in California.

Nonfederally recognized tribes have also been pressured to make casino-related deals with local governments in order to win support for their federal recognition efforts.[120] In 1998, Lynn Woolsey, who represented California's Sixth District in Congress, offered to support the restoration of the Federated Indians of Graton Rancheria's federal recognition if the tribe promised not to open a casino. Woolsey subsequently introduced a bill to restore the Graton Rancheria. In testimony about the bill, Assistant Secretary for Indian Affairs Kevin Gover expressed concern that singling out the Federated Indians of Graton Rancheria on gaming restrictions could have implications for tribal sovereignty nationally.[121] In May 2000, Senator Barbara Boxer (D-CA) introduced an identical restoration bill that removed the casino restriction, and the Federated Indians of Graton Rancheria became a federally recognized tribe once again in December 2000.

Federal recognition's linkage with casino development confronts

unrecognized and terminated California tribes with rampant opposition. Antigaming organizations and individuals frame the pursuit of federal recognition as one based on profit rather than tribal sovereignty. In 2012, Senator Dianne Feinstein (D-CA), who was notoriously anti-Indian, addressed the Mishewal Wappo Tribe's quest for restoration by writing to Secretary of the Interior Ken Salazar, stating, "It is deeply concerning to me that the re-recognition process has become so closely intertwined with the development of new casinos in California."[122] Senator Feinstein's statement played directly into the long-standing popular "discursive jump from knowing that a tribe is petitioning for Federal Recognition to thinking that they will open a casino," which only increases anticasino and anti-Indian sentiment relative to unrecognized and terminated tribes in California.[123] When former assistant secretary for Indian Affairs Kevin Washburn announced proposed changes to the federal acknowledgment process in spring 2014, many lauded his announcement because the proposed changes altered portions of the regulations especially troubling for unrecognized tribes. At the same time, potential revisions to the federal acknowledgment process reinvigorated anticasino organizations and some federally recognized tribes to express opposition to reform.[124]

The most vocal and active organization working against tribal casinos in California, Stand Up for California!, responded to the proposed changes in a statement on July 9, 2014. Utilizing rhetoric similar to that of Senator Feinstein, Stand Up for California! stated that the proposed changes would "cause a rapid increase in gaming facilities, potentially resulting in 22 new casinos in local communities, in particular, in high-density urban areas such as Los Angeles, Orange, San Francisco and Kern counties."[125] The director of Stand Up for California!, Cheryl Schmit, stated further that more tribal casinos would "cause an increase in expensive and disruptive litigation over land and water rights" and "create economic hardships for currently recognized non-gaming tribal governments who will experience greater competition for the federal funds allocated annually toward tribal services."[126] Schmit and Stand Up for California! relied on enduring scare tactics to promote the myth that more federally recognized tribes means a decrease in federal resources for other tribes.[127]

Some federally recognized tribes also voiced opposition and concern

regarding the proposed changes to the federal acknowledgment process. Written and oral comments characterized the proposed changes as weakening the federal acknowledgment process criteria and thus diluting tribal sovereignty. In a public comment letter dated September 30, 2014, Chairman Mark Macarro of the Pechanga Band of Indians, one of the most successful gaming tribes in the nation, wrote, "We believe the significant struggles we have faced illustrate our Tribe's resilience, hard fought longevity and strong will to remain a distinct political body in the face of substantial adversity. It is with this backdrop that Pechanga asserts its position that the standards for federal acknowledgment must not be unnecessarily weakened in order to accommodate marginal claims for federal acknowledgment as sovereign tribal nations."[128] Chairman Macarro's statement takes the position that if his tribe can endure hardships through the sheer will of his people, then the same should be true for other tribes as well. His position obscures nonfederally recognized tribes' similar struggles to maintain identities as politically distinct groups despite colonization.

The Agua Caliente Band of Cahuilla Indians, another prosperous gaming tribe in Southern California, submitted a public comment letter that expressed concern. The tribe did support revisions that ensure timeliness and transparency in the process but also articulated unease that aspects of the proposed revisions would "diminish the important standards required to ensure that only petitioners with truly legitimate claims will satisfy the high standard necessary for the incredibly important designation of federal recognition."[129] The Agua Caliente Band's invocation of "legitimacy" is a long-standing line of reasoning used by federally recognized tribes to imply that unrecognized tribes are fraudulent groups of people seeking power and resources. Perhaps based on trepidations that "fake" or "illegitimate" tribes could secure legal status, powerful gaming tribes' concerns about changes to the federal acknowledgment process criteria were likely also tied to economic interests.

The tribal gaming industry complicates the landscape of federal recognition for California tribes that face yet another barrier to restoration or acknowledgment of inherent tribal sovereignty. Not only is the legalization of tribal gaming correlated with fewer tribes gaining federal recognition, but it has also led to widespread skepticism and political advocacy against federal

recognition.[130] Anticasino organizations and individuals paint nonfederally recognized tribes as economic opportunists instead of established tribal governments that sought federal recognition well before the legalization of tribal gaming. Historical and ongoing impacts of colonization combined with contests over identity and the politics of tribal gaming create conditions in which securing federal recognition, particularly through the federal acknowledgment process, is nearly impossible for unrecognized California tribes.

Addressing Federal Acknowledgment in California

Unrecognized tribes and their allies have been concerned with the vexed status of federal recognition and termination in California for decades. In 1983, the landmark class action suit *Tillie Hardwick et al. v. the United States et al.* affirmed that "all termination in California was illegally promulgated and executed" and led to the restoration of seventeen tribes involved in the lawsuit.[131] Later that decade, Al Logan Slagle, Cherokee lawyer and advocate for tribes in California, described how the United States' historic treatment of California Indians made it difficult for unrecognized tribes to prove cultural and political continuity through the federal acknowledgment process.[132] Instead, Slagle called for the creation of "legislation which addresses the needs of most California candidates for acknowledgment or untermination."[133] The Advisory Council on California Indian Policy also made significant recommendations to Congress in the 1990s to create a California-specific solution to the problems with the federal acknowledgment process and to address the restoration of all remaining terminated tribes.

The Advisory Council on California Indian Policy Act of 1992 created a council to produce recommendations for Congress concerning the specific issues that California Indians faced. As the first body of California Indians charged with reporting directly to Congress, the council consisted of sixteen California Indians from federally recognized, unrecognized, and terminated tribes across California.[134] The council created several task forces to investigate federal recognition, termination, education, health, culture, economic development, community services, and natural resources and the

trust responsibility for California Indian peoples and tribes. The council's investigations found that most problems California Indians faced "can be traced to their unique historical circumstances and the inconsistent and misguided federal policies that have shaped their history."[135] The council described the federal government's inequitable treatment of California Indians as "institutionalized injustice" and explained that it was "not injustice isolated in time or effect, but a pattern of injustice that stretches across the better part of two centuries and threatens to enter a third. Not injustice based on ignorance or inadvertence, but injustice that has been acknowledged, documented and studied by the federal government—then to a large extent ignored. Institutionalized injustice that has affected every aspect of Indian life in California."[136] A history of genocide, a pattern of federal neglect, the federal government's refusal to ratify negotiated treaties, and the state and federal governments' implementation of discriminatory laws and policies all contribute to what the Advisory Council on California Indian Policy termed "institutionalized injustice."

Ironically, dozens of studies and reports commissioned by federal and state government agencies as well as private parties have documented the condition of California Indians since the nineteenth century.[137] Although hypervisibility of the problems prevailed, the federal government did little to improve the health, education, and general well-being of California Indians.[138] Efforts of the Advisory Council on California Indian Policy resulted in the last large-scale interrogation of federal acknowledgment as an ongoing "institutionalized injustice" in California. From the beginnings of California statehood in 1850, the state legislature voiced opposition to federal recognition and instead advocated for tribes' extermination. The legislature opposed the United States' treaty commission and the eighteen treaties its commissioners negotiated with tribes. Treaty commissioners purposefully ignored treaty negotiations with most tribal groups on or near the California coast, as those Native peoples were already considered "domesticated" by Spanish missionization.[139] The council made it clear that federal and state histories of anti-Indian policies, genocide, and nonratification of treaties, as well as the federal government's inequitable treatment of California tribes, contributed to their uneven legal status and made it challenging to gain federal recognition.

The council emphasized the importance of tribal recognition status because it is the point from which all federal responsibility emanates. The council's Task Force on Recognition, chaired by council member Dena Ammon Magdaleno (Tsnungwe), "confirmed that tribal status clarification is a primary issue of concern to California Indians."[140] Without clarification of tribal status, the council's recommendations could not adequately address the issues all California tribes encountered. Another council task force commissioned a report by the American Indian Studies Center at the University of California, Los Angeles, to aid the council's work. Professors Carol Goldberg and Duane Champagne, along with several research assistants, generated a report titled *A Second Century of Dishonor: Federal Inequities and California Tribes*. Goldberg and Champagne's report played off the title of Helen Hunt Jackson's 1881 book *A Century of Dishonor*, which focused on injustices faced by Native Americans in the nineteenth century. *A Second Century of Dishonor* drew attention to the specific ways the Bureau of Indian Affairs had historically treated California tribes differently, with emphasis on underfunding and administrative neglect. One section of the report analyzed the condition and needs of unrecognized and terminated tribes in California. The Goldberg-Champagne research team interviewed a citizen of the San Luis Rey Band of Mission Indians for the report, and the tribe also responded to a survey associated with the study.

In 1997, the Advisory Council on California Indian Policy gave its final reports and recommendations to Congress. Drawing on findings from *A Second Century of Dishonor* and other research, the council's final reports included one on termination and one on federal recognition. Although the council did not create an explicit task force on termination, the final "termination report" made six recommendations that urged Congress to restore remaining terminated tribes in California and provide necessary assistance, financial and otherwise, to support newly restored tribes in reestablishing tribal governance and acquiring land for tribal housing and economic development.[141] As for the final "recognition report," the council called the federal acknowledgment process a "continuing injustice" and provided draft legislation for Congress to pass and thereby ensure California tribes' equitable treatment under the administrative process.[142] Since Congress and several other federal agencies treated California Indians as a discrete group for other

legislative purposes, the council recommended that the Department of the Interior do the same for federal acknowledgment through congressional passage of the California Tribal Status Act of 1997. The council noted that "this draft legislation would allow currently petitioning tribes the option of either using a modification of the current federal acknowledgment process administered by the [Bureau of Indian Affairs], or transferring their petitions to an independent Commission on California Indian Recognition, created by Congress to administer a California-specific process for unacknowledged California Indian groups."[143] In place of legislative action, the council also offered recommendations on modifying the federal acknowledgment process criteria to better account for the federal and state governments' destructive actions toward California Indians.

The council made it clear that the federal acknowledgment process did not work for California tribes. "A major problem with the current process is that it requires unacknowledged tribes to prove their status as self-governing entities continuously throughout history, substantially without interruption, as though that history did not include the federal and state policies that contributed to the destruction and repression of these very same native peoples and cultures," the council stated.[144] Overall, the council concluded that the primary reason unrecognized California tribes struggled to meet the federal acknowledgment process criteria lay in the historical injustices that the US and California governments had committed against California Indians and tribes. Missing from the council's analysis on tribal legal status was the havoc Spanish colonization also wrought on coastal California tribes. Spanish colonization impacted and continues to influence many unrecognized California tribes' ability to meet the criteria for federal acknowledgment. The long history of successive colonial powers' influence on California Indian tribes is crucial to understanding patterns of federal acknowledgment and lack thereof in the state.

Although the council's final reports made significant recommendations for unrecognized and terminated tribes, the lack of institutional support for such measures was voiced from the very inception of the council. In signing HR 2144, the Advisory Council on California Indian Policy Act of 1992, into law, President George H. W. Bush stated that, while he supported the federal acknowledgment process and the restoration of terminated tribes, he did

not "support establishment of separate recognition procedures or policies exclusive to one State." He further noted, "I sign this bill on the understanding that the Council will serve only in an advisory capacity."[145] An unwilling executive branch thus foreclosed the possibility of a California-specific path to federal recognition at a critical moment of potential reform.

The Advisory Council on California Indian Policy's reports and recommendations were a crucial step toward addressing tribal status and the specificities of the California Indian experience. Since the 1992 formation of the Advisory Council on California Indian Policy, unrecognized and terminated tribes in California have encountered some successes. Congress restored three groups to recognized status when it passed the Auburn Indian Restoration Act (1994), the Paskenta Band Restoration Act (1994), and the Graton Rancheria Restoration Act (2000). Federal court rulings restored federal recognition to the Mechoopda Indian Tribe (1992) and the Wilton Rancheria (2009). The assistant secretary for Indians Affairs reaffirmed federal recognition to three California tribes: the Ione Band of Miwok Indians (1994), the Koi Nation (2000), and the Tejon Indian Tribe (2012).

Despite these achievements, the council's and others' calls to the federal government remain relevant today as California-specific modifications to the federal acknowledgment process have never been made. Since the 1992 creation of the Advisory Council on California Indian Policy, no California tribes have achieved federal recognition through the federal acknowledgment process, and tribes that remain terminated, such as the Nevada City Rancheria Nisenan Tribe and the Mishewal Wappo Tribe of Alexander Valley, continue to seek restoration. For all the good that came from the council's reports and recommendations to Congress in other areas of California Indian life, its recommendations to remedy the federal acknowledgment process for California tribes have yet to be realized.[146] When the acknowledgment process regulations went through the most recent revision, concerns over the California experience again surfaced. Written and oral comments to the Office of Federal Acknowledgment called for California-specific considerations to inform the revised process criteria. When the *Federal Register* published the revised regulations in July 2015, there was once again no recourse for California tribes.

The histories and experiences of California's unrecognized tribes are complex and varied, but their struggles for federal acknowledgment share common themes that stem from the multiple ways that colonialism took shape in California. If California's history had not included so many injustices, perhaps all of today's unrecognized tribes would be federally recognized. Unfortunately, the federal acknowledgment process regulations place the burden on California Indian tribes to prove their community and sovereign identities. The process asks petitioning tribes to prove they maintained community cohesion and political influence despite colonial policies that undermined California Indian rights to life and land. Process criteria require petitioning tribes to prove they "existed as a distinct community" and "maintained political authority" autonomously over tribal members from 1900 to the present regardless of multiple attempts to eradicate Native peoples, cultures, and systems of governance. Past governmental (in)actions and policies, in the form of legalized genocide, rejected treaties, and land dispossession, make it almost impossible for unrecognized tribes in California to prove continuity in ways that sufficiently meet the process regulations, while simultaneously inflicting trauma on communities forced to contend with histories of genocide and colonization.[147] The federal acknowledgment process's emphasis on descent from a historic tribe belies the reality of some tribes' political structures after Spanish missionization. Anthropology, as a discipline, and anthropologists, as perceived authorities on Native American culture, also played significant roles in the creation of nonfederally recognized California Indian tribes. Further adding to California tribes' difficulties in securing federal recognition are contentious debates about tribal and individual authenticity, as well as the politically charged nature of the tribal gaming industry. Taken together, nonfederally recognized tribes in California face ongoing and serious challenges toward the recognition of inherent tribal sovereignty.

THREE

Struggle for the San Luis Rey Village

In 1984, the San Luis Rey Band of Mission Indians sent a letter of intent to petition for federal recognition through the relatively new federal acknowledgment process. The San Luis Rey Band's decision to do so was grounded in a long history of tribal demands for the same rights and political status held by other Native Americans, including the six other federally recognized bands of Luiseño people. An unrecognized status precluded the tribe's ability to fully exercise tribal self-determination through providing land-based, political, and socioeconomic resources and opportunities for its community. Tribal leaders agreed to pursue federal recognition and establish the tribe's legal status once and for all.

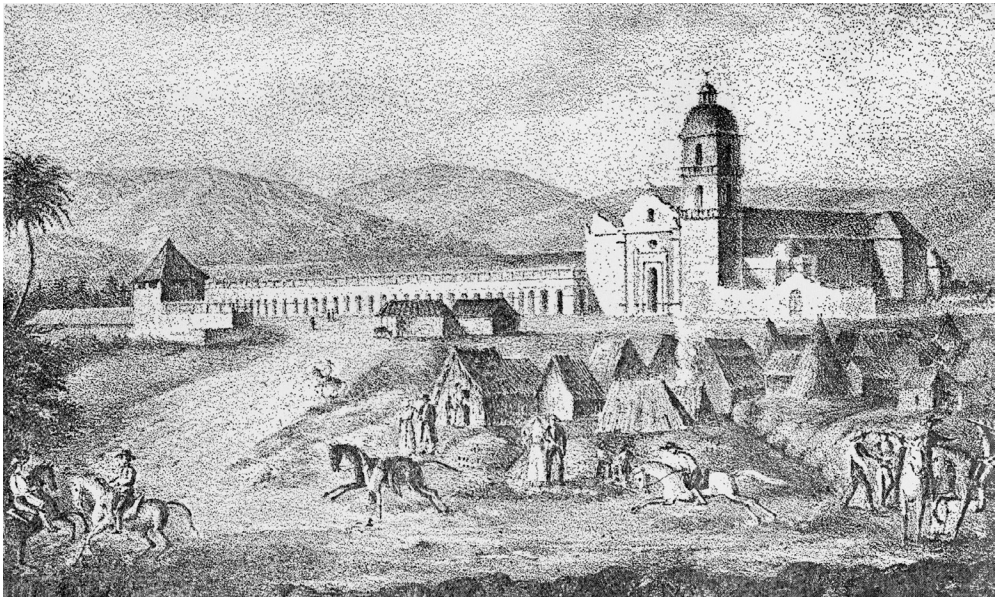
Like every unrecognized tribe in the United States, the San Luis Rey Band's story underscores the ways in which quests for federal recognition are deeply rooted in history. Indeed, the San Luis Rey Band's current struggle to retain the federal government's recognition of its inherent tribal sovereignty is embedded in the successive waves of colonization that changed California Indians' lives forever. Spanish and Mexican colonization played a fundamental part in shaping the contemporary San Luis Rey Band of Mission Indians. Luiseño people from multiple villages, including Qéch, merged at Mission San Luis Rey but maintained an understanding of Luiseño social and political organization. After mission secularization under the Mexican government, Qéch retained its political identity as one of several postmission settlements in a network of village communities across the Luiseño territory. Subsequently, the US Senate's refusal to ratify the 1852 Treaty of Temecula, the dispossession of the San Luis Rey Village, and the federal government's failure to set aside land for the San Luis Rey Band resulted in the tribe's lack of federal recognition.

Spanish and Mexican Colonization in the San Luis Rey Valley

When the Nóot, or hereditary leader, of Qéch witnessed eight Spaniards approach his village, he proclaimed, "What is it that you seek here? Leave

our country!"[1] Skepticism about the outsiders subsided once the Spaniards provided the Nóot with gifts. Threats of violence transformed into a possible alliance for the Qéchyam, who were the inhabitants of Qéch, and the Nóot let the eight men stay in his "country." Like other Indigenous leaders who encountered foreigners, the Nóot of Qéch insisted the Spaniards follow his community's protocols before creating a relationship.[2] Writing of this encounter in the 1830s from Rome, Pablo Tac, a Luiseño baptized at Mission San Luis Rey in 1822, found it striking that the Nóot allowed the Spaniards to stay at Qéch and establish the San Luis Rey Mission nearby. Qéchyam rarely let others live in their territory, a place that Tamáayawut, or the earth mother, had created just for them. Pablo Tac claimed an Indigenous sovereignty for Luiseño peoples who had their own "countries" and whose language and dances differentiated them from other tribes.[3]

Qéchyam had encountered Spaniards prior to the exchange documented by Pablo Tac. In July 1769, the Portolá expedition came across Qéch's territory and named it San Juan Capistrano. After Mission San Juan Capistrano's founding in 1776, the Spaniards called the area around Qéch San Juan Capistrano el Viejo instead.[4] Spanish padres compelled some Qéchyam to receive baptism at Missions San Diego, San Gabriel, and San Juan Capistrano prior to Mission San Luis Rey's founding. In June 1798, Franciscan padres established Mission San Luis Rey in Qéchyam territory, and many people of Qéch then received baptism there.[5] Given Qéch's proximity to Mission San Luis Rey, the Spaniards rapidly incorporated Qéchyam into mission life. Father Antonio Peyri, the missionary in charge, utilized Luiseño sociopolitical structures in his development of Mission San Luis Rey and treated Luiseño leadership "with respect."[6] Luiseños persisted in established interior villages such as Temecula and Pauma, but many also relocated to a baptized Indian village that developed near Mission San Luis Rey.[7] Spanish colonization disordered the Luiseño world as it led to the rearrangement of village community networks. Although Luiseño people from multiple lineages converged at the mission, territorial understandings preserved Qéch's continuity as a Luiseño place. Approximately two thousand Luiseños joined together at the restructured Qéch village and elected *alcaldes* and *regidores* to act as intermediaries with the missionaries.[8] The village also had an elected political leader the Spaniards called a *capitán* who dressed in Spanish garments and held a leadership position.[9]



Mission San Luis Rey, by Auguste Bernard du Hautcilly. Courtesy of the Bancroft Library, University of California, Berkeley.

After Mexico gained independence from Spain in September 1821, processes to emancipate baptized Indians and secularize the missions took place. Under Spanish law, Indigenous peoples had held the status of a minor. "The Mexican constitution of 1824," however, "granted citizenship to Indians and freed the majority of the Indigenous population from all forms of coercive labor, tribute, and service," historian Lisbeth Haas explains.[10] Emancipation presented an opportunity for baptized Indians at the missions to leave their status as minors and acquire Mexican citizenship. An 1826 order to emancipate Indians in the San Diego military district, which included San Luis Rey, compelled many Luiseños to depart the mission and return to their home villages upon learning of their freedom. Other Luiseños wanted to stay near the San Luis Rey Mission because not only did they view it as belonging to them, given the labor they performed to maintain the mission's existence, but they continued to have an understanding of the mission locality as the Luiseño space of Qéch.

Father Antonio Peyri retired from his position at Mission San Luis Rey in 1832. Upon his departure, Peyri took two Luiseño boys to Mexico City

with him—twelve-year-old Pablo Tac and ten-year-old Agapito Amamix, whose parents came from the Pumuushi and Qéch villages. Peyri took Tac and Amamix to Mexico City to study for the priesthood at the Iglesia y Colegio de San Fernando, the oldest Franciscan institution in the Americas for training missionaries to work with Indigenous peoples. While in Mexico City, political upheaval from the Mexican government's new policy of secularization created an unstable environment at the Franciscan facility. Peyri, who secured passage back to his home in Spain, took Tac and Amamix with him, and they arrived in Barcelona on June 21, 1834. Peyri then sent Tac and Amamix to Rome to continue their studies for the priesthood at the Collegium Urbanum de Propaganda Fide, where they enrolled in September of the same year. While in Rome, Tac created the first written version of the Luiseño language and the earliest documented account of Spanish colonization from a California Indigenous perspective. In his manuscript, Tac used Luiseño spiritual thought and practice that alluded to the power relations, knowledge production, and cultural protocols within his community at Mission San Luis Rey.[11] Tac understood the mission as a Luiseño place, noting that "Mission San Luis Rey de Francia was so named by the Fernandino Father . . . but we call it *Quechla* in our language."[12] Tac's writing emphasized the ongoing connections Luiseños had to their lands despite Spanish and Mexican claims. Before they had the chance to return home, Amamix and Tac passed away in Rome from illness in 1837 and 1841, respectively.

In 1833, José Figueroa, the Mexican governor of California, issued a full emancipation decree, which included a provision to establish Indian pueblos composed of emancipated Indians. Governor Figueroa enlisted General Santiago Argüello to identify Indians at the southernmost missions who could establish the pueblos and serve as models of emancipated life for the rest of the missions. At San Luis Rey, Argüello selected 449 people and proposed to establish Indian pueblos at Santa Margarita (the Luiseño village Tópomay) and Las Flores (the Luiseño village Ushmay).[13] Only four Luiseño families originally from Tópomay agreed to start a pueblo at Santa Margarita. The one hundred Luiseño families who formed the Las Flores pueblo originated from the Ushmay village or knew of ancestral connections to the area.[14] Both instances underscored the continuity of Luiseño people's relationship to place despite Spanish colonization.

After 1833, Luiseños at the San Luis Rey Mission regularly protested the actions of the Mexican *mayordomos*, the overseers and administrators of mission property and labor thereupon. Writing to Governor José Figueroa a month after his tenure as San Luis Rey Mission administrator began, Mexican military captain Pablo de la Portillà complained that the "Indians will do absolutely no work nor obey my orders" and "all with one voice would shout, 'We are free! We do not want to obey! We do not want to work!'"[15] Julio César, a Luiseño born at Mission San Luis Rey in 1824, recollected his experience growing up and working at and around the mission until his departure in 1849. He recalled some of the harsh conditions the *mayordomos* imposed on the Luiseños, as well as the Spanish functionaries' efforts to acquire land, material goods, mission cattle, and other resources. César remembered the mission administrators gave the Luiseños "plenty of whippings for any wrongdoing, however slight."[16] César further recounted, "When Don José Antonio Estudillo stopped being administrator he took a rancho—San Jacinto, livestock and all. No one ever found out if it really belonged to the Indians. Don José Joaquín Ortega, during his administration, took possession of nearly everything that belonged to the mission . . . even the dishes and cups."[17] Although Mexican officials treated Luiseño peoples poorly and appropriated land, San Luis Rey Mission records indicated that between 1832 and 1843 the baptismal rate reached a peak, attesting to an increased birth rate and some semblance of recovery.[18]

The secularization process involved transitioning missions into parish churches and breaking apart the missions' landholdings. In theory, mission lands would revert to Indigenous control in large plots of collectively owned land. In practice, Mexican officials in California parceled out most mission land in the form of private land grants. The six largest land grants closest to Mission San Luis Rey included Rancho Agua Hedionda, Rancho Buena Vista, Rancho Guajome, Rancho Santa Margarita y Las Flores, Rancho Monserrate, and Rancho Los Vallecitos de San Marcos. The Mexican government granted legal title for Rancho Buena Vista and Rancho Guajome to Luiseño Indians of the San Luis Rey Mission. After his emancipation in 1836, Felipe Subria supported his family by cultivating a small number of livestock in an area known as Buenavista. Felipe petitioned for the land he believed he deserved as "a native of [the San Luis Rey] mission, where I

have spent so much labor."[19] Andrés and José Manuel, two Luiseños of San Luis Rey, petitioned in 1843 for legal title to land they had begun cultivating four years earlier at a place the Mexican authorities called Guajome and the Luiseño called Waxáwmay. Pablo Apis, a Luiseño *alcalde* originally from the Waxáwmay village, made a counterclaim to the land requested by Andrés and José Manuel.[20] Governor Pío Pico awarded the title of Rancho Guajome to Andrés and José Manuel in 1845 and granted a small piece of land in Temecula to Apis in exchange.[21] By and large, however, Californios and Mexican government officials usurped most former mission lands for themselves and their families. Rancho grantees could not dispossess Indian villages that existed within a grant but used the Indians "of the enclaved rancherias as forced peon labor and restricted them in many ways."[22] Indigenous peoples' labor made the rancho economy possible in that they worked as vaqueros, carpenters, domestic servants, and more.

In the process of emancipation and secularization, the remaining Luiseños who congregated at Mission San Luis Rey relocated to the vicinity of Qéch's precontact settlements about one to two miles from the mission.[23] Some postmission Qéchyam hailed from multiple Luiseño villages while others originated at Qéch prior to Mission San Luis Rey's establishment.[24] Spanish colonization created the village's new composition, but an Indigenous understanding of Qéch as a Luiseño political territory persisted even after missionization and secularization. As the Mexican-American War reached California, Qéch navigated the transitionary period between shifting colonial powers as a politically and socially organized Luiseño settlement active in the Indigenous politics that shaped the era.

The San Luis Rey Village and the United States, 1846–1912

During the Mexican-American War, Southern California Indians played an active role in the events that unfolded. Considerable Indian unrest and resistance to Californio rancheros and Americans led to the presence of successive military units at Mission San Luis Rey. The military commander of California, Captain John C. Frémont, appointed John Bidwell as magistrate of the San Luis Rey District in August 1846.[25] While stationed at San Luis Rey, Bidwell interacted with the people of Qéch. Bidwell mentioned

a "chief" named Samuel and described the Indians as friendly, literate, and masters of the Spanish language.[26] Luiseño Julio César recalled that in 1846 the "chief of the Indians at Mission San Luis Rey was Gerónimo," an individual who took part in events leading up to the Pauma Massacre of the same year.[27] The "chief" Samuel may have been an *alcalde* of the village rather than the captain. A sixty-year-old *alcalde* of "San Luis Rey" named Samuel appeared on the 1852 California state census. Proximity to the mission made Qéch synonymous with San Luis Rey. Qéch gradually acquired an anglicized name, the San Luis Rey Village, while the Luiseño understanding of Qéch as a political locality endured.

After Bidwell retired from his position, US military troops under Colonel Stephen W. Kearny and Commodore Robert F. Stockton took control of San Luis Rey in January 1847. When they arrived in the valley, they got the keys to the mission from the *alcalde* of the "Indian Village, a mile distant."[28] After Kearny and Stockton moved north, the Mormon Battalion, a group of volunteers recruited to serve the war effort, stayed at San Luis Rey until April 1847. In July, the military governor of California, Colonel Richard Barnes Mason, ordered the creation of an Indian subagency for the Native peoples of Southern California. Governor Mason appointed a member of the erstwhile Mormon Battalion, Captain J. D. Hunter, to serve as the subagent for the agency headquartered at Mission San Luis Rey.[29] The appointment of a military man to the position of Indian subagent suggested that the Americans had a certain anxiety about the power of Southern Californian tribes.

In early 1851, tribal leaders of the San Luis Rey Village received word that Indians to the north had entered treaty agreements with the United States. By June, messengers had informed the San Luis Rey Village that treaty commissioner George W. Barbour intended to meet with Indian leaders from San Diego and Los Angeles at Rancho del Chino.[30] Tribal leaders from across Southern California made the trip to Rancho del Chino in anticipation of treaty negotiations. After waiting days for Commissioner Barbour's arrival, the numerous tribal representatives in attendance expressed frustration that Barbour had failed to meet with them.[31] Commissioner Barbour had instead traveled north to San Francisco and eventually back to Washington, DC. Despite Commissioner Barbour's absence, the San Luis Rey Village remained agreeable to the prospect of a treaty if it meant securing land. Soon

after the attempted treaty meeting, Cupeño village leader Antonio Garra, concerned about being forced to pay taxes and the influx of settlers entering his territory, contacted the San Luis Rey Village with plans to coordinate an uprising against Americans.[32]

Rumors of an attack prompted another treaty commissioner, O. M. Wozencraft, to expedite a visit to Southern California. The San Luis Rey Village, like many other Luiseño communities, refused to participate in Garra's uprising and expressed willingness to support the Americans.[33] Once in San Diego, Wozencraft joined Captain S. P. Heintzelman, a US Army officer ordered to the region in 1850, and his command. In mid-December 1851, Captain Juan Bautista of the Los Coyotes Cahuilla village of Pauki sent runners to inform tribal leaders at the San Luis Rey Village and elsewhere that they should soon assemble in Temecula to meet Commissioner Wozencraft.[34] When Wozencraft and Captain Heintzelman arrived in Temecula on December 30, 1851, most Luiseño leaders were present while the Cahuilla leaders remained absent.[35] J. J. Warner, an early American settler in Mexican California and owner of a large ranch in Cupeño territory, and Lieutenant Robert Emmet Patterson found the primary chief of the Cahuilla, Juan Antonio, and threatened that "troops would be sent against him if he refused to meet with the Indian commissioner."[36] Threats of military action against the Cahuilla indicated a coercive element to treaty negotiations that gave some Native leaders little choice or agency in the matter.

Finally, on January 5, 1852, tribal leaders from Luiseño, Cupeño, Cahuilla, and Serrano territories signed the Treaty of Temecula at the adobe quarters of Luiseño Pablo Apis. The treaty of "peace and friendship" would in theory establish reservation lands for the tribes away from the primary areas of white settlement and bring the tribes under the jurisdiction of the federal government by extinguishing Indian title to land.[37] The treaty also stipulated the provision of supplies, livestock, agricultural equipment, and education access to tribes on the proposed reservations. Captain Pedro Ka-wa-wish signed on behalf of the San Luis Rey Village near the mission and initiated a government-to-government relationship with the United States when he made his X-mark.[38] Captain Ka-wa-wish also provided information about Luiseño language to US boundary commissioner John Russell Bartlett in May 1852.[39] Bartlett described Pedro "Cawewas" as the "Captain or chief of

his tribe, about 150 of which now live in the valley where the mission San Luis Rey is situated."[40] Participation in the 1852 Treaty of Temecula represented one of the earliest and most explicit instances of the San Luis Rey Village's interaction with the United States. Although the US Senate refused to ratify any of the treaties made in California, the federal government indisputably recognized the San Luis Rey Village's inherent tribal sovereignty by entering a treaty relationship.

Without treaty ratification, the people of San Luis Rey Village remained in their homes and continued to tend their fields and livestock relatively undisturbed.[41] Like people in other Indigenous communities in California, San Luis Rey Village members deployed their labor power and joined the region's workforce as agricultural and domestic laborers.[42] The 1860 federal census placed the "San Luis Rey Indian Village" in the San Luis Rey Township and identified the captain of the village as a man named Geronimo. The 1860 census also recorded Indian-owned agricultural production in San Diego County. For the San Luis Rey Village, 107 Indians had livestock valued at $1,500 and $100 for animals slaughtered. The San Luis Rey Village also produced 50 bushels of wheat and 250 bushels of Indian corn.[43]

In 1865, Special Indian Agent W. E. Lovett and Southern California Indian Agent J. Q. A. Stanley met with Southern California Indians in Temecula. It was the first time Southern California Indians had convened with federal officials since treaty negotiations were held at the same location thirteen years prior.[44] Agent Stanley requested the meeting so he could distribute agricultural implements, corn, and seeds to the Indian rancheria communities whose crops had suffered due to drought the previous season. Lovett reported that about fourteen hundred Luiseño, Cahuilla, and Kumeyaay Indians attended the meeting. Representatives of the San Luis Rey Village reported that there were seventy-five people, sixty-two cows, and forty-five sheep at their rancheria.[45] In addition to acquiring their agricultural distributions, the tribal delegations in attendance had the opportunity to share their grievances with the federal agents.[46] Complaints voiced by Cahuilla and Luiseño attendees centered on land disputes, thereby illuminating how the absence of treaty-designated reservations created antagonism between Southern California Indians and white settlers over territorial claims. As the Civil War came to a close in 1865, more settlers came to Southern California

and encroached on several of the Mission Indians' villages and agricultural fields. During this time, white American settlement impacted the San Luis Rey Village, and the tribal community entered a struggle over the recognition of their rights by the US government that has continued to the present.

A general disregard for Native rights by settlers and government officials hindered tribal claims to land. Since the Indian peoples of San Diego County had long established irrigable lands for agricultural purposes, settlers were especially keen to stake homestead claims close to Indian villages. Land near the San Luis Rey Village was particularly desirable due to its location near the San Luis Rey River and Mission San Luis Rey, a place already developed for agriculture and related industries.

In fall 1867, a white man named John Summers moved to the San Luis Rey Valley and established himself near the San Luis Rey Village.[47] What members of the San Luis Rey Village did not know was that Summers intended to take their land. Without the San Luis Rey Village's knowledge or consent, federal land surveyors demarcated their village as public land available for settlement. On May 3, 1871, Summers filed with the US Land Office in Los Angeles a homestead claim that encompassed the entire San Luis Rey Village, including homes, cultivation fields, and burial grounds. Initially, Summers built a small dwelling at a distance from the village, but he later decided to build a house next to the village and informed the community of his intent to drive them off "his" land. Outrage gripped the village members at the prospect of leaving their homes and ancestors. Benito Molido, the San Luis Rey Village captain, communicated with other Native leaders and with attorney C. N. Wilson about Summers's claim and plan to remove his community. Tensions ran high as word of the situation spread among tribal leaders in Southern California who similarly confronted non-Native encroachment on their lands.

Threats to the San Luis Rey Village incited protest and action. Wilson informed the commissioner of Indian Affairs on March 14, 1873, that the families of the San Luis Rey Village "have no place to go to if they were inclined to go, but they declare they will fight for their homes if they all perish, rather than give them up."[48] On May 7, 1873, Captain Benito Molido protested Summers's claim to his people's land.[49] He wrote to the US Land Office in Los Angeles,

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

1st—That the Indian title to said land has not been extinguished nor in any manner purchased or acquired by the Government of the United States,

2nd—That said lands have been in the peaceable possession of the Fathers of the Indians who now occupy the said lands as an Indian village and for agricultural purposes for hundreds of years,

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

And as Captain of the Band of the Mission Indians living at the Indian Village at San Luis Rey, San Diego County, California, I, Bonito Molino, protest against the occupancy of said Village by said John Somers as a Homestead claim under the laws of the United States and in the name of and for my People as well as for myself protest against the Government of the United States granting to said John Somers or any person whatever any rights claim or possession in or to the above described lands or any land to which the Indian title has not been extinguished in the United States Land Office within and for the Los Angeles Land District of the State of California and I declare that I with the band of Indians of which I am Captain now live on, occupy and cultivate the said lands for more than forty years that I was born upon said land and My Fathers for hundreds of years before me.[50]

In his powerful statement, Captain Benito Molido expressed his rejection of settler colonialism in Southern California. Captain Molido and the San Luis Rey Village's perspective on Native land rights as "Time Out of Mind," or from time immemorial, defied US legal doctrines and confronted settler colonial laws that enabled settlers to secure land titles. Moreover, Captain

Molido's assertion that "Indian title had not been extinguished" clashed with the government's perspective on the existence of aboriginal title in California. As would be confirmed later by judicial ruling and Congress, the United States extinguished aboriginal title to land in California through the 1851 California Land Act and the intent to make treaties with California tribes. Alongside the tribe's participation in the Treaty of Temecula, Captain Molido's letter is another attempt by the San Luis Rey Village to strategically utilize the US legal system for land preservation even as the community outright protested the government's authority.

In an act of solidarity, the following day Luiseño and Cahuilla leaders, including Olegario Calac and José Antonio, also wrote to the US Land Office in Los Angeles. Southern California tribes and leaders worked to support each other through the shared experience of land dispossession and non-Native intrusion. The leaders protested the United States' sale, transfer, or conveyance of public or government land within the limits of the Los Angeles Land District.[51] They argued that public or government land instead belonged to the Luiseño and Cahuilla. For more than a hundred years, they contended, the Luiseño and Cahuilla had continuously and unquestionably possessed the lands that their homes, villages, pastures, and fields occupied. Like Captain Molido, they too made the case that Indian title had not been extinguished, purchased, or legally acquired by the United States. Luiseño and Cahuilla leaders powerfully claimed the land for their tribes, their families, and future generations. They asserted that no one, including the US government, had the right to claim Luiseño or Cahuilla land.

Office of Indian Affairs officials reported on the San Luis Rey Village land dispute to the commissioner of Indian Affairs multiple times. B. C. Whiting, California's superintendent of Indian Affairs, discussed the concern at length in a letter, reporting that settlers and officials in the Land Office "have the slightest regard for Indian claims or possession. They all act upon the hypothesis that an Indian has no rights that a white man is bound to respect." Memories of Antonio Garra's uprising two decades earlier flooded settlers' minds as land disputes threatened to produce violent interactions. Whiting explained, "The case which was the immediate cause of excitement amongst the San Luis Rey Indians, and which it was apprehended might lead to an open collision between the two races, was a fraudulent location

of a Homestead covering the whole Indian Village of San Luis Rey Mission, in close proximity to the old mission church."[52] Whiting underscored just how significant the issue was not only for the San Luis Rey Village but for other Luiseño and Southern California Mission Indians as well.

By June 1873, the protest letters written by Benito Molido and Olegario Calac had reached the commissioner of Indian Affairs, but the federal government took no action to secure land for the San Luis Rey Village. On a tour to investigate the condition of the Mission Indians of Southern California, Special Agent John G. Ames met with the San Luis Rey Village residents on July 11, and they once again iterated their protest of John Summers's homestead claim.[53] Southern California Indian leaders, particularly Olegario Calac, continued to pressure the United States to establish reservations for their tribes.[54] In November 1875, Calac met with President Grant in Washington, DC, to discuss the issue. A month later, President Grant issued an executive order that established nine reservations for tribes in Southern California.[55] A correspondent reporting from the San Luis Rey Valley for the *San Diego Union* wrote in early 1876, "We notice that in the reservation of lands for Indians, recently published in The Union, the rancheria of San Luis Rey is not included. The Indians have dwelt here as far back as the oldest resident remembers. They have several comfortable houses, and number about ten families. These Indians are on the homestead tract of John Summers."[56] Despite relentless protest, Indians of the San Luis Rey Village were ordered to leave their homes in May 1877 and the United States issued Summers's 160-acre homestead claim on June 2, 1877.[57] The San Luis Rey Village, however, refused to leave its land and resisted ejection.

The San Luis Rey Village and other tribes made a concerted effort to counter non-Native claims to land and resources through outright resistance as well as engagement with the settler colonial institutions of the United States. Resistance took multiple forms: refusal to vacate their land; organized visits to the US Land Office in Los Angeles and to Washington, DC; written protests of settlers' actions, sent to Indian agents and other officials; and armed force against settlers. On February 7, 1878, Luiseño leaders wrote a letter to the Interior secretary. They implored, "We do not ask . . . for the Government to give us money, nor blankets, nor seeds; only some lands for us to cultivate for the support of our families, and to raise

our animals to work our lands, and that this land shall be protected against whites and that you hold a protection over us so that it cannot be taken from us."[58] Uncertainty about autonomy for their communities and non-Native settlement compelled Luiseño leaders to seek the "protection" of the federal government. Based on the language used in the letter, which conveys a sense of pride, the term "protection" reads less like a helpless plea and more of a nod to the federal Indian trust responsibility that "broadly entails the unique legal and moral duty of the federal government to assist Indian tribes in the protection of their lands, resources, and cultural heritage."[59] In the 1870s, the connection between tribes and the federal government was problematically referred to as that of a ward-guardian relationship. The paternalistic language used is offensive and incorrect because it renders tribes as weak and dependent upon the United States, while also undermining tribal sovereignty. When tribal leaders wrote that letter, they asserted themselves not as wards in need of guardianship but as sovereign nations with rights to their land and the right to expect the federal government to fulfill its legal responsibility.

A year later, on March 12, 1879, a delegation of Luiseño leaders from eleven different communities convened in Pala to sign a petition to the federal government in opposition to their removal from their respective lands. Captain Benito Molido and the other Luiseño leaders requested that S. S. Lawson, an Indian agent for the Mission Indian Agency, forward their request to the president and Congress. The petition decreed, "We find ourselves in a critical situation in the Southern part of the state of California, frequently molested by settlers, and . . . efforts have been made, and prepared to remove us from the land where our ancestors have resided for generations."[60] A list of the eleven impacted Indian villages and the number of Indian people living at each was included in the petition. For San Luis Rey, it noted fifty-seven people lived at the village. Luiseños who signed the petition pronounced that they "respectfully petition and request of the proper authorities to provide that we may be permitted to continue residing in the places above mentioned, and in the free and peaceful possession of our homes."[61] The San Luis Rey Village's direct appeal to the federal government alongside other similarly situated tribal communities demonstrated its ongoing commitment to secure its land as well as its status as an inherently sovereign Luiseño band. The San Luis Rey

Village's enumeration on federal Indian censuses in 1886 and 1888 served as further evidence of its discrete status.

Non-Native settlers held conflicting perspectives on Mission Indians' claims to land. Non-Native reformers who considered themselves "friends of the Indians" took an interest in the conditions facing the Mission Indians of Southern California. Reformers such as Helen Hunt Jackson worked to bring attention to the circumstances of Southern California Indians and to compel the federal government to act on its trust responsibility. The federal government responded by commissioning several reports to document the circumstances of the Mission Indians.[62] Jackson and Indian agent Abbott Kinney coauthored the 1883 *Report on the Conditions and Needs of the Mission Indians of California* for the commissioner of Indian Affairs to support, among other goals, the clarification of land titles and the resolution of boundary disputes between Mission Indians and non-Native settlers. Jackson's famous 1884 novel *Ramona* also focused on the plight of Southern California Mission Indians in an attempt to elicit change. While *Ramona*'s popularity brought national attention to Mission Indians, it did so by portraying them as helpless against Americans and strengthening public fascination with California's Spanish past. Mission Indians and Non-Native advocates did not always align on reform agendas and methods, which contributed to their mixed success.

On the other end of the spectrum, non-Native settlers routinely expressed disdain toward Native land claims and the federal government's role in reserving lands for Mission Indians. If Mission Indians displayed the tenets of "civilization" and self-sufficiency, then why, settlers reasoned, did the federal government need to establish reservations where isolated Indians might revert to their unindustrious "primitive" ways? Settler opposition toward reservations also hinged on access to Mission Indian land and labor. Settler society relied on Mission Indian labor to function, and individuals vehemently objected to the federal government's appropriation of land for Indian use. An 1889 letter written by former US Indian inspector William Vandever to the commissioner of Indian Affairs detailed his irritation with the situation and his views that Mission Indians did not deserve land. At the time of writing, Vandever lived in Ventura and was serving a second term in the US House of Representatives. Interestingly, thirteen

years prior, Vandever had reported on the conditions of the Mission Indians in California. In his 1876 report, he had advocated for the federal government to secure lands for the Mission Indians as soon as possible and that removal of the Indians to Indian Territory would be disastrous. In a little over a decade, Vandever's views became quite the opposite. He wrote to the commissioner of Indian Affairs in 1889, stating that "these so called Mission Indians, like Indians generally, imitate the vices rather than the virtues of civilized society, and it is cruel as well as absurd to turn good citizens and thrifty settlers upon public lands out of house and home, to make room for a miserably debauched and demoralized set of unfortunates who will desolate rather than improve the farms assigned them from which white men have been thrust."[63] Vandever's letter demonstrates the irony of settler claims to occupancy through his clear disdain toward the idea of white men being removed from "their" land to make space for Native peoples. Vandever's statements acutely expressed white settlers' sense of entitlement to land in Southern California.

Vandever's and other settlers' logic had implications for policy and governmental action. With little support from settlers in Southern California, the federal government's attempts at securing land for Mission Indians was often met with resistance or dismissiveness. Non-Native settlers even intruded upon and made purposeful claims to the little land federally reserved for tribes in Southern California.[64] Continued Native resistance to settlers' problematic views and deceptive actions led to the 1891 Act for the Relief of the Mission Indians, or the Mission Indian Relief Act, to address the wrongs confronting Mission Indians in Southern California. Jackson and Kinney's recommendations in their 1883 *Report on the Conditions and Needs of the Mission Indians of California* also impelled federal officials to act. The Mission Indian Relief Act established a special commission to survey the lands in Southern California where Mission Indians lived, both on and off existing reservations.

Albert K. Smiley led the Mission Indian Commission, and it came to be known as the Smiley Commission. The other members of the commission were Judge Joseph B. Morse and Professor C. C. Painter. All three men were part of the Lake Mohonk Conference of Friends of the Indians and the Indian Rights Association of Philadelphia.[65] Lack of funding and time

constraints prevented the Smiley Commission from visiting all Mission Indian villages and led to some errors in the commission's work. Florence Shipek has contended that the effectiveness of the commission was diminished "by the existence of deliberately or accidentally confused earlier survey lines, an unsympathetic General Land Office, and also less competent, or some possible less-than-honest, employees and surveyors who were necessarily entrusted with carrying out the work of actually locating lands and boundaries."[66] The Smiley Commission came through Southern California in March and April 1891.[67]

According to A. K. Smiley's diary, his commission came to the San Luis Rey Valley on April 9, 1891.[68] When the Smiley group met with the San Luis Rey Village, they provided testimony to reiterate how their village predated John Summers's land patent. The forty Indian people of the San Luis Rey Village continued to cultivate their fields and live in comfortable homes despite Summers's government-secured ownership of their land. Pointing out an economic benefit for the white settlers, the Smiley commissioners stated that the Indians of the San Luis Rey Village were "needed" as laborers in the area.[69] "They utterly refuse," the Smiley Commission reported, "to consider the question of removing to some other place, and, unless ejected by the Sherriff [*sic*], will remain where they are, and if thus ejected they can find homes on one of the reservations set apart for those who may be evicted from their present homes."[70] Other than suggest the Indian people go elsewhere, the commissioners admitted they were unable to do much more for the San Luis Rey Village.[71] The San Luis Rey Village "utterly refused" the prospect of leaving their homes and ancestors' graves to live in a place where they had no connections.

Since the Smiley Commission failed to provide any relief to the San Luis Rey Village, the community raised the issue to the local Indian agent in 1894. Agent Francisco Estudillo wrote to the commissioner of Indian Affairs about the San Luis Rey Village.[72] Estudillo reiterated the situation of the San Luis Rey Village and stated, "These Indians have lived near the Old Mission, San Luis Rey, for many years before the whites came into the valley. For all of this, their homes are patented to the whites, and ultimately[,] they must be evicted, as they utterly refuse to move from the home of their fathers and their childhood days."[73] Estudillo predicted forceful eviction would be

Indian village of Mission San Luis Rey de Francia, ca. 1891–99, by C. C. Pierce. Courtesy of the University of Southern California Digital Library and California Historical Society.

the only way to remove the community from their homes, a fate the village avoided for another eighteen years.

Indian agents enumerated the San Luis Rey Village on federal Indian censuses for the commissioner of Indian Affairs from 1893 through 1902. Census data, oral historical accounts, and court records indicate that throughout this period San Luis Rey Village community members attended the Carlisle Indian Industrial School, Perris/Sherman Indian Institute, the Phoenix Indian School, and the Whittier State School. Some also attended St. Anthony's Industrial School for Indians in San Diego.[74] Reginaldo Gonzales, a young boy who resided at the San Luis Rey Village, stole John Summers's pocketwatch in October 1896. Perhaps Reginaldo took the watch as a youthful attempt to exact some kind of justice for his tribal community in the face of government inaction. San Luis Rey Township constable Benjamin Hubbard told Reginaldo that Summers did not appreciate having his things stolen, an outrageous statement given Summers's theft of the San Luis Rey Village. In court proceedings against the approximately ten-year-old boy, prosecutors suggested he attend reform school in Whittier as punishment for his "crime."[75]

San Luis Rey Village elders earned a reputation as centenarians in the 1890s, as promoters endeavored to associate aged Indians with a romanticized Spanish past. The widely circulated 1893 "Belles of San Luis Rey" photograph depicted San Luis Rey Village matriarchs whose families lived and worked throughout the region. In August 1904, longtime San Luis Rey captain Benito Molido passed away at his home.[76] One of Benito's daughters, Francisca Molido, married a Kumeyaay man named Juan Duro who worked as a ranch hand in the San Luis Rey Valley. They lived together with their children in Captain Molido's house at the village after his death. The San Luis Rey Village subsequently selected Thomas Iguerra, a Luiseño with ancestral ties to the premission Qéch settlement, as the new captain.

Meanwhile, San Diego County's population rapidly grew, from 35,090 people in 1900 to 61,665 in 1910.[77] Businessmen and land developers like Henry E. Huntington and Colonel Ed Fletcher took advantage of the region's expansion at the expense of Native communities. In their plans to develop the area, harnessing the power of the San Luis Rey River became a top priority.[78] In 1905, Huntington's Pacific Light and Power purchased the 45,000-acre Warner's Ranch, which included riparian rights to the San Luis Rey River, in hopes of building a hydroelectric dam.[79] Huntington and Fletcher, along with three other Los Angeles businessmen, formed the South Coast Land Company and began to purchase hundreds of acres of land with riparian rights to the San Luis Rey River. Based on available documentation, at some point prior to 1912, ownership of John Summers's 160-acre property was transferred to an Orange County man named Ernest A. Wakeham. After an almost forty-year struggle to remain on their land, the San Luis Rey Village was evicted on February 9, 1912, and had approximately two thousand sheep taken away from them.[80] Shortly thereafter, Fletcher purchased the Wakeham tract to obtain riparian water rights to the San Luis Rey River, the waterway that had sustained the San Luis Rey Village for generations.[81] In the minds of businessmen and land developers intent on capitalizing on San Diego County's growth, the San Luis Rey Village's eviction was a necessary step to ensure white settlement's progress. With rights to the San Luis Rey River and plans for real estate development, settlers pushed the people of San Luis Rey Village out of their homes, taking their water supply and livelihood. Given the Supreme Court's 1903 ruling against the Cupeño people's rights to land

at Warner's Ranch, federal officials did nothing to secure land for the San Luis Rey Village.

Herbert Crouch, an early settler in the San Luis Rey Valley, said he acquired seventy dollars from John Summers to buy a small parcel of land for dispossessed members of the San Luis Rey Village.[82] Some village members relocated to the new plot, which was about three miles away from the original village. Although Crouch considered his intentions admirable, noting he thought "it was the best thing I did," he still owned the land and did not transfer property rights to village members.[83] Lack of legal ownership of the land reproduced the original issues facing the community. Without land or water, the San Luis Rey Village struggled. Many community members remained in the San Luis Rey Valley and Oceanside region, finding work where they could. Others became more mobile as they searched for labor opportunities. One community member, Juan Tule, moved to the Riverside area to find work and eventually resided on the Soboba Reservation.[84] San Luis Rey Indian women who married non-Native men resided on their privately owned land and raised families, but they retained a connection to their tribe. Even as the community lost the physical San Luis Rey Village, they retained their identities as an inherently sovereign tribe. Captain Iguerra continued in his role as leader of the tribal community. Despite the federal government's failure to preserve or acquire land for the San Luis Rey Village, the tribe persevered as a distinct political community and maintained its place alongside the Mission Indians of Southern California.

The contemporary San Luis Rey Band's ancestral connection to the San Luis Rey Village established after missionization is a fundamental element in its effort to secure federal recognition. Spanish and Mexican colonization directly influences the San Luis Rey Band's recognition petition with regard to criterion (e), or proving descent from a historical Indian tribe. The San Luis Rey Village that emerged after Spanish colonization included Luiseño people, from various precontact villages, who amalgamated and then reestablished themselves as a single social and political unit. Spanish missionization's impact on Luiseño people at Mission San Luis Rey also

sheds light on contemporary conditions for unrecognized California tribes along the route of missionization.

Shifts in colonial power from Spain and Mexico to the United States created an environment grounded in genocide and a lack of rights for Indian people. An unratified treaty, the genocidal legal landscape, and Office of Indian Affairs inaction on disputes over the San Luis Rey Village's claim to land are fundamentally connected to the contemporary unrecognized status of the tribe. The San Luis Rey Village's engagement with the non-Native world coalesced around control and ownership of land. Securing the San Luis Rey Village was the community's top priority. From opposing corrupt *mayordomos* to negotiating treaty agreements to protesting Summers's homestead claim, the San Luis Rey Village's activism and involvement with Southern California tribes influenced the tribe's political engagement with the United States.

The United States unquestionably recognized the San Luis Rey Village as an inherently sovereign tribe through treaty relations. Tribal struggles for land in the late nineteenth and early twentieth centuries served as a prelude to the contemporary campaign for federal recognition. While antirecognition rhetoric often obscures the ways in which unrecognized tribes engaged the federal government historically, the San Luis Rey Band of Mission Indians' participation in the federal acknowledgment process exemplifies the ongoing nature of a federal-tribal relationship from an unrecognized tribe's perspective. From the San Luis Rey Band's point of view, participation in the federal acknowledgment process is the most recent iteration of an ongoing struggle for rights and claims to ancestral lands.

FOUR

Reckoning with Recognition

Landless Indians lived throughout California by the turn of the twentieth century and searched for ways to secure land. The eighteen unratified treaties reemerged as one possible way to address the situation.[1] In January 1905, over fifty years after nonratification of those treaties, the US Senate removed the injunction of secrecy from the treaties and made them available to the public. Renewed attention to the unratified treaties rallied California Indians and their supporters across the state. The Mission Indian Federation, one of the most prominent intertribal organizations in Southern California, attracted a broad intertribal membership intent on changing the political landscape of Indian affairs.[2] Established in 1919 by Cahuilla Indians Julio Norte and Joe Pete, as well as a white man named Johnathan Tibbet who lived in Riverside, the Mission Indian Federation operated under the motto "Human Rights and Home Rule." From the federation's inception, its members criticized the federal government's failure to ratify the Treaty of Temecula and the Treaty of Santa Ysabel. Combined with dissatisfaction related to the forced implementation of the 1887 General Allotment Act, federal paternalism, and Bureau of Indian Affairs overreach in internal tribal affairs, intertribal political action in California grew throughout the early twentieth century.

The Mission Indian Federation's membership expanded quickly and included both reservation and nonreservation Indian communities throughout Southern California. The two most active nonreservation groups in the federation included the Acjachemen/Juaneño people of San Juan Capistrano and the San Luis Rey Band of Mission Indians in Oceanside. Participation in the Mission Indian Federation provided an outlet for the San Luis Rey Band to exercise its inherent sovereignty as a landless tribe and collaborate with other Mission Indians on issues impacting both reservation and nonreservation communities. Although one of the federation's goals was to sever the relationship between tribes and the federal government, the San Luis Rey Band's connection with the organization ironically laid the foundation

for an eventual campaign to obtain federal recognition through the federal acknowledgment process.

The San Luis Rey Band and the Mission Indian Federation

Over 150 Indians representing numerous tribes across Southern California gathered at Johnathan Tibbet's home in late October 1923 for the Mission Indian Federation's six-day semiannual convention.[3] The attendees included Captain Thomas Iguerra and others of the San Luis Rey Band. Federation members at the autumn convention discussed their rejection of the popular belief that Columbus, or anyone else for that matter, "discovered" America, and they used that sentiment as the basis to draft a resolution opposing the federal government's land allotment policy.[4] The resolution also demanded that the federal government consult with and listen to Indians on any matters pertaining to their tribal communities. Tribal representatives at the convention received a template petition addressed to the Interior secretary in Washington, DC, to fill out and sign. The typed petition protested allotment, calling it "unjust and unequal to the Indians," and had a blank space where tribal representatives could insert the name of their respective reservations.[5] When Captain Iguerra returned to his tribal community after the convention ended, he and twenty-seven other Indians of "the San Louis Rey Reservation in Southern California" signed the petition. On the back, a tribal member handwrote a paragraph that described the tribe's 1912 eviction from their village and the community's overall condition. The paragraph's author explained, "We had some good land at first. But since they drove us off, we been [*sic*] living about three miles away from where we were at first. We are just making [*sic*] living in a poor way, cannot raise nothing even a straw of hay, not a chicken nor nothing."[6] In adding a personalized component to the document, the San Luis Rey Band utilized the petition to assert their perseverance and active presence as an inherently sovereign community.[7] Using the petition to explain the community's circumstances implied the tribe's hopefulness that the federal government might be moved to finally provide assistance.

On December 7, 1923, Charles Ellis, superintendent of the Mission Indian Agency, wrote to Father Dominic of Mission San Luis Rey about the

points raised in the petition from the San Luis Rey Band.[8] Superintendent Ellis wrote, "Thomas Iguerra, F. L. Foussat, Miguel Salgado, Victor Molino, O. Soto, and several other Indians have signed the enclosed petition to the Secretary of the Interior in which they call themselves the Mission Indians of the San Luis Rey Reservation, and protest against being allotted."[9] Superintendent Ellis described the Indians who signed the petition as "citizen Indians" and stated that he had no record of a San Luis Rey Reservation. He asked Father Dominic to refer him to someone who might have more information because he did not want "to hold out hope to the San Luis Rey Indians that I can give them any relief, but I would like to have the facts at hand should there be a chance of helping them in the future."[10] The same day, Superintendent Ellis also wrote to the commissioner of Indian Affairs about the San Luis Rey Band's petition. Superintendent Ellis said he had called on Captain Thomas Iguerra to ascertain more information about the "San Luis Rey Reservation." Superintendent Ellis confirmed, "This is another instance of dispossession from their village where they had lived for generations," and given the 1903 Warner's Ranch decision, "nothing can be done in this and other similar cases."[11] Superintendent Ellis foreclosed the possibility of helping the San Luis Rey Band address the loss of the San Luis Rey Village.

Reservation politics and life drove the Mission Indian Federation's course of action, but the San Luis Rey Band's landlessness did not prevent its inclusion in the organization. In fact, from the Mission Indian Federation's inception, it acknowledged dispossessed village communities even as the federal government refused to do so.[12] In other words, the Mission Indian Federation "recognized" communities, like San Luis Rey, San Felipe, and Mataguay, that had never had a specific reservation set aside for them.[13] Many of those same communities were also participants in the unratified Treaty of Temecula and Treaty of Santa Ysabel. Disagreements and contention did sometimes arise at meetings when federation members wondered out loud why representatives of the San Luis Rey Band attended at all, as they belonged to a nonreservation people.[14] Nevertheless, the San Luis Rey Band remained active in the organization because of its emphasis on pursuing justice in relation to the unratified treaties. Participation in the Mission Indian Federation politically mobilized the San Luis Rey Band around some of the most pressing regional and statewide Indian issues.

On December 9, 1924, Captain Thomas Iguerra passed away suddenly in the San Luis Rey Valley. In the wake of his death, the tribal community selected thirty-five-year-old Faustino Foussat to serve as tribal captain. Foussat's background as a "mixed-blood" Luiseño Indian likely contributed to the community's decision to elect him as captain. Historically, mixed Indians had more access to dominant society and sometimes acted as intermediaries between "full-blood" Indians and the non-Native world.[15] By the time Faustino Foussat had become captain, he was already familiar with the Mission Indian Federation, having been a signatory on the 1923 petition.

Captain Foussat represented the San Luis Rey Band at Mission Indian Federation meetings held on Southern California Indian reservations and brought information back to his tribal community. He enlisted his close family members and other tribal members to attend meetings so that they too could participate in local Indian affairs. Captain Foussat often took his granddaughter Quinn to Mission Indian Federation meetings, where she played an administrative role by reading letters from Washington, DC, and taking notes for those in attendance. "My grandfather was trying to get everybody together more or less to be in the federation. He would take me to Pauma for Indian meetings. They talked about stuff that Washington was doing at that time," she recalled.[16] Quinn remembered Captain Foussat also "had Indian people come to Oceanside and San Luis Rey for meetings all the time."[17] In Oceanside, Captain Foussat hosted "Indian meetings" at a local community hall on North Tremont Street, just a couple of blocks away from a house where one of his daughters lived with her children. He parked his car in front of the house and stayed for dinner before walking to the meetings. Although the federation had a strong male presence, Quinn and other women in the San Luis Rey Band participated in the organization. One woman in the San Luis Rey Band was close with the organization's non-Native counselor, Purl Willis. She collected donations and sold enchiladas to help send federation members to Washington, DC. The San Luis Rey Band's involvement with the Mission Indian Federation supported the political consciousness of the community and contributed to an assertion of self-governance as a landless tribe.

In addition to its stance against government paternalism and abuse, the Mission Indian Federation also sought justice for the unratified treaties.

Tribal citizens of the San Luis Rey Band of Mission Indians in Oceanside, California, ca. 1922. Courtesy of Marlene Fosselman.

Historian Tanis Thorne has argued that one of the primary reasons the Mission Indian Federation was so popular among Southern California Indians involved the organization's objective to provide justice "for the federal government's failure to recognize California Indian occupancy rights."[18] It is apparent that the San Luis Rey Band took an interest in the organization because, as a signatory to the unratified Treaty of Temecula, they continued to contend with the effects of treaty nonratification and dispossession of their village. The Mission Indian Federation mobilized around claims cases related to the federal government's failure to ratify the eighteen treaties and later for all California Indian lands lost.

In 1928, Congress passed the California Indians Jurisdictional Act (45 Stat. 602), which authorized the attorney general of California, on behalf of the "Indians of California," to sue the United States in the Court of Claims for taking without compensation land that had been promised to them in the treaties.[19] Instead of distributing per capita payments to individuals, the act initially mandated that any judgment funds be held in the US Treasury and subject to appropriation by Congress for "educational, health, industrial,

and other purposes[,] . . . including the purchase of lands and building of homes" for California Indians.[20] The prospect of land purchases and services for a tribe denied the reservation promised in the Treaty of Temecula surely gave the San Luis Rey Band hope for a judgment against the United States. Eventually, however, the Mission Indian Federation and other California Indians advocated to receive any judgment funds in per capita distribution payments. Receiving funds directly aligned with the Mission Indian Federation's overarching goal to alleviate government oversight.[21] The California Indians Jurisdictional Act called for the creation of a census of the "Indians of California," and under Captain Foussat's leadership, families in the San Luis Rey Band filled out applications for enrollment. Adam Castillo of the Soboba Reservation, serving as president of the Mission Indian Federation, signed as a witness on several enrollment applications for citizens of the San Luis Rey Band, including Juan Tule, who took up residence at Soboba after the 1912 eviction.

The Mission Indian Federation offered a venue for Southern California Indians to organize and act. The San Luis Rey Band utilized the federation as a vehicle by which to engage with the federal government on the tribe's concerns related to land dispossession and Indian life outside the reservations. The federation's emphasis on unratified treaties and its objective "to secure by legislation or otherwise all the rights and benefits belonging to each Indian, both singly, and collectively," pulled the San Luis Rey Band into the group's fold.[22] Even though the San Luis Rey Band was ejected from their land, they retained a collective political identity that transcended the village's physical space. A 1929 list of tribal leaders in the Mission Indian Federation, for example, identified "Faustino Fausette" from "San Louis Rey, village."[23] Captain Foussat's awareness and involvement with local Indian affairs was invaluable for maintaining the San Luis Rey Band's identity as a distinct Luiseño group and as California Indians on the individual and tribal scale. When asked about Captain Foussat and the Mission Indian Federation, San Luis Rey Band tribal citizens acknowledged that his involvement with the organization as a conduit for pursuing claims against the United States played a significant part in the contemporary struggle for federal recognition.

The San Luis Rey Band's Water Rights and Docket 80A-2

In 1946, Congress established the Indian Claims Commission to hear and determine tribal claims against the United States. Two separate claims, Dockets 31 and 37, were filed to represent the "Indians of California" in gaining compensation for the remaining land in California not covered by the California Indians Jurisdictional Act of 1928. Members of the Mission Indian Federation questioned the validity of the term "Indians of California" and whether it would have any legal standing to bring a claim as an "identifiable tribe or band" under the guidelines of the Indian Claims Commission. Skepticism behind the generalized and individualized "Indians of California" phrasing led Mission Indian tribes to pull out of Docket 31 and instead contract with a Mission Indian Federation associated attorney to file a similar petition for confiscated lands. Like the "Indians of California," the general "Mission Indians" risked exclusion from the Indian Claims Commission. To get around the issue, the San Luis Rey Band and forty-six other separate Mission Indian Bands filed a petition, Docket 80, with the Indian Claims Commission.

Since an abundance of claims from California Indians existed, some attorneys and representatives for the various tribal claimants urged for consolidation. Mission Indian Federation members, however, did not favor consolidation for the same reason they had abandoned Docket 31: most believed distinct tribes had a better chance of success than the general "Indians of California."[24] As conversations regarding consolidation took place, the Indian Claims Commission ordered for the various claims in Docket 80, otherwise known as the Mission Indian Land Claims, to be subdivided into separate dockets: 80A, 80B, 80C, and 80D. Docket 80D was consolidated into the Mission Indian Land Claims, while Dockets 80A, 80B, and 80C were to be tried at a different time.[25] The San Luis Rey Band was party to Docket 80A, which sought damages for loss of water rights and/or failure to protect such rights. On June 1, 1955, the Indian Claims Commission ordered that the Mission Indian Land Claims be consolidated with the "Indians of California" cases (Dockets 31 and 37), but by 1958 the Mission Indian Bands had elected to maintain separate land claims cases and remove their territories from the "Indians of California" case.[26] Eventually, the federal

government offered all California Indian cases an out-of-court settlement that valued taken California Indian land at forty-seven cents per acre, an amount that understandably disappointed many. After a voting process undertaken throughout the state, California Indians ultimately accepted the settlement even though a dollar amount could never give true justice to the lands lost.

Throughout this process, Captain Faustino Foussat and the tribal community remained actively involved to ensure the San Luis Rey Band's ongoing legal representation and participation in the developing water rights case.[27] In 1965, Captain Foussat passed away. Tribal leadership then passed down to the next generation, particularly Foussat descendants Miranda and Tony.[28] The San Luis Rey Band agreed that Tony should serve as the new captain. On December 15, 1976, the Indian Claims Commission ordered the transfer of Docket 80A, the water rights claim, to the US Court of Claims. In December of the following year, the United States moved to dismiss thirty-eight inactive plaintiffs on Docket 80A. Washington, DC–based attorney Arthur Gajarsa decided to reinstate Docket 80A after the previous attorneys had abandoned the case.[29] Captain Tony recalled, "In '75 or '77 is when . . . we got a lawyer here and we're fighting for the water rights."[30] Despite the transition in tribal leadership after Captain Foussat's death, the San Luis Rey Band and eleven other bands retained legal counsel to represent them in Docket 80A and opposed their dismissal from the case.[31] On June 22, 1978, the Court of Claims denied the United States' motion to dismiss and severed the twelve bands from Docket 80A to create a new one, Docket 80A-2.[32] Docket 80A-2 continued to center the federal government's failure to protect the aboriginal and reservation water rights of the twelve different bands.[33]

In the American West, Indian water rights have been heavily disputed and represent a crucial area of federal Indian law. The *Winters* doctrine, established after the Supreme Court case *Winters v. United States* (1908), is the foundation of Indian water rights in US law. The *Winters* doctrine affirms that establishment of a reservation implies the rights to water sources within or bordering the reservation.[34] Since the United States never created a reservation for the San Luis Rey Band, the Docket 80A-2 claim focused on the San Luis Rey Band's overall loss of aboriginal water rights. After 1979, the claims of the Cuyapaipe Band, the Morongo Band, the La Posta Band,

the Pechanga Band, the Santa Rosa Band, and the San Luis Rey Band were separated from the other six Docket 80A-2 bands for a trial in the Court of Claims.[35]

Around the same time, an attorney named Pamela Aldridge, who had worked on the water rights litigation, played a key part in the tribe's early efforts for federal recognition. While working on the claims cases in the late 1970s, Aldridge wrote a funding proposal on behalf of California Indian Legal Services and California Indian Manpower Consortium, Inc., to train paralegals to perform archival research at the National Archives in Laguna Niguel, California.[36] Paralegals were instructed to make copies of all documents that mentioned Mission Indians, with particular emphasis on documentation of water use and agriculture.[37] From those copies, paralegals then separated the documents into categories that pertained to all Mission Indians or each individual band. It became clear to Aldridge and others working on the cases that the federal government always considered the San Luis Rey Band a distinct tribe of Luiseño Indians in Southern California. Indian agents included the San Luis Rey Village on federal Indian censuses and in reports to the commissioner of Indian Affairs, for instance. Archival documentation revealed the San Luis Rey Band's fight for their village land, the Smiley Commission's failure to patent a reservation for the tribe, and the band's attempts for redress at the local and the federal levels. Aldridge then approached the San Luis Rey Band about the possibility of addressing the discrepancy in the tribe's legal status by using the newly created federal acknowledgment process.

Pursuing Federal Recognition

Participation in the Docket 80A-2 case served as a catalyst for pursuing recognition through the federal acknowledgment process. When Pamela Aldridge contacted leaders of the San Luis Rey Band to talk about the water rights case and the prospect of seeking federal recognition, her main contact in the San Luis Rey Band became Miranda. Miranda served as a liaison figure between Aldridge and the rest of the tribe, and together they scheduled about ten meetings with citizens of the San Luis Rey Band to discuss the tribe's history and the prospect of participating in the federal

acknowledgment process.[38] Aldridge remembered that Miranda and others were excited to pursue federal recognition because the tribal community did not fully understand why they were not recognized at the same time as other Mission Indians. At the meetings, it was agreed that the San Luis Rey Band would pursue federal recognition by submitting a letter of intent and finding funds to help with creating a petition.

On September 4, 1984, the San Luis Rey Band wrote a letter of intent to petition for federal recognition through the federal acknowledgment process. The letter stated that the tribe believed it was eligible for federal recognition and requested any information regarding the process be sent to the Mission Indian Bands Paralegal Consortium, the organization for which Aldridge worked at the time.[39] With this simple letter, the San Luis Rey Band began a process no one imagined would still be ongoing forty years later. After the Branch of Acknowledgment and Research received the letter of intent, it asked for a resolution from the San Luis Rey Band's governing body to authorize the tribe's pursuit of federal acknowledgment.[40] Governing body authorization meant that the San Luis Rey Band had submitted an undocumented petition and could send documentation, in accordance with the regulations, at a later time. The San Luis Rey Band responded on October 10, 1984, with a letter that provided authorization from the tribe's governing body. In the same letter, the San Luis Rey Band also informed the Branch of Acknowledgment and Research that the tribe had requested funds from the Administration for Native Americans, an agency of the Department of Health and Human Services, to conduct the necessary research for the petition. Formal notices were then sent out and published announcing that the San Luis Rey Band had filed a petition with the assistant secretary for Indian Affairs.[41]

With Aldridge's help, in 1985 the San Luis Rey Band secured a two-year, $90,000 grant from the Administration for Native Americans to pay for research and the creation of a documented petition for federal recognition. Aldridge hired an independent research agency, Cultural Systems Research, Inc., to work on the San Luis Rey Band's recognition petition. Two anthropologists, Lowell Bean and Sylvia Vane, had founded Cultural Systems Research in 1978, and Florence Shipek worked with them on the San Luis Rey Band's recognition petition. Shipek already had specific

research material on the San Luis Rey Band because she was also working on the Docket 80A-2 water rights case at the same time. Some of the historical documentation Shipek had compiled could transfer directly over to a federal recognition petition for the San Luis Rey Band. However, there was still an enormous amount of work to be done to gather more information and to tailor documentation specifically for the federal acknowledgment process criteria. Cultural Systems Research mostly worked toward proving that the San Luis Rey Band had been an autonomous entity from historical times to the present per the original 1978 federal acknowledgment process regulations.

Cultural Systems Research developed a research and work plan in April 1985, and its research commenced on May 9, 1985, when Lowell Bean and Sylvia Vane attended a meeting with the San Luis Rey Band to discuss their plan of action.[42] In addition to drawing on existing files and published materials, the researchers dug into archives at various locations, including Mission San Luis Rey; the National Archives in Laguna Niguel, California, and Washington, DC; the San Diego Historical Society Library; the Bureau of Indian Affairs branch in Riverside, California; and the genealogical libraries of the Latter-day Saints in Menlo Park, California, and Salt Lake City. Cultural Systems Research also conducted interviews with several citizens of the San Luis Rey Band, Luiseños on other reservations, and older community members in the vicinity of the San Luis Rey Mission. Interviews greatly informed the genealogy charts that Cultural Systems Research developed and also aided in its interpretation of the San Luis Rey Band's history, though the researchers were not always correct.

While Cultural Systems Research undertook the burden of historical and ethnological research about the San Luis Rey Band, Aldridge aided the tribe in nation-building efforts to create a governing document per criterion (d) of the federal acknowledgment process. Criterion (d) required submission of a copy of the group's governing document, including its membership criteria. If no written document existed, then the petitioner had to provide a written statement describing in full its membership criteria and governing procedures. Although the criterion appeared to make room for more traditional or culturally based governments, most unrecognized tribes adopted constitutions based on models provided through the Indian Reorganization

Act. Just as a tribe's adoption of the Indian Reorganization Act in the 1930s had led the Bureau of Indian Affairs to facilitate the development of a tribal governmental structure, the bureau again provided unrecognized tribes pursuing federal acknowledgment with models of constitutions and certain guidelines to follow when establishing a governing document. One such document disseminated by the Bureau of Indian Affairs in 1981 stated that an advantage of having a constitution is that "other governments and federal agencies are more likely to pursue positive dealings with tribal leaders who are serving under a written form of organization approved by the Secretary of the Commissioner."[43] Aldridge used this document when she helped the San Luis Rey Band's tribal government create an initial constitution. She also helped create an enrollment ordinance and a membership list.

As Cultural Systems Research and Aldridge aided the San Luis Rey Band, it became clear that the project would take longer than anyone anticipated. The Administration for Native Americans grant period was only two years, and the funding rapidly dwindled as expenses for labor, travel, and associated research started to add up. Aldridge requested additional time and funding through the Administration for Native Americans, but it denied her request. In a report for the grant, Aldridge wrote, "The Project's only exception to its planned approach was the unexpected length of time it took to do the necessary legal and historical research necessary to complete an undertaking of this magnitude." She added, "Since no additional funding was made available[,] the Project's consultants must now donate their time and business expenses. This will greatly delay the Petition for Recognition's submission to the Bureau of Indian Affairs."[44] The grant expired before all the necessary research was completed and tailored to the federal acknowledgment process criteria.

Aldridge had mentioned in her grant report that the research consultants would donate their time to finishing the petition, but in reality that was not the case. Sylvia Vane wrote to Aldridge on April 15, 1987, updating her on the progress of the petition components and saying that "it has proved more time consuming to finish than I had hoped."[45] Vane made a copy of the letter for Florence Shipek and handwrote at the bottom, "Florence—They got word that a request for more time and money is denied, and the deadline is April 20. SV."[46] With the impending grant expiration and request for an extension

denied, Cultural Systems Research sent Aldridge the materials they had completed so she could forward them on to the Branch of Acknowledgment and Research. In April or May 1987, the incomplete, and in some cases incorrect, Cultural Systems Research materials, as well as the newly adopted tribal constitution, were submitted. The San Luis Rey Band's governing body did not certify the 1987 submission, which was far from meeting the requirements of the federal acknowledgment process.

Tribal citizens interviewed are unclear about exactly what happened after the incomplete petition was submitted because the tribe fell out of contact with both Pamela Aldridge and Cultural Systems Research. Tribal citizens also had no recollection of why Aldridge was no longer involved, and several believed that she must have passed away. Cultural Systems Research also stopped working on the petition research because the Administration for Native Americans grant funding ran out. Without contact from the Branch of Acknowledgment and Research or others who had been so involved in the effort to secure federal recognition, the tribal community presumed it was just a matter of waiting for a decision from the federal government.

A Berkeley, California–based law firm, Alexander & Karshmer, took over the Docket 80A-2 water rights case in 1988. Attorneys worked with specialists to calculate damages for each band and to provide evidence for the approximate value of their aboriginal water rights. The *Cuyapaipe Band of Mission Indians et al. v. United States of America* trial began on June 30, 1992, and the bands presented their evidence through July 22 of that year.[47] The bands' losses due to the government's failure to assist in maintaining irrigation for economically feasible crops formed the basis of the settlement reached between the bands' legal counsel and that of the United States. However, attorney Barbara Karshmer clarified that "because the San Luis Rey Band never had a Reservation, its claim was limited to the Government's failure to protect its aboriginal water rights."[48] The second phase of the trial was set to resume in October 1992, but just prior, the bands and the United States reached a settlement. After discussing the settlement with their legal counsel, the San Luis Rey Band created a resolution and voted unanimously to accept the terms of the agreement. The Department of the Interior's plan of use in the settlement stated, "The share of the award in Docket 80-A-2 made to the San Luis Rey Band of Mission Indians shall be

invested by the Secretary, until such time as a specific plan for the use of the funds is approved by Congress."[49] The settlement awarded $100,000 to the San Luis Rey Band.

The San Luis Rey Band's involvement with the Docket 80A-2 case continues to impact the tribal community. Contemporarily, the San Luis Rey Band Tribal Council periodically receives updates on the settlement monies, which are collecting interest. Inability to use the settlement funds is a point of frustration for the tribal council and other citizens of the tribe. Several community members believe the settlement funds could help the San Luis Rey Band's campaign for federal recognition or be used for another community effort. A tribal leader said, "I know they've looked into trying to get access to it because, you know, we wanted to use the money for recognition and for ourselves, but we can't access it. Even though they negotiated this with a nonrecognized tribe, the condition was you wouldn't get access to it until [the tribe is federally recognized]."[50] Mention of the band's inability to access the settlement monies raises tribal citizens' dissatisfaction with the lack of federal recognition and the injustice apparent in the federal government's recognition of some tribes over others. As one tribal citizen noted, "In the state of California we have more tribes than any other state. Why should some be acknowledged, and we are not? I believe that if we are recognized, it will give our people a sense of respect that was taken away from our ancestors."[51] The case also created a disconnect between tribal citizens' perceptions of their Native identity and the legal status of the San Luis Rey Band. One tribal citizen, for example, expressed confusion about the San Luis Rey Band's status as an unrecognized tribe despite its participation in the water rights case. In various settings, tribal citizens routinely mention participation in that case and the settlement award as an indication that their band is a viable entity that has long had interactions with the federal government.

After a few years passed, the Branch of Acknowledgment and Research contacted the San Luis Rey Band in 1991 to inform the tribe of proposed changes to the federal acknowledgment process criteria. The prospect of reform prompted tribal leaders to seek aid in understanding exactly what that would mean for the San Luis Rey Band. A young tribal citizen and recent master's graduate, Christine, was "called into service" to help her

tribal community navigate the reform process.[52] In doing so, she became the primary contact and lead facilitator for the tribe's recognition campaign. She attended meetings, informational sessions, and other programs and workshops about the federal acknowledgment process and the proposed changes to it, which was eventually revised in 1994.

As an intermediary between the Bureau of Indian Affairs and the tribal council, Christine undertook the arduous task of continuing to educate the council on matters of federal recognition and the meaning of the federal acknowledgment process. She acquired what research Cultural Systems Research had completed and began to translate the information into a format that addressed each of the federal acknowledgment process criteria, since Aldridge's previously submitted materials had not done so. Christine worked in collaboration with the tribal council to draft a new version of the petition. She regularly presented materials at council meetings and received comments and suggestions on the petition narrative. The revised petition took the stance that the San Luis Rey Band is a previously federally acknowledged tribe. Per the federal criteria, if a tribe can prove that the United States federally recognized it at a prior time, then the tribe's evidentiary burden is reduced. In the new petition materials, the San Luis Rey Band's participation in the 1852 Treaty of Temecula served as a point of unambiguous previous federal acknowledgment.

Although Christine was a lead facilitator for the petition, it was overwhelmingly a group effort. Genealogy research required expertise from elders and community members versed in the complex network of relationships that composed the tribe. Documenting the genealogical connections between tribal citizens exposed how multiple lineages intermingled and moved across time together. Tribal citizens with no explicit training offered to perform research at multiple archival locations. Sometimes they were met with condescension, but they mostly received the help they needed to figure out the unapproachable institutional settings. Without funding or resources, the laborious tasks required to compile a recognition petition fell on the volunteer time and energy of tribal community members. Those who contributed to the recognition effort balanced it with their own careers and family obligations, which of course added to the amount of time it took to organize and

compile each component of the petition. Christine admitted that perhaps more could have been done, financially or otherwise, to find sources of help, but tribal citizens committed themselves to assisting the effort however they could. Misunderstandings and missteps inevitably happened along the way, but they constituted unavoidable pitfalls of the approach taken, and the San Luis Rey Band was determined to submit a petition.

Building the tribe's case for federal recognition entailed a lot of activities, but to Christine the most important component was the constitution. To reinvigorate San Luis Rey's petitioning efforts, the tribe moved to revise the constitution Pamela Aldridge had helped draft in the 1980s. Christine recalled, "That constitution, the original one, was recommended for a lot of tribes. It included blood quantum as the membership requirement. It resembled much more of an organizational constitution versus a government constitution."[53] Although it did meet the need for having a formal document, the Bureau of Indian Affairs constitution was, in her view, "so cookie-cutter. It didn't mean anything to anybody."[54] Christine's observations on the constitution aligned with long-standing critiques of the federal acknowledgment process as a "one-size-fits-all" approach that fails to fully account for the diversity of tribal experiences and modes of governance. The Bureau of Indian Affairs' template constitution also reinforced the pressure put on unrecognized tribes to govern in ways that are legible to the United States. Christine also thought the old constitution "was certainly too flexible, or it just wasn't strong enough to withstand certain challenges."[55] She recalled, "We spent a lot of time—months and months—developing [the new constitution] and debating over different issues."[56]

Significant consideration was given to the different branches of tribal government, including the judicial alongside the tribal council and general council legislative bodies, but several pieces of the constitution have yet to be realized because of the inherent limitations of unrecognized tribal status. Without legal jurisdiction over tribal lands, for example, unrecognized tribes are limited in what they can administer. As Christine pointed out, "The tribal court has never been activated, but it is called for in the constitution. There are several things called for in the constitution that haven't been activated."[57] Questions over leadership and governing systems garnered considerable attention from the tribal council, but the question

of enrollment became particularly salient among the tribal citizenry as they reviewed the council's proposed changes to the constitution. The original Bureau of Indian Affairs constitution called for blood quantum as one of the requirements for enrollment, but the tribal council saw blood quantum as a detrimental membership criterion because of the way it defines Native American people out of existence through outdated theories of race that serve the interests of the federal government.[58] To address the blood quantum issue, Christine said the tribe "really took a stand on lineal descent, and since [blood quantum] was just assumed, [we tried] to really understand the historical context of why that policy was put in place."[59] Inclusion of blood quantum in the Bureau of Indian Affairs constitution paralleled the Indian Reorganization Act's call for blood quantum as an element of tribal recognition. Conflating blood, race, and political status remains a central challenge for unrecognized tribes grappling with Native identity and sovereign status.

After the tribe's general council approved the constitution by consensus, the tribal council certified the entire petition on September 14, 2001. In 2003, responsibility for carrying out the federal acknowledgment process was transferred administratively to the assistant secretary for Indian Affairs and the new Office of Federal Acknowledgment. By September 2008, the documented petition materials and tribal council certifications had arrived in the Office of Federal Acknowledgment. Over six years later, on December 31, 2014, that office sent the San Luis Rey Band a technical assistance letter.[60]

Technical assistance letters are intended to point out obvious deficiencies, significant omissions, or technical issues with a petition. The San Luis Rey Band's technical assistance letter made it clear that the Office of Federal Acknowledgment staff did not fully read the submitted material. The letter said the San Luis Rey Band's petition did not mention or discuss the Treaty of Temecula at all, a factually incorrect statement, and suggested that the San Luis Rey Band respond to the letter by trying to meet the regulatory requirements of previous federal acknowledgment protocols. The San Luis Rey Band replied to the letter in December 2015, by which time the new federal acknowledgment process regulations were in effect. In 2020, the San Luis Rey Band responded to the 2014 technical assistance letter with materials for meeting previous federal acknowledgment standards set forth in the federal acknowledgment regulations. The Office of Federal Acknowledgment

received the materials but informed the San Luis Rey Band that they were no longer considered a petitioning tribe under the 2015 revised regulations and needed to once again submit a documented petition certified by the tribal government. Currently, the San Luis Rey Band is working toward creating a petition for the 2015 regulations that considers the recommendations made in the 2014 technical assistance letter and includes the argument for previous federal acknowledgment.

For some citizens of the San Luis Rey Band, efforts to reconcile the difference between individual and tribal identity for the federal acknowledgment process continue. As one tribal leader explained,

> Trying to understand what exactly recognition is—trying to help people reconcile this as part of their identity: the fact that it's not challenging your identity as an Indian or a Native. [The federal acknowledgment process] was challenging us as a tribe. You can say it, but people don't fully digest it. So, I spent a couple years reinforcing that the government is not saying we're not Indian; we need to prove that we are a tribal government—very different things. And every step along the way since then, constant reinforcing of that. People seem to get it, but I think it's just a hard, hard thing to reconcile. You're questioning my identity, and [people] become very defensive.[61]

When asked about the current campaign for federal recognition, citizens of the tribe spoke passionately about their commitment to providing for their families, youth, and the entire tribal citizenry. The majority believe that one way to accomplish this on a large scale is by becoming federally recognized. Like perspectives among other unrecognized tribes, San Luis Rey people see recognition as a form of justice after over a century of federal injustices.[62] A tribal citizen revealed, "It is very important for me to have our ancestors, current members and family, future children and family know that our [San Luis Rey] Band has always existed and should be recognized. We want to provide and have the benefits other tribes may have and provide to their people. We want to continue to preserve and protect our ancestral land and cultur[e]."[63] Another said, "It will take a new generation of quality leadership to complete the process, and I have faith in the talents of our up-and-coming member activists."[64]

When asked about her role in facilitating the petitioning process, Christine said, "Emotionally, on some level it feels very undone. It's a real effort, but it never felt like it was mine. It's a legacy project, you know? Our ancestors . . . have been working on this too. Waiting and everybody's hoping for this, so I hope it's not a legacy to pass on to the next generation! I really hope to see the fruition of [the federal acknowledgment process]."[65] Interviews and archival materials show that engaging with the federal acknowledgment process is part of an inherited struggle that goes back over 150 years for the San Luis Rey Band. While antirecognition rhetoric often obscures the ways in which unrecognized tribes have historically interacted with the federal government, the San Luis Rey Band's strategy to gain rights through the federal acknowledgment process exemplifies the ongoing nature of federal-tribal engagement. Participation in the Mission Indian Federation and the water rights case, as this chapter has described, is part of the longer movement made by the San Luis Rey Band for tribal self-determination, one that extends back to treaty negotiations with the federal government. Each generation of San Luis Rey people adjusted their struggles toward acknowledgment in skillful ways in parallel to the government's whims toward Native peoples. Christine's statement on pursuit of federal recognition as a legacy project, as something passed down, significantly demonstrates how the tribe banded together for generations for the betterment of the community and maintained inherent tribal sovereignty. Pursuing federal recognition is only the most recent iteration of the tribe's ongoing assertion of its inherent tribal sovereignty and system of tribal governance that is foundational to maintaining a sense of tribe and family.

The Office of Federal Acknowledgment is careful to underscore that the federal acknowledgment process is not about determining whether individuals are Native American racially or culturally; rather, it holds that federal recognition grants formal acknowledgment of tribal political sovereignty. The San Luis Rey Band is well aware that it must adhere to the government's standards, but it takes the position that "there is more to be gained through federal recognition than through rejecting it as a hopelessly fraught colonial relationship that true sovereigns need not pursue."[66] Unrecognized tribes like

the San Luis Rey Band are governments positioned to choose how they enact inherent tribal sovereignty and their right to self-determination, albeit in sometimes limited ways. If that means seeking federal recognition through the federal acknowledgment process, then that is the tribal community's decision to make. Through attaining federal recognition, the tribe understands the very process as an act of resistance, assertion of identity, and a means for securing autonomy away from the federal government. Regardless of federal recognition, the San Luis Rey Band continues to function as a tribal government and survive as a distinct band of Luiseño people, just as our ancestors did before us.

FIVE

Inherent Tribal Sovereignty in Practice

Absence of federal recognition does not prevent a tribe from exercising inherent tribal sovereignty, asserting an Indigenous identity, or undertaking cultural revitalization. Nonfederally recognized tribes across the country enact sovereignty in ways that support community self-determination goals even as they grapple with their liminal legal status.[1] The San Luis Rey Band works through and outside its legal status to assert sovereignty, maintain cultural integrity, practice self-determination, and assert connections to traditional territories. The tribe exercises sovereignty every single day with its functioning government despite the lack of federal recognition.

As one tribal citizen put it, "We're an unrecognized tribe, but we can't think that way."[2] This statement gets to the core of how the San Luis Rey Band does not let legal status inhibit tribal self-determination. Inherent tribal sovereignty comes from Luiseño Creation and 'Ataaxum, or the People, not the federal government. Tribal sovereignty existed prior to the United States and is an extraconstitutional status affirmed through treaties and the Supreme Court. Tribal sovereignty is, according to scholars, "the spiritual, moral, and dynamic cultural force within a given tribal community empowering the group toward political, economic, and most important, cultural integrity, and toward maturity in the group's relationships with its own members, with other peoples and their governments, and with the environment."[3] The creation of an intertribal powwow and the tribe's government-to-government relationships in San Diego County and the state of California are examples of the San Luis Rey Band's inherent tribal sovereignty at work.

The San Luis Rey Band of Mission Indians' Intertribal Powwow

The San Luis Rey Band's tribal community did what they could to provide for their families and make a living in the aftermath of the 1912 eviction from the San Luis Rey Village. The tribal government exerted its inherent

sovereignty by always doing as much as possible to facilitate community needs, even with few to no resources. In addition to overseeing internal governance matters, the tribe coordinated healthcare paperwork through the Rincon Indian Health Clinic, managed issues around foster care and children who were put up for adoption, fulfilled requests for educational scholarships and grant support, and helped tribal citizens with paperwork to qualify for relevant government programs. Even as a functioning tribal government, the San Luis Rey Band had to deal with its landlessness that shaped the broader community's lack of awareness of the tribe's existence in Oceanside. In the 1990s, the San Luis Rey Band Tribal Council deliberated on how to let people know that there were in fact Native Americans in the area.

A San Luis Rey tribal citizen explained that in 1997 the tribe wanted to combat its invisibility by establishing an event to generate public awareness of it in Oceanside and surrounding communities. They decided to host an intertribal powwow, which is a gathering where Native Americans from many different tribes come together to sing, dance, share food, sell goods, and strengthen social connections. Originating among the Native cultures of the Great Plains, powwows are now popular events for both Native and non-Native peoples to celebrate Native American culture.[4] Around the time the San Luis Rey Band decided to host a powwow, several others also took place, with local colleges, the San Diego American Indian Health Center, and a few tribes hosting a handful. A former tribal council member reflected, "The most important thing that I think we did when I was on the council was we created the powwow that we have every year. We always had gatherings, but . . . the public wasn't invited."[5] Not only would a powwow inform the non-Native community of the tribe's existence, but its intertribal nature would also garner attention from other Native Americans across the country.

The tribe's incentive to host a powwow cannot be separated from its pursuit of federal recognition. Shortly before deciding to address the visibility issue, the tribal government worked intensively on composing its federal recognition petition and revising the tribal constitution. A tribal leader explained that the "federal recognition process is important, and everybody needs to understand it to an extent. But they don't live it, it doesn't warm their heart whatsoever. It's all technical. It's so complicated,

and it's frustrating."[6] Even as tribal leaders continued educating tribal citizens about federal recognition policy and procedures, the process itself remained difficult to grasp. Tribal citizens not involved in the petition's construction understood that crafting a federal recognition petition took time, resources, and work. At a time when tribal politics overshadowed community connection, tribal leaders hoped that hosting a powwow could bring balance back to the community. Moreover, widespread public awareness of the San Luis Rey Band's existence could serve the tribe in garnering support for federal recognition from the local community at a time when antitribal backlash from California's legalization of "Las Vegas–style" gaming at tribal casinos was about to surge. The San Luis Rey Band also considered how the powwow might be one piece of evidence to present for the federal acknowledgment process's community criterion (b) as an event held by a distinct community based on collective identity and interaction.

Once the tribal council had officially decided to host a powwow, the next major discussion revolved around how to fund the gathering and where it should take place. As one tribal council member recalled, "It's a wonder we even had it—we had no money! No money in our little treasury; probably a few hundred bucks. [The captain] said clear up your credit cards because if it doesn't pan out we're all going to share in this expense."[7] The tribal council had created a nonprofit in 1996, the San Luis Rey Mission Indian Foundation, that helped facilitate powwow planning and the management of funds. As for location, tribal leadership agreed the powwow should be held on the grounds of the San Luis Rey Mission. With the location selected, the tribal council decided the powwow should coincide with the anniversary of the mission's founding—not to celebrate Spanish colonization but Native American peoples instead. Mission San Luis Rey was founded on June 13, 1798, and the San Luis Rey Band planned to host their first powwow 199 years later, on the weekend of June 14–15, 1997. In response to a question about the location choice, a tribal citizen explained, "That was just where we should have it. Our ancestors built it, and that was just the natural place to have it. And so we went to the priests and asked them, and they were open to it; they agreed. I don't even think we thought of any place else. It was meant to be."[8] One tribal citizen shared a personal perspective on what the location of the powwow means: "[For elders], the process of coming to terms

with their relationship with the San Luis Rey Mission and what that meant took time. Having the powwow [at the mission] was part of our community healing in terms of the relationship with the mission."[9] A spiritual leader who gave a blessing at the first powwow told tribal community members, "Your ancestors have been waiting a long time for this."[10]

The first annual San Luis Rey intertribal powwow, held in 1997, was a success. Thanks to the help of local tribes and Native American organizations, the San Luis Rey Band obtained contact information for vendors and dancers. They also aided the San Luis Rey Band's effort to spread the word. Even as all tribal nations were invited to participate in the powwow, the San Luis Rey Band inserted aspects of Southern California tribal culture as a way of localizing the event, with an emphasis on Luiseño and Southern California Native traditions.[11] The San Luis Rey Band had a tribal history booth, bird singers used the arena to sing songs, and *peon*, a Southern California Native gambling game, was played through the night. A drum group composed of tribal citizens even adapted powwow songs to be sung in the Luiseño language. A local TV channel made a video to highlight the first annual powwow. A dancer enrolled in the San Luis Rey Band told the videographer, "In years past there's never been anything to really acknowledge or commemorate in any way the American Indian, the California Indian, or Luiseño . . . [and] their contribution to the mission. So, from what I understand of [the powwow] is that it's kind of something to show that part of the history of the mission and to shed a little bit of light on Indian cultures as a whole."[12] Despite this emphasis on local culture, some Luiseños from the reservation communities were wary of attending the San Luis Rey Band's powwow precisely because of its location at the mission.

San Luis Rey Band tribal citizens said that while many Luiseños did not want anything to do with the mission, several did attend the powwow the first year. Since then, the centrality of Luiseño people at the powwow has not gone unnoticed. One powwow organizer, talking about the event's reception over the years, said, "The comments that we've gotten [are that] other tribes in the surrounding area come to ours. And so [a man] from La Jolla has said a couple times that you're going to become the drawing point for the tribes because they all come to yours. And so, yeah, that was interesting, and I thought, well, thank you! I'm glad that we do bring you

San Luis Rey Band of Mission Indians' fifth annual powwow, 2001, held at Mission San Luis Rey, Oceanside, California. Photo by Marlene Fosselman.

together."[13] The powwow enabled the San Luis Rey Band to meet the tribe's goals of bringing awareness to the local community in the north county of San Diego, as well as bringing the San Luis Rey tribal citizenry together to host an event for the well-being of the tribal community.

Not all tribal citizens agree, however, that hosting the powwow at the San Luis Rey Mission is in the best interest of the tribe. Initially, the mission let the tribe host the powwow for free. But after the Franciscan mission staff realized the popularity of the event, they decided to charge the tribe to rent a portion of the grounds and for facility usage. Paying rent to host the powwow created resentment among some tribal community members since the San Luis Rey Mission would not exist were it not for the sacrifices of Luiseño peoples. Navigating tensions and conflicts within the community is an assertion of the San Luis Rey Band's inherent governing powers. A tribal citizen expressing concern about the powwow's location said, "I stand on that land [at the mission] and I can picture the ancestors there, and I can kind of feel them. And of course, our family has deep, deep roots in that valley. But, for the mission itself, I don't see how they're helpful to us in any way. And in fact, I believe that it is a mistake to hold the powwow there . . .

especially since they charge so much."[14] When faced with the rental request, the tribal council made the difficult decision to pay the San Luis Rey Mission's fees in lieu of finding a new location for the powwow.

Some tribal citizens' apprehensions about holding the powwow at the mission exemplify ongoing community debates regarding the legacies of Spanish colonization. As an unrecognized tribe without a reservation, the San Luis Rey Mission grounds have served as a space where the San Luis Rey Band's tribal community can connect with their complicated past and assert their Native identity.[15] The tribe's relationship to the San Luis Rey Mission and surrounding land involves reverence for ancestors impacted by missionization and place-based epistemologies that predate colonization. Tribal stories and perspectives view the mission as only one small part of a much longer Native presence on the land. The complex relationship between the San Luis Rey Band and Mission San Luis Rey is ever present on the minds of the community as they engage with the space during the powwow.

The powwow is especially meaningful for elders because many grew up going to or hearing about fiestas that took place at Mission San Luis Rey and the surrounding reservations. The fiestas would bring Luiseños from reservations and other residents together for food, music, dance, trade, stories, *peon*, and ceremonies.[16] From information in the journal of Gregorio Omish of the Rincon Indian Reservation, Florence Shipek describes how fiestas "produced income for many families[,] who cooked and served various types of food. A family, or two men as partners, rented space . . . and erected a brush ramada (a small brush-walled booth) in which to cook and serve food."[17] Shipek also wrote that in 1895, despite being warned by Indian agent Francisco Estudillo not to attend, Luiseños from Rincon went to a fiesta at the San Luis Rey Mission on August 25 and stayed for a week. In 1896, Luiseños from La Jolla and Rincon Reservations went to another fiesta in San Luis Rey.[18] Louise Muñoa Foussat, a Luiseño elder and community pillar in Oceanside before she passed away in 2005, was born in a saloon next to the San Luis Rey Mission on August 25, 1908, to a mother from Pala visiting for a fiesta. In the early 1900s, the fiestas in the San Luis Rey Valley ceased, but the San Luis Rey Band remade local tradition when it started the annual intertribal powwow. The brush ramadas of the fiestas are now

replaced with pop-up canopies, but the intention of bringing the Native and non-Native community together in the San Luis Rey Valley remains.

For many tribal community members, planning, volunteering, and dancing at the powwow has become a meaningful way to connect. Tribal citizens believe the powwow is an especially important way for tribal youth to learn about their own and other Native American cultures and about giving back to the local and tribal community. The powwow is also one of the few events that generates a modest profit for the tribe. Funds earned are put toward hosting subsequent powwows or other social gatherings and events. The San Luis Rey Band held the powwow every year from 1997 to 2019, until the COVID-19 pandemic prevented the gathering. In June 2022, the San Luis Rey Band hosted an event just for tribal citizens and their families at Mission San Luis Rey during the same weekend the powwow had traditionally been held. The powwow was set to return in June 2024.

As a community event, the powwow serves as a time when extended families come back to the San Luis Rey Mission and celebrate their history with other tribes and the local San Diego community. San Luis Rey's powwow also serves a strategic social purpose in connection with participation in the federal acknowledgment process, which was the very impetus for the powwow; the tribal council saw a need within the community and exercised its self-governing abilities to establish a community-based event.

Government-to-Government Relationships in California

Nonfederally recognized tribes like the San Luis Rey Band are governments positioned to choose how they exercise inherent tribal sovereignty to further community-based ideals and political influence. One primary method the San Luis Rey Band uses to assert inherent tribal sovereignty is government-to-government relationships with counties, municipalities, and the state of California. The San Luis Rey Band is constantly challenged to save and preserve Luiseño cultural resources while educating the wider community and sharing the tribe's history. Collaborative relationships with local governments and universities present opportunities for the San Luis Rey Band to enact its self-governing powers and strengthen relationships within and outside the tribe. The Oceanside City Council issues an annual

Tribal leaders and citizens of the San Luis Rey Band of Mission Indians at the Oceanside City Council's annual recognition of the tribe, November 2022. Photo courtesy of Raenette Olvera.

proclamation during Native American Heritage Month to recognize the tribe, honor the relationship between the two governments, and acknowledge the tribe's contributions to the area.[19]

In June 2000, the San Luis Rey Band of Mission Indians, via the San Luis Rey Mission Indian Foundation, entered a one-dollar-a-year lease agreement with the San Diego County city of Vista to protect a sacred site publicly known as Indian Rock, an important site related to *wiqénish* and *yunínish*, the coming-of-age ceremony for Luiseño girls.[20] During the yunínish portion of the ceremony, girls raced to a boulder, where they painted images that represented sacred people and concepts.[21] Girls reenacted Luiseño Creation during the wiqénish and yunínish, and racing to the boulder symbolized how Wuyóot, one of the first beings, instructed the Luiseño people to hold races at the new moon. Residents of Vista repeatedly desecrated Indian Rock over the years by leaving graffiti that marred the girls' drawings and by littering throughout the area. Working with the city of Vista to protect the site became an opportunity for the San Luis Rey Band to exercise its inherent

sovereignty. Immediately after the tribe entered the one-hundred-year lease agreement for the Indian Rock site, it put up a fence and started the process of cleaning up the area. Vista also gave the tribe a grant of $11,600 from its Historical, Cultural, and Promotional Grants fund to help with expenses associated with protecting the site.[22] The San Luis Rey Band planned to restore the site with native plants and preserve the images Luiseño girls made during their coming-of-age ceremony. To make their vision a reality, the tribe collaborated with professors Deborah Small and Bonnie Bade at California State University, San Marcos, to create the Indian Rock Native Garden Project with the help of university students and a network of other collaborators.[23] The Indian Rock Garden is thriving today, and the San Luis Rey Band continues to host California State University, San Marcos, students and educate them about Luiseño culture and history. In May and June 2023, the tribe hosted the first of hopefully many *páa$al*, or chia, harvests at the Indian Rock Garden.

State statutes, governor's executive orders and policies, state agency policies, and various memoranda of understanding also empower the San Luis Rey Band and other nonfederally recognized tribes in California to assert inherent tribal sovereignty in a government-to-government capacity. Key to tribal inclusion in government-to-government relationships is the legal definition of a tribe in California. In 2004, Senate Bill 18 introduced a law mandating that cities and counties participate in government-to-government consultations with California Native American tribes on local land-use decisions in the early stages of planning so as to protect or mitigate impacts to culturally significant places. Senate Bill 18 amended the California Civil and Government Codes to identify as a "California Native American Tribe" any tribe on the Native American Heritage Commission's contact list. This contact list, sometimes called a consultation list, facilitates the exercise of nonfederally recognized tribes' sovereignty by empowering tribes to participate in government-to-government relationships.

The Native American Heritage Commission is the primary state agency charged with identifying and cataloging cultural resources, preventing damage to sacred sites and Native American cemeteries, and preventing interference with Native American religious practices.[24] Maintaining a contact list

of tribes in California is essential for the Native American Heritage Commission to perform its legally mandated duties. The contact list is routinely utilized to determine tribal eligibility to engage in consultations for land-use planning as well as consultations related to the California Environmental Quality Act, but the list's applicability spans a wide range of issues.[25]

In order for nonfederally recognized tribes to be included on the contact list, those tribes "must provide documentation that their members are descended from a historical California tribe and currently operate as a tribal governmental body that carries out general governmental functions for its members."[26] Because the contact list has become an authoritative source of information on tribes in California and one that holds significant power, in 2021 the Native American Heritage Commission began to develop regulations regarding qualifications for placement on the contact list. As of this writing, draft contact list regulations were available for tribal consultation and comment until March 1, 2024. After comment and revision, the commission expects the final regulations to be adopted and published with the Office of the Secretary of State before the end of 2024.[27] Conversations about modifications to the contact list will no doubt be a site for contestation over Indigenous and tribal identity, given the list's definitional purposes.

The designation of a California Native American Tribe as one that is on the Native American Heritage Commission's contact list is regularly used in state statutes and policies to facilitate tribal self-determination and self-government. For example, section 815.3 of the Civil Code states that "a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission" may acquire or hold a conservation easement.[28] Conservation easements are a method to preserve land in its "natural, scenic, historical, agricultural, forested, or open-space condition" through the voluntary transfer of real property interests for perpetuity and for all successive landowners.[29] Nonfederally recognized California tribes' eligibility to hold conservation easements and therefore hold property rights is thus directly linked to the commission's contact list. In other words, the contact list qualifies nonfederally recognized tribes to be granted certain property interests and/or rights

not available otherwise. Entering a cultural conservation easement is an act of self-government for tribes and a form of land reclamation in line with "land back" efforts employed by tribes across the country. Since 2004, the San Luis Rey Band has elected to enter multiple conservation easement agreements to protect sacred sites.[30]

California's legislature promotes the exercise of nonfederally recognized tribes' inherent sovereignty through approximately thirty different statutes that incorporate or reference the Native American Heritage Commission's contact list. The California Government Code, Civil Code, Code of Civil Procedure, Fish and Game Code, Public Resources Code, Water Code, Health and Safety Code, and Education Code all contain language that includes California Native American tribes recorded on the Native American Heritage Commission's contact list. Since the definition of a California Native American tribe includes nonfederally recognized tribes, state statutes that reference the Native American Heritage Commission's contact list open and widen possibilities for tribes to enact inherent tribal sovereignty through government-to-government consultation, co-management and co-stewardship of natural resources, funding opportunities, land reclamation, and much more. Administrative policies generated by two governors, Edmund G. "Jerry" Brown Jr. and Gavin Newsom, further reinforce government-to-government engagement with all California tribes regardless of federally recognized status.

In 2011, Governor Brown issued Executive Order B-10-11 proclaiming California's commitment to "strengthening and sustaining effective government-to-government relationships" with California tribes. Brown, who also served as governor from 1975 to 1983, established the Native American Heritage Commission in 1976 after signing Assembly Bill 4239 into law. In alignment with his previous administration's support of California tribes, Governor Brown's second administration (2011–19) began with Executive Order B-10-11's "recognition and reaffirmation" of California tribal sovereignty. Governor Brown issued Executive Order B-10-11 soon after Governor Arnold Schwarzenegger's notoriously antitribal administration had come to an end, making the timing especially noteworthy for California tribes.[31] Given California's relationship with tribes affirmed in state law up to that point, Executive Order B-10-11 created the position of a tribal advisor to

oversee the implementation of meaningful government-to-government consultation with California tribes on relevant issues and policies.

California state agencies and departments subject to Governor Brown's executive control were also ordered to "encourage communication and consultation with California Indian Tribes" for the purpose of providing "meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities."[32] Executive Order B-10-11 specified that the term "California Indian Tribe" included federally recognized tribes and "other California Native Americans," meaning nonfederally recognized tribes. Drawing on established definitions of a California Native American tribe in other state statutes, the terminology in Executive Order B-10-11 created a major shift in state practices toward the broad inclusion of nonfederally recognized tribes in government-to-government consultation. Since Executive Order B-10-11's original release, state legislators and agencies have heeded the call to strengthen government-to-government relationships with California tribes, thus giving nonfederally recognized tribes more opportunities to assert inherent tribal sovereignty.

Executive Order B-10-11's rhetorical essence, combined with a high-profile theft of petroglyphs sacred to the Bishop Paiute Tribe and several intense fights to protect sacred sites, led former California State Assembly members Mike Gatto (D-Los Angeles) and Luis Alejo (D-Watsonville) to author Assembly Bill 52 (AB 52).[33] Introduced in December 2012, AB 52 proposed to amend the California Environmental Quality Act of 1970 to recognize California tribes' expertise on cultural resources. AB 52 created a formal procedure for including California Native American tribal governments in the act's consultation process to mitigate further environmental impacts on tribal cultural resources and sacred places. Supporters welcomed AB 52 because it would force every lead agency to consult with California Native American tribes from the inception of a project. Lead agencies are often city governments, which means that the legislation enables tribes to assert their inherent sovereignty in localized government-to-government engagements. While AB 52's intent was lauded, many were actually against the bill because it defined a California Native American tribe only as one that was federally recognized.

The bill's language made nonfederally recognized tribes into interested parties just like the public, which was a direct affront to unrecognized tribes'

inherent sovereignty. Moreover, the exclusion of nonfederally recognized tribes went against Executive Order B-10-11's call for meaningful and effective government-to-government consultation with all California Native American tribes. As the San Luis Rey Band's chief legal counsel at the time explained, "They literally cut the nonfederally recognized tribes out."[34] AB 52's changes to the California Environmental Quality Act would also create conflicting definitions of a California Native American tribe encoded in state law because Senate Bill 18 and the California Native American Graves Protection and Repatriation Act of 2001 included nonfederally recognized tribes in their definitions of a California tribe. The San Luis Rey Band and other nonfederally recognized tribes could see that exclusion from the California Environmental Quality Act process would have disastrous impacts on their ability to protect and preserve tribal cultural resources made possible through government-to-government consultations.

The San Luis Rey Band and other nonfederally recognized tribes across the state fought to revise the bill's language. "One of my duties," revealed the former chief counsel for the San Luis Rey Band, "was to fight [the definition in AB 52] because, if it went through, [the tribe] would be cut out. [The tribe] would still have [Senate Bill] 18, and hope that the definition wouldn't be retroactive, but there's no guarantees."[35] The San Luis Rey Band wrote public comment letters, submitted testimony, visited California legislators' offices, and utilized Assembly floor alerts to express resistance to the bill's language. The San Luis Rey Band and other nonfederally recognized tribes' advocacy successfully resulted in changes to AB 52, including an expansive definition of a California Native American tribe, thus ensuring nonfederally recognized tribes' rights in the California Environmental Quality Act's consultation process. The California Legislature passed the revised version of AB 52 in August 2014, and Governor Brown signed the bill in September of that year. As evidenced by the strong push to secure nonfederally recognized tribes' place within state law, protecting and managing sacred sites is one of the most important arenas in which nonfederally recognized tribes in California exercise inherent sovereignty via government-to-government consultation processes.

Senate Bill 18 and AB 52 thus enable California Native American tribes—with or without federal recognition—to participate in government-to-government consultations. Senate Bill 18 mandates that lead agencies, which

are usually cities and counties, consult with California Native American tribes for specific purposes, whereas AB 52 stipulates that tribes must send a letter to lead agencies requesting consultation.[36] Although their implementation has had mixed success, the provisions in Senate Bill 18 and AB 52 for consultation with California Native American tribes ensure tribes' ability to protect their cultural resources by recommending mitigation measures that will avoid or significantly lessen impacts to the resource(s).

The San Luis Rey Band of Mission Indians treats the consultation process as an opportunity to educate agencies about Luiseño presence on the land and how the tribe's wishes should be incorporated into project planning and environmental documents. Protecting and preserving sacred sites and tribal cultural resources is one of the most robust aspects of the San Luis Rey Band's tribal government. Participation in government-to-government consultations is a central way the tribe asserts inherent tribal sovereignty as well as what tribal leadership calls "cultural sovereignty," a concept intimately linked to Luiseño epistemologies and associated protocols that protect, preserve, and promote Luiseño culture for the benefit of San Luis Rey tribal citizens and all Luiseño people.

For many years, nonfederally recognized tribes like the San Luis Rey Band primarily asserted inherent tribal sovereignty through government-to-government consultation in the cultural resource protection and preservation sphere. That began to change after Governor Gavin Newsom reaffirmed government-to-government engagement with tribes in his 2019 Executive Order N-15-19 and a 2020 statement of administration policy. Although it did not explicitly mention "genocide," Executive Order N-15-19 apologized "on behalf of the citizens of the State of California to all California Native Americans for the many instances of violence, mistreatment and neglect California inflicted on tribes" for over a century.[37] Executive Order N-15-19 brought newfound public attention to the atrocities committed against California Indians at the hands of the state, some of which remain ongoing, particularly in terms of land dispossession.[38] Executive Order N-15-19 reasserted and incorporated the principles of Executive Order B-10-11 but with specific reference to government-to-government engagement and consultation on policies that may impact tribal communities. State legislators heeded Executive Order N-15-19 and regularly incorporate the phrase

"California Native American tribe" in new legislative efforts to ensure that nonfederally recognized tribes are covered by statutes that address cultural resource protection and other important matters.

In 2020, Assembly Bill 275 (AB 275), for example, revised the definition of a "California Indian Tribe" in the California Native American Graves Protection and Repatriation Act of 2001. Originally, that law defined a nonfederally recognized California Indian tribe as one indigenous to the state of California that is both listed as a petitioner in the federal acknowledgment process and is determined to be eligible for repatriation by the Native American Heritage Commission. California Assembly member James Ramos (D-San Bernardino), a citizen of the San Manuel Band of Mission Indians, introduced AB 275 in 2019 as an amendment to the California Native American Graves Protection and Repatriation Act to add additional responsibilities to the Native American Heritage Commission as part of the repatriation process. Early drafts of the legislation maintained the same definition of a nonfederally recognized California Indian tribe found in the California Native American Graves Protection and Repatriation Act. Like the strong resistance voiced about the definition of a California tribe in the first draft of AB 52, nonfederally recognized tribes rallied in opposition to the narrow definition in AB 275. The San Luis Rey Band once again took a strong stance to advocate that the definition of a California tribe mirrors the language set forth in AB 52 and SB 18 regarding a tribe's placement on the contact list maintained by the Native American Heritage Commission. Assembly member Ramos listened to the nonfederally recognized tribes; the final version of AB 275, chaptered in September 2020 and effective in 2021, stated that a nonfederally recognized tribe located in California on the Native American Heritage Commission's contact list is considered a "California Indian tribe" covered by the California Native American Graves Protection and Repatriation Act.

Executive Order N-15-19 also charged the governor's tribal advisor with the task of establishing and leading a truth and healing council. This body is intended to "bear witness to, record, examine existing documentation of, and receive California Native American narratives regarding the historical relationship between the State of California and California Native Americans in order to clarify the historical record of this relationship in the spirit

of truth and healing."[39] The Truth and Healing Council will submit a final report on the historical relationship between the state of California and California tribes to the governor by January 1, 2025. The final report will make recommendations aimed at the "reparation and restoration of the victims, survivors, descendants, and communities" subjected to California's genocidal policies.[40] Governor Newsom's Executive Order N-15-19 reaffirmed California's willingness to engage in government-to-government relations with nonfederally recognized tribes and provided an avenue for addressing the role the California government and various state actors played in contemporary tribal legal status.

On September 25, 2020, Governor Newsom followed up Executive Order N-15-19 with a statement of administration policy relating to Native American ancestral lands. The statement referenced both Executive Order N-15-19 and Executive Order B-10-11 to reiterate the state's commitment to government-to-government engagement with tribes. Governor Newsom stated that it would be his administration's policy to encourage every state department, agency, board, and commission under his executive control "to seek opportunities to support California tribes' co-management of and access to natural lands that are within a California tribe's ancestral land and under the ownership or control of the State of California, and to work cooperatively with California tribes that are interested in acquiring natural lands in excess of State needs."[41] Co-management and access permissions are poor substitutes for outright land return and ultimately uphold California's role in settler colonialism. The possibility of tribal land acquisitions is noteworthy, but California still holds power over tribes in determining which lands are deemed beyond state needs. Less than two weeks after the statement of administration policy's release, Governor Newsom issued Executive Order N-82-20 on October 7, 2020. Executive Order N-82-20 established California's intent to conserve 30 percent of its lands and coastal waters by 2030. Strengthening tribal partnerships for shared conservation goals is one aspect of the California 30×30 initiative.

While Governor Newsom's statement of administration policy maintains a settler colonial framework, one of its intended purposes is to meaningfully support tribal self-determination and self-government, which are two fundamental aspects of inherent tribal sovereignty, through tribal connection

to ancestral lands. In 2022, Governor Newsom continued to support tribal partnerships with the state for shared climate and conservation goals. He allocated $100 million over two years for the Tribal Nature-Based Solutions Program. The $100 million allocation is to be used to fund various activities, such as land return, co-management, and capacity building for California Native American tribes to support stewardship practices.[42] Not all tribes are satisfied, understandably, with the amount of money or the restrictions placed on its use. Charlene Nijmeh, chairwoman of the Muwekma Ohlone Tribe, stated that although her community is open to participating in the grant, "too much focus is on plants and animals and not the native people. It's a perpetuation of colonialism and performative allyship."[43] Chairwoman Nijmeh's criticism of the state's priorities reflects deep-seated mistrust of the California government as well as a broader concern about Native inclusion when it benefits the interests of mainstream society. To clarify the statement of administration policy and California's 30×30 initiative with regard to California tribes, Assembly member Ramos introduced AB 1284 in February 2023. The bill defines co-management and co-governance and encourages a government-to-government relationship between the Natural Resources Agency and federally recognized tribes. If it becomes law, there may be an impact on nonfederally recognized tribes' ability to exercise inherent tribal sovereignty through these state conservation initiatives.

Indigenous peoples the world over contend with ongoing threats, both tangible and intangible, to their ancestral lands and sacred landscapes. Regardless of federal recognition status, California tribes seek to consistently connect, engage, and steward their tribal territories however possible. All tribes utilize a wide range of tools and techniques to gain "access, stewardship, and authority over culturally important lands."[44] Since 2020, several California tribes have entered into new government-to-government agreements with state agencies for co-management purposes.[45] The San Luis Rey Band of Mission Indians, the Amah Mutsun Tribal Band, and the Fernandeño Tataviam Band of Mission Indians, all nonfederally recognized tribes, entered into memoranda of understanding with the California Department of Parks and Recreation. A uniform definition of co-management of natural resources does not currently exist in California, so tribes construct co-management agreements with state agencies, given

the limitations of authorizing statutes and regulations under which state agencies operate.[46]

The San Luis Rey Band's 2022 memorandum of understanding established and formalized a consultation relationship between the tribe and California State Parks. A primary goal of the memorandum of understanding is to foster a shared stewardship approach to six units within the state parks system. Cultural and natural resource management activities related to traditional cultural practices and the co-creation of educational and interpretive materials for six parks and beaches are some of the shared plans outlined in the memorandum of understanding. In creating the government-to-government agreement, the San Luis Rey Band asserted its inherent sovereignty and generated opportunities to continue to do so through consultations and collaborations with California State Parks that will ultimately benefit the tribal community's efforts toward cultural preservation and revitalization.

Government-to-government engagement between state entities and nonfederally recognized tribes on the Native American Heritage Commission's contact list is legally required in California. This engagement occurs on a scale rarely seen elsewhere in the United States. California acknowledges nonfederally recognized tribal sovereignty through approximately thirty state statutes, executive orders and policies, and existing state agency policies and various memoranda of understanding. Nonfederally recognized tribes act on available state-level rights and opportunities for government-to-government engagement that support shared goals or promote tribal upliftment. As Native American legal scholar Matthew L. M. Fletcher has written, "Many states now recognize Indian tribes as *de facto* political sovereigns, often in the form of a statement of policy whereby the state agrees to engage Indian tribes in a government-to-government relationship mirroring federal policy."[47] In many ways, then, inclusion on the Native American Heritage Commission's contact list as a requirement to be considered a "California Native American tribe" represents a type of formal state acknowledgment.

Considering State Recognition in California

As of 2024, California does not have an official process to acknowledge tribes, nor does it have any statutes that legally acknowledge a tribe. The

legislature issued two joint resolutions, one in 1993 for the Juaneño Band of Mission Indians and another in 1994 for the Gabrielinos, known originally as the San Gabriel Band of Mission Indians, to support the tribes' respective quests for federal acknowledgment. The joint resolution for the Gabrielinos stated that "the State of California recognizes the Gabrielinos as the aboriginal tribe of the Los Angeles Basin and takes great pride in recognizing the Indian inhabitance of the Los Angeles Basin and the continued existence of the Indian community within our state."[48] Despite the legislature's recognition rhetoric, joint resolutions in California do not have the force of law; they merely express the opinion of the California Legislature in matters related to the federal government. Although the Juaneño Band of Mission Indians and the Gabrielinos are often identified as state-recognized tribes, they are not legally acknowledged by California state law.

Lack of federal recognition and the difficulty tribes face in gaining federal recognition is directly linked to the California government's treatment of tribes. Militia laws and state-financed expeditions against Indians produced a violent and horrific genocide against California Indians that deeply impacted tribal communities in the nineteenth century. Under a genocidal legal system, California prevented the ratification of eighteen treaties between the federal government and California Indian tribes. As historian James Rawls notes, "The most important reason for the rejection of the treaties was the vigorous opposition to them from the California congressional delegation."[49] That delegation expressed the antitreaty sentiments of the California governor, the state legislature, and most California citizens to the US Senate, which then rejected the treaties in a secret session.[50] By blocking treaty ratification in the nineteenth century, California has prevented the federal government from acknowledging several California tribes, including the San Luis Rey Band, which signed the 1852 Treaty of Temecula, right up to the present.

The California Legislature generated laws that controlled California Indian lands and lives, and counties and townships then implemented and enforced those laws.[51] Historians Damon B. Akins and William J. Bauer Jr. explain that "California disenfranchised, disarmed, and legalized the indenture, if not outright slavery, of Indigenous People" through early state laws and policies such as the Act for the Government and Protection of Indians

(1850) and the California Constitution's prohibition of Indian suffrage.[52] Rapid encroachment of settlers on Indian land combined with state and federal laws to dispossess many California Indians created an environment that suppressed tribal governance. All considered, California's laws, policies, and violent actions against California Indians created the legal conditions that now beset nonfederally recognized California tribes. In light of Executive Order N-15-19's apology and the Truth and Healing Council's ability to make recommendations aimed at reparation and restoration for state-sanctioned "depredations and prejudicial policies," how should California address its role in shaping tribes' contemporary legal status?

One viable option is for the California Legislature to formalize its acknowledgment of nonfederally recognized tribes in the state. As discussed herein, California already acknowledges nonfederally recognized tribes' inherent sovereignty and continues to present opportunities for those tribes to exercise governmental powers. There are currently thirteen states that recognize over sixty tribes. Alabama, Connecticut, Delaware, Georgia, Louisiana, Maryland, Massachusetts, New Jersey, New York, North Carolina, South Carolina, Vermont, and Virginia all have formal processes to acknowledge tribes' sovereignty. Scholars of state recognition explained that it "operates as a means for states to acknowledge the long-standing existence of specific, inherently sovereign Indian tribes within state borders and can be a means to address and rectify centuries of oppressive policies and practices with regard to tribal nations."[53] States' power to acknowledge tribes is a highly understudied area of the US federalist system, but the federal government has repeatedly affirmed states' constitutional authority to recognize tribes.[54]

State recognition is endorsed and legitimized by the federal government through the provision of certain rights and resources. Federal protections for state-recognized tribes can be found in the Indian Arts and Crafts Act of 1990. That legislation is in essence a truth-in-advertising law that prohibits false marketing of any art or craft product as Indian made and also defines an Indian person as a member of a federally or state-recognized tribe.[55] Under the Indian Arts and Crafts Act, state recognition means "any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority."[56] In the 2016 court case *United States v.*

Natchez, the US District Court of New Mexico ruled that the California Native American Heritage Commission is a state commission for the purposes of the Indian Arts and Crafts Act. The court's opinion in *United States v. Natchez*, based on an analysis of the usage and purpose of the contact list maintained by the Native American Heritage Commission, means that nonfederally recognized tribal members in California are considered Indians protected by the provisions outlined in the Indian Arts and Crafts Act. The *Natchez* ruling once again underscored the power and authority tied to the Native American Heritage Commission's contact list despite the absence of a formal process for state acknowledgment in California.

Acknowledgment from a state can serve as an alternative to federal recognition in helping nonfederally recognized tribes provide for their communities. The US departments of Housing and Urban Development, Labor, Education, and Health and Human Services have statutory and regulatory authority to provide funding for state-recognized tribes and tribal members.[57] With official state acknowledgment, nonfederally recognized California tribes could access federal resources as well as other forms of aid, including certain scholarships, funding opportunities, or health and wellness services and programs earmarked for state-recognized tribes and tribal members. Access to these resources and opportunities could be transformative for nonfederally recognized tribal communities.

In some cases, state recognition can aid tribes in securing federal recognition. The Shinnecock Nation of New York became the 565th federally recognized tribe in October 2010 after over three decades of struggle with the Bureau of Indian Affairs and the Department of the Interior. After the tribe sued the Department of the Interior, "a federal judge declared the Shinnecock nation recognized based on overwhelming evidence of their long-standing presence within and recognition by the State of New York."[58] Four of the six Virginia tribes federally recognized by the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017 were first officially recognized by that state. The Shinnecock Nation and state-recognized tribes in Virginia also had state reservation lands.[59] A state reservation provides a land base from which to facilitate community cohesion in a way that might not be possible for nonfederally recognized tribes that have no land or central place for tribal members to gather or for tribal governance to occur. In the effort to satisfy

federal acknowledgment process criteria that stress the crucial importance of community continuity, the advantage of state recognition and a state reservation could be immense.[60]

Critics of state recognition rightfully point out that it must be understood within the historical context of tribal-state relationships, because states have long been opponents of tribal sovereignty. The Supreme Court opinion in *United States v. Kagama* (1886) captured the political conflict: "Because of local ill feeling, the people of the States where [Indian tribes] are found are often their deadliest enemies."[61] The "deadliest enemies hypothesis" or "deadliest enemies model" of tribal-state relations is a long-standing narrative within federal Indian law case opinions and scholarship.[62] Noted Lumbee professor of law Robert A. Williams Jr. has written that Native peoples can look to history to clearly see that "white racial power organized through state governments represents the gravest and most persistent threat to Indian rights and cultural survival on this continent."[63] California Indians know this all too well, as they are descended from survivors of the vicious genocide condoned and perpetrated by the California government and its citizens. In Executive Order N-15-19, the California government openly acknowledged how "violence, exploitation, dispossession and the attempted destruction of tribal communities" characterized early tribal-state relations.[64] Matthew L. M. Fletcher has argued that while violent interactions between states and tribes are historical realities, "Indian tribes and states must move away from the 'deadliest enemies' model" and embrace "a new political relationship" instead.[65] The state of California and tribes work in dynamic ways that acknowledge inherent tribal sovereignty and earnestly move away from a "deadliest enemies" relationship.

Opposition to state recognition also comes from federally recognized tribes. Federally recognized Cherokee tribes' resistance to state recognition is informed by the actions of "racial shifters" who changed their racial self-identification to Native American and formed new Cherokee "tribes."[66] Tensions between federally recognized and state-recognized Cherokee tribes coalesce around questions of sovereignty and legitimacy that are amplified by variations in state recognition processes. In a detailed ethnographic study of Cherokee "race shifters," anthropologist Circe Sturm found that federally recognized and state-recognized Cherokee tribes compete with each other

and bitterly "fight for local political influence and for federal and state funding."[67] The federally recognized Cherokee tribes argue that states' recognition of new Cherokee tribes "creates public and legal confusion, undermines perceptions of Cherokee historical and cultural authenticity, and defies the principle that sovereignty is fundamentally based on nation-to-nation relationships."[68] Federally recognized Cherokee tribes contend that tribal recognition is a federal matter and have urged states to stop recognizing tribes.

Concern over illegitimate claims to Native nationhood is warranted. As detailed in chapter 2, precarious claims to Native identity are an ongoing contested issue among California Indians. The context in which debates over tribal legitimacy and racial authenticity emerge for California tribes and Cherokees is distinct, but both are based in fears concerning the meaning of tribal sovereignty when false claims to Native American identity are given "political legitimacy and legal rights."[69] Any conversations about official state recognition in California will need to carefully consider the interplay between the Native American Heritage Commission's contact list and accusations of fraudulent California Indian identity.

In 1997, the Advisory Council on California Indian Policy reported to Congress that the process to obtain federal acknowledgment is deeply flawed for California tribes, and that remains a problem to this day. Since 1997, the Office of Federal Acknowledgment has not recognized any tribes in California. Given the states' role in preventing federal recognition, how can California be accountable to nonfederally recognized tribes? It is more crucial now than ever to engage in conversations that seriously consider official state acknowledgment for nonfederally recognized tribes in California. The Native American Heritage Commission's promotion of inherent tribal sovereignty through its contact list, the Truth and Healing Council's ability to make recommendations on reparation, and governors' executive orders and policies create an environment in which the question of official state acknowledgment cannot be ignored any longer. Clarifying and formalizing the relationship between California tribes and the state government of California is a crucial step toward solidifying California's commitment to nonfederally recognized tribes.

In discussing the possibility of formal state acknowledgment, nonfederally recognized tribes and the state might revisit what was negotiated

in the unratified treaties or propose ways to return significant amounts of land to nonfederally recognized tribes that, like the San Luis Rey Band, have been dispossessed of their traditional villages. Economic partnerships, educational opportunities, or land return from California's institutions of higher learning are significant areas to further explore. Nonfederally recognized California tribes know all too well how flawed "recognition" can be; replicating the federal acknowledgment process and producing the same issues tribes faced for decades all over again is not the goal. State recognition in California cannot uphold power *over* tribes. Instead, tribes and California must move away from colonial structures and work toward respectful coexistence with each other and among all beings, lands, and waters. Imagining possibilities and determining collective futures is a fundamental aspect of tribal nationhood and tribes' responsibility to their communities, ancestors, and future generations.

The San Luis Rey Band's inaugural powwow, held in 1997, served multiple ends, bringing the community together for an event with historical resonance at Mission San Luis Rey and serving as a strategic political move. Tribal leadership intended the powwow to show the local community there was a Native American tribe in the city of Oceanside with a connection to the area that predated colonization. The tribal council made the decision to host the event to provide a physical outlet for community relationality at a time when the tribe's governmental function and federal recognition effort took precedence. Significantly, the powwow also revived the late nineteenth- and early twentieth-century tradition of holding fiestas—weeklong gatherings with food, trade, and Luiseño games, dance, and ceremony—for Native and non-Native people at the San Luis Rey Mission. Created in response to the demands of petitioning for federal recognition, the San Luis Rey Band's powwow is an important event that promotes community building, visibility, public service, and cultural renewal. At the same time, the powwow also reveals the ways in which tribal communities can use the federal acknowledgment process for their own social purposes as an exercise of self-government.

The San Luis Rey Band's assertion of inherent tribal sovereignty via

government-to-government engagement takes many forms. The agreement with the city of Vista and subsequent collaboration with California State University, San Marcos, to protect Indian Rock is just one example of the many ways the San Luis Rey Band exerts its inherent tribal sovereignty vis-à-vis city governments in San Diego County. On the state level, government-to-government engagement is made possible through the definition of what constitutes a California Native American tribe as codified in California state law. A California Native American tribe is one that is on the contact list maintained by California's Native American Heritage Commission and does not need to be federally recognized. As of this writing, approximately thirty different state statutes as well as various state agency policies and memoranda of understanding include nonfederally recognized tribes in government-to-government consultation and tribal liaison mandates based on the Native American Heritage Commission's contact list. The San Luis Rey Band utilized the broad definition of a "California Native American tribe" to develop a memorandum of understanding with the California Department of Parks and Recreation, to protect and manage dozens of sacred sites, and to create cultural conservation easements as a form of land return. In the context of California Executive Orders B-10-11 and N-15-19, as well as Governor Newsom's 2020 statement of administration policy on Native American ancestral lands, a tribe's presence on the Native American Heritage Commission's contact list represents de facto state recognition for nonfederally recognized California tribes. Statewide policy change must be considered in order to hold California accountable to nonfederally recognized tribes like the San Luis Rey Band of Mission Indians.

The San Luis Rey Band managed to persevere and maintain a self-governing tribal community despite colonial forces that sought to dismantle tribal governance, connections to tribal territories, and Indigenous belief systems. Without federal recognition, the San Luis Rey Band exercises its self-governing powers in many ways on a daily basis. From essential functions like determining tribal citizenship to more complex government-to-government engagement with non-Native governments, the San Luis Rey Band's assertions of inherent tribal sovereignty show that there are standards of tribal nationhood that predate the United States and destabilize the federal government's reach of authority.

Even as the San Luis Rey Band regularly exercises its inherent tribal sovereignty and considers the possibility of official recognition by the State of California, tribal leadership still finds value in pursuing federal recognition from the United States. The rights, resources, and power that extend from a government-to-government relationship with the United States are difficult to dismiss. Beginning with the Treaty of Temecula, the San Luis Rey Band's willingness to engage the United States in a political relationship has shaped the course of the tribe's history and its choices as a government. The San Luis Rey Band will continue to pursue federal recognition of its inherent tribal sovereignty to deliver justice for the tribe's ancestors and lands.

EPILOGUE

Moving through Time Together

In 2011, a development project that involved constructing an access road near Fallbrook, California, uncovered Luiseño ancestors from sixteen burial sites. The ancestors were associated with Tómqav, one of the most significant and sacred places in Luiseño Creation. Tómqav is the place where mortality came into being when Waxáawut, a beautiful woman with long dark hair, poisoned Wuyóot, the keeper and teacher of all knowledge.[1] Waxáawut and Wuyóot were two of several Káamalam, or First People, whom Tamáayawut, the earth, birthed after her brother Túukumit, the sky, impregnated her.[2] The Káamalam sustained themselves by eating white clay called *tóovish*. One day, Wuyóot watched Waxáawut jump into the water at Tómqav and felt disgusted when he saw that her back looked flat and hollow, like a frog. Waxáawut knew what Wuyóot thought about her appearance and conspired to bewitch and poison him.[3] After the poisoning, Wuyóot became sick and knew that he would die. When the people found out what Waxáawut had done, she turned into a frog. Wuyóot and many of the First People searched far and wide for a cure, making sure to check numerous curative hot springs, but they were unsuccessful.[4]

In the process of searching for a remedy, Wuyóot named places, seasons, and months, thus giving out knowledge on how to live and make sense of the world. Wuyóot never successfully found a cure and knew he had to die. Since death did not exist among the First People prior to this time, Wuyóot gave Chixéemal, "kingbird," instructions to follow in association with his death. Following his instructions, the First People cremated Wuyóot at Wexéwxi Pu'éska, or Pu'éska Mountain. Everything changed after Wuyóot died, because the First People had to come to terms with the fact of death, and they also had to figure out "the order" of the world since they could no longer survive by eating white clay. The First People met and agreed to turn into their present forms as animals, plants, celestial objects, and human beings. Three days after he passed away, Wuyóot returned as Móyla, the moon, to watch over the people forever.

Wuyóot's story is an integral part of Luiseño culture because it serves as

the basis for concepts of traditional knowledge and power that inform Luiseño worldviews. Since the Wuyóot portion of Luiseño Creation began at Tómqav, its location is of great significance to all Luiseño people. Wuyóot's journey and acceptance that his life would end provide Luiseño people with information on protocols and cosmology associated with death. Like other California Indians, the Luiseño people understand that death offers "a moment for extended kinship networks to come together."[5] When ancestors were uncovered at the epicenter of mortality, it became the impetus for Luiseño Bands to collaborate and implement knowledge given at Creation.

Following the protocols in California Public Resources Code 5097.9 concerning the dignified and respectful treatment of Native American remains, the Native American Heritage Commission had to determine a "most likely descendant" (MLD) to recommend how the uncovered ancestors from Tómqav should be handled. All seven Luiseño Bands wanted to be the MLD or co-MLDs, but the Native American Heritage Commission was compelled to choose only one. The commission first contacted the tribe located closest to the project site, the Pala Band of Mission Indians, to serve as MLD. Pala decided to defer the MLD designation to the San Luis Rey Band. The commission obliged Pala's choice because of the San Luis Rey Band's experience at managing MLD responsibilities and because the latter's Native American monitors had already been called to work at the development project site. MLDs usually work autonomously, but in an unprecedented move the Native American Heritage Commission required the San Luis Rey Band to build consensus among other Luiseño Bands and keep them apprised of the situation.

When the other Luiseño Bands found out, they did not welcome the San Luis Rey Band's MLD designation. Animosity between the tribes intensified because the Luiseño Bands did not believe a nonfederally recognized tribe should be an MLD. Merri Lopez-Keifer, the San Luis Rey Band's legal counsel at the time, who was involved throughout the entire Tómqav process, described some of the tension:

> That's when we really got to see how the other tribes viewed us. Our first meeting for the Tómqav situation, they were very hostile. I was shaken by how hostile they were. I was yelled at by someone at the top of their lungs that, "You don't know what you're doing, you're only a nonfederally

> recognized tribe, and you shouldn't be at the same table as us!" I was like, "Why do you hate me and my tribe so much?" I was so shaken, I was starting to believe what they said. We shouldn't be here. We don't have a right.[6]

The harsh reactions were particularly jarring since less than a decade earlier, the San Luis Rey Band had participated in the now-defunct Luiseño Intertribal NAGPRA Coalition, albeit as a nonvoting member due to its status as a nonfederally recognized tribe. After the initial meeting about Tómqav, Lopez-Keifer contacted the Native American Heritage Commission to inquire about the number of times each Luiseño Band had served as an MLD. She discovered that the San Luis Rey Band and the Pechanga Band had designations in the double digits while the other five bands had either one or none. The numbers reassured leaders in the San Luis Rey Band that they did in fact belong and had both the rights and proficiency necessary to ensure the appropriate handling of uncovered ancestors at Tómqav.

Regardless, representatives from three Luiseño Bands went so far as to attend a Native American Heritage Commission regional meeting in Los Angeles to argue against nonfederally recognized tribes serving as MLDs statewide. The commission did not offer a sympathetic ear and cited Senate Bill 18, the California legislation that defines a California Native American tribe as one that can be nonfederally recognized, as the reason unrecognized tribes can be MLDs.[7] The commission's response and support for nonfederally recognized tribes enraged some Luiseño Bands further. Others realized that the San Luis Rey Band did indeed have the right to be an MLD and decided they should be San Luis Rey's ally instead of an opponent. The Luiseño Bands' lack of awareness about nonfederally recognized tribal status and rights in California state law drove the hostility surrounding the San Luis Rey Band's MLD designation. Tómqav's significance in Luiseño culture, identity, and history no doubt also fueled the antagonism between the bands.

While competing interests initially drove the tension, the Luiseño Bands eventually came together as a collective to defend the unearthed ancestors and to honor Tómqav's cultural significance. The San Luis Rey, Pala, La Jolla, Rincon, and Pauma Bands formed the Luiseño Cultural Resource Advisory Group to be a united voice in the complex cultural resource protection work for Tómqav. The advisory group managed competing entities, landownership conundrums, and uncooperative project developers as best they could with

the available resources. News of the gravity of the situation at Tómqav spread within local tribal communities and prompted support from Cahuilla and Kumeyaay allies, who visited the construction site and offered help.

Tensions between the Luiseño Bands and the developer, intent on finishing the roadway project, also bubbled over. In violation of multiple laws and in opposition to the MLDs' recommendations, the project developer instructed contractors to bulldoze the site and fill open archeological pits. Contractors purposely started work earlier than usual, at 6:30 a.m., and laughed and high-fived each other as Native American monitors urged them to cease the desecration of ancestors.[8] Several people caught the outrageous event on their phone cameras, bringing the Tómqav saga to a public audience. Despite these horrific experiences, the San Luis Rey Band brought two simultaneous lawsuits that ultimately resolved the Tómqav situation. The Luiseño Bands recovered the ancestors and other cultural objects unearthed in archeological investigations and reinterred them as close as possible to their original location. The Luiseño Bands fulfilled cultural protocol first given at Creation when they returned ancestors to their resting places. In Tómqav's wake, the Luiseño Cultural Resources Advisory Group worked with a consulting firm to create an ethnographic study, a short documentary, and language to support a possible National Register of Historic Places designation.[9]

Although Tómqav was a trying time for the San Luis Rey Band, in the end, relationships with the other Luiseño Bands and with San Diego County improved. The San Luis Rey Band's MLD recommendations combined with the tribe's unconventional legal maneuvering earned respect from the other bands. "All of a sudden," Lopez-Keifer recounted, "all the tribes were talking again. We did something very unique. Something that sets San Luis Rey apart is that we are creative, and we think of new ways to get what we need. In a lot of ways, I have a feeling it's because we're not federally recognized. We are solution oriented. We don't look to other agencies to come to our rescue. We fight for what we believe in, and we fight hard."[10] The San Luis Rey Band did not let legal status impede its responsibility to protect the cultural foundations and worldviews sacred to all Luiseño people.

In addition to being the place where Waxáawut poisoned Wuyóot, Tómqav was a place where Luiseño people came together and through which

Native travelers passed during journeys in all directions. Tómqav translates to "gathering place" or "meeting place" in English. The ethnographic study commissioned by the Luiseño Cultural Resources Advisory Group characterized Tómqav as a place of both emergence and convergence: "*Tómqav* is a gathering and meeting place of history and movement, where Luiseño ancestors repeatedly journeyed, traveled, traded, lived, met, loved, fought, and reconciled from village to village, from ocean and mountains, from and throughout all corners and directions of the Luiseño ancestral landscape; and *Tómqav* is a gathering and meeting place of time and space, where the past repeatedly speaks to a future of and for Luiseños, but always in intimate connection to the material environments and capacities of places in the ancestral landscape."[11] It is no coincidence, then, that the San Luis Rey Band and other Luiseño Bands both clashed and ultimately united at Tómqav. The Luiseño Cultural Resources Advisory Group remains dedicated to preventing further impacts to Tómqav's physical integrity and to preserving its importance in Luiseño history, culture, and identity for generations to come.

The San Luis Rey Band's history as a tribal nation in Southern California is entwined with the histories of other tribes in the region. The San Luis Rey Village's struggles for land in the nineteenth and early twentieth centuries paralleled the battles other tribes faced in being dispossessed of their homelands. Southern California tribal leaders often acted in solidarity with one another to protest white encroachment and demand that the federal government remedy the conditions of the "Mission Indians." As the San Luis Rey Village disputed the legal claim to their home, our fellow Luiseño leaders supported the community's protests and appeals to the federal government. The Mission Indian Federation's inclusion of dispossessed village communities like the San Luis Rey Band held possibilities for an Indigenous future in which on- and off-reservation Indigenous peoples cooperated. That era seems like a distant memory in a place now dominated by many powerful reservation-based tribal governments. But for the San Luis Rey Band, the history of our land dispossession is a glaring reality our community must deal with every single day as a landless, nonfederally recognized tribe. I urge the

tribes of Southern California to revisit our shared histories and once again support the San Luis Rey Band's inherent tribal sovereignty and claims to land and place among the tribal nations of California.

In my research and conversations with tribal citizens, three major themes emerged about why securing federal recognition matters for the San Luis Rey Band. First, the United States could rectify the injustices and failures of the past by federally recognizing the San Luis Rey Band. Discussed throughout this book, the original disavowal of the San Luis Rey Band's federal recognition came from the US Senate's refusal to ratify the 1852 Treaty of Temecula, which Pedro Ka-wa-wish signed with his X-mark on behalf of the San Luis Rey Village near Mission San Luis Rey. After the treaty's nonratification, the San Luis Rey Band persisted as a distinct social and political unit despite the federal government's refusal to set aside treaty-designated land. The San Luis Rey Village served as the home base for the community composed of numerous families, livestock, agricultural crops, and burial grounds. John Summers, a white settler who arrived in 1867, slowly encroached on the San Luis Rey Village's land. Summers then made a homestead claim for 160 acres that encompassed the San Luis Rey Village.

Once the San Luis Rey Village discovered Summers's claim to their home, a fight to dispute the claim's validity ensued. The San Luis Rey Village's captain, Benito Molido, took a prominent role in resisting Summers's claim. Efforts to overturn his homestead application proved unsuccessful, and new landowners eventually evicted the tribe to secure riparian water rights to the San Luis Rey River and make way for further white settlement. In that struggle, the federal government again failed to legally secure a land base and failed to act in the community's best interests per the federal trust doctrine. As other Southern California tribes acquired reservations, in large part because of fierce Native activism, the United States repeatedly failed to reserve land for the San Luis Rey Band and eventually ceased to include the tribal community under the jurisdiction of the Mission Indian Agency. Our ancestors' struggles are inherited injustices that the San Luis Rey Band confronts daily. For as long as I can remember, San Luis Rey Band tribal leaders have spoken about their desire to provide elders with housing and establish a tribal cemetery exclusively for community members. The San Luis

Rey Band lost its dedicated burial grounds in the process of eviction from the San Luis Rey Village, and reestablishing a designated area in which to honor our deceased relatives in culturally appropriate ways is long overdue. With the understanding that locating and taking land into trust for a reservation would not happen overnight, the San Luis Rey Band believe federal recognition could be the way to remedy the United States' long-standing failure to reserve land for the tribe. Moreover, federal recognition could be a pathway for substantial land return, including, but not limited to, the San Luis Rey Village and other significant places within the tribe's territory.

Second, enrollment in a federally recognized tribe would largely put to rest accusations of illegitimate Native American identity and open up possibilities for greater resource access secured through tribal political status. Enrollment in a federally recognized tribe does not completely shield Native peoples from charges of ethnic fraud or inauthenticity, but those allegations are given far less weight and happen on an infrequent basis compared to ongoing assaults on unrecognized tribal identities. There is something to be said for the "psychological validation" federal recognition can bring after decades of skepticism.[12] As an unrecognized tribe in San Diego County surrounded by reservations, the San Luis Rey Band holds the view that federal recognition could make a big difference for tribal citizens accused of being part of an "organization" or "club" instead of an inherently sovereign tribe. It might also reverse the tribe's exclusion from local and national tribal associations and its general relegation to the sidelines of intertribal politics. Holding a respected voice in collective organizing and advocacy for Indigenous futures could be transformative. Again, to reiterate a statement made throughout this book, San Luis Rey Band tribal citizens do not expect the federal government or anyone else to tell us who we are. The tribe is not seeking federal recognition to prove the community's Native identity. Our collective tribal identity is something passed down from our ancestors and shared among our community-based kinship networks.

In terms of resource access, enrollment in a federally recognized tribe has the potential to address serious issues of substance abuse, lack of housing, and child welfare that impact tribal citizens' livelihood. A wider range of educational scholarships and grants for cultural and language revitalization

Citizens of the San Luis Rey Band of Mission Indians and their families at a gathering in Escondido, California, 2016. Photo by Raenette Olvera.

would be available to tribal youth and culture bearers. Citizens of the San Luis Rey Band work diligently to ensure that the tribe's legal status does not limit our community's ability to practice our culture, as evidenced by the push to create a memorandum of understanding with the California Department of Parks and Recreation to provide access to places and materials that enable the continuity of our culture. Still, greater access to federal funding opportunities that support food sovereignty initiatives and the use of traditional ecological knowledge could mean more tribal community members with the ability to learn tribal stewardship practices and care for our ancestral lands and waters. Similarly, resources to assist Luiseño language acquisition could supplement and expand existing revitalization efforts. The administrative capability and infrastructure of a federally recognized San Luis Rey Band of Mission Indians would be able to meaningfully support tribal initiatives in a way that is currently not possible.

Third, the San Luis Rey Band will be able to assert self-governing powers and exercise self-determination more fully and in new ways as a federally recognized tribe. As a functioning tribal government, the San Luis Rey Band already uses its inherent tribal sovereignty to, for example, determine tribal citizenship and participate in government-to-government relationships at

the local and state level. But implementation of governmental powers such as administering our own court system or joining the Intertribal Court of Southern California, negotiating binding legal compacts, having civil and criminal jurisdiction, or regulating economic activity would deploy the San Luis Rey Band's inherent tribal sovereignty in novel ways. The San Luis Rey Band does not live under the assumption that federal recognition makes problems suddenly disappear. In fact, the tribe understands that new and complex challenges will arise with federal recognition. Issues aplenty confront federally recognized tribes across the nation, and expanded governmental powers will open the door to structural dilemmas and complicated outside interests. The tribe's administrative capacity will be pushed to never-before-seen levels, and the community will contend with newfound reservation politics. Nevertheless, the San Luis Rey Band is eager to build on its experiences as an unrecognized tribal government and adapt to exercising inherent and delegated powers as a federally recognized tribe.

I often think back to my childhood, when I watched the tribal council meet at my family's dining room table or when my mom sometimes picked me up late from school because she had spent the day at the archives conducting research to support federal recognition. Reflecting on those moments, I think it is clear that the San Luis Rey Band of Mission Indians is a strong tribal community because we are committed and dedicated to our tribe's continuity under any circumstances. Tribal citizens can disagree or have differing perspectives on what we believe is best for our tribe, but just like our ancestors, we will always stay together and move through time as a community. Significant work still lies ahead, but I believe in the strength of our tribal community to come together in pursuit of federal recognition. I know I am not alone in my desire to make sure this struggle is not passed on to the next generation. The San Luis Rey Band of Mission Indians submitted a letter of intent to petition through the federal acknowledgment process before I was born. Now, I have a child of my own. I have witnessed elder after elder pass away without seeing the completion of the federal acknowledgment process. I do not want my son to witness the same. In my lifetime, I want to see the United States reestablish a government-to-government relationship with our tribe and once again acknowledge the San Luis Rey Band of Mission Indians' inherent tribal sovereignty.

NOTES

Introduction

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

2. "Ka-wa-wish" is an anglicized rendering of *qewéewish*, the Luiseño word for "fox." I use Ka-wa-wish when referencing the treaty specifically.

Scott Richard Lyons argues in *X-Marks* that treaty X-marks simultaneously represent consent, coercion, and assent to new concepts (1). Lyons theorizes how an X-mark "is a contaminated and coerced sign of consent made under conditions that are not of one's making. It signifies power and a lack of power, agency and a lack of agency. It is a decision one makes when something has already been decided for you, but it is still a decision" (2–3).

3. I use the terms "nonfederally recognized," "unrecognized," and "unacknowledged" interchangeably to describe the legal status of tribes that are not recognized by the US government.

4. For broad scholarship on tribal nation-building, see Kidwell, *Choctaws in Oklahoma*; and Oakley, *Keeping the Circle*.

5. The epilogue includes an abbreviated version of the Luiseño Creation narrative. A uniform narrative does not exist, but various versions retain key aspects. For more, see Applegate, "Black, the Red, and the White"; White, "Luiseño Theory of 'Knowledge'"; DuBois, "Religion of the Luiseño Indians of Southern California"; DuBois, "Mythology of the Mission Indians" (1904); and DuBois, "Mythology of the Mission Indians" (1906).

6. Wailacki and Concow historian William Bauer Jr. discusses California Indian creation narratives and the ways in which they counter conventional understandings of history, Native identity, and relationships to place. For an analysis of the connection between California Indian creation narratives and tribal sovereignty, see Bauer, *California through Native Eyes*, 27.

7. The San Luis Rey River originates in the Palomar and Hot Springs Mountains of eastern San Diego County and empties into the Pacific Ocean at Oceanside. The river is about 55 miles long and drains an area of approximately 560 square miles.

For more information, see City of Oceanside, accessed December 26, 2023, https://www.ci.oceanside.ca.us/government/water-utilities/environmental-services-programs/watershed-protection-program/oceanside-waterbodies/san-luis-rey-river.

8. Bean and Shipek, "Luiseño," 555. Several anthropological studies provide further information on Luiseño society and religion; see DuBois, "Religion of the Luiseño Indians of Southern California"; Shipek, "Strategy for Change"; Gifford, "Clans and Moieties in Southern California"; Sparkman, "Culture of the Luiseño Indians"; Strong, *Aboriginal Society in Southern California*; and White, "Luiseño Social Organization."

9. Bean and Shipek, "Luiseño," 555–56.

10. The phrase "culture of resistance" comes specifically from Hanks, *This War Is for a Whole Life*, but many other studies also take up tribal resistance in Southern California and California overall. See, for example, Connolly Miskwish, *Kumeyaay*; Phillips, *Chiefs and Challengers*; Phillips, *Indians and Indian Agents*; Thorne, "On the Fault Line"; Thorne, "Death of Superintendent Stanley"; Thorne, "Mixed Legacy"; Thorne, "Indian Water Rights"; Farris, "José Panto"; Hyer, *"We Are Not Savages"*; Bauer, *California through Native Eyes*; Hurtado, *Indian Survival*; and Carrico, *Strangers in a Stolen Land*.

11. Luiseño language is part of the Cupan group of the Takic subfamily of the larger Uto-Aztecan language family. See Hyde, *Introduction to the Luiseño Language*; Bean and Shipek, "Luiseño"; and Elliott, "Dictionary of Rincón Luiseño," for a deeper look at Luiseño language.

12. Pablo Tac, a Luiseño born at the San Luis Rey Mission and who later went to Rome as a seminarian, created the first Luiseño-language grammar and orthography. Pablo Tac described being from "Quechla." Spanish mission records used the term "Quechinga" to identify a Native village close to the San Luis Rey Mission. Father Fermín Lasuén, the Spanish priest who founded Mission San Luis Rey in 1798, stated that the Native people of the area called the specific site of the mission "Tacayme." Evidence for multiple place-names indicates that Luiseños conceived of the mission site as separate from the nearby village, at least initially. Anthropologists in the nineteenth and twentieth centuries recorded the name of the San Luis Rey Indian Village as some variant of Qéch, such as "Kechi" or "Keish," which suggests the persistence of Luiseño place-names despite Spanish colonization. John Johnson and Stephen O'Neil argue that "Quechinga" became a "regional designation for a political territory" after the founding of Mission San Luis Rey, since Spanish missionization disrupted Luiseño settlements. Johnson and O'Neil, *Descendants of Native Communities in the Vicinity of Marine Corps Base Camp Pendleton*, 28. For further discussion on village naming, see Haas, *Pablo Tac, Indigenous Scholar*;

Kroeber, *Handbook of the Indians of California*; and Oxendine, "The Luiseño Village during the Late Prehistoric Era."

13. Anaya, "Indigenous Law and Its Contribution to Global Pluralism," 4.

14. My positionality as an "insider" researcher of the San Luis Rey Band of Mission Indians has introduced me to the advantages and challenges of "working from home." My position as an "insider" enabled me to pose questions and interpret history through a community-centered lens. At the same time, my understanding of intratribal and familial conflicts adds a dimension to both my analysis of the historical record and my own original research with tribal citizens. For a special issue on "working from home" for Native American scholars, see *American Indian Quarterly* 33, no. 4 (2009).

15. I understand my research and involvement with my tribal community in a relational sense. Relationality, as Aboriginal scholar Aileen Moreton-Robinson contends, is a "distinct Indigenous social research presupposition within academia" that "shapes Indigenous scholars' research." Moreton-Robinson, "Relationality," 72. Based in a framework of relationality, my relationship to my tribal community and our specific community protocols informed every aspect of my study.

16. Innes, "'Wait a Second. Who Are You Anyways?,'" 441–47.

17. Archival management and access are topics of interest for Native communities interested in preserving historical and cultural resources. The Association of Tribal Archives, Libraries, and Museums is an international nonprofit organization that "maintains a network of support for indigenous programs, provides culturally relevant programming and services, encourages collaboration among tribal and non-tribal cultural institutions, and articulates contemporary issues related to developing and sustaining the cultural sovereignty of Native Nations." For current initiatives and programs, see Association of Tribal Archives, Libraries, and Museums, accessed December 27, 2023, https://atalm.org/. There is a voluminous body of critical scholarship on archives' role in upholding state power and their seemingly authoritative control over history and evidence. See, for instance, Stoler, "Colonial Archives and the Arts of Governance"; Schwartz and Cook, "Archives, Records, and Power"; and Adams-Campbell, Falzetti, and Rivard, "Introduction: Indigeneity and the Work of Settler Archives."

18. Gould, "Nipmuc Nation, Federal Acknowledgment, and a Case of Mistaken Identity"; Rivard, "Who Decides If You're Real."

19. Simpson, *Mohawk Interruptus*, 105.

20. "Number of Petitions by State as of November 12, 2013," Office of Federal Acknowledgment, Bureau of Indian Affairs, 2013, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/admindocs/NumPetByState_2013-11-12.pdf.

21. The most current information regarding petitioning tribes can be found at

the Office of Federal Acknowledgment, Bureau of Indian Affairs, accessed January 6, 2024, https://www.bia.gov/as-ia/ofa. The website is updated daily to reflect petitioner statuses and recent departmental actions.

22. The Interior Board of Indian Appeals affirmed the negative final determinations for the Tolowa Nation and the Juaneño Band of Mission Indians but recommended that the assistant secretary for Indian Affairs review five issues outside the board's jurisdiction regarding the Juaneño Band's request for reconsideration. See the Interior Board of Indian Appeals' decisions 57 IBIA 149 for the Juaneño Band in 2013 and 62 IBIA 187 for the Tolowa Nation in 2016, https://www.doi.gov/oha/organization/ibia/cumulative-chronological-index-of-cases.

23. Ben Brazil, "New Tribal Leader Will Help the First People of O.C. in Their Decades-Long Battle to Gain Federal Recognition," *Los Angeles Times*, September 22, 2021.

24. A July 17, 2022, letter explains the reason for the split in the 1990s. For the letter, scroll down on the website of the Juaneño Band of Mission Indians Acjachemen Nation, accessed December 27, 2023, https://www.jbmian.com/#/.

25. Department of the Interior, "Federal Acknowledgment of American Indian Tribes," 37888.

26. Champagne and Goldberg, *Coalition of Lineages*, 11–16; Lauren Gold, "Mission Impossible: Native San Gabriel Valley Tribes Seek U.S. Recognition," *Los Angeles Daily News*, June 3, 2013.

27. The Office of Federal Acknowledgment's website is updated daily to reflect recent acknowledgment actions. See Office of Federal Acknowledgment, Bureau of Indian Affairs, accessed December 27, 2023, https://www.bia.gov/as-ia/ofa/recent-acknowledgment-actions.

28. Acting Deputy Assistant Secretary–Indian Affairs, "Recommendation and Summary of Evidence for Proposed Finding against Federal Acknowledgment of the Kaweah Indian Nation, Inc., Pursuant to 25 CFR 83."

29. Fletcher, "Indian Frauds."

30. Klopotek, *Recognition Odysseys*, 35; M. Miller, *Forgotten Tribes*, 69.

31. Neale-Sacks, "Process of Survival."

32. Louis Sahagún, "A Century-Old Fight for Tribal Recognition Simmers over the Eastern Sierra Nevada's Mono Lake," *Los Angeles Times*, February 20, 2021.

33. California State Senate, Muwekma Ohlone Tribe: Federal Recognition, SJR-13 (introduced March 7, 2022), https://trackbill.com/bill/california-senate-joint-resolution-13-muwekma-ohlone-tribe-federal-recognition/2239901/.

34. Amah Mutsun Land Trust, accessed December 27, 2023, https://www.amahmutsunlandtrust.org/; Hannibal, "Rekindling the Old Ways."

35. Muwekma Ohlone Tribe v. Kempthorne, 452 F. Supp. 2d 105 (D.D.C. 2006).

36. A full account of the Muwekma Ohlone Tribe's experience with the court case(s) and the federal acknowledgment process from the tribe's perspective can be found at "Recognition Process," Muwekma Ohlone Tribe, accessed December 27, 2023, http://www.muwekma.org/recognition-process.html. The Muwekma Ohlone Tribe's pursuit of federal recognition has received significant scholarly attention; see Field, "Unacknowledged Tribes, Dangerous Knowledge"; Field, Leventhal, and Cambra, "Mapping Erasure"; Field et al., "Contemporary Ohlone Tribal Revitalization Movement"; and Leventhal et al., "The Ohlone."

37. Muwekma Ohlone Tribe v. Salazar, 708 F.3d 209 (D.C. Cir. 2013).

38. Department of the Interior, "Requests for Administrative Acknowledgment of Federal Indian Tribes." Assistant Secretary for Indian Affairs Kevin Washburn released the policy guidance document "Requests for Administrative Acknowledgment of Indian Tribes" at the same time the revised federal acknowledgment process regulations were published in the *Federal Register*. The policy guidelines state that the Department of the Interior would no longer use discretionary authority to acknowledge Indian tribes and that all tribes must use the Part 83 process to acquire federal recognition administratively. Given the long-standing issues with the federal acknowledgment process, the guidance concedes that it "is contingent on the Department's ability to implement Part 83, as reformed. If in the future the newly reformed Part 83 process is not in effect and being implemented, this policy guidance is deemed rescinded" (37538).

39. US Government Accountability Office, *Federal Funding for Non-Federally Recognized Tribes*, 36–37.

40. US Government Accountability Office, *Federal Funding for Non-Federally Recognized Tribes*, 36–37.

41. Jennifer K. Morita, "Native American Leader, Who Fought for Two Decades to Restore Local Tribe's Rights, to Receive President's Medal for Distinguished Service," Sacramento State Newsroom, April 13, 2023, https://www.csus.edu/news/newsroom/stories/2023/4/presidents-medal-tarango.html.

42. California Heritage: Indigenous Research Project, "Nevada City Rancheria Nisenan Tribe Gains Momentum in Bid for Federal Recognition," Yubanet.com, January 19, 2023, https://yubanet.com/regional/nevada-city-rancheria-nisenan-tribe-gains-momentum-in-bid-for-federal-recognition/.

43. California Indians' eligibility for health programs funded by the Indian Health Service can be found at "Eligibility Statement," California Area Indian Health Service, accessed February 8, 2024, https://www.ihs.gov/california/index.cfm/health-programs/eligibility/.

44. "Federated Indians of Graton Rancheria Scholarship Fund," accessed December 27, 2023, https://gratonrancheria.com/ucscholarship/.

45. Chamings, "After 250 Years, Big Sur Land Finally Returned to Native American Tribe"; Moya, "How the Amah Mutsun Tribe Is Reclaiming Its Heritage"; Peterson, "Lands Returned to the Mountain Maidu Tribe"; Jonah Valdez, "After Nearly 200 Years, the Tongva Community Has Land in Los Angeles County," *Los Angeles Times*, October 10, 2022.

ONE Federal Acknowledgment in the United States

1. Tribes that fall under the "unrecognized" umbrella include those that had their federal recognition terminated by the United States as well as tribes recognized by a state government but not the federal government.

2. Bureau of Indian Affairs, "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs."

3. US Government Accountability Office, *Federal Funding for Non-Federally Recognized Tribes*. The number of nonfederally recognized tribes is unclear in part because of the serious issue of "fake" tribes ostensibly created to pursue rights and resources for groups of individuals with ambiguous or nonexistent claims to Native American ancestry. See Sturm, *Becoming Indian*.

4. Quinn, "Federal Acknowledgment of American Indian Tribes," 333.

5. Quinn, "Federal Acknowledgment of American Indian Tribes," 334.

6. Wilkins and Stark, *American Indian Politics and the American Indian Political System*, 308.

7. Department of the Interior, "Federal Acknowledgment of American Indian Tribes," 37888.

8. Walch, "Terminating the Indian Termination Policy," 1186.

9. Walch, "Terminating the Indian Termination Policy," 1181.

10. Some nonfederally recognized tribes with state recognition have access to support or resources not available for other unrecognized or terminated tribes, including state-based reservations. Lack of federal recognition does not prevent tribes from asserting their inherent tribal sovereignty in ways that support community and cultural initiatives. However, even as some unrecognized tribes thrive, they still seek federal recognition to obtain the rights and resources that extend from a government-to-government relationship with the United States. See chapter 5 for a more in-depth discussion of the ways in which nonfederally recognized tribes exercise inherent tribal sovereignty.

11. Deloria and Lytle, *Nations Within*, 17; Wilkins and Stark, *American Indian Politics and the American Indian Political System*, 39–41.

12. Cohen, *Handbook of Federal Indian Law*, 122 (original emphasis).

13. Wilkins and Stark, *American Indian Politics and the American Indian Political System*, 37.

14. Barker, *Sovereignty Matters*, 6.

15. Deloria and Lytle, *American Indians, American Justice*, 26–27.

16. Barker, *Sovereignty Matters*, 7.

17. Cherokee Nation v. Georgia (1831) (30 U.S. [5 Pet.] 1).

18. Canby, *American Indian Law in a Nutshell*, 16.

19. Quoted in Cohen, *Handbook of Federal Indian Law*, 123.

20. Nichols, *American Indians in U.S. History*, 77–79; Williams, *Like a Loaded Weapon*, 63–70.

21. Davis, Biber, and Kempf, "Persisting Sovereignties," 575–76.

22. Wilkins and Stark, *American Indian Politics and the American Indian Political System*, 33–37.

23. See Alfred, *Peace, Power, Righteousness*; and Deloria and Lytle, *Nations Within*.

24. Alfred, *Peace, Power, Righteousness*, 82–83.

25. Wilkins and Stark, *American Indian Politics and the American Indian Political System*, 312–13.

26. Department of the Interior, "What Is the Federal Indian Trust Responsibilty?," accessed April 8, 2024, https://www.bia.gov/faqs/what-federal-indian-trust-responsibility.

27. Pevar, *Rights of Indians and Tribes*, 29–31.

28. Pevar, *Rights of Indians and Tribes*, 41–42.

29. Pevar, *Rights of Indians and Tribes*, 274; Gristede's Foods v. Poospatuck, 06-cv-1260 (KAM) (E.D.N.Y. October 27, 2009).

30. Greene v. State of Rhode Island, 398 F.3d 45 (1st Cir. 2005).

31. Pevar, *Rights of Indians and Tribes*, 35.

32. Christine Fernando, "Pandemic Leaves Tribes without US Recognition at Higher Risk," Associated Press, February 27, 2021, https://apnews.com/article/pandemics-tribal-governments-united-states-coronavirus-pandemic-9eb1a8218c602d80385f2fce89625147; Sokolow, "For Non-Federally Recognized Tribes, the Covid-19 Pandemic Hurts Even More."

33. A small number of federally recognized tribes do not have a reservation.

34. Dadigan, "Winnemem Fear Forest Service Harrassment during Sacred Ceremony."

35. Furshong, "Some 'Unrecognized' Tribes Still Waiting after 130 Years."

36. Orona and Esquivido, "Continued Disembodiment," 52–59. With the help of federally recognized tribes, unrecognized tribes can have cultural items or ancestors repatriated through the Native American Graves Protection and Repatriation Act. States can also pass laws that support nonfederally recognized tribes where federal protections are lacking. While well intentioned, these laws can sometimes perpetuate problems at the federal level or reinforce settler colonialism.

State legislators in California, for example, passed the California Native American Graves Protection and Repatriation Act in 2001 to address nonfederally recognized tribes' exclusion from the federal Native American Graves Protection and Repatriation Act. Chapter 5 provides an in-depth discussion of California state laws as they relate to nonfederally recognized tribes.

37. Garroutte, *Real Indians*, 30–32.

38. Miranda, *Bad Indians*, 136.

39. Responses to questionnaire by anonymous citizens of the San Luis Rey Band of Mission Indians.

40. Field, "Complicities and Collaborations."

41. Barker, *Native Acts*.

42. See Cramer, *Cash, Color, and Colonialism*.

43. Clifford, "Identity in Mashpee"; Cramer, *Cash, Color, and Colonialism*; Garroutte, *Real Indians*.

44. For example, Stand Up for California! is a statewide organization founded on fighting tribal casino development in California. The organization routinely takes legal action against tribes. US senator Dianne Feinstein was notoriously vocal in her stance against tribal casinos and tribes seeking federal recognition. Chapter 2 further explores the politics of tribal gaming in California.

45. Cattelino, "Double Bind of American Indian Need-Based Sovereignty," 252; Cattelino, *High Stakes*, 101; Harmon, *Rich Indians*, 249–79.

46. Bruyneel, "Colonizer Demands Its 'Fair Share,' and More," 299.

47. Cramer, "Common Sense of Anti-Indian Racism."

48. Cramer, "Common Sense of Anti-Indian Racism," 326.

49. Dudas, *Cultivation of Resentment*.

50. Klopotek, *Recognition Odysseys*, 5.

51. Barker, *Native Acts*, 40.

52. Barker, "Recognition," 155.

53. Kauanui, "Precarious Positions."

54. Coulthard, *Red Skin, White Masks*, 3.

55. Coulthard, "Subjects of Empire," 455; Coulthard, *Red Skin, White Masks*, 43.

56. Simpson, *Mohawk Interruptus*, 10, 20–21.

57. Simpson, *Mohawk Interruptus*, 11.

58. This figure reflects the number of letters of intent to petition received by the Branch of Acknowledgment and Research and later the Office of Federal Acknowledgment. Tribes that sent a letter of intent did not necessarily follow through with submitting a petition. There are various reasons some did not choose to do so, including acquiring federal recognition by other means, but the 350 figure illuminates just how many tribes have been impelled to go through process.

59. Pevar, *Rights of Indians and Tribes*, 10.

60. Deloria and Lytle, *American Indians, American Justice*.

61. Wilkins and Stark, *American Indian Politics and the American Indian Political System*.

62. Quinn, "Federal Acknowledgment of American Indian Tribes," 334.

63. Klopotek, *Recognition Odysseys*, 19.

64. M. Miller, *Forgotten Tribes*, 28–30.

65. Montoya v. United States, 180 U.S. 261 (1901).

66. Tolley, *Quest for Tribal Acknowledgment*, 61.

67. Cohen, *Handbook of Federal Indian Law*, 271.

68. Quinn, "Federal Acknowledgment of American Indian Tribes," 359.

69. Deloria and Lytle, *American Indians, American Justice*, 21–22.

70. Klopotek, *Recognition Odysseys*, 23.

71. Klopotek, *Recognition Odysseys*, 23.

72. Klopotek, *Recognition Odysseys*, 23.

73. Klopotek, *Recognition Odysseys*, 24.

74. Klopotek, *Recognition Odysseys*, 26.

75. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F. Supp. 649 (D. Me. 1975).

76. M. Miller, *Forgotten Tribes*, 36 (original emphasis).

77. Quinn, "Federal Acknowledgment of American Indian Tribes," 362–63.

78. American Indian Policy Review Commission, *Final Report*.

79. American Indian Policy Review Commission, *Final Report*, 37.

80. Slagle, "Unfinished Justice," 325.

81. M. Miller, *Forgotten Tribes*, 40.

82. Bureau of Indian Affairs, "Procedures Governing Determination That Indian Group Is a Federally Recognized Indian Tribe."

83. Bureau of Indian Affairs, "Procedures for Establishing That an American Indian Group Exists as an Indian Tribe" (June 1978).

84. Bureau of Indian Affairs, "Procedures for Establishing That an American Indian Group Exists as an Indian Tribe" (September 1978), 39361.

85. Bureau of Indian Affairs, "Procedures for Establishing That an American Indian Group Exists as an Indian Tribe" (September 1978).

86. M. Miller, *Forgotten Tribes*, 44.

87. Klopotek, *Recognition Odysseys*, 80–81.

88. Montenegro, "Unsettling Evidence," 123–24.

89. Barker, *Native Acts*; Klopotek, *Recognition Odysseys*, 4.

90. Den Ouden and O'Brien, *Recognition, Sovereignty Struggles, and Indigenous Rights in the United States*, 22–23.

91. Ferguson-Bohnee, "Testimony before the Senate Committee on Indian Affairs," 2.

92. Ferguson-Bohnee, "Testimony before the Senate Committee on Indian Affairs."

93. Field, "Unacknowledged Tribes, Dangerous Knowledge," 84.

94. Starna, "Public Ethnohistory and Native-American Communities," 135.

95. Wilkins and Stark, *American Indian Politics and the American Indian Political System*, 5–6.

96. "Petitions Resolved," Office of Federal Acknowledgment, 2024, accessed February 8, 2024, https://www.bia.gov/as-ia/ofa/petitions-resolved. The Office of Federal Acknowledgment used to be known as the Branch of Acknowledgment Research (BAR).

97. M. Miller, *Forgotten Tribes*, 3.

98. The criteria are listed in part 83 of Title 25 of the Code of Federal Regulations; see Department of the Interior, "Federal Acknowledgment of American Indian Tribes," 37889–91.

99. US Government Accountability Office, *Federal Funding for Non-Federally Recognized Tribes*, 36–37.

100. US Government Accountability Office, *Indian Issues*, 13–14.

101. Den Ouden and O'Brien, *Recognition, Sovereignty Struggles, and Indigenous Rights in the United States*, 13.

102. Den Ouden and O'Brien, *Recognition, Sovereignty Struggles, and Indigenous Rights in the United States*, 13.

103. Den Ouden and O'Brien, *Recognition, Sovereignty Struggles, and Indigenous Rights in the United States*, 13.

104. Klopotek, *Recognition Odysseys*, 39.

105. See Jurmain and McCawley, *O, My Ancestor*; Den Ouden and O'Brien, *Recognition, Sovereignty Struggles, and Indigenous Rights in the United States*; and Tolley, *Quest for Tribal Acknowledgment*.

TWO The California Conundrum

1. "Winnemem Wintu Chief Caleen Sisk to Report on Racial Discrimination of Federal Tribal Recognition at the United Nations in Geneva" (press release), Winnemem Wintu, July 31, 2014, http://www.winnememwintu.us/2014/07/31/winnemem-wintu-chief-caleen-sisk-to-report-on-racial-discrimination-of-federal-tribal-recognition-at-the-united-nations-in-geneva/ (no longer available).

2. Winnemem Wintu Tribe, *Shadow Report*, 2013, http://www.winnememwintu.us/wp-content/uploads/2014/07/Winnemem-Wintu-shadow-report-FINAL-2-copy.pdf (no longer available).

3. Coulthard, "Subjects of Empire"; B. Miller, *Invisible Indigenes*; Povinelli, *Cunning of Recognition*; Coulthard, *Red Skin, White Masks*; Lawrence, *Fractured Homeland*; Simpson, *Mohawk Interruptus*.

4. The Native American Heritage Commission maintains a contact list of all "California Native American" tribes. The contact list is used for a variety of purposes, many of which are codified in state statutes. The contact list is discussed in further detail in chapter 5.

5. Ellen Barry, "Agency Willing to Relinquish Power to Recognize Tribes," *Boston Globe*, May 26, 2000; Wilkins and Stark, *American Indian Politics and the American Indian Political System*, 7.

6. M. Miller, *Forgotten Tribes*, 155.

7. M. Miller, *Forgotten Tribes*, 146; Crum, "Tripartite State of Affairs," 123–33.

8. M. Miller, *Forgotten Tribes*, 154–55.

9. Advisory Council on California Indian Policy, *Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416*, 20.

10. Lightfoot, *Indians, Missionaries, and Merchants*, 239.

11. Lightfoot, *Indians, Missionaries, and Merchants*, 210–11.

12. Panich, "Archaeologies of Persistence," 112.

13. In addition to Lightfoot in *Indians, Missionaries, and Merchants*, several other scholars also make the connection between anthropological inquiry and the United States' decisions regarding tribal land acquisition in the form of reservations and rancherias; see Field, "Complicities and Collaborations"; Tolley, *Quest for Tribal Acknowledgment*; and Laverty, "Recognizing Indians."

14. From Beebe and Senkewicz, *Lands of Promise and Despair*, 292.

15. Haas, *Pablo Tac, Indigenous Scholar*, 9.

16. Lightfoot and Parrish, *California Indians and Their Environment*; Preston, "Serpent in the Garden"; Shipek, "Strategy for Change."

17. R. Jackson and Castillo, *Indians, Franciscans, and Spanish Colonization*, 6.

18. Castillo, "Impact of Euro-American Exploration and Settlement," 101.

19. Champagne and Goldberg, *Coalition of Lineages*, 66.

20. Lightfoot, *Indians, Missionaries, and Merchants*, 65–66; Shipek, "Strategy for Change," 75–76; Shipek, *Pushed into the Rocks*, 20.

21. Lightfoot, *Indians, Missionaries, and Merchants*, 208–9.

22. Cook, *Conflict between the California Indian and White Civilization*.

23. R. Jackson and Castillo, *Indians, Franciscans, and Spanish Colonization*, 44.

24. Cook, *Conflict between the California Indian and White Civilization*, 445.

25. Shipek, "Strategy for Change," 70.

26. Shipek, "Strategy for Change," 81–82.

27. Shipek, "Strategy for Change," 76.

28. Lightfoot et al., "Study of Indigenous Political Economies and Colonialism in Native California," 97.

29. Montenegro, "Unsettling Evidence," 129.

30. Unlike the Muwekma Ohlone Tribe and the Juaneño Band of Mission Indians (petitioner #084B), the Tolowa Nation was not in the direct path of Spanish missionization.

31. Metini refers to both a specific archeological site and the area that encompasses the Fort Ross State Historic Park. See Lightfoot and Gonzalez, "Study of Sustained Colonialism," for a detailed overview of collaborative archeological research related to Metini Village and similar sites in the Kashia Band of Pomo Indians' homelands.

32. Many publications explore the brief era of Russian colonization in California. For examples, see works by Glenn Farris, such "Recognizing Indian Folk History as Real History"; "Russian Imprint on the Colonization of California"; and "Life at Fort Ross as the Indians Saw It."

33. Lightfoot, *Indians, Missionaries, and Merchants*, 204.

34. Lightfoot, *Indians, Missionaries, and Merchants*, 205.

35. Lightfoot, *Indians, Missionaries, and Merchants*, 205.

36. R. Jackson and Castillo, *Indians, Franciscans, and Spanish Colonization*, 87.

37. Haas, *Conquests and Historical Identities in California*, 39.

38. Castillo, "Impact of Euro-American Exploration and Settlement," 105; Haas, *Conquests and Historical Identities in California*, 32–38.

39. Haas, *Conquests and Historical Identities in California*, 39.

40. Champagne and Goldberg, *Coalition of Lineages*, 85; Larry Echo Hawk, "Final Determination against Acknowledgment of the Juaneño Band of Mission Indians, Acjachemen Nation (Petitioner #084A), 4–7, Office of the Assistant Secretary–Indian Affairs, March 15, 2011, https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/084A_juajba_CA/084a_fd.pdf.

41. Carrico, *Strangers in a Stolen Land*, 43.

42. Shipek, *Pushed into the Rocks*, 28.

43. Madley, *American Genocide*, 77–78.

44. Lindsay, *Murder State*, 135–36.

45. Lindsay, *Murder State*, 179.

46. Lindsay, *Murder State*; Madley, *American Genocide*; Norton, *Genocide in Northwestern California*; Trafzer and Hyer, *Exterminate Them!*

47. Quoted in Madley, *American Genocide*, 4.

48. "Convention on the Prevention and Punishment of the Crime of Genocide," Office of the High Commissioner–Human Rights, United Nations, December 9, 1948, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CrimeOfGenocide.aspx.

49. "Convention on the Prevention and Punishment of the Crime of Genocide."

50. "Convention on the Prevention and Punishment of the Crime of Genocide."

51. Ostler, *Surviving Genocide*, 383–87.

52. While scholars debate the finer points of how genocide occurred, its perpetration in California is widely accepted. See Lindsay, *Murder State*; Madley, *American Genocide*; Norton, *Genocide in Northwestern California*; Rawls, *Indians of California*; Trafzer and Hyer, *Exterminate Them!* Gary Clayton Anderson, however, rejects the view that genocide occurred in California; see G. Anderson, "Native Peoples of the American West."

53. Lindsay, *Murder State*, 123.

54. Madley, *American Genocide*, 355.

55. Johnston-Dodds, *Early California Laws and Policies Related to California Indians*, 2.

56. Johnston-Dodds, *Early California Laws and Policies Related to California Indians*, 18.

57. Rawls, *Indians of California*, 86.

58. An Act for the Government and Protection of Indians, chapter 133, Statutes of California of 1850.

59. Madley, *American Genocide*, 160.

60. An Act amendatory of an Act entitled "An Act for the Government and Protection of Indians," chapter 231, Statutes of California of 1860; Magliari, "Free Soil, Unfree Labor," 351–58; Magliari, "Free State Slavery," 168–69; Middleton Manning and Gayle, "Enslaved in a Free Country," 287–92.

61. Johnston-Dodds, *Early California Laws and Policies Related to California Indians*, 9. A publicly available list of primary sources concerning the involuntary servitude, apprenticeship, and slavery of California Indians can be found at California Indian History, accessed December 29, 2023, https://calindianhistory.org/california-indian-involuntary-servitude-apprenticeship-and-slavery-primary-sources/.

62. Historian Stacey Smith, for example, provides an account of Oliver M. Wozencraft charging an African American abolitionist with kidnapping his nine-year-old Yuki Indian ward, bound to him through the 1850 Act for the Government and Protection of Indians. Wozencraft was one of three federal Indian agents/commissioners charged with negotiating treaties with California Indian tribes, and he abducted the Yuki child after participating in a genocidal campaign against her people. S. Smith, *Freedom's Frontier*, 1–2.

63. Act for the Government and Protection of Indians, chapter 133, Statutes of California of 1850.

64. Shipek, "Documents of San Diego History."

65. Before Congress passed the California Land Act of 1851, a series of reports were prepared in order to assess the nature of land titles made under Spanish and

Mexican law. The federal agents who researched and wrote on the status of land title showed a bias against Native peoples and even speculated in land during the process of reporting. William Carey Jones, for example, purchased property at Mission San Luis Rey and the associated ranches at Pala and San Juan only to sell it shortly thereafter for a profit. The federal agents reported that Spanish and Mexican law only recognized Indian landownership over settled lands, such as those held by Mission Indians, as opposed to ownership of the entirety of the state. See Jones, *Report on the Subject of Land Titles in California*.

66. An Act to Ascertain and Settle the Private Land Claims in the State of California (9 Stat. 631), March 3, 1851.

67. Haas, *Conquests and Historical Identities in California*, 60; Shipek, *Pushed into the Rocks*, 31; Hyer, "'It Was My Duty to Protect the Indians,'" 30.

68. Shipek, *Pushed into the Rocks*, 31–32.

69. Haas, *Conquests and Historical Identities in California*, 60. Mexican governor Pio Pico had granted the Rancho Cuca or El Portrero to a Luiseño woman, María Juana de Los Angeles, in 1845. Her daughter, Margarita Sobenes de Trujillo, secured a patent to the Cuca grant in 1877. See Johnson and O'Neil, *Descendants of Native Communities in the Vicinity of Marine Corps Base Camp Pendleton*, 36.

70. Flushman and Barbieri, "Aboriginal Title," 399–400.

71. Brigandi, "In the Name of the Law."

72. Carrico, *Strangers in a Stolen Land*, 156.

73. Brigandi, "In the Name of the Law"; Hyer, "'It Was My Duty to Protect the Indians.'"

74. For a more in-depth analysis of the case and the subsequent eviction, see Brigandi, "In the Name of the Law"; Carrico, *Strangers in a Stolen Land*; and Hyer, "'It Was My Duty to Protect the Indians.'" For more on the Cupeño Indians, see Hill and Nolasquez, *Mulu'Wetam*.

75. Anderson, Ellison, and Heizer, *Treaty Making and Treaty Rejection by the Federal Government in California*, 53; Heizer, *Eighteen Unratified Treaties of 1851–1852*, 703; Rawls, *Indians of California*, 141; Phillips, *Indians and Indian Agents*, 11–13.

76. Heizer, *Eighteen Unratified Treaties of 1851–1852*, 2; Johnston-Dodds, *Early California Laws and Policies Related to California Indians*, 23.

77. Dilley, "T^{y}iptukiłhi Wa T^{y}iptut^{y}i$^{?}$ni, Where Are You From and Where Are You Going?," 142.

78. Kelsey, "California Indian Treaty Myth," 231.

79. Heizer, *Eighteen Unratified Treaties of 1851–1852*, 5.

80. J. J. Warner of San Diego County was the only member of the California state Senate to support ratification of the treaties. However, he suggested that instead of setting aside large reservations, the state should revert to a system similar to

Spanish missionization. Warner, as a longtime ranch owner, presumably suggested that alternative because it would provide him with a perpetual workforce of Indian laborers to exploit.

81. Flushman and Barbieri, "Aboriginal Title," 439.

82. For detailed histories about the evolution of the reservation system in California, see Phillips, *Indians and Indian Agents*; and Phillips, *"Bringing Them under Subjection."*

83. Carrico, *Strangers in a Stolen Land*, 122.

84. Castillo, "Impact of Euro-American Exploration and Settlement," 116.

85. Castillo, "Impact of Euro-American Exploration and Settlement," 118; Schneider, "Making Indian Land in the Allotment Era," 433; W. Wood, "Trajectory of Indian Country in California," 14–15.

86. Kroeber, "Nature of Land-Holding Groups in Aboriginal California," 38.

87. Slagle, "Unfinished Justice," 328.

88. Kroeber, *Handbook of the Indians of California*, 464.

89. Lightfoot, *Indians, Missionaries, and Merchants*, 227.

90. Field, "Complicities and Collaborations," 198; Lightfoot, *Indians, Missionaries, and Merchants*, 222–32.

91. Field, "Complicities and Collaborations," 197.

92. Lightfoot, *Indians, Missionaries, and Merchants*, does not explicitly state that all Luiseños are not federally recognized today.

93. Joseph A. Myers Center on Native American Issues and Native American Student Development, *University of California Land Grab*; L. Smith, "Into the Ishi Wilderness."

94. Notable examples in California include Les Field, Alan Leventhal, Kent Lightfoot, Lee Panich, Jun Sunseri, and Charlotte Sunseri.

95. Goldberg and Champagne, *Second Century of Dishonor*; Chilcote, "Process and the People," 52–54.

96. Lorraine Escobar, "Worthless Paper and Shattered Identities," January 11, 2010, http://www.gabrielenoindians.org/Site/WORTHLESS_PAPER.html (no longer available).

97. Office of Federal Acknowledgment, "Proposed Finding against Acknowledgment of the Juaneño Band of Mission Indians Acjachemen Nation (Petitioner #84A)," Office of the Assistant Secretary–Indian Affairs, Washington, DC, 2007, 192–201.

98. See "Impostors," Gabrieleño Indians, 2015, 2017, http://gabrielenoindians.net/impostors.html; Matt Coker, "Anthony Rivera's Juaneño Indian Tribal Council Says Chief David Belardes Is No Juaneño," *OC Weekly*, February 19, 2009, http://www.ocweekly.com/news/anthony-riveras-juaneo-indian-tribal-council-says-chief-david-belardes-is-no-juaneo-6413921; Miles Corwin, "Heritage

of Indians Questioned: Genealogists Cast Doubt on Background of Chumash Group," *Los Angeles Times*, May 26, 1987.

99. See Haley and Wilcoxon, "How Spaniards Became Chumash and Other Tales of Ethnogenesis"; Erlandson, "Making of Chumash Tradition"; Haley and Wilcoxon, "Anthropology and the Making of Chumash Tradition"; Kristina Gill and Jon Erlandson, "The Battle for Chumash Identity: Chumash Identity Is Not Up to Anthropologists (or Journalists)," *Santa Barbara Independent*, February 10, 2020, https://www.independent.com/2020/02/10/the-battle-for-chumash-identity/.

100. "An Act Authorizing the attorney general of the State of California to bring suit in the Court of Claims on behalf of the Indians of California," May 18, 1928, ch. 624, §1, 45 Stat. 602.

101. Stewart, "Litigation and Its Effects," 708.

102. Goldberg and Champagne, *Second Century of Dishonor*, 123. Similar to the Indians of California census rolls' "recognition" issue is the status of land allotments acquired through the 1887 General Allotment Act and still held by members of nonfederally recognized tribes. The Office of Federal Acknowledgment does not consider land allotments as evidence for federal recognition because the United States allotted lands to individuals, not tribes. For a more detailed discussion of unrecognized tribes and the General Allotment Act, see Esquivido, "Fighting for Federal Recognition."

103. For some people, enrollment on the Indians of California census rolls is conflated with tribal enrollment. Indicating descent from a tribe or tribes on the rolls did not automatically enroll that person or their descendants in a tribe because tribes are the ultimate decision-makers of who is a member/citizen.

104. Escobar, "Worthless Paper and Shattered Identities," 4.

105. Haas, *Conquests and Historical Identities in California*, 130.

106. The Bureau of Indian Affairs issued a "Certificate of Degree of Indian Blood" to any person who could prove their Native American ancestry. Such a certificate documents a measurement of "Indian blood," or blood quantum. For example, a child with one "full blood" (4/4) parent and one non-Native parent would have ½ degree Indian blood. If that same person later had a child with a non-Native, that child would have ¼ degree Indian blood. Blood quantum is often criticized because it serves to define Native people out of existence. At the same time, many tribes use the BIA certificate as part of their enrollment criteria.

107. Haley and Wilcoxon, "How Spaniards Became Chumash and Other Tales of Ethnogenesis"; "Impostors," Gabrieleño Indians, 2015, 2017; Corwin, "Heritage of Indians Questioned," *Los Angeles Times*.

108. Office of Federal Acknowledgment, "Proposed Finding against Acknowledgment of the Juaneño Band of Mission Indians Acjachemen Nation (Petitioner

#84A)"; Coker, "Anthony Rivera's Juaneño Indian Tribal Council Says Chief David Belardes Is No Juaneño," *OC Weekly*; Matt Coker, "David Belardes, OC's Most Controversial Native American Leader, Draws a Line in the Cemetery," *OC Weekly*, February 5, 2009, https://www.ocweekly.com/news-david-belardes-ocs-most-controversial-native-american-leader-draws-a-line-in-the-cemetery-6413918/. For a more in-depth look into the phenomenon of removing tribal members, otherwise known as disenrollment, see Wilkins and Wilkins, *Dismembered*.

109. Quoted in Lauren Gold, "Mission Impossible: Native San Gabriel Valley Tribes Seek US recognition," *Los Angeles Daily News*, June 3, 2013.

110. However, tribes can still use the Indians of California census rolls as corroborating evidence in the genealogical portions of their federal recognition petition.

111. Indian Gaming Regulatory Act (1988), National Indian Gaming Commission, accessed December 29, 2023, https://www.nigc.gov/general-counsel/indian-gaming-regulatory-act.

112. Spilde, "Cultivating New Opportunities," 324.

113. Spilde, "Cultivating New Opportunities," 325.

114. Spilde, "Cultivating New Opportunities," 326.

115. Spilde, "Cultivating New Opportunities," 326.

116. Bruyneel, "Colonizer Demands Its 'Fair Share,' and More," 303–12.

117. Anonymous citizen of the San Luis Rey Band of Mission Indians in discussion with the author, March 2015.

118. Gabrielino-Tongva Tribe v. Stein, 2:21-cv-05871-MCS-DFM (C.D. Cal. Oct. 14, 2021); Jessica Garrison, "Battle over a Casino Plan Divides Gabrielino Indians," *Los Angeles Times*, November 26, 2006.

119. Anonymous citizen of the San Luis Rey Band of Mission Indians in discussion with the author, March 2015.

120. Tolley, *Quest for Tribal Acknowledgment*, 67.

121. Tolley, *Quest for Tribal Acknowledgment*, 67; *Graton Rancheria Restoration Act of 1998: Hearing on HR 946 before the House Resources Committee*, 105th Cong. 2–3 (2000) (testimony of Kevin Gover, Assistant Secretary–Indian Affairs, Department of the Interior).

122. Senator Dianne Feinstein, "Feinstein Urges Protection of Napa Valley, Opposes New Casino Development" (news release), February 2012, https://www.feinstein.senate.gov/public/index.cfm/2012/2/feinstein-urges-protection-of-napa-valley-opposes-new-casino-development (no longer available).

123. Tolley, *Quest for Tribal Acknowledgment*, 67.

124. Several federally recognized tribes in California openly supported reform to the federal acknowledgment process precisely because of the particular history of California, including unratified treaties, genocide, and the federal government's ongoing uneven treatment of California Indians.

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

126. Stand Up for California!, "New Federal Proposal Could Have Damaging Impact on California Economy," 2.

127. Klopotek, *Recognition Odysseys*, 35–36. M. Miller, *Forgotten Tribes*, 68–69.

128. Mark Macarro, "Public Comment on 1076-AF18—Federal Acknowledgment of American Indian Tribes Proposed Rulemaking," 1, Bureau of Indian Affairs, Regulations.gov, September 30, 2014, https://www.regulations.gov/comment/BIA-2013-0007-0309.

129. Jeff Grubbe, "Public Comment on BIA-2013-0007; Subject: 1076-AF18," 2, Bureau of Indian Affairs, Regulations.gov, September 30, 2014, https://www.regulations.gov/comment/BIA-2013-0007-0320.

130. US Government Accountability Office, *Indian Issues*, 18.

131. Slagle, "Unfinished Justice," 333.

132. Slagle, "Unfinished Justice," 327.

133. Slagle, "Unfinished Justice," 332.

134. Pub. L. No. 102-416 (October 14, 1992), as amended by Pub. L. No. 104-9 (February 12, 1996).

135. Advisory Council on California Indian Policy, *Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416*, 2.

136. Advisory Council on California Indian Policy, *Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416*, 2.

137. Goldberg and Champagne, *Second Century of Dishonor*; Advisory Council on California Indian Policy, *Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416*.

138. Goldberg and Champagne, *Second Century of Dishonor*.

139. Heizer, "Treaties," 704; Laverty, "Recognizing Indians," 186–87; Rawls, *Indians of California*, 144.

140. Advisory Council on California Indian Policy, *ACCIP Recognition Report*, 1.

141. Advisory Council on California Indian Policy, *Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416*, 24–28. Council member George Freeman (Paskenta Band of Nomlaki Indians) coordinated the termination report.

142. Advisory Council on California Indian Policy, *ACCIP Recognition Report*, 16.

143. Advisory Council on California Indian Policy, *ACCIP Recognition Report*, 19.

144. Advisory Council on California Indian Policy, *Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416*, 20.

145. George H. W. Bush, Statement on Signing the Advisory Council on California Indian Policy Act of 1992, October 14, 1992, American Presidency Project, comp. Gerhard Peters and John T. Woolley, https://www.presidency.ucsb.edu/documents/statement-signing-the-advisory-council-california-indian-policy-act-1992. An earlier version of HR 2144, the California Tribal Status Act of 1991, called for the federal government's restoration of all terminated tribes in California, the federal recognition of certain tribes, and the creation of administrative procedures and guidelines to clarify the status of certain California tribes. The only aspect of the original HR 2144 that remained was the establishment of what later became the Advisory Council on California Indian Policy.

146. The Advisory Council on California Indian Policy's report and recommendations for the status of terminated tribes led to further restoration of certain tribes' federal recognition as well as the reaffirmation of the Ione Band of Miwok by the assistant secretary for Indian Affairs.

147. Tolley, *Quest for Tribal Acknowledgment*, 40.

THREE Struggle for the San Luis Rey Village

1. Haas, *Pablo Tac, Indigenous Scholar*, 171.

2. Akins and Bauer, *We Are the Land*, 66.

3. For an exact reproduction of Pablo Tac's account, found in his manuscript at the Biblioteca Comunale dell'Archiginnasio, Bologna, see Haas, *Pablo Tac, Indigenous Scholar*, 60–261. For citizens of the San Luis Rey Band, knowing there are figures like Pablo Tac in the tribe's collective history is a point of pride and validation of their identity as Luiseño people from Qéch. Tribal citizens have undertaken initiatives to honor the memory of Tac and his fellow Luiseño Agapito Amamix. In 1997, the San Luis Rey Band, with the aid of the San Luis Rey Mission, republished Tac's account, *Indian Life and Customs at Mission San Luis Rey*, to promote Native education and to pay tribute to Tac's influential contribution to both Luiseño and California history. Peyri Hall, the former Mission San Luis Rey schoolhouse, was renamed Pablo Tac Hall in 2012. Mel Vernon, captain of the San Luis Rey Band, blessed the dedication sign at a ceremony with other tribal citizens. Captain Vernon supported renaming the building Pablo Tac Hall because it acknowledged the ancestors of the San Luis Rey Band who had built the mission; these ancestors are rarely referenced elsewhere on the mission grounds. When the Oceanside School District Board of Education solicited suggestions to rename the San Luis Rey Elementary School in 2021, San Luis Rey tribal leaders proposed they rename the school after Pablo Tac due to his connection with education. The school board selected the tribe's proposal, and the school is now called the Pablo Tac School of the Arts.

4. Engelhardt, *San Luis Rey Mission*, 8.

5. Some Luiseños remembered the site of the San Luis Rey Mission as Takáymay, while Qéch was the area surrounding the mission. Given the large number of Native people baptized from the surrounding area, John Johnson and Stephen O'Neil proposed that "Qéch" was a regional designation for a political territory that likely encompassed a network of villages. See Johnson and O'Neil, *Descendants of Native Communities in the Vicinity of Marine Corps Base Camp Pendleton*.

6. Shipek, "Strategy for Change," 172.

7. Oxendine, "Luiseño Village during the Late Prehistoric Era," 99–101.

8. Engelhardt, *San Luis Rey Mission*, 15, 57.

9. Haas, *Pablo Tac, Indigenous Scholar*, 183.

10. Haas, *Saints and Citizens*, 9.

11. Haas, *Pablo Tac, Indigenous Scholar*, 12.

12. Haas, *Pablo Tac, Indigenous Scholar*, 181.

13. Haas, *Saints and Citizens*, 155.

14. Haas, *Saints and Citizens*, 155.

15. Quoted in Engelhardt, *San Luis Rey Mission*, 96.

16. Beebe and Senkewicz, *Lands of Promise and Despair*, 470.

17. Beebe and Senkewicz, *Lands of Promise and Despair*, 470.

18. Shipek, "Strategy for Change," 183.

19. Felipe [Subria], San Luis Rey, Expediente No. 456, Roll 6, Spanish Archives Translations, California State Archives, Sacramento, CA.

20. Andrés and José Manuel, San Luis Rey, Expediente No. 459, Roll 6, Spanish Archives Translations, California State Archives.

21. Johnson and Crawford, "Contributions to Luiseño Ethnohistory Based on Mission Register Research," 96.

22. Shipek, *Pushed into the Rocks*, 26.

23. Oxendine, "Luiseño Village during the Late Prehistoric Era," 113–15.

24. In their studies of Luiseño social and political organization, Edward Gifford's and William Strong's research on Luiseño clan names revealed about twenty to twenty-one names for San Luis Rey. They both suggested that the grouping of so many clans at San Luis Rey, compared to other locations, was the result of Spanish influence. See Gifford, "Clans and Moieties in Southern California," 207–8; and Strong, *Aboriginal Society in Southern California*, 287.

25. Engelhardt, *San Luis Rey Mission*, 136.

26. Engelhardt, *San Luis Rey Mission*, 137.

27. Beebe and Senkewicz, *Lands of Promise and Despair*, 474.

28. Engelhardt, *San Luis Rey Mission*, 138.

29. Engelhardt, *San Luis Rey Mission*, 142.

30. "The Indians of San Bernardino and San Diego Counties," *Los Angeles Star*, March 8, 1856, 3.

31. "Indians of San Bernardino and San Diego Counties," 3.

32. Phillips, *Chiefs and Challengers*, 101–2.

33. Domingo Tule to Manuel Cota, November 30, 1851, CT 2321; and Francis Engle Patterson to Edward Harold Fitzgerald, November 30, 1851, CT 1755, both in Cave Johnson Couts Papers, Huntington Library, San Marino, CA.

34. Phillips, *Chiefs and Challengers*, 115.

35. "Arrival of the Indian Commissioner," *San Diego Herald*, January 10, 1852, 3.

36. Phillips, *Chiefs and Challengers*, 138.

37. Heizer, *Eighteen Unratified Treaties of 1851–1852*.

38. Two other Treaty of Temecula signatories, Cisto "Go-no-nish" of Las Flores and Bicente "Poo-clow" of Buena Vista, represented areas that are contemporarily considered the San Luis Rey Band of Mission Indians' territory. As settler colonialism displaced Luiseño peoples, some village communities dissolved and joined other established settlements.

39. Information on Kechi language informant Pedro Cawewas from MS 772, Miscellaneous vocabularies of 32 different tribes, National Anthropological Archives, Smithsonian Institution, accessed February 16, 2024, https://sova.si.edu/record/naa.ms1627?q=ms+1627&t=C; Bartlett, *Personal Narrative of Explorations and Incidents*, 92; Engelhardt, *San Luis Rey Mission*, 159.

40. Information on Kechi language informant Pedro Cawewas.

41. Shipek, *Pushed into the Rocks*, 32.

42. Akins and Bauer, *We Are the Land*, 170.

43. "Production of Agriculture in San Luis Rey Township in the County of San Diego in the Post Office San Diego," in Selected Federal Census Non-Population Schedules, 1850–1880, accessed February 9, 2024, at Ancestry.com.

44. Hyer, *"We Are Not Savages,"* 79.

45. Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs, for the Year 1865*, 124.

46. Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs, for the Year 1865*, 122.

47. Herbert Crouch, "Herbert Crouch: Reminiscences and Biographical Notes," 2, TMS CROH, San Diego History Center, San Diego, CA.

48. C. N. Wilson to Commissioner of Indian Affairs, March 14, 1873, Microfilm Series 234, Roll 45, National Archives and Records Administration, Washington, DC.

49. Archival records document the captain's surname as both Molido and Molino. Variations in the spelling of his first name are also present in archival records.

To reflect his descendants' preferences, I utilize the spelling "Benito Molido" when not directly quoting other documents.

50. Protest of Bonito Molino [*sic*] to Claim of John Somers [*sic*], May 7, 1873, Microfilm Series 234, Roll 45, National Archives and Records Administration, Washington, DC.

51. Protest of Cahuilla and San Luis Rey Mission Indians against the Sale of Lands, May 8, 1873, Microfilm Series 234, Roll 45, National Archives and Records Administration, Washington, DC.

52. B. C. Whiting to Edward P. Smith, May 19, 1873, 2–3, Microfilm Series 234, Roll 45, National Archives and Records Administration, Washington, DC.

53. Office of Indian Affairs, *Papers Accompanying the Report of the Commissioner of Indian Affairs, 1873*, 30.

54. Carrico, *Strangers in a Stolen Land*, 127–31.

55. Carrico, *Strangers in a Stolen Land*, 122.

56. "A correspondent writing from San Luis Rey, January 26th, sends The Union the following items of news," *San Diego Union*, January 30, 1876.

57. "San Luis Rey Notes," *San Diego Union*, May 8, 1877.

58. Carrico, *Strangers in a Stolen Land*, 86; February 7, 1878, letter to Interior secretary in Painter, *Visit to the Mission Indians of Southern California, and Other Western Tribes*, 13.

59. Wilkins and Stark, *American Indian Politics and the American Indian Political System*, 313.

60. S. S. Lawson to Hon. E. A. Hayt, March 26, 1879, Folder L. B543, Box 17, Special Case 31, Record Group 75, National Archives and Records Administration, Washington, DC.

61. Lawson to Hayt, March 26, 1879.

62. Although many tribes were associated with the Spanish mission system in the western parts of California, the Bureau of Indian Affairs has historically and legally applied the term "Mission Indians" to California Indians in Southern California residing primarily in nineteenth-century San Diego, San Bernardino, and Los Angeles Counties. Helen Hunt Jackson and Abbot Kinney in their 1883 *Report on the Conditions and Needs of the Mission Indians of California* identify the Mission Indians as comprising the San Luiseño, Diegueño, Serrano, and Cahuilla.

63. Mr. [William] Vandever to Commissioner of Indian Affairs, October 17, 1889, Box 19, Special Case 31, Record Group 75, National Archives and Records Administration, Washington DC.

64. See Shipek, *Pushed into the Rocks*.

65. Shipek, *Pushed into the Rocks*, 39.

66. Shipek, *Pushed into the Rocks*, 39–40.

67. A. K. Smiley, Smiley Commission Report, 1891, 70, Box 44, Heritage Room,

A. K. Smiley Library, Redlands, CA. See also "Last Removals & Repatriation 1890–1938," in Carrico, *Strangers in a Stolen Land*.

68. A. K. Smiley, Account of a trip through Southern California spring of 1891 as chairman of Mission Indian Commission, 1891, Box 44, Heritage Room, A.K. Smiley Library, Redlands, CA.

69. Smiley, Smiley Commission Report, 70.

70. Smiley, Smiley Commission Report, 70.

71. Smiley, Smiley Commission Report, 70.

72. Francisco Estudillo to Commissioner of Indian Affairs, 1894, SLR Estudillo Folder, Box 42, Al Logan Slagle Collection, UC Davis Special Collections.

73. Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs* (1894), 121.

74. Until the 2015 changes to the federal acknowledgment process, enrollment in federal Indian boarding schools was not considered evidence of tribal status because students attended as individuals. With the updated criteria, attendance at boarding schools or other Indian educational institutions can be included as evidence to support criterion (b), which is community, as long as supporting documentation points to the distinct tribal community claimed.

75. John Summers v. Reginaldo Gonzales, November 2, 1896, PR3.37, Case 4, File 8, Box 9, Justice Court Case Files, San Diego History Center, San Diego, CA.

76. "Local News of the Week," *Oceanside Blade*, August 20, 1904.

77. "Timeline of San Diego History: 1900–1929," San Diego History Center, accessed December 30, 2023, https://sandiegohistory.org/archives/biographysubject/timeline/1900-1929/.

78. Friedricks, "Henry E. Huntington and Real Estate Development in Southern California," 336.

79. Friedricks, "Henry E. Huntington and Real Estate Development in Southern California," 336.

80. Mission Indian Agency Superintendent to Father Dominic, 1923, SLR Superintendent Folder, Box 42, Al Logan Slagle Collection, UC Davis Special Collections.

81. "Fletcher Company Buys Valley Lands," *Oceanside Blade*, January 4, 1913, 1, 3.

82. Crouch, "Herbert Crouch: Reminiscences and Biographical Notes," 44.

83. Crouch, "Herbert Crouch: Reminiscences and Biographical Notes," 44.

84. Juan Tule, Application for Enrollment with the Indians of the State of California under the Act of May 18, 1923 (45 Stat. L. 602), 1928, 75.7.5 Enrollment Records, Record Group 75, National Archives and Records Administration, Riverside, CA.

FOUR Reckoning with Recognition

1. L. Miller, "Secret Treaties with California's Indians," 40–44.

2. The Mission Indian Federation was one of several organizations created by or with Southern California Indians in the twentieth century. The federation's political ideals sometimes clashed with other organizations, which led to struggles among tribal communities and families. The federation's non-Native "counselors," Johnathan Tibbet and later Purl Willis, contributed to the friction, but the organization was primarily a Native-centered endeavor. Kumeyaay historian Heather Daly has explained that the Mission Indian Federation claimed to speak for *all* Mission Indians when in reality that was not the case. Daly, "Fractured Relations at Home," 433. For more context on the Mission Indian Federation, see Daly, "American Indian Freedom Controversy"; Hanks, *This War Is for a Whole Life*; Thorne, "On the Fault Line"; and Przeklasa, "Reservation Empire."

3. "Mission Indians Protest Federal Allotment," *Los Angeles Times*, October 23, 1923, 5.

4. "Deny Columbus Found America," *Los Angeles Times*, October 29, 1923, 15.

5. Petition of the San Luis Rey Reservation, 1923, Mission Agency: File 79070-1923-313-Mission-Part 2, Central Classified Files, 1907–1939, Record Group 75, National Archives and Records Administration, Washington, DC.

6. Petition of the San Luis Rey Reservation, 1923.

7. Wigginton, "Extending Root and Branch," 25–26. Caroline Wigginton makes a clear connection between the eighteenth-century Native cleric Samson Occom's petitions and the Mohegan tribe's fight for federal recognition. She powerfully states, "Occom's petitions are written utterances of self-determining communities and enactments of their perseverance. Significantly, these documents continue to demand and execute sovereignty because they resonate beyond their moment of creation into the future and continue to establish a self-governing community for the Mohegan tribe, perhaps most tangibly in the legal process of tribal recognition" (26). I find Wigginton's analysis of petitions useful in understanding how the San Luis Rey Band utilized petitions for a similar purpose.

8. The petition was addressed to the Interior secretary at the department's headquarters in Washington, DC, but the superintendent of the Mission Indian Agency appears to have received it on November 5, 1923. Superintendent Ellis's December 7 letter to the commissioner of Indian Affairs was received on December 12, 1923.

9. Mission Indian Agency Superintendent Ellis to Father Dominic, December 7, 1923, SLR Superintendent Folder, Box 42, Al Logan Slagle Collection, UC Davis Special Collections.

10. Mission Indian Agency Superintendent Ellis to Father Dominic, December 7, 1923.

11. Mission Indian Agency Superintendent Ellis to Father Dominic, December 7, 1923; Petition of the San Luis Rey Reservation, 1923.

12. Przeklasa, "Reservation Empire," 125.

13. Unlike the San Luis Rey Village community, Native peoples of other dispossessed villages, like San Felipe, relocated to existing reservations. They retained their village identities as they merged with the reservation communities.

14. Cultural Systems Research Inc., "Overview," 1987, 67, in private collection of the San Luis Rey Band of Mission Indians (see discussion in the introduction to this volume). After World War II, the Mission Indian Federation utilized "freedom" rhetoric to support its goals of ending government oversight. Nonreservation Indians, then, were by implication already "free" from the federal government's control. This distinction may have contributed to some of the friction between reservation and nonreservation Indians in the federation. See Przeklasa, "Reservation Empire," esp. 177–82.

15. Garroutte, *Real Indians*, 41. Also see Ellinghaus, *Blood Will Tell*, for a nuanced analysis of "mixed-blood" Native American identity during the assimilation era, 1887–1934.

16. Anonymous citizen of the San Luis Rey Band of Mission Indians, interview by author, March 2015. "Quinn" is a pseudonym used to protect the tribal citizen's identity.

17. Anonymous citizen of the San Luis Rey Band of Mission Indians, interview by author, March 2015.

18. Thorne, "On the Fault Line," 193.

19. The 1928 California Indians Jurisdictional Act introduced the first legal definition of the "Indians of California" as all Indians who resided in the state on June 1, 1852, as well as their living California-based descendants. At the time of the act's passage, categorizing all the diverse tribes in California under one generic label was a new concept that not everyone readily accepted. However, the "Indians of California" umbrella was ultimately the result of statewide Indian activism and introduced a collective identity through which all California Indians could work to address their most pressing shared issues. For a more detailed overview of the "Indians of California" category, see "Becoming the Indians of California: Reorganization and Justice, 1928–1954," which is chapter 8 in Akins and Bauer, *We Are the Land*.

20. California Indians Jurisdictional Act of 1928 (§6, 45 Stat. 602).

21. Przeklasa, "Reservation Empire," 180–81.

22. "Mission Indian Federation Constitution, ca. 1922," National Archives and Records Administration, accessed December 31, 2023, https://www.archives.gov/exhibits/documented-rights/exhibit/section3/detail/mif-constitution-transcript.html.

23. List of Tribal Leaders in Mission Indian Federation, 1929, San Luis Rey

Binder 1, Florence Shipek Collection, Kumeyaay Community College, El Cajon, CA.

24. Shipek, "Mission Indians and Indians of California Land Claims," 413.

25. Shipek, "Mission Indians and Indians of California Land Claims," 411.

26. Shipek, "Mission Indians and Indians of California Land Claims," 412. The Pit River Indians also chose to maintain a separate docket. A full account of the California Indian land claims is beyond the scope of this chapter, but see Stewart, "Litigation and Its Effects," for a detailed overview.

27. Attorney Contract between San Luis Rey Band of Mission Indians and Byron F. Lindsley and Robert O. Staniforth and Associates, 1959, private collection of the San Luis Rey Band of Mission Indians.

28. These are pseudonyms used to protect tribal citizens' identities.

29. Barbara E. Karshmer to Denise Homer, undated 1993 letter, private collection of the San Luis Rey Band of Mission Indians.

30. Anonymous citizen of the San Luis Rey Band of Mission Indians, interview by author, January 2016.

31. The twelve bands that retained legal counsel for Docket 80A were Campo, Capitan Grande, Cuyapaipe, Inaja, La Posta, Los Coyotes, Mesa Grande, Morongo, Pechanga, San Luis Rey, Santa Rosa, and Santa Ysabel. The San Luis Rey Band was the only nonreservation tribe.

32. Plaintiffs' Contention of Law and Statement of Facts, Docket 80A-2, 1992, private collection of the San Luis Rey Band of Mission Indians.

33. In 1969, a completely different tribal water rights saga took place. It concerned the diversion of the San Luis Rey River from five reservations—La Jolla, Pala, Pauma, Rincon, and San Pasqual—to two San Diego County cities, Escondido and Vista. A 2014 documentary, *Once We Had a River*, describes the dispute and ensuing litigation from tribal perspectives. The film can be accessed at Culture Unplugged, https://www.cultureunplugged.com/documentary/watch-online/play/53262/Once-We-Had-A-River.

34. Canby, *American Indian Law in a Nutshell*, 498.

35. Plaintiffs' Contention of Law and Statement of Facts, Docket 80A-2. The Indian Claims Commission expired by statute in 1978, which is why the case was transferred to the US Court of Claims.

36. The National Archives and Records Administration–Pacific Region moved from Laguna Niguel to its current location in Perris, California, around 2009.

37. Pamela Aldridge, phone conversation with author, July 1, 2015.

38. Aldridge phone conversation.

39. San Luis Rey Band of Mission Indians, letter to Branch of Acknowledgment and Research, September 4, 1984, Private Collection of the San Luis Rey Band of Mission Indians.

40. Hazel E. Elbert, letter to San Luis Rey Band of Mission Indians, September 28, 1984, private collection of the San Luis Rey Band of Mission Indians.

41. Fritz, "Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe," 48225.

42. Cultural Systems Research, Inc., Report on Research Accomplished, 1985, private collection of the San Luis Rey Band of Mission Indians.

43. Bureau of Indian Affairs, Drafting and Reviewing Proposed Tribal Constitutions and Amendments, 1981, private collection of the San Luis Rey Band of Mission Indians.

44. Administration for Native Americans Objective Progress Report, 1987, private collection of the San Luis Rey Band of Mission Indians.

45. Sylvia Vane, letter to Pamela Aldridge for Florence Shipek, April 15, 1987 (copy), Folder 22 "SLR Band Recog.," Box 025, Florence Shipek Collection, Kumeyaay Community College.

46. Notation on Vane letter to Aldridge for Florence Shipek, April 15, 1987 (copy).

47. Cuyapaipe Band of Mission Indians et al. v. United States of America, No. 80-A-2 (US Claims Court, 1993).

48. Karshmer to Homer, undated 1993 letter, 3–4.

49. Deer, "Plan for the Use of the Mission Indian Judgment Funds in Docket No. 80 A-2 before the United States Court of Federal Claims," 31045.

50. Anonymous citizen of the San Luis Rey Band of Mission Indians, interview by author, March 2015.

51. Anonymous citizen of the San Luis Rey Band, response to questionnaire.

52. This is a pseudonym to protect the individual's identity.

53. "Christine," anonymous citizen of the San Luis Rey Band of Mission Indians, interview by author, March 2015.

54. Christine, interview.

55. Christine, interview.

56. Christine, interview.

57. Christine, interview.

58. Garroutte, *Real Indians*, 38–60; Wolfe, "Settler Colonialism and the Elimination of the Native," 388; Kauanui, *Hawaiian Blood*, 9; Ellinghaus, *Blood Will Tell*, xiii.

59. Christine, interview.

60. The timing of the technical assistance letter was likely related to the assistant secretary for Indian Affairs' introduction of draft changes to the federal acknowledgment process in July 2013.

61. Anonymous citizen of the San Luis Rey Band in discussion with the author, March 2015.

62. There are many sources, including news articles, documentaries, and books that mention this positionality and statement by unrecognized tribes. One example

of another California tribe's expression of this can be found in Jurmain and McCawley, *O, My Ancestor*.

63. Response to questionnaire from anonymous citizen of the San Luis Rey Band of Mission Indians.

64. Response to questionnaire from anonymous citizen of the San Luis Rey Band of Mission Indians.

65. Christine, interview.

66. Den Ouden and O'Brien, *Recognition, Sovereignty Struggles, and Indigenous Rights in the United States*, 16.

FIVE Inherent Tribal Sovereignty in Practice

1. See S. R. Cook, "Monacan Indian Nation"; and Lowery, *Lumbee Indians*.

2. Anonymous citizen of the San Luis Rey Band in discussion with the author, March 2015.

3. Wilkins and Stark, *American Indian Politics and the American Indian Political System*, 312–13.

4. For an in-depth history of the development of Southern Plains powwow culture, see Ellis, *Dancing People*.

5. Anonymous citizen of the San Luis Rey Band in discussion with the author, March 2015.

6. Anonymous citizen of the San Luis Rey Band in discussion with the author, March 2015.

7. Anonymous citizen of the San Luis Rey Band in discussion with the author, March 2015.

8. Anonymous citizen of the San Luis Rey Band in discussion with the author, March 2015.

9. Anonymous citizen of the San Luis Rey Band in discussion with the author, March 2015.

10. Anonymous citizen of the San Luis Rey Band in discussion with the author, March 2015.

11. Many tribes insert their own culture into contemporary powwow settings. For a discussion of this practice by tribes in the Southeast, see Goertzen, "Purposes of North Carolina Powwows."

12. "1st Annual Inter-Tribal Pow Wow (1997)," KOCT - The Voice of North County, accessed 2016, https://www.youtube.com/watch?v=rzyMENNhTHc.

13. Anonymous citizen of the San Luis Rey Band in discussion with the author, March 2015.

14. Anonymous citizen of the San Luis Rey Band in discussion with the author, January 2015.

15. Chilcote, "Pow Wows at the Mission."

16. Shipek, "Strategy for Change," 210–11. For an in-depth study of Native fiestas in Southern California, see Muñoz, "Haní'-cha Fiesta-yk."

17. Shipek, "Strategy for Change," 211.

18. Florence Shipek, "San Luisenos," draft prepared for Docket 80A-2, 19, private collection of the San Luis Rey Band of Mission Indians.

19. Samantha Nelson, "Oceanside Recognizes San Luis Rey Band of Mission Indians," *Coast News*, December 5, 2018, https://thecoastnews.com/still-out-there-oceanside-recognizes-san-luis-rey-band-of-mission-indians/.

20. For more on the ceremony and an Indigenous feminist critique of menstrual discourse in California, see Oxendine, "Luiseño Girls' Ceremony"; Baldy, "Mini-k'iwh'e:n (For That Purpose—I Consider Things)"; and Baldy, *We Are Dancing for You*.

21. Oxendine, "Luiseño Girls' Ceremony," 37; DuBois, "Religion of the Luiseño Indians of Southern California," 174–75.

22. Erin Massey, "Fight to Protect Indian Rock Continues," *North County Times* (Oceanside, CA), July 12, 2000, 17.

23. California State University, San Marcos, and San Luis Rey Band of Luiseño Indians, *Indian Rock Native Garden Project*.

24. "About the Native American Heritage Commission," Native American Heritage Commission, accessed January 2, 2024, https://nahc.ca.gov/about/.

25. Senate Bill 18 (2004) and Assembly Bill 52 (2012) are two statutes that rely on the Native American Heritage Commission's contact list for government-to-government consultation.

26. State of California, Native American Heritage Commission, Request for Tribal Consultation–NAHC Contact List Regulations, 2021, https://nahc.ca.gov/2021/08/request-for-tribal-consultation-nahc-contact-list-regulations/.

27. State of California, Native American Heritage Commission, Proposed Rulemaking Schedule 2023 Contact List Regulations, 2022, https://nahc.ca.gov/wp-content/uploads/2022/10/Info3_Contact-List-APA-Timeline.pdf.

28. Chapter 905 of the Statutes of California, 6996 (2004).

29. California Civil Code, section 815. See also M. Wood and Welcker, "Tribes as Trustees Again (Part I)," 395–423; and Middleton, *Trust in the Land*, 7–25.

30. California Native American tribes that utilize conservation easements for sacred site protection do encounter a bind because easements are public records searchable through any county grantor/grantee index. The easement's purpose for site protection can be undermined if access to the easement's location is used for site desecration or looting.

31. See Bruyneel, "Colonizer Demands Its 'Fair Share,' and More."

32. Governor Edmund G. Brown Jr., Executive Order B-10-11 (September 19, 2011), https://www.ca.gov/archive/gov39/2011/09/19/news17223/index.html.

33. Craig Sherwood, "Gatto Introduces Legislation to Protect California's Native American Sacred Sites," *My Burbank*, December 24, 2012, https://myburbank.com/gatto-introduces-legislation-to-protect-californias-native-american-sacred-sites/.

34. Merri Lopez-Keifer in discussion with the author, April 2015.

35. Merri Lopez-Keifer in discussion with the author, April 2015.

36. Section 15367 of the California Environmental Quality Act guidelines defines a lead agency as a public agency that has the primary responsibility for carrying out or approving a project.

37. Governor Gavin Newsom, Executive Order N-15-19, 1 (2019), https://www.gov.ca.gov/wp-content/uploads/2019/06/6.18.19-Executive-Order.pdf.

38. Placing a time frame on genocide serves to obscure the ongoing nature of violence against California Indian peoples and lands. In a panel entitled "California Indian Scholars Respond to Benjamin Madley's *An American Genocide: The United States and the California Indian Catastrophe, 1846–1873*" at the 2018 Native American and Indigenous Studies Association annual meeting in Los Angeles, California, California Indian scholars Mark Minch-de Leon and Stephanie Lumsden argued that Governor Newsom's apology was "merely a salve for the guilty conscience of settlers," who are implicated in ongoing land dispossession. They argued that Newsom's apology reduced genocide to a shameful historical epoch that serves as a rhetorical tool for liberal disavowal of atrocities toward California Indians.

39. Newsom, Executive Order N-15-19.

40. California Truth and Healing Council Charter, December 2020, 3, https://cthcupdates.files.wordpress.com/2021/05/cthc-charter_final.pdf.

41. Governor Gavin Newsom, Statement of Administration Policy: Native American Ancestral Lands, 1, Office of the Governor, September 25, 2020, https://www.gov.ca.gov/wp-content/uploads/2020/09/9.25.20-Native-Ancestral-Lands-Policy.pdf.

42. The Tribal Nature-Based Solutions Program is connected to Governor Newsom's 2020 Statement of Administration Policy: Native American Ancestral Lands, as well as Executive Order N-82-20 regarding nature-based solutions for climate change. Given the large number of tribes in California and exorbitant land values, $100 million is far from enough money to fully address tribal connections to land.

43. Nik Altenberg, "$100 Million Grant to Assist California Native Tribes with Buying Back Land." *KQED*, August 4, 2023, https://www.kqed.org/news/11957413/100-million-grant-to-assist-california-native-tribes-with-buying-back-land.

44. Middleton, "'Just Another Hoop to Jump Through?,'" 1058.

45. Lopez-Keifer, "California's Approach to Co-Management of Natural Resources with California Native American Tribes." The California Department of Fish and Wildlife entered into memoranda of agreement with the Bishop Paiute

Tribe and the Bear River Band of Rohnerville Rancheria, as well as a memorandum of understanding with the Tolowa Dee-Ni' Nation. The memorandum of agreement between the Bishop Paiute Tribe and the California Department of Fish and Wildlife occurred prior to Governor Newsom's statement of administration policy. The memorandum of agreement was signed on January 21, 2020, and the statement of administration policy was released on September 25, 2020.

46. Lopez-Keifer, "California's Approach to Co-Management of Natural Resources with California Native American Tribes."

47. Fletcher, "Retiring the 'Deadliest Enemies Model' of Tribal-State Relations," 74.

48. "Assembly Joint Resolution No. 96 Relative to the Gabrielino-Tongva Nation," California State Legislature, August 1994, http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_0051-0100/ajr_96_bill_940831_enrolled.

49. Rawls, *Indians of California*, 146.

50. Rawls, *Indians of California*, 146–47.

51. Johnston-Dodds, *Early California Laws and Policies Related to California Indians*, 1.

52. Akins and Bauer, *We Are the Land*, 156.

53. Koenig and Stein, "State Recognition of American Indian Tribes," 118.

54. Koenig and Stein, "State Recognition of American Indian Tribes," 118.

55. Indian Arts and Crafts Act of 1990 (P.L. 101-644), Department of the Interior, accessed January 3, 2024, https://www.doi.gov/iacb/indian-arts-and-crafts-act-1990.

56. Indian Arts and Crafts Act of 1990 (P.L. 101-644).

57. "State Recognition of American Indian Tribes," National Conference of State Legislatures, October 10, 2016, https://www.ncsl.org/legislators-staff/legislators/quad-caucus/state-recognition-of-american-indian-tribes.aspx.

58. Koenig and Stein, "State Recognition of American Indian Tribes," 117.

59. Unlike reservations for federally recognized tribes, state reservations are not subject to federal laws, jurisdictions, tax exemptions, and administration.

60. State recognition's ability to work in tribes' favor for acquiring federal acknowledgment from the United States is highly contextual. For example, in 2005 the Interior Department's Board of Indian Appeals overturned the positive final determinations for federal recognition of longtime state-recognized tribes in Connecticut—the Eastern Pequot tribal nation and the Schaghticoke tribal nation—rejecting the tribes' state recognition as evidence. Connecticut's Office of the Attorney General described the overturning of the federal recognitions as a huge victory for the state, calling into question Connecticut's political influence in the situation.

61. United States v. Kagama, 118 U.S. 375 (1886).

62. Biolsi, *Deadliest Enemies*, 1–2; Fletcher, "Retiring the 'Deadliest Enemies Model' of Tribal-State Relations," 73.

63. Williams, "'People of the States Where They Are Found Are Often Their Deadliest Enemies,'" 987.

64. Newsom, Executive Order N-15-19, 1.

65. Fletcher, "Retiring the 'Deadliest Enemies Model' of Tribal-State Relations," 74.

66. Sturm, *Becoming Indian*, 17.

67. Sturm, *Becoming Indian*, 156.

68. Sturm, *Becoming Indian*, 162.

69. Sturm, *Becoming Indian*, 163.

Epilogue

1. Multiple versions of the Luiseño creation narrative exist, and this is a brief synthesis of multiple accounts. See Applegate, "Black, the Red, and the White"; DuBois, "Religion of the Luiseño Indians of Southern California"; Sparkman, "Culture of the Luiseño Indians"; White, "Luiseño Theory of 'Knowledge'"; and White, "Luiseño Social Organization."

2. White, "Luiseño Social Organization," 140–42.

3. DuBois, "Religion of the Luiseño Indians of Southern California"; DuBois, "Mythology of the Mission Indians"(1904, 1906).

4. Cultural Geographics Consulting, LLC, "Tómqav Ethnographic Study" (2020), 13–14. This report by a Bainbridge Island, Washington, company was prepared solely for the tribes involved in the project and was not made available to the public.

5. Bauer, *California through Native Eyes*, 20.

6. Merri Lopez-Keifer in discussion with author, April 29, 2015.

7. Prior to Assembly Bill 52's passage in 2014, the Traditional Tribal Places Law (Senate Bill 18) and the California Native American Graves and Repatriation Act of 2001 were the two places in which a definition of a California Native American Tribe was enshrined in state law.

8. "Injustice Served: Judge Refuses to Grant Temporary Restraining Order, Allows Violations to Continue," Save Tomkav, February 29, 2012, https://savetomkav.wordpress.com/2012/02/29/injustice-served/.

9. The Luiseño Cultural Resources Advisory Group worked with Cultural Geographics Consulting to develop resources related to Tómqav, but they are not currently available for public use.

10. Lopez-Keifer discussion with author.

11. Cultural Geographics Consulting, "Tómqav Ethnographic Study," 2.

12. Garroutte, *Real Indians*, 30–32.

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"Chilcote explains the impacts of lack of federal recognition—in material, psychological, and cultural terms—and simultaneously offers a relentlessly empowering perspective, articulating that sovereignty is inherent and exercised continually by her tribe and other non–federally recognized tribes in California."
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"In addition to insightful historical, political, and cultural analysis, Olivia Chilcote gives an insider's perspective on the dissonant emotional experiences of nonrecognition paired with ongoing experiences of Indigenous dispossession and survivance. An important contribution to the scholarship on federal recognition politics and California Indian histories."
BRIAN KLOPOTEK, author of *Recognition Odysseys: Indigeneity, Race, and Federal Tribal Recognition Policy in Three Louisiana Indian Communities*

With the largest number of Native Americans as well as the most non–federally recognized tribes in the United States, California is a key site for sovereignty struggles, including federal recognition. In *Unrecognized in California,* Olivia M. Chilcote, member of the San Luis Rey Band of Mission Indians of San Diego County, demonstrates how the state's colonial history is foundational to the ongoing crisis over tribal legal status. Chilcote traces the tensions and contradictions—but also the limits and opportunities—surrounding federal recognition for California Indians. Based on the author's experiences, interviews with tribal leaders, and hard-to-access archives, the book tells the story of the San Luis Rey Band's efforts to gain recognition through the Federal Acknowledgment Process.

Perceptive and comprehensive, *Unrecognized in California* explores one tribe's confrontations with the federal government, the politics of Native American identity, and California's distinct crisis of tribal federal recognition.

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Indigenous Confluences

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