# Blood Quantum Neg

#### Natives want federal blood quantum – the plan papers over Native requests as an act of settler benevolence.

Gover 09 (Kirsty Gover, B.A./LL.B.(hons) (Canterbury), LL.M.(Columbia), J.S.D. (NYU). Senior Lecturer, Melbourne Law School., “ARTICLE: GENEALOGY AS CONTINUITY: EXPLAINING THE GROWING TRIBAL PREFERENCE FOR DESCENT RULES IN MEMBERSHIP GOVERNANCE IN THE UNITED STATES,” 33 Am. Indian L. Rev. 243, accessed on 6/25/18, AB)

Given these constraints, blood-quantum rules have considerable appeal. The concept of blood quantum is controversial because it is a concept that originates with the federal government and has been used historically to identify Indians as members of a pan-tribal racial class. The up-take of blood-quantum rules in new constitutions is a puzzle that many commentators may find troubling given the association of blood quantum with race and racial discrimination. However, as pointed out above, tribes understandably seek to avail themselves of blood quantum as a pre-existing, well-documented administrative device that conveniently concurs with federal expectations of tribal continuity and political cohesiveness. Importantly, though, in their use of blood quantum, tribes also transform the concept from a racial to a genealogic measure. They borrow concepts of Indianness and Indian blood quantum from federal policy but increasingly use these to construct and define a tribe-specific genealogic structure. The increased use of tribal blood and lineal descent rules indicates that a form of "retribalization" is underway. Tribal communities are acting to extricate themselves from the pan-Indian category used by the federal government and to reassert themselves as self- [\*299] contained, self-governing polities. The emergence of new forms of "genealogic" tribalism affirm the sui generis qualities of tribes, as neither racial communities, nor classically liberal polities. As part of their efforts to cope with the changes wrought by federal policy and shifts in Indian demography, tribes are evolving a tribe-specific concept of tribalism, given effect through the formal processes of tribal constitutionalism. [\*300] TRIBAL MEMBERSHIP IN THE UNITED STATES – CHARTS

#### The plan doesn’t resolve controversies involving Native Identity on the local level, which makes the racist exclusion of Freedmen inevitable. This means tribal sovereignty trades off with racial injustice.

Mousakhani 13 (Sepideh Mousakhani, Editor-in-Chief, Santa Clara Law Review, Volume 53; J.D. Candidate, Santa Clara University School of Law, 2013; B.A., Political Science and Anthropology, University of California, Berkeley, 2008., “COMMENT: SEEKING TO EMERGE FROM SLAVERY'S LONG SHADOW: THE INTERPLAY OF TRIBAL SOVEREIGNTY AND FEDERAL OVERSIGHT IN THE CONTEXT OF THE RECENT DISENROLLMENT OF THE CHEROKEE FREEDMEN,” 53 Santa Clara L. Rev. 937, accessed on 6/25/18, AB)

Based on the complex nature of the federal-tribal relationship, as well as the turbulent and oppressive history between the Cherokee Nation and Cherokee Freedmen, no single solution will prove sufficient to solve the problem. Most fundamentally, the federal government should [\*961] reexamine the way it defines an Indian. Blood quantum requirements derive from the federal classification methods that date back to the Dawes Rolls, and as long as the federal government continues to define Indian by racial means, the Cherokee Nation will likely follow suit. 195Link to the text of the note Because the Cherokee Nation, like other tribes, relies on federal definitions of Indian to qualify for aid and eligibility for programs, the tribe continues to perpetuate these racial categories. Cherokee Nation political leaders and tribal members further reinforce this lineage distinction by calling others to preserve the tribal political community by excluding the Freedmen. In place of racial definitions, the federal government, as well as tribal nations, should redefine Indian using factors such as cultural and political assimilation. 196Link to the text of the note Ultimately, a paradigmatic shift in understandings of tribal identity is essential to solve the recurring problem of tribal membership determinations. Until that shift occurs, Congress and the DOI should take practical steps to redress the Freedmen's harm. The BIA should act as it did in the Seminole Nation case, refusing to recognize the election results and engage in government-to-government relations until the Freedmen's citizenship status is reinstated. Furthermore, Congress could strengthen the ICRA by adding a cause of action so that injured parties, such as the Freedmen, can seek recourse for civil rights violations in federal court. Though these solutions may detract to some degree from tribal sovereignty, this further limitation on tribal self-determination serves the greater purpose of ensuring racial justice, a subset of justice itself. The fundamental unfairness here is that the Cherokee Freedmen are being deprived of a right to which they have a legitimate claim solely on account of their race. While preserving the Cherokee Nation's ability to determine membership in its tribe is an important aspect of the tribe's right to self-determination, this autonomy should not extend so far as to promote racist policies and outcomes. As previously mentioned, blood quantum requirements are archaic measures, used historically to [\*962] create artificial differences and promote racist laws, such as miscegenation statutes. 197Link to the text of the note Ultimately, even though extensive federal and congressional oversight would threaten tribal sovereignty, federal involvement is necessary to prevent racial injustice. Conclusion In sum, the Cherokee Freedmen controversy serves as a microcosm for the greater struggle to strike a balance between tribal sovereignty and federal oversight. Indian control over membership is the very essence of tribal independence. Yet, when that definition relies on outdated blood quanta requirements and excludes individuals solely based on their race, justice calls for federal intervention; tribal sovereignty does not justify racist policies. All the current legal avenues available to the federal government and its executive agencies, however, would not adequately address the Freedmen's grievances or solve the greater problem of fairly defining Native identity. Not only must the federal government get involved, but it must also redefine tribal membership in nonracial terms, which would have the effect of allowing and encouraging Native tribes to do the same. Ultimately, it will not be until this paradigmatic shift occurs that controversies such as that of the Cherokee Freedman can truly be resolved and perhaps even prevented.

#### **Focus on immigration across the northern border obscures the needed immigration regulations on the border between the US and Mexico.**

Osburn 2k (Richard Osburn, While an intern with the Office of Tribal Justice during the Summer 1999 semester, Richard Osburn was tasked with researching and writing about the issues presented in this note. This note represents the product of that research as submitted to the Director of the Office of Tribal Justice. The opinions expressed in the note are those of the author and do not necessarily reflect the policies and positions of the Office of Tribal Justice or the Department of Justice. Mr. Osburn was a December 1999 graduate of the University of Oklahoma College of Law and is currently serving as a staff attorney with the Office of Law and Justice, Cherokee Nation of Oklahoma., “Problems and Solutions Regarding Indigenous Peoples Split by International Borders,” 24 Am. Indian L. Rev. 471, accessed on 6/27/18, AB)

Canadian citizens of American Indian ancestry of at least fifty percent blood quantum can freely pass the U.S.-Canadian border. This is due to treaties dating back to the founding of the United States. Subsequent legislation has also reinforced this right of passage. Indian interaction between tribes separated by America's northern border is safe. What is the situation with tribes on America's southern border? Do the tribes there have the same right to cross the border freely as their cousins in the north? With one notable exception, the answer is no. The Tohono O'Odham are typical of the situation facing split peoples. In 1853, their ancestral lands were divided between the United States and Mexico via the Gadsden Purchase. 72Link to the text of the note Thus, the people of this indigenous nation were separated by and artificial line created by outside forces. The results of this act are still felt today. Prior to increased border enforcement, O'Odham people were able to freely interact with their Mexican members. 73Link to the text of the note This allowed for a free exchange of cultural and social ideas between members of the tribe on opposite sides of the border. However, the Border Patrol has increased its enforcement of laws regarding border crossings. This forces members of the tribe to travel 120 miles in order to cross the border at the closest legal border crossing point. 74Link to the text of the note Effectively, the Tohono O'Odham are prevented from learning of their past from tribal members who have information to share. Many of the U.S.-Mexico border tribes have expressed desire to freely interact with their foreign cousins. One very important reason for this is culture. Mexican members of border tribes have been less exposed to European culture and, because of that, they have managed to retain their language and culture to an extent unknown north of the border. Tribes on the U.S. side would like to visit their southern relatives who still know the old ways, still know their ancestral language, and still participate in cultural [\*480] events. 75Link to the text of the note Among the tribes in this situation are: Tohono O'Odham, 76Link to the text of the note Pascua Yaqui, Yavapai-Apache Nation, Salt River Pima Maricopa Indian Community, Cocopah Nation, Pai Pai, 77Link to the text of the note and Kumai Indian Community. 78Link to the text of the note However, there is one exception to this problem. The Texas Band of Kickapoo Indians may provide an example of how the problem could be resolved for all southern border indigenous groups. The Kickapoo originally lived in the Great Lakes region of the United States. 79Link to the text of the note By treaty, some of the Kickapoo moved but others refused and relocated in Texas. 80Link to the text of the note Due to hostilities in Texas, the Kickapoo Band moved south and, in exchange for land, agreed to help Mexico defend its border. 81Link to the text of the note This land was later exchanged, in 1852, for land in Nacimiento, Mexico. 82Link to the text of the note In 1883, a reservation for Kickapoo still in the United States was established in Oklahoma. 83Link to the text of the note The Kickapoo in Mexico and those in Oklahoma "maintained close relations through inter-marriage and frequent visitation between Oklahoma, . . . and Nacimiento." 84Link to the text of the note During the first part of the twentieth century, the Kickapoo lived in Mexico all year. 85Link to the text of the note However, because of a drought in Mexico, the band moved to Eagle Pass, Texas in order to work as migrant farm hands. 86Link to the text of the note Now, the band lives in Nacimiento from November through March. 87Link to the text of the note The rest of the year, during farming season, ninety percent of the band moves to Eagle Pass. 88Link to the text of the note Because of the immigration issues raised, the Immigration and Naturalization Service (INS) issued cards to the Kickapoo to allow them to cross the border freely. 89Link to the text of the note This pass had to be renewed annually. 90Link to the text of the note In 1983, Congress made this status permanent. 91Link to the text of the note Congress took special note of the tribe's needs to retain tribal culture, which was based on U.S., [\*481] Mexican, and Kickapoo influences. 92Link to the text of the note The act was therefore passed to ensure that Kickapoo could "pass and repass the borders of the United States." 93Link to the text of the note This congressional act ensured the Kickapoo could travel freely across the U.S.-Mexican border. The tribal members from each side of the boundary are allowed to interact without worrying about immigration laws. The end result is that Kickapoo members desiring to share their culture and society with each other are not impeded by an international boundary line. The positive results generated by the Kickapoo situation are looked upon by other tribes as an example of how Congress could resolve the problems facing other border tribes.

#### Congressional regulations could only result in either the vast exclusion of Canadian Natives or failed enforcement because there is no stable definition of Nativity.

Spruhan 08, 9-16-2008 (Paul Spruhan, Assistant Attorney General, Navajo Department of Justice, “The Canadian Indian Free Passage Right: The Last Stronghold of Explicit Race Restriction in United States Immigration Law,” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1267977>, accessed on 6-20-2018, AB)

For those who support the free passage rights of Canadian Indians, how might the potential constitutional problems be avoided? One possibility might be for Congress to revise the free passage statute again and eliminate the blood quantum requirement. Congress might replace blood quantum with a different definition, perhaps tied to Canada’s 1982 Constitution, which uses the term “aboriginal peoples of Canada,” a classification arguably not racial in nature, at least from an American perspective.188 Using the term “aboriginal peoples” or some similar term is more inclusive than applying the Indian Act’s definition and avoids the controversial history and current status of that act. This might create even more complicated problems in identification, however, because the Canadian Constitution does not define “aboriginal peoples,” except to include “Indians,” “Inuit,” and “Métis.”189 Though such a statutory revision might avoid the potential constitutional problem, in practice it might be impractical to apply without a clear definition. In the end, there appears to be no perfect fix; any decision has negative consequences by cutting off some part of the Canadian aboriginal population, or by including so large and ill-defined a group that enforcement becomes impossible.190 However, the racial problem might be avoided by shifting the definition from a straight blood quantum threshold to some politically-based criteria, if such criteria could be found.191 191 If Canadian law views Indian status as racial, but appropriate under its constitution, see supra note 158, there may not be a “political” definition that can apply to the free passage right if Congress again applies a definition tracking Canadian law. See supra note 158. The “racial” nature of the Canadian law’s conception of Indian status still might not be dispositive, however, as American law might view Indian status as political under Mancari’s racial and political dichotomy regardless of Canada’s position. Id. At the very least, Congress could still avoid the problems associated with applying blood quantum, and potentially provide greater protection from constitutional attack