

THE CENTER FOR INDIGENOUS LAW, GOVERNANCE, & CITIZENSHIP
AT SYRACUSE UNIVERSITY, COLLEGE OF LAW



Protecting our Citizenship through Tribal Laws and Tribal Courts

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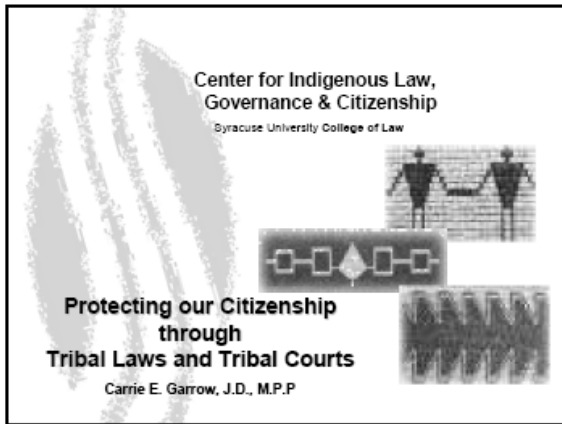
Colonialism greatly impacted Indigenous citizenship. Blood quantum became the new standard for many nations. Other nations changed their laws from matrilineal to patriarchal descent or simply descent. Although the Supreme Court has acknowledged Indian nations' inherent sovereignty over internal matters, such as citizenship, Congress has made inroads on the definition of who is an Indian. An issue that may jumpstart further federal interference into Indigenous citizenship is the recent increase in disenrollment by Indian nations and claims that tribal governments do not afford their citizens due process. To protect their citizens, Indian nations must strengthen and use their own laws and dispute resolution forums. Examination of 70 Indian nations' citizenship codes and/or constitutions, along with 45 tribal court cases on citizenship, illustrates that Indian nations do have laws and systems that afford due process. However, these laws suffer from colonialism and do not reflect indigenous philosophies about citizenship.

Tribal laws and systems that affect citizenship must be decolonized to protect indigenous citizenship. Reform should not simply entail adding procedures that provide western notions of due process or changing blood quantum levels. Tribal leaders and citizens need to step back and re-examine their laws by asking three difficult questions. First, what is citizenship? Is it status in the community, rights, duties, political engagement, and/or identity? Second, where does citizenship take place? In the political domain of the nation? The social domain? And/or the economic domain? Finally one can then ask, who is a citizen? Encompassed in all these questions are whether or not there are different levels of citizenship. Can one live in the community as a citizen in the social domain, but not be able to exercise political rights? Answers to many of these questions are found in the language, oral traditions, ceremonies, and traditional laws of the nation. Once the answers to these questions are determined, nations can move forward to develop strong citizenship laws and procedures that will protect their citizens, non-citizens living in their territories, and nations from interference by the federal government.

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Overview

- Current Tribal Citizenship Laws
- Role of Tribal Courts
- Recommendations for Drafting and Amending Citizenship Laws

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Are our Laws Sufficient to Protect our Citizenship?

- 70 Nations
 - Enrollment codes or constitutions or both
- Characteristics of the Data
 - Not a random sample
 - New amendments
 - No code provisions

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Some Basic Data

- Base Roll Comprised of Federally Influenced Count - 81%
- Lineal Descent – 27%
 - 37% require residency
- Blood Quantum – 70%
- Adoption – 34%
- Dual Citizenship Prohibited– 60%
- U.S. Citizenship Required – 6%

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Lessons from Codes - Enrollment

- Due Process Procedures are Present
 - Notice – 33% of codes
 - 79% of codes with administrative bodies
- Appeal Procedures are Present
 - Appeal of denial - 39% of codes
 - 79% of codes with administrative bodies

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Lessons from Codes - Disenrollment

- Basis for Loss of Citizenship – 54%
- Due Process Procedures are Present
 - In 30% of 70 nations reviewed
- Appeal Procedures are Present
 - In 17% of 70 nations reviewed
 - Court involved in 5% of 70 nations

Lessons from Codes

- Base Roll Based on Federal Laws/Policies
- Blood Quantum
 - Foreign concept of citizenship
 - Racial based concept
 - Seeing changes even with amendments
- Few Adoption Provisions
- Western Notion of Due Process

Swinomish Tribal Code

- Automatic Citizens
- Optional Citizens
 - Indian blood, relation, U.S. citizenship
 - Key component: residency and participation
- 5 Year Provisional Citizenship Status

A Court in Action – Grand Ronde

- 1999 Constitutional Amendment
 - Increased enrollment requirements - including having a parent on the rolls at birth
- Enrollment Procedure - Enrollment Committee, Tribal Council, Trial Court, Appellate Court
- 45+ Tribal Court Cases

Lessons Learned – Tribal Courts

- Appropriate Forum
 - Decisions based on law
- Ensures Due Process
 - Indigenous form of due process
- Insulates Nation from Invasion of Foreign Laws
- Strengthens Overall Government

Where do we go from here?

- Strengthen Tribal Courts
 - Foundation
 - Respect
 - Judges
- Decolonize Citizenship Laws
 - Re-examine indigenous philosophies regarding citizenship
 - Relearn and incorporate language

Questions to Ask

- The Substance Question – What is citizenship?
 - Status?
 - Political engagement?
 - Rights/duties?
 - Identity?
 - Are there different levels of citizenship?

Questions to Ask

- The Location Question - Where does citizenship take place?
 - Political realm?
 - Social realm?
 - Economic realm?
 - Civil society?
 - Are there different levels of citizenship?

Questions to Ask

- The Class Question - Who is a citizen?
 - How is the border defined?
 - What process is used to grant entry?
 - Can you be part of one realm, but not another?

Where do we go from here?

“Perhaps the social and political realities have changed drastically since the early days of contact; even so, indigenous strategies for engaging philosophical problems through the oral tradition remain an essential part of indigenous identity.”

-Dale Turner, This is Not a Peace Pipe, Towards a Critical Indigenous Philosophy (University of Toronto Press 2006), 46.