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Disenrollment as Citizenship Revocation: Promoting Tribal Sovereignty by Embracing International Norms

ABSTRACT. This Note argues that Indian tribes can best address disenrollment by viewing the problem through the lens of international norms regarding citizenship revocation. Tribal officials and members, advocates and journalists, and scholars and practitioners of federal Indian law typically understand disenrollment, which is when a tribe severs its governmental relationship with certain members, as a practice unique to Indian Country. However, while tribes' unique legal status facilitates disenrollment, this practice can nevertheless be understood as a form of citizenship revocation, which is when a state deprives certain persons of their previously held citizenship. By understanding disenrollment as citizenship revocation, tribes can draw from a wide body of existing literature about states' citizenship-revocation regimes when considering limitations on their power to disenroll. If tribes choose to address disenrollment by embracing international norms regarding citizenship revocation, they will not simply *invoke* tribal sovereignty, as sometimes occurs under the current status quo, but instead *promote* it by advancing good governance and aligning their sovereignty with state sovereignty.

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INTRODUCTION

In 2022, the Picayune Rancheria of the Chukchansi Indians, one of 574 federally recognized Indian tribes,[1] terminated its governmental relationship with sixty to seventy of its members.[2] This action was ostensibly the result of a constitutional dispute over whether the descendants of certain Chukchansi Indians were entitled to tribal membership.[3] Shortly before resigning, however, the Tribe's attorney wrote that these individuals should remain members under "the plain language of the Tribe's Constitution."[4] Regardless, on the eve of a Tribal Council election, the Picayune Rancheria's Tribal Council and Enrollment Committee disenrolled a substantial portion of the Tribe's membership.[5]

The Picayune Rancheria's 2022 expulsion of many of its members was not an isolated incident. The Tribe began removing members in 1992[6] and was still doing so as recently as November 2023.[7] Furthermore, many other federally recognized tribes engage in similar practices, creating what critics have labeled a disenrollment epidemic.[8] In Indian Country,[9] the term "disenrollment" de-

1. Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 89 Fed. Reg. 944, 946 (Jan. 8, 2024) [hereinafter Federally Recognized Tribes].

2. Carmen Kohlruss, *'Used and Abused.' Chukchansi Looks to Oust Members on Election Eve as Casino Profits Soar*, Fresno Bee (Sept. 30, 2022, 10:21 AM), https://www.fresnobee.com/news/local/article266513506.html [https://perma.cc/NZ68-JS4Q]; Yesenia Amaro, *'Corrupt Political Favoritism.' Chukchansi Kick 49 Members Out of Tribe, More Targeted*, Fresno Bee (Apr. 16, 2023, 9:10 AM), https://www.fresnobee.com/news/local/article274101165.html [https://perma.cc/K3NF-RWPW].

3. Kohlruss, *supra* note 2; *see* Const. of the Picayune Reservation art. 3, § 1, https://www.documentcloud.org/documents/6172090-Chukchansi-tribal-constitution [https://perma.cc/T98G-NLHD].

4. Kohlruss, *supra* note 2.

5. *Id.*; Yesenia Amaro, *'We Need Help.' More Chukchansi Members Targeted for Removal, Have Benefits Suspended*, Fresno Bee (Jan. 26, 2023, 2:41 PM), https://www.fresnobee.com/news/local/article271259182.html [https://perma.cc/VY2J-32TQ].

6. David E. Wilkins & Shelly Hulse Wilkins, Dismembered: Native Disenrollment and the Battle for Human Rights 92-96 (2017).

7. Amaro, *supra* note 5; Amaro, *supra* note 2; Marco Rosas, *Chukchansi Using 'Paper Genocide' for More Casino Money, Former Council Members Say*, Your Cent. Valley (June 17, 2024, 9:06 AM PDT), https://www.yourcentralvalley.com/news/chukchansi-using-paper-genocide-for-more-casino-money-former-council-members-say [https://perma.cc/UG8Q-S6X5].

8. Gabriel S. Galanda & Ryan D. Dreveskracht, *Curing the Tribal Disenrollment Epidemic: In Search of a Remedy*, 57 Ariz. L. Rev. 383, 385-87 (2015); *see, e.g.*, Gabriel S. Galanda, *Disenrollment Is a Tool of the Colonizers*, ICT News (Sept. 12, 2018), https://ictnews.org/archive

scribes a tribe terminating its governmental relationship with one or more of its members.[10] Over the past few decades, disenrollment has stripped the heritage of thousands of Native Americans across the country.[11] Those disenrolled face negative health impacts, direct financial loss, and denial of access to social, educational, and economic opportunities.[12]

In recent years, various scholars and journalists have criticized tribes that engage in disenrollment.[13] Opponents of disenrollment highlight the practice's considerable normative weaknesses and practical problems. As a normative matter, disenrollment raises questions regarding political accountability, fundamental fairness, and human rights.[14] In practice, disenrollment can under-

/disenrollment-is-a-tool-of-the-colonizers [https://perma.cc/AVC5-WNFJ]; Cecily Hilleary, *Native American Tribal Disenrollment Reaching Epidemic Levels*, VOICE OF AM. (Mar. 3, 2017, 10:38 AM), https://www.voanews.com/a/native-american-tribal-disenrollment-reaching-epidemic-levels/3748192.html [https://perma.cc/J5RG-99PS]; WILKINS & WILKINS, *supra* note 6, at 67-71.

9. "Indian country" is a term that has both a legal meaning and a colloquial meaning. *See, e.g.*, 18 U.S.C. § 1151 (2018) (defining the term "Indian country" as used in a particular chapter of the United States Code); *NCAI Response to Usage of the Term, "Indian Country*," NCAI (Dec. 27, 2019), https://www.ncai.org/news/ncai-response-to-usage-of-the-term-indian-country [https://perma.cc/TP3E-4EDZ] ("[T]he term 'Indian Country' is leveraged broadly as a general description of Native spaces and places within the United States . . . ."). Generally, "Indian country" with a lowercase "c" signifies that the term is being used in the legal sense, while "Indian Country" with an uppercase "C" signifies that the term is being used in the colloquial sense, although this is not a universally consistent or coherent distinction. *See NCAI Response to Usage of the Term, supra*; Andrew Huff, *What Is Indian Country?: Uncertain About the Term "Indian Country"? Read This*, CTR. FOR INDIAN COUNTRY DEV. 1 (Oct. 2023), https://www.minneapolisfed.org/-/media/assets/indiancountry/what-is-indian-country/cicd-what-is-indian-country.pdf [https://perma.cc/AYL2-S8WX]. This Note refers to "Indian Country" in the colloquial sense and adheres to the aforementioned capitalization convention.

10. *See, e.g.*, Galanda & Dreveskracht, *supra* note 8, at 385; Deron Marquez, *Citizenship, Disenrollment & Trauma*, 53 CAL. W. L. REV. 181, 183 (2017); WILKINS & WILKINS, *supra* note 6, at 4-6.

11. *See* WILKINS & WILKINS, *supra* note 6, at 67-79; Galanda, *supra* note 8, at 385; Hilleary, *supra* note 8.

12. *See, e.g.*, *Disenrollment Background Papers and Resolutions*, ASS'N AM. INDIAN PHYSICIANS (Oct. 22, 2015), https://www.aaip.org/news/disenrollment-background-papers-and-resolution [https://perma.cc/KR9M-C33U]; Hilleary, *supra* note 8.

13. *See, e.g.*, Galanda & Dreveskracht, *supra* note 8, at 383-86; WILKINS & WILKINS, *supra* note 6, at 5; Marquez, *supra* note 10, at 207-11; Hilleary, *supra* note 8; Jaime Dunaway, *The Fight Over Who's a "Real Indian*," SLATE (June 12, 2018, 4:05 PM), https://slate.com/news-and-politics/2018/06/native-american-disenrollments-are-waning-after-decades-of-tribes-stripping-citizenship-from-members.html [https://perma.cc/NPC5-5QKT].

14. *See, e.g.*, Galanda & Dreveskracht, *supra* note 8, at 388-89; Greg Rubio, *Reclaiming Indian Civil Rights: The Application of International Rights Law to Tribal Disenrollment Actions*, 11 OR.

mine the legitimacy of tribal governments and institutions, weaken the rule of law in Indian Country, and endanger tribal business ventures.[15]

Tribes engaging in disenrollment often invoke tribal sovereignty and Indian self-determination to defend their actions.[16] Many in Indian Country equate criticism of disenrollment to criticism of these two concepts.[17] Because tribal sovereignty and Indian self-determination are vitally important to Indian Country, many key voices have hesitated to take a firm position regarding disenrollment.[18] This Note, however, argues that tribes can confront the problem of disenrollment without returning to past federal paternalism by looking beyond Indian Country for solutions.

Understanding how disenrollment implicates tribal sovereignty and Indian self-determination requires understanding what each of these concepts represents. "Tribal sovereignty" describes tribes' inherent "ability to govern and to protect and enhance the health, safety, and welfare of [their] tribal citizens

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Rev. Int'l L. 1, 3 (2009); *Resolution # 2015-06, Supporting Equal Protection and Due Process for Any Divestment of the American Indigenous Right of Tribal Citizenship*, Nat'l Native Am. Bar Ass'n 2 (Apr. 8, 2015) [hereinafter *NNABA Resolution*], https://www.nativeamericanbar.org/wp-content/uploads/2014/01/2015-04-09-2015-06-NNABA-Resolution-Due-Process.pdf [https://perma.cc/6ASJ-FDGR].

15. *See, e.g.*, Anthony Broadman & Jared Miller, *Disenrollment Is Bad for the Bottom Line: Redux*, ICT News (Sept. 12, 2018), https://ictnews.org/archive/disenrollment-is-bad-for-the-bottom-line-redux [https://perma.cc/5R6M-PMSH]; *Disenrollment Background Papers and Resolutions*, *supra* note 12; Cedric Sunray, *Disenrollment Clubs*, ICT News (Sept. 12, 2018), https://ictnews.org/archive/disenrollment-clubs [https://perma.cc/2RPX-63GA].

16. *See, e.g.*, Daniel Beekman, *United Nations Watchdogs Raise Concerns About Nooksack Evictions, Again*, Seattle Times (May 20, 2023, 6:00 AM), https://www.seattletimes.com/seattle-news/politics/united-nations-watchdogs-raise-concerns-about-nooksack-evictions-again [https://perma.cc/X5LV-PF9W] ("'All nations have the right to govern themselves and establish their own laws and membership, and sovereign Tribes are no different,' the [Nooksack Tribal Council] said. 'Tribes may require tribal membership for certain programs. Ignoring this fundamental right undermines Tribal self-determination and the government-to-government relationship between Tribes and the United States.'"); Amanda Peacher, *Tribal Court Reverses Grand Ronde Disenrollment Decision*, Or. Pub. Broad. (Aug. 8, 2016, 8:15 PM), https://www.opb.org/news/article/grand-ronde-disenrollment-decision-reversed-chief-tumulth [https://perma.cc/HK49-EXC6] (indicating that the Chairman of the Confederated Tribes of the Grand Ronde (CTGR) described the Court of Appeals of the CTGR's reversal of "a decision . . . to disenroll 66 tribal members" as "a huge infringement on our Tribal sovereignty").

17. *See, e.g.*, Beekman, *supra* note 16; Circe Sturm, *Race, Sovereignty, and Civil Rights: Understanding the Cherokee Freedmen Controversy*, 29 Cultural Anthropology 575, 576, 587 (2014).

18. *See NCAI, Rep. Deb Haaland Each Break Disenrollment Silence*, Galanda Broadman (Aug. 5, 2020), https://www.galandabroadman.com/blog/2020/8/ncai-rep-deb-haaland-each-break-disenrollment-silence [https://perma.cc/5GRQ-437Q].

within [their] tribal territory."[19] Tribes' sovereignty is derived from their historical status as independent political communities rather than from the U.S. Constitution or a federal delegation of power.[20] As explained by Felix S. Cohen, a central figure to twentieth-century Native American history and the development of the field of federal Indian law,[21] "[p]erhaps the most basic principle of all Indian law" is that tribal powers are "not, in general, delegated powers granted by express acts of Congress" but instead "inherent powers of a limited sovereignty which has never been extinguished."[22]

Today, however, tribal sovereignty is limited by the United States's plenary power over Indian affairs.[23] The Supreme Court has explained that "Congress's power to legislate with respect to the Indian tribes [is] 'plenary and exclusive'"[24] and "supersed[es] both tribal and state authority."[25] Although "the federal government did not give tribal sovereignty to Indian tribes," the federal government is the ultimate authority on how tribes can functionally exert their sovereignty.[26]

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19. *Tribal Nations and the United States: An Introduction*, Nat'l Cong. of Am. Indians 23 (Feb. 2020), https://archive.ncai.org/tribalnations/introduction/Indian_Country_101_Updated_February_2019.pdf [https://perma.cc/UQL4-4HV5].

20. *See* Philip P. Frickey, *(Native) American Exceptionalism in Federal Public Law*, 119 Harv. L. Rev. 431, 440, 442 (2005); *see also* Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55-56 (1978) ("As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority.").

21. *See generally* Kevin K. Washburn, *Felix Cohen, Anti-Semitism and American Indian Law*, 33 Am. Indian L. Rev. 583 (2009) (reviewing Dalia Tsuk Mitchell, Architect of Justice: Felix S. Cohen and the Founding of American Legal Pluralism (2007)) (discussing Felix S. Cohen's legacy).

22. Felix S. Cohen, Handbook of Federal Indian Law § 2.09 (Nell Jessup Newton & Kevin K. Washburn eds., 2024) (emphasis omitted) (quoting Powers of Indian Tribes, 55 Interior Dec. 14, 19 (1934)).

23. As a legal matter, the plenary-power doctrine is well established in case law and constitutionally grounded via the Indian Commerce Clause, the Treaty Clause, and "principles inherent in the Constitution's structure." Haaland v. Brackeen, 599 U.S. 255, 272-74 (2023). As a historical matter, the plenary-power doctrine rose to prominence during the height of the United States's efforts to displace and erase Indigenous peoples and has been frequently used to legitimize these efforts. *See id.* at 327-29 (Gorsuch, J., concurring) ("It is no coincidence either that this Court's plenary-power jurisprudence emerged in the same era as Indian boarding schools and other assimilationist policies.").

24. *Id.* at 272 (majority opinion) (quoting United States v. Lara, 541 U.S. 193, 200 (2004)).

25. *Id.* at 272 (citing *Martinez*, 436 U.S. at 56).

26. Matthew L.M. Fletcher, *Tribal Membership and Indian Nationhood*, 37 Am. Indian L. Rev. 1, 16 (2012).

While much of tribal sovereignty and its limitations are presently defined by federal law,[27] Indian self-determination is a matter of federal policy.[28] Specifically, Indian self-determination is the federal policy that has defined the United States's relationship with Indian tribes since the late 1960s.[29] In 1970, President Richard Nixon proposed to create "a new era in which the Indian future is determined by Indian acts and Indian decisions."[30] In the present Self-Determination Era, the federal government strives for Indian tribes to "have autonomy and the opportunity to operate programs and services themselves."[31] In the words of the Biden Administration, over "the last 50 years . . . the Federal Government has worked with Tribal Nations to promote and support Tribal self-governance and the growth of Tribal institutions."[32] The policy of Indian self-determination has continued for more than half a century because it "is the only policy that produces positive results."[33]

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27. *Martinez*, 436 U.S. at 55-57. *But see Haaland*, 599 U.S. at 330 (Gorsuch, J., concurring) ("Yes, Tribes retain the inherent sovereignty the Constitution left for them. But no, Congress does not possess power to 'calibrate "the metes and bounds of tribal sovereignty."'" (quoting *Lara*, 541 U.S. at 214-15 (2004)).

28. *See* MATTHEW L.M. FLETCHER, FEDERAL INDIAN LAW 103 (2016).

29. *See id.*; Lyndon B. Johnson, Special Message to the Congress on the Problems of the American Indians: "The Forgotten American." (March 6, 1968), *in* 1 PUBLIC PAPERS OF THE PRESIDENT OF THE UNITED STATES: LYNDON B. JOHNSON, JANUARY 1 TO JUNE 30, 1968, at 335, 336 (1970); Richard Nixon, Special Message to the Congress on Indian Affairs (July 8, 1970), *in* PUBLIC PAPERS OF THE PRESIDENT OF THE UNITED STATES: RICHARD NIXON, 1970, at 564, 564 (1971); Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, §§ 2-3, 88 Stat. 2203, 2203-04 (1975) (codified as amended at 25 U.S.C. §§ 450, 450a); Exec. Order No. 14,112, 3 C.F.R. 703, 703-04 (2024).

30. Nixon, *supra* note 29, at 565.

31. Lina Mann, *"Self Determination Without Termination": President Richard M. Nixon's Approach to Native American Policy Reform*, WHITE HOUSE HIST. ASS'N (Nov. 3, 2021), https://www.whitehousehistory.org/self-determination-without-termination [https://perma.cc/538D-4JLD]; *see also* Bureau of Indian Affs., *Federal Law and Indian Policy Overview: History of Indian Law and Policy*, U.S. DEP'T INTERIOR, https://www.bia.gov/bia/history/IndianLawPolicy [https://perma.cc/MEX6-T49Y] (listing "The Self-Determination Era" as a period of federal Indian policy).

32. Exec. Order No. 14,112, 3 C.F.R. 703, 703 (2024).

33. Patrice H. Kunesh, *The Power of Self-Determination in Building Sustainable Economies in Indian Country*, ECON. POL'Y INST. 1 (June 15, 2022), https://files.epi.org/uploads/270697.pdf [https://perma.cc/S9UP-XDBT] (discussing Indian self-determination in the context of economic development); *see also* Geoff Strommer & Kirke Kickingbird, *Indian Self-Determination: Four Decades of Extraordinary Success*, 40 HUM. RTS., no. 2, 2015, at 2, 2 ("By all accounts, tribal self-determination has become the most successful bipartisan Indian policy ever enacted by Congress.").

The advent of the Self-Determination Era did not *create* tribal sovereignty, but it has enabled tribes to better *exercise* tribal sovereignty as compared to earlier paternalistic eras of federal-tribal relations.[34] An example of the relationship between tribal sovereignty and Indian self-determination is *Santa Clara Pueblo v. Martinez*—a case that is also key to understanding disenrollment.[35] Julia Martinez was a female member of the Santa Clara Pueblo whose children were ineligible for tribal membership because of a tribal "ordinance denying membership to the children of certain female tribal members."[36] Martinez claimed that this ordinance violated the Indian Civil Rights Act (ICRA) of 1968,[37] which provides that "[n]o Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws."[38] But ICRA "does not expressly authorize the bringing of civil actions for declaratory or injunctive relief to enforce its substantive provisions" in federal court.[39]

The Supreme Court first determined that "[s]uits against [tribes] under the ICRA are barred by [tribal] sovereign immunity."[40] The *Martinez* Court then rejected the argument that ICRA created an implicit civil cause of action against tribal officials.[41] In enacting ICRA, Congress had "[t]wo distinct and competing purposes . . . : In addition to its objective of strengthening the position of individual tribal members vis-à-vis the tribe, Congress also intended to promote the well-established federal 'policy of furthering Indian self-

34. *See, e.g.*, Santa Clara Pueblo v. Martinez, 436 U.S. 49, 62-66, 72 (1978) (explaining that one of Congress's purposes in enacting the Indian Civil Right Acts (ICRA) of 1968 was promoting Indian self-determination and therefore declining to adopt an interpretation of ICRA that would create an "additional intrusion on tribal sovereignty" in the absence of clear congressional intent).

35. *Id.* at 62-63.

36. *Id.* at 51.

37. *Id.*

38. 25 U.S.C. § 1302(a) (2018).

39. *Martinez*, 436 U.S. at 51-52.

40. *Id.* at 59. The Supreme Court noted that tribes are "separate sovereigns pre-existing the Constitution" which are not inherently subject to "those constitutional provisions framed specifically as limitations on federal or state authority." *Id.* at 56. In enacting ICRA, however, Congress exerted its "plenary authority" to "impos[e] certain restrictions upon tribal governments similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment." *Id.* at 56-57. But "[n]othing on the face of Title I of the ICRA purports to subject tribes to the jurisdiction of the federal courts in civil actions for injunctive or declaratory relief," nor can Title III of ICRA, which provides for a habeas corpus action, "be read as a general waiver of the tribe's sovereign immunity." *Id.* at 59.

41. *Id.* at 59-62.

government.'"[42] A federal civil cause of action would harm the second purpose by "undermin[ing] the authority of tribal forums [and] impos[ing] serious financial burdens" on tribes.[43] Moreover, the Court noted that "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community," and the federal judiciary "should not rush to . . . intrude on these delicate matters."[44]

Martinez acknowledged Indian tribes' authority to make membership decisions without oversight from federal courts based on principles of tribal sovereignty and Indian self-determination.[45] This decision is key to understanding disenrollment because tribes' sovereign "right to define . . . membership"[46] intuitively seems like it should include not just the power to enroll, but also the power to disenroll. Many opponents of disenrollment even concede this point.[47] Others emphasize that the histories and traditions of North American Indigenous peoples do not support disenrollment and therefore argue that disenrollment is fundamentally a colonial power originating from the United States, not an Indigenous one.[48] But even accepting that tribes have an inherent power to disenroll, they are not required to exercise this power: tribes are free to restrict disenrollment in their constitutions, ordinances, or courts. But what a government can do, it can also undo, and so there is a clear need for limiting principles on the power to disenroll.

Although some scholars and practitioners of federal Indian law have made "calls for outside influence" to halt disenrollments, tribes' internal responses are critical because disenrollment, regardless of its origins, is fundamentally a tribal issue.[49] In particular, there is a need for *effective* tribal responses to disen-

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42. *Id.* at 62 (quoting Morton v. Mancari, 417 U.S. 535, 551 (1974)).

43. *Id.* at 64.

44. *Id.* at 72 n.32 (citing Roff v. Burney, 168 U.S. 218, 222-23 (1897); Cherokee Intermarriage Cases, 203 U.S. 76, 94-96 (1906)).

45. *See id.* at 72 ("[U]nless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication . . . in a federal forum would represent, we are constrained to find that [ICRA] does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers.").

46. *Id.* at 72 n.32 (citing *Roff*, 168 U.S. at 222-23; Cherokee Intermarriage Cases, 203 U.S. at 94-96); *see* COHEN, *supra* note 22, § 4.03.

47. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 5; Kevin K. Washburn, *What the Future Holds: The Changing Landscape of Federal Indian Policy*, 130 HARV. L. REV. F. 200, 229 (2017); Eric Reitman, Note, *An Argument for the Partial Abrogation of Federally Recognized Indian Tribes' Sovereign Power over Membership*, 92 VA. L. REV. 793, 798-99 (2006).

48. *See* Galanda & Dreveskracht, *supra* note 8, at 388-89.

49. William R. Norman Jr., Kirke Kickingbird & Adam P. Bailey, *Tribal Disenrollment Demands a Tribal Answer*, 43 HUM. RTS., no. 1, 2017, at 10, 13.

rollment that go beyond invoking tribal sovereignty as a shield against criticism.[50] Given the realities of the plenary-power doctrine, "[e]xpansions of tribal sovereignty . . . *must be earned*."[51] By addressing disenrollment directly, tribes can therefore demonstrate the merits of a broader conception of tribal sovereignty.

Tribes that decide to address disenrollment internally could benefit from looking beyond Indian Country for answers to many of the questions raised by this power. International norms and literature regarding citizenship revocation are particularly instructive regarding whether, when, and how disenrollment might be justified. By embracing restrictions on their power to disenroll in line with restrictions on states' power to revoke citizenship, tribes can both exhibit that tribal sovereignty is akin to state sovereignty and demonstrate that tribal sovereignty *deserves* to be treated with the same degree of seriousness as state sovereignty.

As a practical matter, tribal sovereignty is clearly distinct from state sovereignty.[52] Tribal advocates, however, frequently equate the two as both a rhetorical device and a vision of their ideal state of affairs.[53] This comparison presumably appeals to many in Indian Country because states, in the international sense of the term, can take actions that tribes cannot, such as exerting jurisdiction over all noncitizens who are within their territory and engaging in independent foreign policy.[54] But less discussed in Indian Country is that the rights

50. For instances in which tribal officials invoked tribal sovereignty to refute criticism of disenrollment, see, for example, *supra* note 16.

51. Fletcher, *supra* note 26, at 16.

52. *Id.* at 15 ("Unless the American Constitution is amended dramatically, Indian tribes will never be equivalent to states or foreign nations."); *see also* COHEN, *supra* note 22, § 6.02 (demonstrating that although Indian tribes have been historically recognized as independent political entities, their powers have also been subjected to important federal limitations, such as those stemming from ICRA); Haaland v. Brackeen, 599 U.S. 255, 256-57 (2023) ("In a long line of cases, we have characterized Congress's power to legislate with respect to Indian tribes as '"plenary and exclusive"' Our cases leave little doubt that Congress's power in this field is muscular, superseding both tribal and state authority." (citations omitted) (quoting United States v. Lara, 541 U.S. 193, 200 (2004))).

53. *See* Fletcher, *supra* note 26, at 15.

54. *See, e.g.*, United States v. Wheeler, 435 U.S. 313, 326 (1978) ("Indian tribes can no longer freely alienate to non-Indians the land they occupy. They cannot enter into direct commercial or governmental relations with foreign nations. And, as we have recently held, they cannot try nonmembers in tribal courts." (citations omitted)).

inherent to statehood are also accompanied by certain duties that exist even in the absence of clear enforcement mechanisms.[55]

Since the Second World War, international law and norms surrounding citizenship have focused on protections for citizens even where such protections conflict with historical ideas of absolute state sovereignty.[56] Under the modern conception of state sovereignty, the powers of national governments are limited in theory, if not always in practice, by certain "human rights and fundamental freedoms."[57] Today, therefore, states do not generally assert an unchecked power to remove citizens from their political communities.[58]

The global War on Terror has forced Western democracies to reckon with "whether certain citizens deserve the protection that citizenship status provides."[59] Scholars focused on citizenship generally use the term "citizenship revocation" to describe states' efforts to rescind, annul, or otherwise deprive disfavored individuals of previous grants of citizenship.[60] The related term "denaturalization" specifically describes the revocation of citizenship obtained through immigration and application rather than through birth.[61]

States with active citizenship-revocation regimes frequently justify their actions through national-security rationales, the idea that citizenship revocation is a just punishment for certain crimes, or a contractual understanding of citizenship.[62] But international law and norms can constrain these states' power to

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55. *See generally, e.g.*, G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) (describing states' duties).

56. *See, e.g.*, Patrick Weil, *Can a Citizen Be Sovereign?*, 8 HUMAN. 1, 2 (2017); Patti Tamara Lenard, *Democracies and the Power to Revoke Citizenship*, 30 ETHICS & INT'L AFFS. 73, 74-76 (2016).

57. G.A. Res. 1948 pmbl., *supra* note 55.

58. *See* Audrey Macklin, *Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien*, 40 QUEEN'S L.J. 1, 10 (2014).

59. *Id.* at 1.

60. *See, e.g.*, Macklin, *supra* note 58, at 2-3; Shai Lavi, *Punishment and the Revocation of Citizenship in the United Kingdom, United States, and Israel*, 13 NEW CRIM. L. REV. 404, 409 (2010); Elke Winter & Ivana Previsic, *Citizenship Revocation in the Mainstream Press: A Case of Re-Ethnicization?*, 42 CANADIAN J. SOCIO. 55, 55 (2017).

61. *See Denaturalization*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining denaturalization as "[t]he process by which a government deprives a naturalized citizen of all rights, duties, and protections of citizenship").

62. *See, e.g.*, Audrey Macklin, *A Brief History of the Brief History of Citizenship Revocation in Canada*, 44 MANITOBA L.J. 434, 436 (2021); Christian Joppke, *Terror and the Loss of Citizenship*, 20 CITIZENSHIP STUD. 728, 742 (2016); Lavi, *supra* note 60, at 409-10.

revoke citizenship.[63] Furthermore, some citizenship-revocation literature has questioned whether states may wield such power at all.[64] Constraints on states' power to revoke citizenship and the discourse surrounding exertions of this power problematize the idea that tribes should fully exercise an unbounded power to disenroll.[65]

This Note examines how tribes can address the problem of disenrollment in a manner that does not simply *invoke* tribal sovereignty but *promotes* it. Part I summarizes existing literature on disenrollment. The focus of this review is current disenrollment efforts and their implications, leaving discussion of the historical development of the practice to existing works.[66] Part II explains that tribal membership is a form of citizenship despite its distinctive aspects and claims that disenrollment can therefore be understood as a form of citizenship revocation. Part III explains why tribes should look to international norms regarding citizenship revocation when addressing disenrollment. Finally, Part IV describes how tribes might choose to apply these norms to limit disenrollment.

The international norms on citizenship revocation reviewed in this Note indicate that some rationales for disenrollment are more legitimate than others. These norms do not support disenrollment on the grounds of lack of blood quantum, one of the most common reasons that tribes give when engaging in disenrollment,[67] suggesting that tribes should cease or severely restrict this practice. But disenrollment may be permissible in narrow circumstances on the grounds of fraud and perhaps dual enrollment. If such circumstances arise, however, tribes engaging in disenrollment must aim to meet a high burden of proof given that they are upsetting the status quo and damaging existing interests for often-unclear benefit.

I. A PRIMER ON DISENROLLMENT

This Part provides an overview of disenrollment for those who are unfamiliar with this practice. First, this Part briefly explains that disenrollment is a widespread issue in Indian Country. It will then consider possible reasons *why*

63. Iseult Honohan, *Just What's Wrong with Losing Citizenship? Examining Revocation of Citizenship from a Non-Domination Perspective*, 24 CITIZENSHIP STUD. 355, 358 (2020).

64. *See id.* at 355; Lenard, *supra* note 56, at 73.

65. Macklin, *supra* note 58, at 10.

66. *See generally* WILKINS & WILKINS, *supra* note 6 (discussing the history of disenrollment); Galanda & Dreveskracht, *supra* note 8 (same).

67. *See* WILKINS & WILKINS, *supra* note 6, at 67-71, 78 (listing known instances of disenrollment and involved tribes' official rationales).

disenrollment has become a widespread issue in Indian Country. Next, this Part discusses the negative impacts of disenrollment on both tribal members targeted for disenrollment and tribes engaging in disenrollment. Finally, it briefly considers proposed solutions to the disenrollment epidemic and claims that none of these solutions are sufficient to address disenrollment fully, indicating that a new solution is required.

A. The Scale of Disenrollment

If disenrollment is a form of citizenship revocation, then it is one of the most prevalent forms in the modern world, in both absolute and relative terms.[68] A comparison between the United Kingdom and the Picayune Rancheria of the Chukchansi Indians is illustrative. Between 2006 and 2017, the United Kingdom revoked the citizenship of "at least 373 Britons," which was "more than the total number of revocations by Canada, France, Australia, and Netherlands combined."[69] This figure represents less than one-thousandth of a percent of the United Kingdom's population of almost seventy million.[70] Between 1992 and 2016, the Rancheria disenrolled over a thousand members, "more . . . than any other Indigenous people."[71] This figure represents more than fifty percent of the Rancheria's peak population circa 2003.[72] Whereas the United Kingdom's citizenship revocations significantly impact targeted individuals, their families, and the country's values, the Rancheria's disenrollment efforts threaten the Tribe's continued existence through demographic implications alone.

While the Picayune Rancheria of the Chukchansi Indians is unique in terms of its sheer number of disenrollments, many other tribes have disenrolled members in recent years.[73] David E. Wilkins, a professor of Native American studies, and Shelly Hulse Wilkins, an attorney specializing in tribal governmental relations, counted fifty-eight tribes that had previously or were

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68. *See id.* at 78-79; Galanda, *supra* note 8; Patrick Weil & Nicholas Handler, *Revocation of Citizenship and Rule of Law: How Judicial Review Defeated Britain's First Denaturalization Regime*, 36 LAW & HIST. REV. 295, 296 (2018); Amber Qureshi, *The Denaturalization Consequences of Guilty Pleas*, 130 YALE L.J.F. 166, 170 (2020).

69. Weil & Handler, *supra* note 68, at 296.

70. *Population, Total - United Kingdom*, WORLD BANK GRP., https://data.worldbank.org/indicator/SP.POP.TOTL?locations=GB [https://perma.cc/3KNH-8R69].

71. WILKINS & WILKINS, *supra* note 6, at 96.

72. *Id.* at 92-96.

73. *See id.* at 67-71, 95-96.

presently disenrolling members as of 2017.[74] They further suggested that while "[i]t [was] impossible to definitively ascertain how many individuals . . . have been dismembered in the last two decades," the figure was likely closer to 8,000 than 2,000.[75] Gabriel S. Galanda, a Native American attorney and prominent opponent of disenrollment, estimated that "over 60 tribes . . . ha[d] collectively terminated over 8,000 Indians" as of 2015.[76] Rick Cuevas, a Luiseño Indian who was disenrolled from the Pechanga Band of Indians, put the number at 11,000 around the same time.[77]

Disenrollment is prevalent across Indian Country. This practice has definitively occurred in almost half of the thirty-six states with federally recognized tribes.[78] Galanda believes that "mass disenrollment has taken hold . . . in at least seventeen states."[79] David E. Wilkins also believes that "Native nations in at least seventeen states [are] engaging in the practice."[80] Disenrollment is most common in California, where the state's total tribal membership declined by around ten percent between 1988 and 2011[81] despite a significant growth in the number of individuals identifying as Native American during a similar peri-

74. *Id.* at 67-71.

75. *Id.* at 78-79. Note that David E. Wilkins and Shelly Hulse Wilkins use the term "dismembered" to refer to Indian tribes that are "disenroll[ing] or banish[ing] . . . otherwise legitimate Native citizens." *Id.* at 4. These tribes are literally dismembering targeted individuals, that is, denying these individuals' membership. Wilkins and Wilkins use of the term "dismembered" is distinct from, although perhaps also intentionally evocative of, this term's more common—and gruesome—meaning.

76. Galanda, *supra* note 8.

77. Rick Cuevas, *Disenrollment Is Indian De-Population: Tribal Governments Violating Rights, Disenrolling, Disenfranchising, Reclassifying, Denying or Placing in Moratorium and Banishing Members*, Original Pechenga Blog (Sept. 16, 2015), https://www.originalpechanga.com/2015/08/tribal-governments-violating-rights.html [https://perma.cc/VE2D-VPCL]; *see also* Hilleary, *supra* note 8 (describing an interview with Rick Cuevas).

78. *See* Federally Recognized Tribes, *supra* note 1, at 944-48 (listing all federally recognized Indian tribes); Galanda, *supra* note 8 (explaining the expansion of disenrollment practices); Wilkins & Wilkins, *supra* note 6, at 67-71 (listing communities that are engaging in disenrollment).

79. Galanda, *supra* note 8.

80. David Wilkins, *Two Possible Paths Forward for Native Disenrollees and the Federal Government?*, ICT News (Sept. 12, 2018), https://ictnews.org/archive/two-possible-paths-forward-for-native-disenrollees-and-the-federal-government [https://perma.cc/W464-7XMC].

81. Galanda & Dreveskracht, *supra* note 8, at 431-32 (citing Joanne Barker, Native Acts: Law, Recognition, and Cultural Authenticity 163 (2011)).

od.[82] At least twenty-eight of California's 110 tribes have engaged in disenrollment.[83] Several of these tribes have disenrolled more than twenty percent of their members.[84]

B. Potential Motivations for Disenrollments

Why has disenrollment spread across Indian Country in recent years? One answer is that the United States's policy of Indian self-determination and its related recognition of tribal sovereignty enables tribes to take actions independently that were previously subject to federal oversight.[85] *Martinez*'s holding that ICRA does not "impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers"[86] effectively shut the doors of federal courts to Native Americans who felt that their disenrollment violated their civil rights.[87] Following *Martinez*, the tribal power to disenroll is unrestricted by federal interference.

However, disenrollment is only partially explained by increased recognition of tribal sovereignty over the past several decades. While the United States's recognition of tribes' "right to define [their] own membership" may enable tribes to disenroll members, it does not force them to do so.[88] A more complete answer must take two perspectives into account—that of tribal officials who are

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82. Nat'l Ctr. for Educ. Stat., U.S. Dep't of Educ., NCES 2008-084, Status and Trends in the Education of American Indians and Alaska Natives: 2008, at 11 tbl.1.1c, https://nces.ed.gov/pubs2008/2008084.pdf [https://perma.cc/JG84-PEBV].

83. *See* Wilkins & Wilkins, *supra* note 6, at 75 tbl.5.3 (listing twenty-eight tribes located in California that are engaging in disenrollment); Federally Recognized Tribes, *supra* note 1, at 944-47 (listing tribes located in California).

84. *See, e.g.*, Wilkins & Wilkins, *supra* note 6, at 95-96 (stating that the Picayune Rancheria of Chukchansi Indians has "formally terminated well over one half of its population over the past two dozen years"); Reitman, *supra* note 47, at 819 (providing a table of disenrollments by California—and one New Mexico—gaming tribes).

85. *See* Washburn, *supra* note 47, at 226 ("Today, [Bureau of Indian Affairs (BIA)] officials are more reluctant to interfere in internal tribal decisions . . . ."); *see also* Allery v. Swimmer, 779 F. Supp. 126, 130-31 (D.N.D. 1991) (holding that BIA lacked authority to correct the blood quanta of enrollees on the 1940 tribal roll without tribal approval).

86. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 (1978).

87. *See* Washburn, *supra* note 47, at 227 ("Following the clear Supreme Court precedent in *Martinez*, federal courts have respected the norm of federal noninterference in tribal membership decisions." (citing Aguayo v. Jewell, 827 F.3d 1213, 1229 (9th Cir. 2016))).

88. *Martinez*, 436 U.S. at 72 n.32 (citing Roff v. Burney, 168 U.S. 218, 222-23 (1897); Cherokee Intermarriage Cases, 203 U.S. 76, 94-96 (1906)).

disenrolling members and that of disenrollees and their advocates.[89] While tribal officials "assert that they have legitimate reasons to purge membership rolls," disenrollees "assert that these official rationales . . . mask[] . . . the real reasons for disenrollment."[90] The following discussion focuses on the potential motivations for disenrollments as discussed by critics of the practice, leaving evaluation of the justifications provided by tribes for Part IV.

Many scholars and journalists within Indian Country point to gaming as the primary motivation for disenrollment.[91] This explanation is intuitively plausible. The Indian Gaming Regulatory Act (IGRA) of 1988 permits tribes to distribute part of the net revenues from their Class II and III gaming operations[92] directly to tribal members as per capita payments, subject to federal approval in the form of revenue-allocation plans.[93] Therefore, in tribes with successful gaming operations and federally approved revenue-allocation plans, tribal members have not only a civic interest in the success of their community but also a financial interest. This interest might cause some members to believe that per capita payments are meant to benefit them *as individuals* rather than "provide for the *general* welfare."[94] Simple math explains why disenrollment would be attractive to tribal members with such perspectives: if a tribe's net revenue from gaming operations is stable, then shrinking membership results in greater income for those that remain.

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89. *See* WILKINS & WILKINS, *supra* note 6, at 9.

90. *Id.*

91. *See, e.g.*, Gabriel S. Galanda, *The Reluctant Watchdog: How National Indian Gaming Commission Inaction Helps Tribes Disenroll Members for Profit, and Jeopardizes Indian Gaming as We Know It*, 20 GAMING L. REV. & ECON. 147, 147-48 (2016) ("Now, an increasing number of those tribes have been jettisoning their members . . . as a means to concentrate gaming revenue wealth among the remaining members." (footnote omitted)); Broadman & Miller, *supra* note 15; Hilleary, *supra* note 8; Reitman, *supra* note 47, at 849.

92. The Indian Gaming Regulatory Act (IGRA) of 1988 divides gaming into three classes subject to increasing levels of regulation. *See generally* 25 U.S.C. § 2710 (2018) (imposing increasing levels of regulation, from Class I, which is "within the exclusive jurisdiction of the Indian tribes," to Class III, subject to the most demanding regulations). Class I gaming is comprised of "social games solely for prizes of minimal value or traditional forms of Indian gaming." *Id.* § 2703(6). Class II gaming includes bingo and nonbanked card games. *Id.* § 2703(7). Class III gaming includes "all forms of gaming that are not class I gaming or class II gaming," most notably banked card games and standard slot machines. *Id.* § 2703(8).

93. *Id.* § 2710(b)(3); *see also* 25 C.F.R. § 290.11 (2024) (requiring an "approved tribal revenue allocation plan" before tribes may "distribute per capita payments from net gaming revenues derived from either Class II or Class III gaming"); 25 C.F.R. § 290.12 (2024) (defining and explaining the purpose and components of a tribal revenue-allocation plan).

94. 25 U.S.C. § 2710(b)(2)(B)(ii) (2018) (emphasis added).

The belief that the greed of some tribal members drives disenrollments is common among disenrollees[95] and supported by correlations between gaming and disenrollment.[96] In an interview for a study that examined the impacts of three tribes' disenrollments, one disenrollee stated that "[g]aming has brought in the dominant culture's disease of greed."[97] Another suggested that "[v]isions of more money blinded some with greed and envy."[98] Basic statistical analysis supports these allegations. Although only about forty-four percent of federally recognized tribes have gaming operations,[99] approximately eighty-four percent of tribes engaging in disenrollment have casinos, according to Wilkins and Wilkins.[100] Tribes that give members per capita payments make up less than a quarter of all federally recognized tribes[101] but more than half of those tribes that have disenrolled members.[102] Disenrollment is therefore clearly associated with the existence of gaming operations and per capita payments. Although this correlation does not prove causation, a connection between gaming success and disenrollment seems likely in the absence of a published empirical study on the subject.

The efforts of private actors to profit from tribal wealth may also contribute to disenrollments. Some disenrollees have linked their losses of membership to conflicts with casino-management companies.[103] Disenrollment has also creat-

95. *See* Janice R. McRae, Identity Delegitimization and Eco-Enterprise: A Comparative Study of the Process of Disenrollment in Native American Communities 225, 227, 241 (Apr. 11, 2010) (Ph.D. dissertation, George Mason University) (ProQuest).

96. *See* WILKINS & WILKINS, *supra* note 6, at 68 tbl.5.1 (providing a list of fifty-eight tribal communities engaged in disenrollment, forty-nine of which have gaming operations).

97. McRae, *supra* note 95, at 223.

98. *Id.* at 225.

99. *See Tribal Gaming: A Vital Sector Supporting Tribes and Local Communities*, AM. GAMING ASS'N 1 (2022), https://www.americangaming.org/wp-content/uploads/2022/05/Tribal-Gaming-One-Pager.pdf [https://perma.cc/MAZ7-9M9E] (stating that 250 tribes have gaming operations); Federally Recognized Tribes, *supra* note 1, at 944 (stating that there are 574 federally recognized tribes in the United States).

100. *See* WILKINS & WILKINS, *supra* note 6, at 67, 68 tbl.5.1 (providing a list of fifty-eight tribal communities engaged in disenrollment, forty-nine of which have gaming operations). Note that Wilkins and Wilkins's list includes one tribe that may or may not have had gaming operations as of 2017. *Id.* at 70 tbl.5.1.

101. *See* Galanda, *supra* note 91, at 147 (stating that 130 tribes make per capita gaming payments); Federally Recognized Tribes, *supra* note 1, at 944 (stating that there are 574 federally recognized tribes in the United States).

102. *See* WILKINS & WILKINS, *supra* note 6, at 67, 68 tbl.5.1 (providing a list of fifty-eight tribal communities engaged in disenrollment, thirty of which make per capita gaming payments).

103. *See* WILKINS & WILKINS, *supra* note 6, at 97.

ed its own industry.[104] Organizations profit from hosting conferences that teach tribal officials how to establish a challenge-proof disenrollment process or by conducting expensive enrollment audits.[105] After disenrolling members, many tribes must rely on outside counsel for years to defend their actions in federal and tribal courts.[106] While the National Native American Bar Association has declared that lawyers should not "advocate for or contribute to [disenrollment] . . . without equal protection at law or due process of law or an effective remedy for the violation of such rights,"[107] some lawyers seem to specialize in facilitating tribal disenrollments.[108]

Neither internal nor external profit motivations explain why disenrollments occur in tribes without significant wealth or income. At least eight tribes without gaming operations have disenrolled members.[109] There are many potential explanations for why these tribes disenroll members in the absence of clear monetary incentives. The possibility of future gaming revenues might drive factions to eliminate their opponents proactively in the hopes of maximizing potential gains. The removal of some tribal members could also further other tribal members' "political power plays" or "personal vendettas."[110] Racial un-

104. *See* Broadman & Miller, *supra* note 15.

105. *Id.*

106. *See, e.g.*, Williams v. Gover, 490 F.3d 785, 788 (9th Cir. 2007); Timbisha Shoshone Tribe v. Kennedy, 714 F. Supp. 2d 1064, 1066 (E.D. Cal. 2010); John v. Garcia, No. C 16-02368, 2018 WL 1569760, at *1 (N.D. Cal. Mar. 31, 2018); Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 ILR 6047, 6047-48 (No. 04-CA-1017) (Saginaw Chippewa Indian Tribe of Michigan App. Ct. Jan. 7, 2005).

107. *NNABA Resolution*, *supra* note 14, at 2.

108. *132 Elem Pomo Indians, Comprising 100 Percent of Elem Indian Colony Residents, Face Banishment and Disenrollment*, Indian Country Today (Sept. 13, 2018) [hereinafter *132 Elem Pomo Indians*], https://ictnews.org/archive/132-elem-pomo-indians-comprising-100-percent-of-elem-indian-colony-residents-face-banishment-and-disenrollment [https://perma.cc/2LG9-EK45] ("Mr. Marston's law firm assists tribes seeking to disenroll their members. He previously assisted in the disenrollment of Robinson Rancheria and the Hopland Band of Pomo Indians' tribal members, amongst other tribes."); *see also* Fernandez v. Marston, No. A149995, 2018 WL 5307805, at *1 (Cal. Ct. App. Oct. 26, 2018) (describing a lawsuit against two attorneys who were hired by a tribal faction to take control over the tribe's governance).

109. *See* Wilkins & Wilkins, *supra* note 6, at 67, 68 tbl.5.1.

110. *Id.* at 9; *see also* McRae, *supra* note 95, at 229 (providing narrative samples from tribe members who experienced disenrollment as related to "in-fighting for power and control of tribal leadership"); Lilly Ana Fowler, *The Nooksack Tribe in Washington Is Attempting to Evict People from Tribal Homes*, NPR (Dec. 11, 2022, 7:54 AM), https://www.npr.org/2022/12/11/1142119438/the-nooksack-tribe-in-washington-is-attempting-to-evict-people-from-tribal-homes [https://perma.cc/75SP-ZVHB] (describing the Nooksack Tribe's attempts to evict members as motivated by "family squabbles and racism").

derstandings of tribal identity may also lead to efforts to disenroll those perceived to be non-Indian.[111]

Critics of disenrollment correctly emphasize that many of the most obvious potential motivations for disenrollment are unrelated to tribal understandings of belonging or good governance.[112] While case-specific information is necessary to ascribe bad motivations to any *individual* tribes engaging in disenrollment, in general, tribal disenrollments for reasons such as greed or infighting are ill-advised. The tribal right to define membership may enable such disenrollments, but it does not legitimize them, particularly given the negative impacts of disenrollment described in the next Section.

C. Impacts of Disenrollment

Disenrollment is a critical issue for Indian Country not only because of its immense scale, but also because of its tremendous negative impact on Native American peoples and communities. Disenrollment literature and news articles indicate that tribal officials cause incredible damage when they attempt to remove members.[113] Targeted members, and particularly those actually removed, are most hurt by disenrollment efforts because they are stripped of their identity and may lose access to financial benefits and government services.[114] But what is perhaps less obvious is that disenrollment efforts also hurt tribes. When tribal officials attempt to remove members, they risk negative media attention, divert resources away from business operations, and run the risk of worsening existing internal conflicts.[115] The following Section provides a brief survey of many of the reasons why tribal officials should think twice before disenrolling members, even if they are vested with such authority.

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111. WILKINS & WILKINS, *supra* note 6, at 9; *see also* McRae, *supra* note 95, at 228-30 (providing statements from tribe members expressing racial motives for disenrollment); Fowler, *supra* note 110 (describing racial discrimination as one of the reasons for disenrollment).

112. *See, e.g.*, Galanda & Dreveskracht, *supra* note 8, at 385 n.5, 388.

113. *Id.* at 391; Marquez, *supra* note 10, at 207; Hilleary, *supra* note 8; Dunaway, *supra* note 13.

114. Marquez, *supra* note 10, at 207; *Disenrollment Background Papers and Resolutions*, *supra* note 12; Hilleary, *supra* note 8.

115. Dunaway, *supra* note 13; Broadman & Miller, *supra* note 15; WILKINS & WILKINS, *supra* note 6, at 93-95.

1. Impacts on Disenrollees

Native Americans are severely harmed when their tribal governments strip them of membership. Disenrollment literature is replete with claims of the negative impacts on targeted individuals.[116] Deron Marquez, a former chairman of the San Manuel Band of Mission Indians, described disenrollments as "traumatic events" that "have a high probability of imperilment."[117] At least one study seems to support this conclusion.[118] Furthermore, the Association of American Indian Physicians, in its resolution opposing disenrollment, stated that "cultural identity loss leads to grief, depression, anxiety and more serious mental health problems."[119] These issues in turn "lead to longer term health care issues and increases [in] morbidity and mortality."[120]

Beyond the personal and health impacts of disenrollment, former tribal members often lose access to significant benefits and social services.[121] Some tribes offer their members a variety of services, including health care, scholarships, hiring preference, and housing.[122] When tribal governments disenroll members, they can cut people off from services long relied upon.[123] For example, two United Nations Special Rapporteurs, who "are independent human rights experts with mandates to report and advise on human rights,"[124] recently condemned the Nooksack Indian Tribe for "the planned and imminent forced evictions of 63" Nooksack disenrollees from homes constructed by the Tribe.[125] At least one targeted family has lived in tribal housing for more than a decade,

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116. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 7; Sunray, *supra* note 15; Hilleary, *supra* note 8.

117. Marquez, *supra* note 10, at 181, 215.

118. McRae, *supra* note 95, at 217.

119. *Disenrollment Background Papers and Resolution*, *supra* note 12.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Special Procedures of the Human Rights Council*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, https://www.ohchr.org/en/special-procedures-human-rights-council [https://perma.cc/CN6U-YKFC].

125. Press Release, Hum. Rts. Off. of the High Comm'r, USA, Evictions of Indigenous Nooksack Must Stop–UN Experts (Feb. 3, 2022), https://www.ohchr.org/en/press-releases/2022/02/usa-evictions-indigenous-nooksack-must-stop-un-experts [https://perma.cc/FT6T-BP3Z].

some are "80 and older," and many "do not know where they will go."[126] In 1964, legal scholar Charles A. Reich discussed the need for procedural protections for the recipients of government largess in *The New Property*.[127] Today, however, many tribes deny members such safeguards in the process of removing them from their communities.

Disenrollment literature also emphasizes the financial losses faced by many of those stripped of their tribal membership.[128] In tribes that distribute per capita payments, disenrollment denies targeted individuals an expected source of income.[129] A 2017 *Voice of America* article on disenrollment explained how one family that was disenrolled from a California tribe with significant gaming revenue lost out on "more than $2.5 million per person in per capita payments . . . in the 11 years since they were disenrolled."[130] Although wealth of this scale is highly atypical in Indian Country,[131] this story underscores how much money can be at stake during membership disputes in certain communities.

2. *Impacts on Tribes*

Tribes considering or currently engaging in disenrollment should take note of the practice's harmful impacts on *tribes themselves* even if they are unconcerned with disenrollment's impact on targeted individuals. Disenrollment can undermine good tribal governance by promoting negative external perspectives of the tribe, damaging tribal businesses, and furthering internal political and cultural disagreement.[132] Any perceived or real benefits of disenrollment in the

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126. Mike Baker, *A Tribe's Bitter Purge Brings an Unusual Request: Federal Intervention*, N.Y. TIMES (Jan. 2, 2022), https://www.nytimes.com/2022/01/02/us/nooksack-306-evictions-tribal-sovereignty.html [https://perma.cc/74BW-ZA5Z].

127. Charles A. Reich, *The New Property*, 73 YALE L.J. 733, 783 (1964).

128. *See, e.g.*, Hilleary, *supra* note 8; Marquez, *supra* note 10, at 207; Galanda, *supra* note 91, at 162.

129. *See, e.g.*, Galanda, *supra* note 91, at 162; Hilleary, *supra* note 8; Marc Cooper, *Tribal Flush: Pechanga People "Disenrolled" En Masse*, LA WKLY. (Jan. 2, 2008), https://www.laweekly.com/tribal-flush-pechanga-people-disenrolled-en-masse [https://perma.cc/TRY5-A9RA].

130. Hilleary, *supra* note 8.

131. *See* Randall K.Q. Akee, Katherine A. Spilde & Jonathan B. Taylor, *The Indian Gaming Regulatory Act and Its Effects on American Indian Economic Development*, 29 J. ECON. PERSPS. 185, 195 (2015).

132. *See, e.g.*, Baker, *supra* note 126 ("[D]isenrolled members believe the effort to oust them is an extension of [a] long-simmering [political] rivalry."); Dunaway, *supra* note 13 (describing rising "shame upon tribes that engage in the practice [of disenrollment]"); Broadman &

narrow sense may therefore be quickly undone due to this practice's broader impacts.[133]

Media coverage of disenrollments is generally unfavorable to tribes.[134] Reporters emphasize the struggles faced by former members and rarely discuss any official rationales for their disenrollment, perhaps because tribal governments can be reluctant to share their thoughts on the matter.[135] The *New York Times* went so far as to describe the Nooksack Indian Tribe's attempt to disenroll 306 tribal members as a "[b]itter [p]urge."[136] Such negative characterizations of tribal-membership disputes likely contribute to paternalistic beliefs amongst the general public that tribes are unable to govern themselves.

In addition to negative publicity, disenrollments can undercut the success of tribal business ventures. Members targeted for disenrollment may play key roles in tribal businesses.[137] As part of its disenrollment campaign, the Nooksack Indian Tribe "fired dozens of [the] disenrollees who, over the last decade, had helped build the Tribe's two casinos and keep Nooksack gaming operations in the black."[138] Several months later, one of the tribal casinos faced closure because of $20 million in unpaid debt.[139]

The Picayune Rancheria of the Chukchansi Indians also provides an example of how membership controversies can negatively affect the bottom line.[140] In 2014, the National Indian Gaming Commission closed the Tribe's casino for fourteen months due to intense tribal infighting, which posed a "real and immediate threat to human health and well-being."[141] The Tribe was then forced to seek financing with "onerous terms . . . to provide capital to reopen the casino."[142] The COVID-19 pandemic then forced the casino to shutter again for several months, temporarily cutting the Tribe's per capita payments to its

Miller, *supra* note 15 ("[P]olitical strife caused by disenrollment controversies can eviscerate tribal economies . . . .").

133. *See, e.g.*, Broadman & Miller, *supra* note 15.

134. *See, e.g.*, Baker, *supra* note 126; Hilleary, *supra* note 8; Dunaway, *supra* note 13.

135. *See, e.g.*, Hilleary, *supra* note 8; Dunaway, *supra* note 13; Baker, *supra* note 126.

136. Baker, *supra* note 126.

137. *See, e.g.*, Broadman & Miller, *supra* note 15.

138. *Id.*

139. *Id.*

140. *Id.*

141. WILKINS & WILKINS, *supra* note 6, at 94.

142. Rob Capriccioso, *COMEBACK WATCH: Picayune Chukchansi Tribe Erases Mountain of Debt, Shares Leadership Lessons*, TRIBAL BUS. NEWS (June 14, 2021), https://tribalbusinessnews.com/sections/sovereignty/13525-comeback-watch-picayune-chukchansi-tribe-erases-mountain-of-debt-shares-leadership-lessons [https://perma.cc/H8NK-ZYNL].

members.[143] The Tribe eventually reached an agreement with its lender to restructure its debt during a period of relative political stability.[144] The year after being commended in *Tribal Business News* for seeking to correct past wrongs, however, the Tribe restarted its efforts to remove members, raising questions of reliability.[145]

Losses by tribal businesses are particularly damaging to tribes because these losses have a direct impact on tribal governments and members.[146] Many tribes rely on their businesses to fund the governmental services that they provide to their members.[147] As was seen during the height of the COVID-19 pandemic, the closure of an Indian casino operation can therefore result in the suspension of many key tribal programs.[148]

Tribes that disenroll members invite internal strife. Tribal officials might imagine that disenrollment is a simple process involving an investigation, a decision, a notification, and perhaps an appeal over a matter of weeks or months. In practice, however, removing tribal members is a complex process. Members facing disenrollment often seek federal or tribal judicial relief,[149] and litigation can last years.[150] In the meantime, tribal elections continue to occur, creating

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143. *Id.*

144. *Id.*

145. *Compare id.* (describing the tribe as "[a] sovereign example for others"), *with* Kohlruss, *supra* note 2 ("The Tribal Council rules supreme at Chukchansi, without checks or balances to its power.").

146. *See* Simon Romero & Jack Healy, *Tribal Nations Face Most Severe Crisis in Decades as the Coronavirus Closes Casinos*, N.Y. TIMES (May 13, 2020), https://www.nytimes.com/2020/05/11/us/coronavirus-native-americans-indian-country.html [https://perma.cc/6R9U-NV2T].

147. *See id.* Note that tribes can levy taxes, but this authority is undercut by significant legal and practical limitations. *Compare Frequently Asked Questions*, NATIVE AM. RTS. FUND, https://narf.org/frequently-asked-questions [https://perma.cc/Z894-TG4C] ("As sovereign entities, tribal governments have the power to levy taxes on reservation lands."), *with Common Misunderstandings About Tax Issues in Indian Country*, OFF. NAVAJO TAX COMM'N, https://tax.navajo-nsn.gov/Common_misunderstandings_about_taxes.htm [https://perma.cc/K6NS-MAME] ("Unlike state governments, tribal governments are generally not in a position to levy property or income taxes because of the unique nature of land tenure in Indian Country, fragile economies, and jurisdictional restraints.").

148. *See* Romero & Healy, *supra* note 146.

149. *See, e.g.*, Williams v. Gover, 490 F.3d 785, 788 (9th Cir. 2007); Timbisha Shoshone Tribe v. Kennedy, 714 F. Supp. 2d 1064, 1066 (E.D. Cal. 2010); John v. Garcia, No. C 16-02368, 2018 WL 1569760, at *1-2 (N.D. Cal. Mar. 31, 2018); Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 ILR 6047, 6047-48 (No. 04-CA-1017) (Saginaw Chippewa Indian Tribe of Michigan App. Ct. Jan. 7, 2005).

150. *See, e.g.*, *Williams*, 490 F.3d at 788; *Kennedy*, 714 F. Supp. 2d at 1066; *John*, 2018 WL 1569760, at *2, 9; *Snowden*, 32 ILR at 6047-48.

questions as to who is eligible to vote and sowing the seeds for contested results and factionalism.[151] The first disenrollment is frequently not the last, and supporters of one disenrollment effort could find themselves targets of the next one.[152] Furthermore, disenrollments can target former tribal leaders, sapping tribes of institutional knowledge.[153]

Given that tribal-disenrollment efforts can theoretically target any community member, disenrollment may also encourage members to self-censor in a manner detrimental to political participation.[154] Anecdotal evidence suggests that tribal members are often afraid to speak out against unjust disenrollments for fear that they might be next. One individual affiliated with the Robinson Rancheria said that the Tribe's disenrollments caused members to be "worried that they would be targeted if they talked to [opponents of the tribal council]" and that "[e]veryone was afraid."[155] Their fear may have been justified. In *Gladstone v. Kelly*, forty members of the Nooksack Indian Tribe alleged that they were disenrolled in retaliation for supporting the people that the Tribal

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151. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 87-89, 92-98; Kohlruss, *supra* note 2.

152. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 87-89, 91-95; Amaro, *supra* note 2.

153. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 92 ("Chairwoman Daisy Liedkie [of the Chukchansi] in June [1999] is forced out of office. Two months later she and two hundred other members are formally disenrolled."); *Snowden*, 32 ILR at 6048 (stating that those facing disenrollment include "two members of a prior Tribal Council, as well as a former Chief Judge of the Tribal Court").

154. The idea that the threat of exclusion from a political community may lead to self-censorship is not unique to Indian Country; the United States has restricted federal efforts to revoke citizenship based on a similar concern. In 1944, the Supreme Court cautioned that "we must be equally watchful that citizenship once bestowed should not be in jeopardy nor in fear of exercising its American freedom through a too easy finding that citizenship was disloyally acquired." Baumgartner v. United States, 322 U.S. 665, 676 (1944). This concern has recently reemerged in American legal scholarship because of the first Trump Administration's efforts to denaturalize more citizens. *See* Laura Bingham, *Unmaking Americans: Insecure Citizenship in the United States*, OPEN SOC'Y JUST. INITIATIVE 42-43 (Sept. 2019), https://www.justiceinitiative.org/uploads/e05c542e-0db4-40cc-a3ed-2d73abcfd37f/unmaking-americans-insecure-citizenship-in-the-united-states-report-20190916.pdf [https://perma.cc/JD9H-TJTK]. According to a report by the Open Society Justice Initiative, these denaturalizations have caused "[n]aturalized Americans and wider immigrant communities [to] suffer a sense of subordination, social paralysis, and surveillance" which "reduc[es] the political participation—and hence political power—of immigrants, including naturalized citizens." *Id.* at 74. Denaturalization efforts do not need to target everyone to have a chilling effect on the behavior of naturalized citizens; "[w]hen the government pursues cases that are neither clear-cut nor morally reprehensible, it is easy for naturalized citizens to identify with denaturalization defendants." Cassandra Burke Robertson & Irina D. Manta, *(Un)Civil Denaturalization*, 94 N.Y.U. L. REV. 402, 467 (2019).

155. Dunaway, *supra* note 13.

Council had originally targeted for removal.[156] As these examples demonstrate, tribal members cannot be secure in their status as part of the community in the absence of established processes and explicit limitations on tribal officials' power to disenroll.

Disenrollment can also damage tribes' rule of law. Federal and tribal court opinions regarding disenrollments often suggest that tribal councils and enrollment committees act either in the absence of or in disregard of existing processes.[157] These actions can pit tribal governments against their own legal counsel[158] and even judges,[159] while proponents of disenrollment instead rely on a financially motivated outside industry to enforce their will.[160]

John v. Garcia reveals the chaos and confusion that disenrollments can create. This 2018 federal district-court case centered around the aftermath of a disputed tribal election.[161] The Elem Indian Colony of Pomo Indians's membership ordinances limited disenrollment to cases of "last resort" in which banishment[162] was "inadequate to protect the members, resources, or sovereignty of Elem from the behavior of the accused Tribal member under the specific cir-

156. WILKINS & WILKINS, *supra* note 6, at 88.

157. *See, e.g.*, Williams v. Gover, 490 F.3d 785, 788 (9th Cir. 2007); Timbisha Shoshone Tribe v. Kennedy, 714 F. Supp. 2d 1064, 1066 (E.D. Cal. 2010); John v. Garcia, No. C 16-02368, 2018 WL 1569760, at *2-4 (N.D. Cal. Mar. 31, 2018); *Snowden*, 32 ILR at 6048.

158. *132 Elem Pomo Indians*, *supra* note 108 (describing how the "Elem Colony Executive Committee's longtime general counsel . . . publicly stated that he withdrew his representation" in response to a tribal-disenrollment effort); Kohlruss, *supra* note 2 (describing how the Chukchansi's "former general counsel . . . affirmed that" certain members facing disenrollment were "eligible for membership").

159. WILKINS & WILKINS, *supra* note 6, at 88.

160. *See* Broadman & Miller, *supra* note 15 ("[D]isenrollment seems to attract entrepreneurs of chaos: investors, lawyers, and consultants willing to do business with regimes that terminate their own members for profit."); David Wilkins, *Auditing Tribal Sovereignty*, INDIAN COUNTRY TODAY (Sept. 12, 2018), https://ictnews.org/archive/auditing-tribal-sovereignty [https://perma.cc/UPE2-3Q48] ("[O]utside audits can be time consuming and expensive. For example, the Falmouth Institute, known for its training programs, recently conducted a nearly eight-year long enrollment audit for the Eastern Band of Cherokee Indians at the cost of $900,000.").

161. *John*, 2018 WL 1569760, at *1.

162. *Id.* at *2. "[B]anishment" is the "physical expulsion [of an individual] from tribal lands." WILKINS & WILKINS, *supra* note 6, at 4. Banishment, which "is an ancient concept that has been utilized by societies and states throughout the world," is typically imposed as a punishment. *Id.* at 5. Banishment is distinct from disenrollment, although the two practices are sometimes closely linked, and a tribal member can be banished without being disenrolled, and vice versa. *Id.* at 4, 68-74.

cumstances of that person's case."[163] Nevertheless, the new Tribal Council accused sixty-one adult tribal members from a rival electoral faction of violating "the laws of Elem" and threatened them with both banishment and disenrollment.[164] This threat would also impact seventy-one children and extended family members of the accused, bringing the total number of tribal members facing disenrollment to 132.[165] Of particular note is that these 132 Pomo Indians represented every tribal member who lived on the Tribe's reservation, the Elem Indian Colony.[166]

The parties went on to trade maneuvers and responses. The Tribe's general counsel withdrew his representation.[167] The trial judge noted that "the parties disagreed on numerous key points of fact."[168] In its third motion to dismiss, which was ultimately granted, the Tribal Council claimed that "[n]o Elem member has been disenrolled" and promised that "no process is underway to disenroll any member."[169] But this promise seems a flimsy guarantee of continued membership given the apparent lack of process found in the original disenrollment effort.

Tribes continue to disenroll members[170] despite criticism by legal scholars and mass media.[171] Some in Indian Country have described disenrollment as an "epidemic."[172] This description accurately conveys the pervasiveness of the

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163. *John*, 2018 WL 1569760, at *1.

164. *Id.*; *132 Elem Pomo Indians*, *supra* note 108.

165. *John*, 2018 WL 1569760, at *1.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.* at *3.

170. *See, e.g.*, Kohlruss, *supra* note 2 ("Chukchansi has been plagued by internal strife for decades, with its leaders kicking out hundreds of members in a slew of disenrollments over the years . . . .").

171. *See generally* WILKINS & WILKINS, *supra* note 6 (questioning the authority of tribal governments to engage in disenrollment and banishment); Galanda & Dreveskracht, *supra* note 8 (declaring disenrollment antithetical to both the histories and traditions of Native American peoples and continued tribal sovereignty); Marquez, *supra* note 10 (classifying disenrollment as a traumatic event); Washburn, *supra* note 44 (stating that the United States should reserve the right to exert diplomatic consequences on tribes engaging in disenrollment); Hilleary, *supra* note 8 (describing disenrollment as an "epidemic" and explaining that a majority of disenrollment cases "are about money"); Dunaway, *supra* note 13 (explaining how disenrollment is often unjustified and places people in legal limbo).

172. *See, e.g.*, Galanda & Dreveskracht, *supra* note 8, at 431-32; Tabitha Minke, Note, Christman v. Confederated Tribes of Grand Ronde*: A Chapter in the Disenrollment Epidemic*, 41 AM. INDIAN L. REV. 201 (2016); Hilleary, *supra* note 8.

practice and the threat it poses if left unconstrained. Some have warned that the disenrollment epidemic, which has spread under a guise of tribal sovereignty, threatens to undercut self-determination within Indian Country by inciting federal action to limit tribes' authority to determine their memberships.[173] Others have explicitly called for such an intervention.[174] Both sides of this debate, however, agree that a solution is needed.

D. Proposed Solutions to the Disenrollment Epidemic

Opponents of disenrollments have proposed a variety of methods to protect tribal members from the threat of future removals.[175] These solutions can be sorted into three categories: (1) federal action, (2) appeals to international law, and (3) tribal reform. Each has its own merits and limitations. While federal action might end the problem of disenrollment, many in Indian Country argue it would also threaten tribal sovereignty.[176] International law suggests that the tribal power to disenroll should not be unbounded, but tribes cannot easily be held accountable in international fora.[177] The most amenable and effective cure to the disenrollment epidemic therefore seems to be tribal reform. However, many of the current reform proposals lack detail as to both why tribes should change their approach to disenrollment and how tribes can effectively address this practice.

The proposed solutions presented in this Section cannot fully address tribal disenrollment for a variety of reasons, as will be discussed. This Note thus argues that tribes themselves should choose to apply norms derived from international approaches to citizenship revocation. This new solution is necessary because of current approaches' limitations, whether they be incompatibility with tribal sovereignty, impracticability, or insufficient grounding.

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173. *See, e.g.*, Rob Roy Smith, *Enhancing Tribal Sovereignty by Protecting Indian Civil Rights: A Win-Win for Indian Tribes and Tribal Members*, 2012 AM. INDIAN L.J. 41, 53; Washburn, *supra* note 44, at 228; Norman et al., *supra* note 49, at 15.

174. Gabriel S. Galanda, *Disenrollment IS a Federal Action*, INDIAN COUNTRY TODAY (Sept. 12, 2018), https://ictnews.org/archive/disenrollment-is-a-federal-action [https://perma.cc/WJ3K-6FH6]; Reitman, *supra* note 47, at 849.

175. *See, e.g.*, Galanda & Dreveskracht, *supra* note 8, at 450-72; Washburn, *supra* note 44, at 229; Wenona T. Singel, *Indian Tribes and Human Rights Accountability*, 49 SAN DIEGO L. REV. 567, 611 (2012); Reitman, *supra* note 47, at 798-99.

176. *See, e.g.*, Washburn, *supra* note 47, at 214-15; Norman et al., *supra* note 49, at 12-15.

177. Galanda & Dreveskracht, *supra* note 8, at 448-50; Singel, *supra* note 175, at 590.

1. Federal Action

This Note uses the term "federal action" to broadly describe any measures taken by the United States to address disenrollment. Since *Martinez*, the federal government has generally sought to avoid involvement in disenrollment controversies on tribal-sovereignty grounds.[178] In recent years, however, some scholars have argued that federal action may be necessary to address the disenrollment epidemic.[179] Federal action could take one or more of three forms: (a) agency intervention, (b) legislative remedies, or (c) judicial relief.

a. Agency Intervention

In the current Self-Determination Era, the Bureau of Indian Affairs (BIA) and other federal agencies dealing with Indian Country have been hesitant to intervene in tribal-membership disputes.[180] But in some disenrollments, federal agencies may have a role to play under current federal law. For example, the Code of Federal Regulations indicates that some tribal constitutions allow individuals to appeal "adverse enrollment actions by tribal committees" to the Secretary of the Interior.[181] These actions include "[t]he rejection of an application for enrollment or the disenrollment of a tribal member."[182] Additionally, Wilkins and Wilkins have suggested that disenrollees with a blood quantum of one-half or greater might invoke the second prong of the definition of "Indian" in the Indian Reorganization Act of 1934, thereby forcing BIA to acknowledge them as "Indian" even if that status would not require their tribes to restore membership.[183]

While agency intervention might provide some disenrollees a measure of recourse, it is unlikely to solve the disenrollment epidemic. In the past few decades, the federal government's tribal trust responsibility "has come to include a

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178. *See* Washburn, *supra* note 47, at 227-28.

179. *See, e.g.*, Galanda & Dreveskracht, *supra* note 8, at 453-61 (discussing federal litigation, BIA oversight, and limited amendment of ICRA "to allow for review of tribal court disenrollment litigation" as potential, though fraught, solutions to the disenrollment epidemic and proposing a federally funded Truth and Reconciliation Commission as another possible solution).

180. *See* Washburn, *supra* note 47, at 225-27; Galanda, *supra* note 91, at 148; Galanda, *supra* note 174.

181. 25 C.F.R. § 62.2 (2024).

182. *Id.* § 62.4.

183. WILKINS & WILKINS, *supra* note 6, at 162; *see* 25 C.F.R. § 5.1 (2024).

new norm against federal interference with tribal decisions."[184] Moreover, this presumption generally benefits Indian Country, even if it can be harmful in specific instances. This is because the freedom to make independent choices, even those "that other sovereigns might find offensive," is central to sovereignty.[185] According to Kevin K. Washburn, a former Assistant Secretary for Indian Affairs, federal noninterference "is key to reversing the old paternalistic approach to the trust responsibility, in which a federal executive branch official or a federal court could overrule a tribal government for its own good."[186] Reverting to past paternalism cannot solve the disenrollment epidemic while keeping tribal sovereignty intact. This tension calls for an internal solution.

b. Legislative Remedies

The Supreme Court has consistently held "that Congress has plenary authority to legislate for the Indian tribes in all matters."[187] Congress could thus always enact a statute limiting or eliminating tribes' inherent authority to "define [their] own membership."[188] In 2006, a law review note called for Congress to "abrogate, at least in part, tribal citizenship power . . . endeavoring to leave primary responsibility for citizenship decisions with the tribe," but also "establish some form of potent remedial mechanism to prevent abuse."[189] In 2007, a United States Representative introduced a bill to the House to "sever [the] United States' government relations with the Cherokee Nation of Oklahoma until such time as the Cherokee Nation of Oklahoma restores full tribal citizenship to the Cherokee Freedmen,"[190] demonstrating that at least some on

184. Washburn, *supra* note 47, at 215.

185. *Id.* at 228; s*ee State Sovereignty*, BLACK'S LAW DICTIONARY (11th ed. 2019).

186. Washburn, *supra* note 47, at 215.

187. United States. v. Wheeler, 435 U.S. 313, 319 (1978); *see also* United States v. Kagama, 118 U.S. 375, 384 (1886) (asserting the federal government's right and authority to govern Indian tribes by acts of Congress); United States v. Lara, 541 U.S. 193, 200 (2004) (holding that Congress has "plenary and exclusive" power over Indian tribes); Haaland v. Brackeen, 599 U.S. 255, 272 (2023) (same).

188. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978) (citing Roff v. Burney, 168 U.S. 218, 222-23 (1897); Cherokee Intermarriage Cases, 203 U.S. 76, 94-96 (1906)).

189. Reitman, *supra* note 47, at 863.

190. H.R. 2824, 110th Cong. (2007). Note that this bill refers to the Cherokee Nation by its former name of the Cherokee Nation of Oklahoma. *See* Federally Recognized Tribes, *supra* note 1, at 945 (listing the "Cherokee Nation"); Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 72 Fed. Reg. 13648, 13648 (Mar. 22, 2007) (listing the "Cherokee Nation, Oklahoma"). The term "Cherokee Freedmen" refers to the descendants of enslaved African Americans who were owned by citizens of the Cherokee

Capitol Hill have considered the possibility of becoming involved in tribal-membership disputes.

Many within Indian Country staunchly reject the idea of a legislative remedy to the disenrollment epidemic because it would curtail tribal sovereignty.[191] Some have even used the threat of congressional action as an argument against disenrollment.[192] Wenona T. Singel, a law professor and the director of the Indigenous Law & Policy Center at Michigan State University,[193] has applied this logic to the more general context of tribal human-rights violations.[194] She argues that such actions create "growing unease with tribal sovereignty in the public, increasing the risk that Congress or the courts will take steps to change the law in a way that diminishes tribal prerogatives of self-government."[195] Even supporters of good governance in Indian Country, it seems, find this cure worse than the disease.

c. Judicial Relief

Some disenrollees have turned to the federal judiciary in search of a remedy.[196] They have found little success.[197] In the aftermath of *Martinez*, "federal

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Nation prior to the Civil War. Sturm, *supra* note 17, at 575. For a brief summary of the Cherokee Freedmen controversy, see *A Timeline for Cherokee Freedmen*, CHEROKEE PHOENIX (Sept. 25, 2024), https://www.cherokeephoenix.org/news/a-timeline-for-cherokee-freedmen/article_b22ddd23-1dfc-5da3-8258-b12ab7e010e7.html [https://perma.cc/XAY4-JZV9].

191. *See, e.g.*, Smith, *supra* note 173, at 41-42; Norman et al., *supra* note 49, at 12-13; Washburn, *supra* note 47, at 227-29.

192. *See, e.g.*, Smith, *supra* note 173, at 55.

193. *Wenona T. Singel*, MICH. STATE UNIV., https://www.law.msu.edu/faculty_staff/profile.php?prof=493 [https://perma.cc/XB9Q-PQSR].

194. Singel, *supra* note 175, at 569.

195. *Id.*

196. *See, e.g.*, Williams v. Gover, 490 F.3d 785, 789, 791 (9th Cir. 2007) (challenging a disenrollment under the Administrative Procedure Act and the Fifth Amendment's Due Process Clause); Poodry v. Tonawanda Band of Seneca Indians, 85 F.3d 874, 876 (2d Cir. 1996) (petitioning for writs of habeas corpus under ICRA in response to a tribal banishment); Quair v. Sisco, 359 F. Supp. 2d 948, 952 (E.D. Cal. 2004) (petitioning for a writ of habeas corpus under ICRA in response to a tribal banishment and disenrollment); John v. Garcia, No. C 16-02368, 2018 WL 1569760, at *1 (N.D. Cal. Mar. 31, 2018) (petitioning for a writ of habeas corpus under ICRA in response to an alleged disenrollment); *see also* Timbisha Shoshone Tribe v. Kennedy, 714 F. Supp. 2d 1064, 1066-67 (E.D. Cal. 2010) (discussing a dispute between competing tribal factions over control of governance).

197. *See, e.g.*, *Williams*, 490 F.3d at 787-91 (affirming the motion to dismiss because "[t]his case is controlled by the proposition that an Indian tribe has the power to decide who is a mem-

courts have respected the norm of federal noninterference in tribal membership decisions."[198] In *Poodry v. Tonawanda Band of Seneca Indians*, a case stemming from a permanent tribal banishment, the Second Circuit seemed poised to upset this status quo.[199] The *Poodry* court declined "to hold that the petitioners—citizens of the United States residing within our borders—cannot challenge the threatened loss of their tribal membership, cultural and religious identity, and property under the laws of the United States."[200] The court further "declin[ed] . . . to hold that under current law basic American principles of due process are wholly irrelevant in these circumstances, or that the federal courts are completely divested of authority to consider whether the alleged actions of the members of the tribal Council of Chiefs conform to those principles."[201] The Second Circuit found "that the ICRA's habeas provision [Section 1303] affords the petitioners access to a federal court to test the legality of their 'convict[ion]' and subsequent 'banishment' from the reservation."[202] In *Quair v. Sisco*, the Eastern District of California followed *Poodry*'s reasoning to declare that "disenrollment from tribal membership and subsequent banishment from the reservation constitute[d] detention" for the purposes of the ICRA's Section 1303 habeas provision, thereby allowing for federal judicial review.[203]

Unfortunately for disenrollees, the *Poodry* and *Quair* decisions have proven to be anomalies rather than bellwethers.[204] In the Second Circuit, many post-*Poodry* decisions "appl[ied] its broad reasoning" but nonetheless "swiftly dismissed detention-based ICRA claims."[205] Despite "express[ing] serious concerns about tribal courts' exclusive jurisdiction over civil rights claims," federal

ber of the tribe"); *John*, 2018 WL 1569760, at *6 (dismissing the habeas petition because "petitioners failed to establish the requisite custody or detention" since the alleged disenrollments had not yet occurred); *see also Kennedy*, 714 F. Supp. 2d at 1072-73 (finding no federal subject-matter jurisdiction in a conflict between competing tribal factions over control of governance). *But see Poodry*, 85 F.3d at 901 (holding that the banished tribal members' "applications for writs of habeas corpus should be heard on the merits by the district court" but that the proper defendant would be individual tribal officials rather than the tribe itself); *Quair*, 359 F. Supp. 2d at 966-67 (allowing the disenrollees to seek habeas review).

198. Washburn, *supra* note 47, at 227.

199. *See Poodry*, 85 F.3d at 876-77.

200. *Id.* at 876.

201. *Id.* at 876-77.

202. *Id.* at 879 (second alteration in original).

203. Quair v. Sisco, 359 F. Supp. 2d 948, 961, 971 (E.D. Cal. 2004).

204. *See* WILKINS & WILKINS, *supra* note 6, at 8.

205. *See* Angela R. Riley, *(Tribal) Sovereignty and Illiberalism*, 95 CALIF. L. REV. 799, 815 & n.108 (2007) (citing Shenandoah v. Halbritter, 366 F.3d 89, 92 (2d Cir. 2004); Shenandoah v. U.S. Dep't of Interior, 159 F.3d 708, 714 (2d Cir. 1998)).

courts have generally continued to "decline[] to authorize federal court review of tribal courts' ICRA decisions."[206] Furthermore, even if the reasoning of *Poodry* eventually becomes commonplace within the federal judiciary, disenrollees would still only be able to challenge the manner in which their tribes removed them rather than the tribe's right to do so in the first place.[207] Moreover, the same tension between affording relief for disenrollees and respecting tribal sovereignty is present as with an agency intervention or legislative remedy.

2. *International Oversight*

International law offers attractive standards for restricting tribes' power to remove members. Tribes, "like all organs of society, are charged with striving to secure the universal and effective recognition and observance of human rights for all individuals."[208] More specifically, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which "is the most comprehensive instrument detailing the rights of indigenous peoples in international law and policy,"[209] contains three articles which seem to limit tribes' power to remove members.[210] Article 9 provides that Indigenous peoples have "*the right to belong to an indigenous community or nation*, in accordance with the traditions and customs of the community or nation concerned."[211] Article 34 provides that "Indigenous peoples have the right to promote, develop and maintain their institutional structures . . . *in accordance with international human rights standards*."[212] Finally, Article 46 provides that "[i]n the exercise of the rights enunciated in the present Declaration, *human rights and fundamental freedoms of all shall be re-*

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206. Riley, *supra* note 205, at 815 n.109 (citing various examples).

207. *See* Poodry v. Tonawanda Band of Seneca Indians, 85 F.3d 874, 876-77 (2d Cir. 1996) (identifying "basic American principles of due process" as a fundamental consideration); *see also* Smith, *supra* note 173, at 47 (describing *Poodry*'s challenge to "the manner in which the banishments were executed" rather than "the ability of the tribe to exercise its sovereign right to banish tribal members" (emphasis omitted)).

208. Singel, *supra* note 175, at 590.

209. *UN Declaration on the Rights of Indigenous Peoples*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples [https://perma.cc/QY2U-DZ6L].

210. G.A. Res. 61/295, annex, Declaration on the Rights of Indigenous Peoples, arts. 9, 34 & 46 (Sept. 13, 2007).

211. *Id.* art. 9 (emphasis added).

212. *Id.* art. 34 (emphasis added); *see* Galanda & Dreveskracht, *supra* note 8, at 465.

spected."[213] In cases where disenrollment rises to the level of human-rights abuses,[214] tribes are therefore in violation of UNDRIP.

However, there are few means to enforce tribal compliance with international standards without tribal consent.[215] Resolutions such as UNDRIP are not legally binding.[216] Furthermore, tribes are not considered states for the purposes of international law, and therefore cannot sign binding international human-rights treaties or be held in violation of such agreements.[217] Gabriel S. Galanda and Ryan D. Dreveskracht have suggested two workarounds to this limitation, theorizing that tribes may be held directly accountable for certain human-rights violations as "quasi-state entities" or "non-state actors," or indirectly accountable as governmental organs of the United States.[218] Even if an international forum accepted jurisdiction based on one of these arguments, however, any disenrollee seeking to bring forward a human-rights claim would face a long road. The disenrollee would need to exhaust all local remedies,[219] and litigating disenrollment cases in tribal and federal courts often takes years.[220] The disenrollee would also need to overcome tribal sovereign immunity, which would bar enforcement of any ruling favorable to the disenrollee unless the tribe chose to accept it or Congress chose to impose it.[221] While international oversight offers useful standards for restricting disenrollment without the threat of federal paternalism, it is not realistic under the status quo. If tribes *choose* to apply standards from international law to restrict disenrollment,

213. G.A. Res. 61/295, art. 46, ¶ 2, *supra* note 210; *see* Galanda & Dreveskracht, *supra* note 8, at 465.

214. *See, e.g.*, Press Release, *supra* note 125 (identifying the Nooksack Tribal Council's planned evictions of self-identified Nooksack members as a human-rights violation).

215. *See* Singel, *supra* note 175, at 590; Galanda & Dreveskracht, *supra* note 8, at 462.

216. United Nations Permanent F. on Indigenous Issues, *Frequently Asked Questions: Declaration of the Rights of Indigenous Peoples*, UNITED NATIONS [2], https://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf [https://perma.cc/673F-EJRM].

217. Singel, *supra* note 175, at 590.

218. Galanda & Dreveskracht, *supra* note 8, at 463-72.

219. Interhandel (Switz. v. U.S.), Judgment, 1959 I.C.J. 6, 27 (Mar. 29) ("The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law.").

220. *See, e.g.*, Williams v. Gover, 490 F.3d 785, 788 (9th Cir. 2007); Timbisha Shoshone Tribe v. Kennedy, 714 F. Supp. 2d 1064, 1065-67 (E.D. Cal. 2010); John v. Garcia, No. C 16-02368, 2018 WL 1569760, at *1 (N.D. Cal. Mar. 31, 2018); Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 ILR 6047, 6047-48 (No. 04-CA-1017) (Saginaw Chippewa Indian Tribe of Michigan App. Ct. Jan. 7, 2005).

221. Galanda & Dreveskracht, *supra* note 8, at 449.

however, then they can take advantage of the benefits of this approach without raising the issue of enforceability.

3. Tribal Reform

This Note uses the term "tribal reform" to describe broadly any measures taken by tribes to address disenrollment. There are 574 federally recognized Indian tribes,[222] each with a unique history, culture, and system of government, meaning that there is no one-size-fits-all solution. However, tribal-reform proposals can nonetheless be divided into two broad categories: (a) intertribal courts which could serve as neutral forums to adjudicate disenrollment controversies, and (b) internal change via constitutional, statutory, or judicial restrictions on the power to disenroll.

a. Intertribal Courts

One method for tribes to resolve enrollment disputes fairly without threatening tribal sovereignty is to create and participate in intertribal courts. In 2010, Suzianne D. Painter-Thorne, a law professor at Mercer University, called for tribes to come together to establish "independent judicial bodies, or an intertribal appellate court, to review membership determinations."[223] Such bodies could "reconcile the seemingly competing goals of ensuring tribal autonomy while also providing tribal members and potential members with an impartial decision maker."[224] In 2012, Singel supported a similar idea on human-rights grounds, arguing that "an intertribal treaty recognizing tribal human rights obligations," combined with "an intertribal institution with the capacity to address human rights violations," is "the best possible method of providing external accountability for tribal abuses of human rights."[225]

The primary drawback of intertribal courts or other intertribal institutions is that they require tribal buy-in and continuous tribal support to establish and

222. Federally Recognized Tribes, *supra* note 1, at 944.

223. Suzianne D. Painter-Thorne, *If You Build It, They Will Come: Preserving Tribal Sovereignty in the Face of Indian Casinos and the New Premium on Tribal Membership*, 14 LEWIS & CLARK L. REV. 311, 315 (2010).

224. *Id.*

225. Singel, *supra* note 175, at 570.

maintain legitimacy.[226] This drawback is apparent with the Intertribal Court of Southern California (ICSC). The ICSC, formed in 2002, aims "to provide its member tribes with an independent and culturally sensitive forum in which to present and resolve disputes."[227] Between 2011 and 2012, the Pala Band of Mission Indians, a tribe in southern California, disenrolled 160 members in the aftermath of intratribal conflict and a decline in per capita payments.[228] The disenrollees had no opportunity to plead their cases before an impartial arbiter because "just before removing the members, the [tribal] executive committee . . . pulled out of [the ICSC]."[229] Perhaps tribes could bind themselves to continued participation in intertribal courts when they join, but this in turn raises questions of tribal sovereign immunity in instances of breach.

b. Internal Change

The principles of tribal sovereignty and sovereign immunity seem to require that any comprehensive solution to disenrollment come from within tribes themselves. Participatory democracy is one avenue for tribal reform. Tribes can amend their constitutions to prohibit disenrollment or limit the scope of officials' disenrollment power. In the aftermath of a membership dispute discussed later in this Note, the Confederated Tribes of the Grand Ronde Community of Oregon (CTGR) did just that.[230] Tribes can also enact ordinances establishing procedural protections for members faced with future dis-

226. *Cf. id.* at 611-12 (describing the "three initial planning phases" needed to establish and maintain "[t]ribal participation . . . to transform traditional notions of tribal sovereignty and self-governance").

227. *Our Story*, INTERTRIBAL CT. S. CAL., https://www.intertribalcourt.org [https://perma.cc/6ZZJ-5DKF].

228. Ben Westhoff, *Pala's Big Gamble: A SoCal Tribe's Casino Made Them Rich. But at What Cost?*, LA WKLY. (June 20, 2013), https://www.laweekly.com/palas-big-gamble-a-socal-tribes-casino-made-them-rich-but-at-what-cost [https://perma.cc/B8ZR-XBET] ("Pala's [disenrollment] decision was widely decried—with greed, not genetics, suspected as the motive. Casino revenue, after all, was believed to be dropping: The monthly per capita payments were cut by $500 in January 2012, just one month before many disenrollment letters were issued. What better way to keep payments high than to reduce the number of people receiving them?").

229. *Id.*

230. *See* Chris Aadland, *Grand Ronde Members Vote to Limit Disenrollment*, UNDERSCORE (Dec. 5, 2022), https://www.underscore.news/reporting/grand-ronde-members-vote-to-limit-disenrollment [https://perma.cc/9RWM-KTWY]; *infra* notes 565-579 and accompanying text (discussing a membership dispute among the CTGR).

enrollment, even if future elected officials and voters could repeal or alter such regulations.[231]

Alternatively, tribal courts could restrict disenrollment. Tribal courts can—and have—blocked removal efforts.[232] In the absence of clear principles restricting the scope of tribal-disenrollment powers, however, such decisions would necessarily be fact-dependent, meaning that some disenrollees would remain without remedies. There is, then, a need for a clear elucidation as to when and why disenrollment might be legally impermissible. One particularly attractive method would be to equate disenrollment to citizenship revocation. Embracing this question would allow tribes to draw from a broader, well-established pool of law and literature when evaluating how they might restrict disenrollment.

II. EQUATING DISENROLLMENT TO CITIZENSHIP REVOCATION

This Part claims that disenrollment, which is typically discussed as a practice unique to Indian Country,[233] can be understood as a form of citizenship revocation. This Part proceeds in two Sections. First, it offers necessary background on citizenship and citizenship revocation as a matter of international law, norms, and citizenship-revocation literature. Second, it explains how tribal membership is a form of citizenship and how disenrollment can be understood as a form of citizenship revocation. Collectively, these two Sections equate disenrollment to citizenship revocation, laying the groundwork for Part III's argument that tribes should look to international norms on citizenship revocation to restrict disenrollment.

A. Understanding Citizenship and Citizenship Revocation

This Section will offer a definition of citizenship, a summary of contemporary citizenship-revocation practices, and a brief overview of the political and academic debate regarding citizenship revocation. These explanations of what

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231. *See, e.g.*, Tribal Enrollment, Ordinance No. 14, § 11 (2019) (Saginaw Chippewa Tribal Council), https://www.sagchip.org/tribalcourt/ordinance/2019/Ordinance%2014%20Enrollment%20050119.pdf [https://perma.cc/AV7X-AF3Q].

232. *See, e.g.*, Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 ILR 6047, 6048, 6051 (No. 04-CA-1017) (Saginaw Chippewa Indian Tribe of Michigan App. Ct. Jan. 7, 2005); Alexander v. Confederated Tribes of Grand Ronde, 13 Am. Tribal L. 353, 367 (No. A-15-008) (Confederated Tribes of the Grand Ronde Community of Oregon Ct. App. Aug. 5, 2016).

233. *See, e.g.*, Galanda & Dreveskracht, *supra* note 8, at 385-86; WILKINS & WILKINS, *supra* note 6, at 5.

citizenship is and how both states and scholars view the removal of this status lay the foundation for equating disenrollment to citizenship revocation.

1. *What Is Citizenship?*

According to the *Oxford English Dictionary*, a "citizen" is "[a] legally recognized subject or national of a state, commonwealth, or other polity, either native or naturalized, having certain rights, privileges, or duties."[234] "Citizenship" is simply "[t]he position or status of being a citizen."[235] In international law and scholarship, citizenship is often conflated with nationality,[236] which similarly means "the status of being a citizen or subject of a particular state; the legal relationship between a citizen and his or her state, usually involving obligations of support and protection; a particular national identity."[237] These definitions offer an understanding of citizenship based on three elements: (1) subjection to a polity, (2) legal recognition of citizenship status, and (3) rights and duties. This Section will discuss each element in turn.

The first element of citizenship is that a citizen must be a subject of a polity.[238] In international law, the prototypical polity is the state.[239] However, under broad interpretations of the terms "subject" and "polity," a person could satisfy this element by "owing allegiance" to any "organized society."[240] While

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234. *Citizen*, OXFORD ENG. DICTIONARY (2014), https://www.oed.com/dictionary/citizen_n?tab=meaning_and_use&tl=true#9254495 [https://perma.cc/3B6C-AP35].

235. *Citizenship*, OXFORD ENG. DICTIONARY (2014), https://www.oed.com/dictionary/citizenship_n?tab=meaning_and_use#9255436 [https://perma.cc/PE6R-7YS9].

236. *See, e.g.*, Introductory Note by the Office of the United Nations High Commissioner for Refugees (May 2014), *in Convention on the Reduction of Statelessness*, OFF. OF UNITED NATIONS HIGH COMM'R FOR HUM. RTS. 3, 3-4 (1961), https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf [https://perma.cc/DY7D-F7AV] (treating the "withdrawal of citizenship" as synonymous with the loss of nationality); Mirna Adjami & Julia Harrington, *The Scope and Content of Article 15 of the Universal Declaration of Human Rights*, 27 REFUGEE SURV. Q. 93, 94 n.2 (2008) ("Throughout this article, the terms 'nationality' and 'citizenship' are used interchangeably."); G.A. Res. 217 (III) A, art. 15, *supra* note 55 ("Everyone has the right to a nationality.").

237. *Nationality*, OXFORD ENG. DICTIONARY (2003), https://www.oed.com/dictionary/nationality_n [https://perma.cc/MN2V-S3L2].

238. *Citizen*, *supra* note 234.

239. *See, e.g.*, U.N. Charter art. 3 (describing "[t]he original Members of the United Nations" as "the states which . . . sign the present Charter and ratify it").

240. *Subject*, OXFORD ENG. DICTIONARY (2012), https://www.oed.com/dictionary/subject_n?tab=meaning_and_use#20053041 [https://perma.cc/EVU9-F8UL]; *Polity*, OXFORD ENG. DICTIONARY (2006), https://www.oed.com/dictionary/polity_n1?tab=meaning_and_use#29499273 [https://perma.cc/U3VA-8S8P].

the state is the most *common* type of organized society in the world today, it is not the *only* type of entity that currently meets this condition.

The claim that the first element of citizenship can be satisfied through subjection to a nonstate polity requires a brief discussion of the meaning of the term "state." The Montevideo Convention on Rights and Duties of States, which is "[t]he source most often cited as a textual basis for statehood,"[241] requires a state that is "a person of international law" to "possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states."[242] This definition is serviceable even if it does not encompass every type of entity that could be considered a state.[243]

More importantly for the purposes of this Section, the Montevideo Convention's understanding of statehood also does not encompass every type of government that people owe allegiance to today. Around the world, people are affiliated with various quasi-state entities such as the Cook Islands or the European Union.[244] These entities arguably meet the Montevideo Convention's

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241. Thomas D. Grant, *Defining Statehood: The Montevideo Convention and Its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403, 413-14 (1999); *see also* Anthony Murphy & Vlad Stancescu, *State Formation and Recognition in International Law*, 7 JURID. TRIB., no. 1, 2017, at 6, 7 ("Statehood designates the feature of an entity that exists in the international community and respects the Montevideo Criteria.").

242. Convention on Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 3100 [hereinafter Montevideo Convention].

243. The Montevideo Convention's definition of statehood does not encompass every type of entity that could be considered a state. For example, the United Nations's Charter describes "[t]he original Members of the United Nations" as "*the states* which . . . sign . . . and ratify it." U.N. Charter art. 3 (emphasis added). Some of the signatories, however, were then subject to higher sovereigns and therefore arguably lacked the "capacity to enter into relations with the other states." Montevideo Convention art. 1, *supra* note 242, 49 Stat. at 3100; *see Founding Members*, UNITED NATIONS, https://research.un.org/en/unmembers/founders [https://perma.cc/H7AG-7VBH] (listing, among others, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic, the Philippine Commonwealth, and India); *see also* 1947 U.N.Y.B. 33-34, U.N. Sales No. 1947.I.18 (same). More recently, some scholars have evaluated how a state might permanently exist without "a defined territory" in the context of climate change threatening the habitability of various island-states in the Pacific Ocean. *See, e.g.*, Jacquelynn Kittel, *The Global "Disappearing Act": How Island States Can Maintain Statehood in the Face of Disappearing Territory*, 2014 MICH. ST. L. REV. 1207, 1228-37.

244. *See Living in the European Union*, EUR. UNION, https://european-union.europa.eu/live-work-study/living-eu_en [https://perma.cc/8ZFM-DATR]; Statement on United States Recognition of the Cook Islands and the Establishment of Diplomatic Relations, 2023 DAILY COMP. PRES. DOC. 833 (Sept. 25, 2023), https://www.govinfo.gov/content/pkg/DCPD-202300833/pdf/DCPD-202300833.pdf [https://perma.cc/CB2P-JYF4] (recognizing the Cook Islands as "a sovereign and independent state"); *cf.* Off. of the Historian, *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, Since*

first three qualifications but lack fully independent "capacity to enter into relations with other states."[245] Moreover, state citizenship is a necessary but not always sufficient condition for obtaining citizenship from one of these entities.[246] Regardless, such quasi-state entities are undoubtedly polities that exert authority over affiliated people in a manner akin to a state. While all states under international law satisfy the first element of citizenship, the existence of quasi-state entities with similar polity-subject relationships to states suggests that some nonstates can also satisfy this condition.

The second element of citizenship is that a citizen must be legally recognized as such. This element has both an internal and an external aspect. Internally, a polity must recognize a person as one of its citizens for this status to be meaningful. If a polity ceases to accept an individual as one of its citizens, this can lead to citizenship revocation,[247] which will be discussed later in the Note.[248]

Externally, much of the value of citizenship is determined by international recognition. Many entities claiming statehood lack universal recognition by well-established states, limiting their citizens' ability to freely travel, participate in international fora, and take advantage of other benefits of participation in the global political body and economy.[249] International bodies must frequently

1776: Cook Islands, U.S. DEP'T STATE, https://history.state.gov/countries/cook-islands [https://perma.cc/W86K-QKH5] (describing the Cook Islands as "a self-governing state in free association with New Zealand" which the United States "recognize[s] . . . as a sovereign and independent state").

245. Montevideo Convention art. 1, *supra* note 242, 49 Stat. at 3100.

246. For example, all "Cook Islanders hold New Zealand citizenship." *Cook Islands*, N.Z. FOREIGN AFFS. & TRADE, https://www.mfat.govt.nz/en/countries-and-regions/australia-and-pacific/cook-islands [https://perma.cc/L936-TR56]. But the Cook Islands define "Cook Islander" as "a person who is part of the Maori race indigenous to the Cook Islands" and their descendants, meaning that most New Zealanders are not Cook Islanders. Cook Islands Immigration Act 2021, pt. 3, § 21, https://mfai.gov.ck/sites/default/files/2023-04/Cook%20Islands%20Immigration%20Act%20%282021%29.pdf [https://perma.cc/RL72-K8YF].

247. *See, e.g.*, Macklin, *supra* note 58, at 2-3; Lavi, *supra* note 60, at 404-06; Winter & Previsic, *supra* note 60, at 56-57.

248. *See infra* Section II.A.2.

249. *See, e.g.*, *Spain Joins Other Schengen Zone Countries in Recognizing Passports Issued by Kosovo*, RADIO FREE EUR./RADIO LIBERTY (Jan. 6, 2024), https://www.rferl.org/a/kosovo-spain-passport-recognition-schengen-visa-liberalization/32763889.html [https://perma.cc/6R8A-X5RV]; *Why Is Taiwan Competing in the Olympics Under 'Chinese Taipei'?*, CONVERSATION (Feb. 2, 2022) [hereinafter *Taiwan Olympics*], https://theconversation.com/why-is-taiwan-competing-in-the-olympics-under-chinese-taipei-175895 [https://perma.cc/2JX7-YWFP].

make distinctions between recognized and unrecognized states.[250] Some entities lay competing claims to being the continuation of a historic state.[251] Other entities lack recognition by the state from which they seceded.[252] All these circumstances require answering difficult questions regarding the nature of citizenship and statehood.

The third element of citizenship is that citizens are afforded certain rights and owe certain duties beyond those of noncitizen residents. Citizenship typically includes a right to permanent residency in a polity.[253] Many citizens can also participate in the political process through elections or referendums.[254] Some citizens are subject to mandatory military service.[255] Many states require naturalized citizens to swear some kind of oath of citizenship.[256] All of these rights and duties collectively make up the bundle of sticks that is citizenship.

In addition to these three elements, the *Oxford English Dictionary*'s definition of "citizen" provides that citizens must be "either native or naturalized."[257] The birthright/naturalization dichotomy will be discussed later in this Part.[258] For now, it is sufficient to say that this "requirement" is more accurately characterized as a statement of how one can *acquire* citizenship rather than a necessary element of citizenship.

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250. *See, e.g.*, *About UN Membership*, UNITED NATIONS, https://www.un.org/en/about-us/about-un-membership [https://perma.cc/C2G5-585D] ("States are admitted to membership in the United Nations by a decision of the General Assembly upon the recommendation of the Security Council.").

251. *See, e.g.*, *Taiwan Olympics*, *supra* note 249.

252. *See, e.g.*, *Which Countries Recognise Kosovo's Statehood?*, ALJAZEERA (Feb. 17, 2023), https://www.aljazeera.com/news/2023/2/17/mapping-the-countries-that-recognise-kosovo-as-a-state-2 [https://perma.cc/28S7-GC28].

253. *See* Patti Tamara Lenard, *Democratic Citizenship and Denationalization*, 112 AM. POL. SCI. REV. 99, 102 (2018) ("Traditionally, domestically, citizenship is thought to guarantee . . . residential security.").

254. *See id.*

255. *See, e.g.*, Kim Tong-Hyung & Jiwon Song, *BTS Members RM and V Start Compulsory Military Service in South Korea. Band Seeks to Reunite in 2025*, AP NEWS (Dec. 11, 2023), https://apnews.com/article/south-korea-kpop-bts-military-service-aac9d886a2fbae90712bd21c42cee299 [https://perma.cc/V4GN-CGND] ("Under South Korean law, most able-bodied men must perform 18-21 months of military service.").

256. *See, e.g.*, Oath of Allegiance, 8 C.F.R. § 337.1 (2024).

257. *Citizen*, *supra* note 234.

258. *See infra* notes 368-379 and accompanying text.

2. *What Is Citizenship Revocation?*

"Citizenship revocation" is when a government strips an individual of their citizenship, leaving that person without the recognition, rights, and duties of a member of that political community.[259] Some scholars use synonymous terms such as "denationalization" to describe this practice.[260] Citizenship-revocation regimes and literature may also reference "denaturalization," which is a form of citizenship revocation specifically involving the loss of citizenship by a person who became a citizen through naturalization.[261]

Citizenship revocation was relatively common in the first half of the twentieth century but became increasingly disfavored in the aftermath of the Second World War.[262] During the 1910s through the 1940s, some European powers stripped citizenship from citizens with alleged ties to rival or hostile powers.[263] Between 1906 and 1944, the United States stripped citizenship from 22,000 naturalized citizens and continued to denationalize an average of 5,000 citizens annually in the years following the Second World War.[264] But in the second half of the twentieth century, various national and international laws restricted citizenship revocation due to concerns of statelessness[265] and due process.[266]

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259. *See generally* Macklin, *supra* note 62 (discussing and criticizing the practice of citizenship revocation in the context of the War on Terror); Winter & Previsic, *supra* note 60 (analyzing how Canadian newspapers discussed the Strengthening Canadian Citizenship Act); Shai Lavi, *Citizenship Revocation as Punishment: On the Modern Duties of Citizens and Their Criminal Breach*, 61 U. TORONTO L.J. 783 (2011) (offering a limited defense of the practice of citizenship revocation); Brian Carey, *Against the Right to Revoke Citizenship*, 22 CITIZENSHIP STUD. 897 (2018) (criticizing the argument that citizenship revocation is justified because certain acts are an expressive form of self-exclusion from the political community).

260. *See, e.g.*, Macklin, *supra* note 62, at 436.

261. *See, e.g.*, Patti Tamara Lenard, *Constraining Denaturalization*, 70 POL. STUD. 367, 367-68 (2020).

262. *See* Macklin, *supra* note 62, at 437-38.

263. Macklin, *supra* note 62, at 428 ("Over the course of the 20th century, and especially around the two World Wars and the Depression, denaturalizing citizens (in Canada's case, British subjects of Canada) based on alleged ties to the enemy, dissident political beliefs (especially communist sympathies), preceded deportation.").

264. Weil, *supra* note 56, at 3.

265. *See, e.g.*, Lenard, *supra* note 56, at 75 ("[T]he United Nations Convention on the Reduction of Statelessness was enacted in the early 1960s. The Convention aimed to respond to the far too extensive discretion of states that enabled them to denationalize citizens during World War II.").

266. *See, e.g.*, Macklin, *supra* note 58, at 13-15; Macklin, *supra* note 62, at 437-39.

In the twenty-first century, citizenship revocation has once again returned to prominence because of the global War on Terror.[267] Many politicians in various Western democracies have promoted citizenship revocation as a response to the threat of homegrown terrorism.[268] In countries such as the United States, Canada, and the United Kingdom, politicians claim that "[c]itizenship is a privilege, not a right," and accordingly argue that this "privilege" should be denied to those who engage in certain proscribed behaviors.[269] This line of reasoning has led to hundreds of people losing citizenship in many states around the world, especially in Europe.[270] States' denial of the "privilege" of citizenship typically occurs through administrative processes subject to discretion by elected officials or political appointees.[271]

Citizenship revocation is the subject of significant scholarly discourse. This body of literature considers a wide variety of normative questions.[272] Why do many states maintain that they can revoke the citizenship of an alleged terrorist but not a convicted murderer?[273] Should all citizens be potentially subject to citizenship revocation, or only naturalized citizens?[274] A scholar's stance in debates like these typically depends on the theoretical framework through which they view citizenship and the loss thereof. Some argue that states can and should engage in citizenship revocation to further a variety of allegedly legitimate interests.[275] Others suggest that states should only engage in citizenship revocation under a narrow set of circumstances, if ever.[276] After all, citizenship

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267. *See, e.g.*, Macklin, *supra* note 58, at 2-3; Lavi, *supra* note 60, at 405, 409; Winter & Previsic, *supra* note 60, at 56-57.

268. *See* Macklin, *supra* note 58, at 9.

269. *Id.* (quoting *Theresa May Strips Citizenship from 20 Britons Fighting in Syria*, GUARDIAN (Dec. 22, 2013), https://www.theguardian.com/politics/2013/dec/23/theresa-may-strips-citizenship-britons-syria [https://perma.cc/Q29F-SNPR]).

270. Weil & Handler, *supra* note 68, at 296.

271. *See* Joppke, *supra* note 62, at 734 ("As in all countries, the British citizenship stripping proceeds by administrative law, which goes along with a high degree of state discretion.").

272. *See, e.g.*, Macklin, *supra* note 58, at 2-3; Lavi, *supra* note 60, at 409; Winter & Previsic, *supra* note 60, at 55; Lenard, *supra* note 56, at 73-74.

273. *See* Lavi, *supra* note 259, at 797-800.

274. *See* Lenard, *supra* note 56, at 73-74.

275. *See, e.g.*, Lavi, *supra* note 259, at 786-87 ("[T]he revocation of citizenship can and can only be justified as punishment."); Joppke, *supra* note 62, at 728 (arguing that stripping terrorists of citizenship is a legitimate exercise of state power).

276. *See, e.g.*, Lenard, *supra* note 56, at 73-74.

revocation, like disenrollment, can impose high costs on both targeted individuals and the wider community for relatively unclear benefits.[277]

Citizenship-revocation literature describes three major theories for understanding when and how this practice might be justified: national-security theory, retributivism theory, and contract theory. Each of these theories has its proponents, and each is vulnerable to various powerful critiques.

The first theory for understanding citizenship revocation is based on protection of national security and identity.[278] This theory is conceptually simple: states must protect their citizens and preserve their citizens' collective norms.[279] These norms could be a common culture, democratic principles, or liberal values.[280] Terrorism is a threat to both national security and identity.[281] States may therefore justify citizenship revocation to combat this threat.[282] The national-security theory has enjoyed governmental support in several countries,[283] presumably because of its facial responsiveness to terrorism.[284]

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277. For a discussion of the costs that disenrollment imposes on both disenrollees and tribes, see *supra* Section I.C. For a discussion of the costs that citizenship revocation imposes on both targeted individuals and the wider citizenry, see, for example, Lenard, *supra* note 56, at 73, 78-87, which argues that "all revocation laws are inconsistent with democratic citizenship"; and Macklin, *supra* note 58, at 51-54, which questions whether citizenship revocation is an effective response to terrorism because "[w]hatever conduct makes [a terrorist] unworthy of Canadian citizenship would presumably make him equally unworthy of citizenship anywhere else."

278. *See, e.g.*, Amanda Frost, *Alienating Citizens*, 114 NW. U. L. REV. ONLINE 241, 246 (2019) ("For many decades, the [United States] argued that it had broad and nearly unfettered denaturalization power under its inherent sovereign authority to protect national security and foreign policy."); Augustine S.J. Park, *Racial Nationalism and Representations of Citizenship: The Recalcitrant Alien, the Citizen of Convenience, and the Fraudulent Citizen*, 38 CANADIAN J. SOCIO. 579, 580 (2013).

279. Lenard, *supra* note 56, at 74 ("It is worth acknowledging at the outset that the legitimacy of sovereign states rests in part on their ability to protect the safety and security of their citizens."); Lenard, *supra* note 253, at 104 ("There are two clusters of defenses offered in favor of the right of states to denationalize. One set begins by stating the priority of democratic principles and suggests roughly that, where denationalization is protecting democracy or is an expression of democratic principles, it can be justified.").

280. *See, e.g.*, Lenard, *supra* note 253, at 104-06.

281. Joppke, *supra* note 62, at 729, 732.

282. *See* Frost, *supra* note 278, at 50; Lenard, *supra* note 253, at 104.

283. *See, e.g.*, Lenard, *supra* note 56, at 76; Macklin, *supra* note 62, at 440.

284. *See, e.g.*, Lenard, *supra* note 56, at 74 ("Since 9/11 states have been particularly concerned about protecting citizens from acts of terrorism, and they have proposed that certain rights and protections normally owed to citizens can be undermined in response to this apparent threat.").

The national-security theory has two primary drawbacks. The first is that it is not clear that existing citizenship-revocation regimes promote national security.[285] Citizenship revocation is fundamentally reactive, not preventative. If a state is trying to revoke the citizenship of an alleged terrorist, then that state already believes that this person *is* a terrorist and could presumably take steps to ensure that this person cannot threaten national security. Nor is it self-evident that citizenship revocation is more effective at promoting national security than incarceration.[286] Revoking the citizenship of an alleged terrorist and deporting them might remove one country's problem, but it can *create* a problem for another country.[287]

The second drawback is that any norm-enforcing value of citizenship revocation is undermined by the fact that citizenship-revocation regimes do not, and largely cannot, evenly target all potential threats to national identity. Many states allow naturalized citizens, but not natural-born citizens, to lose their citizenship.[288] Additionally, international prohibitions on statelessness mean that citizenship revocation disproportionately impacts dual citizens.[289] Finally, whether a person faces citizenship revocation is usually subject to a variety of discretionary factors.

The second theory for understanding citizenship revocation is retributivism.[290] Under this theory, "citizenship revocation is not justified as a means to a social end, such as national security or solidarity, but is rather the deserved outcome of the criminal's own doing."[291] In line with the idea that "the punishment must fit the crime," law professor Shai Lavi, a proponent of retributivism, argues that only political crimes can lead to citizenship revocation, a quintessentially political punishment.[292] Under this version of the theory, retributiv-

285. *See* Macklin, *supra* note 62, at 435-36.

286. *See* Macklin, *supra* note 58, at 36 ("Citizenship revocation as punishment can claim no unique or plausible deterrent value, over and above the prison sentences that those targeted by it already face.").

287. *See* Macklin, *supra* note 62, at 441-42 ("[T]he U.K. model of citizenship deprivation . . . minimizes the likelihood of accountability and permanently disposes of an undesirable [former] citizen on the territory of another country that lacks the capacity or will to object." (third alteration in original)).

288. *See* Matthew J. Gibney, *Should Citizenship Be Conditional? The Ethics of Denationalization*, 75 J. POL. 646, 653 (2013).

289. *See* Helen Irving, *The Concept of Allegiance in Citizenship Law and Revocation: An Australian Study*, 23 CITIZENSHIP STUD. 372, 376 (2019).

290. *See* Lavi, *supra* note 259, at 788-93.

291. *Id.* at 786.

292. *Id.* at 797-98.

ism arguably narrows the scope of citizenship revocation as compared to national-security theory by rejecting "any attempt to infringe on fundamental citizenship rights in the name of 'state interest' or by means of an administrative procedure."[293]

A retributivist theory of citizenship revocation unsurprisingly relies on a retributivist theory of criminal justice more generally.[294] The idea that "causing harm to a person who has damaged societal values has intrinsic positive moral value,"[295] however, is hotly contested as a general proposition.[296] Additionally, as applied to citizenship revocation, this idea has to establish why, specifically, the loss of citizenship is the most fitting punishment for certain types of crimes.[297] Moreover, a retributivist theory of citizenship revocation faces a similar issue to the national-security theory in terms of making political criminals someone else's problem.

A third theory for understanding citizenship revocation frames citizenship as a contract between the state and the citizen. Under this theory, states can revoke the citizenship of those who breach the "terms" of their citizenship.[298] This framework depends on the idea that citizenship is a privilege rather than a right.[299] If one accepts this idea, a contractual understanding of citizenship has a certain practical appeal, as it provides a convenient justification for states revoking the citizenship of known terrorists or other problematic individuals.

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293. *Id.* at 810.

294. *See id.* at 786; *see also* Macklin, *supra* note 58, at 38 n.138 (summarizing Lavi's argument and offering a preliminary response to it); Shay Keinan & Golan Luzon, *Revocation of Citizenship: How Punitive Theories and Restorative Justice Principles Apply to Acts of Disloyalty Toward the State*, 72 Crime L. & Soc. Change 145, 148-49 (2019) (discussing arguments for and against the validity of retributivism as a rationale for citizenship revocation, including those of Shai Lavi and Audrey Macklin).

295. Keinan & Luzon, *supra* note 294, at 148.

296. *See, e.g.*, Gregg D. Caruso, *Justice Without Retribution: An Epistemic Argument Against Retributive Criminal Punishment*, 13 Neuroethics 13, 14 (2020) ("While retributivism provides one of the main sources of justification for punishment within the criminal justice system, there are good philosophical and practical reasons for rejecting it."); David Dolinko, *Three Mistakes of Retributivism*, 39 UCLA L. Rev. 1623, 1624 (1992) ("The notion that the practice of punishment is morally justified—perhaps even required—simply and solely because it gives offenders what they deserve appears to me to be a prime example of 'the finding of bad reasons for what we believe upon instinct.'" (quoting F.H. Bradley, Appearance and Reality, at xiv (2d ed. 1897))).

297. *See* Macklin, *supra* note 58, at 38 n.138.

298. Joppke, *supra* note 62, at 742-43.

299. *See* Macklin, *supra* note 58, at 9.

However, there is a major issue with understanding citizenship as a contract—states and citizens are not equal parties.[300] If a citizen breaches the "contract," the state can revoke their citizenship. If the state breaches the "contract," however, there is no clearly equivalent action available to the citizen. This model therefore struggles to account for the practical relationship between states and citizens. Additionally, a contractual understanding of citizenship still requires an explanation of what constitutes a "breach" on the part of a citizen. After all, citizens frequently express beliefs contrary to the state without facing punishment, and states routinely punish citizens without revoking citizenship.[301] Accordingly, the contract theory cannot independently justify citizenship revocation but must instead be paired with another justification concerning what satisfies a "breach."

Closely related to contract theory is the concept of "citizenship annulment." Citizenship annulment is a form of citizenship revocation in which an individual's citizenship is declared "null and void," meaning that it was never actually granted and had always been without legal effect.[302] Citizenship annulment tends to occur in cases in which an individual obtained citizenship via fraud.[303] The idea behind such annulments is simple: if a person only obtained citizenship because of deception, then they never should have become a citizen in the first place. Some scholars therefore frame this practice as an uncontroversial means of ensuring an applicant's good character in states' naturalization processes.[304] Others, however, have questioned whether this practice is justified.[305]

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300. *Cf.* Honohan, *supra* note 63, at 365 (describing how revocation "increases the state's arbitrary power").

301. For a discussion of this point by the Supreme Court of Canada, see *infra* notes 483-484 and accompanying text.

302. Lenard, *supra* note 261, at 379.

303. *See* Rutger Birnie & Rainer Bauböck, *Introduction: Expulsion and Citizenship in the 21st Century*, 24 CITIZENSHIP STUD. 265, 270 (2020) ("[N]early all nationality laws have provisions for the annulment of naturalisation if citizenship has been acquired by fraud.").

304. *See* Émilien Fargues, *Simply a Matter of Compliance with the Rules? The Moralising and Responsibilising Function of Fraud-Based Citizenship Deprivation in France and the UK*, 23 CITIZENSHIP STUD. 356, 357, 363 (2019); Stefan Magen, *Naturalizations Obtained by Fraud - Can They Be Revoked? The German Federal Constitutional Court's Judgment of 24 May 2006*, 7 GERMAN L.J. 681, 682 (2006); Carey, *supra* note 259, at 900; Lavi, *supra* note 259, at 789.

305. Lenard, *supra* note 261, at 380.

B. Disenrollment as Citizenship Revocation

This Section will explain what tribal membership is, claim that tribal membership can be understood as a form of citizenship, and then argue that disenrollment can be understood as a form of citizenship revocation. The connection between disenrollment and citizenship revocation is central to Part III's argument regarding *why* tribes should look to international citizenship-revocation norms to restrict disenrollment.

1. What Is Tribal Membership?

Federally recognized tribes use tribal membership to define their political communities.[306] Additionally, the United States generally determines whom it will treat as an American Indian under federal law based on tribal membership.[307] While *tribal membership* is a vital concept in Indian Country, the term "membership" typically refers to participation in social clubs.[308] If tribal membership is a form of citizenship, then why do most tribes and scholars, as well as the United States, discuss "membership" rather than "citizenship"?[309]

The use of the descriptor of "member" rather than "citizen" in Indian Country reflects federal prerogatives rather than any tribal representations of their status as polities or the nature of their relationships with their members.[310] The Indian Reorganization Act (IRA) of 1934 used the term "member"

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306. Off. of Indian Servs., *Tracing American Indian and Alaska Native Ancestry*, U.S. DEP'T INTERIOR: INDIAN AFFS., https://www.bia.gov/guide/tracing-american-indian-and-alaska-native-aian-ancestry [https://perma.cc/45DM-XEKP].

307. *Id. But see* Bureau of Indian Affs., *Indian Preference*, U.S. DEP'T INTERIOR, https://www.bia.gov/jobs/Indian_Preference [https://perma.cc/472G-MJSC] (explaining that under the Indian Reorganization Act of 1934, a person may also be eligible for Indian hiring preference based on their ancestry).

308. *See, e.g.*, *Membership*, OXFORD ENG. DICTIONARY (2001), https://www.oed.com/dictionary/membership_n?tab=meaning_and_use#37216956 [https://perma.cc/A63K-A56D] (defining "membership" as "[t]he fact or status of being a member of an organization, society, or other group").

309. Note, however, that some scholars do refer to tribal membership as tribal citizenship. *See, e.g.*, Marquez, *supra* note 10, at 183; WILKINS & WILKINS, *supra* note 6, at 4.

310. *See* Allison M. Dussias, *Geographically-Based and Membership-Based Views of Indian Tribal Sovereignty: The Supreme Court's Changing Vision*, 55 U. PITT. L. REV. 1, 92-93, 93 n.381 (1993) ("It is first worth noting that the Court's habitual use of the term 'member' rather than 'citizen' when referring to Indians, at least in recent years, may itself be significant . . . . Using the sociological term 'member' rather than the political term 'citizen' when referring to Indians, may alone implicitly detract from Indian sovereignty . . . ."); Carole Goldberg, *Members Only? Designing Citizenship Requirements for Indian Nations*, 50 U. KAN.

rather than "citizen,"[311] perhaps because BIA then envisioned tribes as private associations rather than governments.[312] An estimated 174 tribes voted to accept the IRA, thereby embedding this language throughout Indian Country.[313] Regardless of BIA's vision of tribes during the Indian New Deal, however, federal Indian law from the Marshall Trilogy[314] to the present demonstrates that tribes are political communities with sovereign powers.

In *Worcester v. Georgia*, Chief Justice John Marshall recognized tribal sovereignty.[315] According to the Marshall Court, all three branches of government "admitted, by most solemn sanctions, the existence of the Indians as a separate and distinct people" who were "vested with rights which constitute them a state."[316] While Indian tribes were "not . . . foreign" communities, they were "separate [ones]."[317] The Court retreated from this position as the United States expanded westward in subsequent decades, eventually holding in *United States v. Kagama* that tribes did not "possess[] . . . the full attributes of sovereignty" and were neither "[s]tates" nor "nations."[318] But even in *Kagama*, the Court recognized tribes' status as "a separate people, with the power of regulating their internal and social relations," where the United States had not extinguished such power.[319]

In the modern era of Indian self-determination, all three branches of the federal government have affirmed tribal sovereignty.[320] Moreover, tribes them-

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L. Rev. 437, 437 n.3 (2002) ("I came to believe that the term 'membership' is used in tribal constitutions rather than 'citizenship' because the Bureau of Indian Affairs ('BIA' or 'the Bureau') did not treat these constitutions as charters for governments. Rather, they viewed them as some variation on private associations . . . .").

311. *See generally* Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (codified as amended in scattered sections of 25 U.S.C.) (referring to members of tribes as citizens).

312. Goldberg, *supra* note 310, at 437 n.3.

313. Lawrence C. Kelly, *The Indian Reorganization Act: The Dream and the Reality*, 44 Pac. Hist. Rev. 291, 301 (1975).

314. The "Marshall Trilogy" refers to three early Supreme Court cases that form the basis of federal Indian law: *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); and *Worcester v. Georgia*, 33 U.S. (6 Pet.) 515 (1832).

315. 31 U.S. (6 Pet.) 515, 583 (1832).

316. *Id.*

317. *Id.*

318. 118 U.S. 375, 381 (1886).

319. *Id.* at 381-85.

320. *See, e.g.*, Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, § 3(a), 88 Stat. 2203, 2204 (1975) ("The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination . . . ."); United States v. Wheeler, 435 U.S. 313, 323 (1978) (indicating that tribes retain their "existing

selves *act* as political communities with sovereign powers.[321] Tribes "maintain the power to determine their own governance structures, pass laws, and enforce laws through police departments and tribal courts."[322] They also provide a variety of governmental services to their members and perform public functions like building and maintaining a variety of infrastructure.[323] Furthermore, members often participate in tribal governance through various means such as electing executive officials and directing the legislative process.[324]

2. *Understanding Tribal Membership as Citizenship*

International norms and literature on citizenship revocation are relevant to disenrollment because tribal membership can be understood as a form of citizenship. As discussed previously,[325] citizenship is based on three elements: (1) subjection to a polity, (2) legal recognition of citizenship status, and (3) rights and duties. Tribal membership arguably satisfies all three elements of citizenship. First, an Indian tribe is a polity which fits within the outer bounds of entities offering citizenship worldwide, even if tribes lack all the conditions of statehood under international law. Second, tribal membership is recognized as a form of citizenship by tribes, the United States, and international law, at least for certain purposes. Third, tribes clearly grant rights to their members and may expect duties in return.

Tribal membership satisfies the first element of citizenship because tribes are quasi-state entities that fit most, but not all, the international-law requirements of a "state," as defined in the Montevideo Convention.[326] Tribes have permanent populations to the extent that any entity can have a *permanent* population of living beings. Many tribes have records of their membership go-

sovereign powers" in the absence of congressional action); Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships from the Administration of Joseph R. Biden, Jr., to the Heads of Executive Departments and Agencies, 2021 DAILY COMP. PRES. DOC. 91 (Jan. 26, 2021), https://www.govinfo.gov/content/pkg/DCPD-202100091/pdf/DCPD-202100091.pdf [https://perma.cc/BLB2-9DH5].

321. *See Tribal Nations and the United States: An Introduction*, *supra* note 19, at 23.

322. *Id.*

323. *Id.*

324. Bureau of Indian Affs., *How Are Tribal Governments Organized?*, U.S. DEP'T INTERIOR (Aug. 19, 2017), https://www.bia.gov/faqs/how-are-tribal-governments-organized [https://perma.cc/9VHJ-FDK2].

325. *See supra* Section II.A.1.

326. Montevideo Convention art. 1, *supra* note 242, 49 Stat. at 3100.

ing back generations,[327] and oral histories can trace family lineages back centuries. Tribal populations are also not in any danger of short-term extinction. Regardless of the pervasive myth of the vanishing Indian, many tribes are experiencing rapid growth in membership,[328] and tribes whose populations are shrinking could always amend their enrollment eligibility criteria to reverse such a trend.[329]

Tribes also have defined territories. The legacy of colonialism and the geographic and jurisdictional complexities of federal Indian law mean that tribal territories have a long history of precise, if not always clear, delineation.[330] The United States has long passed judgment on tribal land claims through Indian treaties, acts of Congress, executive orders, agency decisions, and litigation in federal and administrative courts.[331] Indian reservations, while often highly fractionated or otherwise noncontiguous, have well-established boundaries.[332] These boundaries can change through land acquisitions or intergovernmental agreements, but so can the boundaries of states definitively recognized under international law.[333]

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327. Waganakising Odawak [Little Traverse Bay Bands of Odawa Indians] Statute 2022-006, §§ IV(A), V (2022), https://ltbbodawa-nsn.gov/wp-content/uploads/2022/09/2022-006-Citizenship-Statute.pdf [https://perma.cc/QL9H-Z62P] (indicating that certain persons who can prove lineal descent from a Native American whose name was on the Durant Roll, which was created in 1908 to determine the living descendants of parties to certain nineteenth-century Indian treaties, are eligible for enrollment).

328. *See, e.g.*, Simon Romero, *Navajo Nation Becomes Largest Tribe in U.S. After Pandemic Enrollment Surge*, N.Y. Times (May 21, 2021), https://www.nytimes.com/2021/05/21/us/navajo-cherokee-population.html [https://perma.cc/DJ3T-KJY3].

329. *See, e.g.*, *Tribe Votes to Eliminate Blood Quantum Requirement*, Burnett Cnty. Sentinel (Nov. 17, 2023), https://www.burnettcountysentinel.com/news/tribe-votes-to-eliminate-blood-quantum-requirement/article_d8792ad6-84a1-11ee-b85b-0b8da95aa17d.html [https://perma.cc/XK5H-YP97].

330. *See, e.g.*, J.W. Powell, Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1896-97, Part 2: Indian Land Cessions in the United States, H.R. Doc. No. 56-736, at plates CVIII-CLXXIV; U.S. Geological Surv. & Indian Claims Comm'n, Map of Indian Land Areas Judicially Established (1978) (on file with Libr. of Cong., Geography & Map Div.), https://www.loc.gov/item/80695449 [https://perma.cc/PF9S-LFTK]; *Fractionation*, U.S. Dep't. Interior, https://www.doi.gov/buybackprogram/fractionation [https://perma.cc/99T5-A64D].

331. *See, e.g.*, U.S. Geological Surv. & Indian Claims Comm'n, *supra* note 330.

332. *See Fractionation*, *supra* note 330.

333. *See* Jane McAdam, *'Disappearing States', Statelessness and the Boundaries of International Law* 6-7 (UNSW L. Rsch. Paper No. 2010-2, 2010), https://ssrn.com/abstract=1539766 [https://perma.cc/Q7SU-85JT] ("[L]oss of some territory at least should not affect the legal status of the [state], since it is not necessary for a State to have precisely defined boundaries.").

Tribes also have governments that maintain the power to determine their own governance structures and enforce laws.[334] Tribes that voted to accept the IRA "were . . . permitted, although not required, to draw up a constitution" pursuant to the IRA, and "some 92" chose to do so "between 1934 and 1945."[335] Many of these tribes continue to be governed by IRA constitutions today.[336] Other tribal governments follow traditional forms of rule.[337] Still others govern using a combination of principles from Western legal traditions and historical practices.[338] Most—but not all—tribes offer members some form of representative democracy, just as most—but not all—modern states offer some form of representative democracy.[339]

To the extent that tribes fall short of the Montevideo Convention's definition of statehood, it is because tribes largely lack the "capacity to enter into relations with other . . . states."[340] In the United States, Indian tribes have long been subject to the courts of the conqueror as "domestic dependent nations," or some other lesser form of sovereign.[341] While some tribal governments have engaged in foreign relations at various points in history,[342] today tribes' *sovereign* powers are functionally limited to domestic affairs.[343]

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334. *How Are Tribal Governments Organized?*, *supra* note 324.

335. Kelly, *supra* note 313, at 299, 301-05.

336. Washburn, *supra* note 21, at 592 ("[Felix S. Cohen's] most stubborn legacy was his work in helping draft the IRA constitutions that continue to govern many tribes today.").

337. *See* Off. of Tribal Just., *Frequently Asked Questions About Native Americans*, DEP'T JUST., https://www.justice.gov/otj/about-native-americans [https://perma.cc/BF7F-PFG2].

338. *See, e.g.*, Pauly Denetclaw, *The Past and Present Diné Government*, SOURCE N.M. (July 24, 2023), https://sourcenm.com/2023/07/24/the-past-and-present-dine-government [https://perma.cc/M4LS-UT7X] ("The Navajo Nation government has evolved steadily, but radically, over the last 100 years. The government, which is now a three-tiered system of checks and balances, looks nothing like it did when Chee Dodge and U.S. military officials first created a central Navajo government. Despite its colonial roots, the [Navajo Nation Council] retains many Navajo traditions.").

339. *How Are Tribal Governments Organized?*, *supra* note 324.

340. Montevideo Convention art. 1, *supra* note 242, 49 Stat. at 3100.

341. *See* Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 2 (1831); McGirt v. Oklahoma, 591 U.S. 894, 910 (2020).

342. *See, e.g.*, *Choctaw and Irish History*, CHOCTAW NATION OKLA., https://www.choctawnation.com/about/history/irish-connection [https://perma.cc/PV84-X9NT] (summarizing cultural exchanges and diplomatic relations between the Irish and Choctaw governments since the mid-nineteenth century).

343. *See, e.g.*, United States. v. Wheeler, 435 U.S. 313, 323-24 (1978) ("Indian tribes are, of course, no longer 'possessed of the full attributes of sovereignty.' Their incorporation within the territory of the United States, and their acceptance of its protection, necessarily divested them

While tribes do not fully satisfy the Montevideo Convention's definition of statehood, tribal membership is still a form of subjection to a polity. As was previously suggested, new types of quasi-state entities have become prominent in the global community, which has caused some scholars to question established understandings of the centrality of statehood to international law.[344] A purely state-based understanding of citizenship fails to account for such entities and the people affiliated with them.[345] Even if Indian tribes must answer to a greater sovereign, the United States, they still possess independent, precon-

of some aspects of the sovereignty which they had previously exercised." (quoting United States v. Kagama, 118 U.S. 375, 381 (1886))).

344. *See* William Thomas Worster, *Functional Statehood in Contemporary International Law*, 46 BROOK. J. INT'L L. 39, 41-42 (2020) ("This article will . . . consider whether the continuing existence of de facto states and regimes forces us to shift our perspective to contemplate an increasingly subject, relative nature of statehood itself."); *see also* Grant, *supra* note 241, at 405-06 (discussing changes in conceptions regarding "what can constitute a person under international law").

345. As was previously mentioned *supra* in Section II.A.1, one example that pushes the boundaries of statehood is the European Union, a quasi-state entity that exists as a supranational government deriving authority from the sovereignty of its member states. *See Founding Agreements*, EUR. UNION, https://european-union.europa.eu/principles-countries-history/principles-and-values/founding-agreements_en [https://perma.cc/Y2CD-UJVX]. While the European Union lacks independent authority, it may enforce law upon member states. The European Court of Justice (ECJ), which is "the judicial authority of the European Union," is responsible for "review[ing] the legality of the acts of the EU's institutions," "ensur[ing] that the member states comply with obligations under the treaties," and "interpret[ing] EU law at the request of national courts and tribunals." *The Court of Justice of the European Union: Ensuring the Protection of EU Law*, CT. OF JUST. OF THE EUR. UNION 4 (Feb. 2022), https://michigan.law.umich.edu/system/files/2023-03/CJEU%20Brochure_a11y.pdf [https://perma.cc/32PQ-URYG]. In a certain sense, the European Union is therefore subject to multiple lesser sovereigns, as no individual member state could enforce law against other member states in the manner that the European Union does. In terms of quasi-state entities, an Indian tribe is the opposite of the European Union: it is a subnational government which has independent authority subject to a greater sovereign. *See* Memorandum on Uniform Standards for Tribal Consultation from the Administration of Joseph R. Biden, Jr., to the Heads of Executive Departments and Agencies, 2022 DAILY COMP. PRESS DOC. 1083 (Nov. 30, 2022), https://www.govinfo.gov/content/pkg/DCPD-202201083/pdf/DCPD-202201083.pdf [https://perma.cc/H6HB-R42P] (discussing the United States's "unique, legally affirmed Nation-to-Nation relationship with American Indian and Alaska Native Tribal Nations").

stitutional authority.[346] Tribal members are subject to this authority in ways that nonmembers are not.[347]

Tribal membership satisfies the second element of citizenship because tribal membership is both internally and externally recognized as a form of citizenship. Internally, many tribes refer to their members as citizens, indicating that many within Indian Country think of tribal membership as a form of citizenship.[348] The Principal Chief of the Cherokee Nation, Chuck Hoskin Jr., has stated that "[e]ach year, the Cherokee Nation pauses to pay recognition to Cherokee *citizens*, as well as our non-Native friends, who have worked tirelessly to promote and advance the efforts of the Cherokee Nation."[349] The Citizen Band of Potawatomi describes itself as "a federally recognized tribe of more than 38,000 Tribal *citizens* around the world."[350] Additionally, the National Congress of American Indians, which is "the oldest, largest and most representative American Indian and Alaska Native organization,"[351] explains that "[t]ribal members are *citizens* of three sovereigns: their tribe, the United States, and the state in which they reside."[352]

Externally, membership in a tribe is functionally recognized as citizenship by other tribes and the United States, as well as by certain aspects of international law, namely UNDRIP. Other tribes' recognition of a tribe's membership as a form of citizenship is most clear in the context of dual enrollments. While some tribes allow their members to also be enrolled as a member in another tribe, others prohibit this practice.[353] For example, in the Cherokee Nation,

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346. *See* Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56 (1978) ("As separate sovereigns preexisting the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority.").

347. *See, e.g.*, Jane M. Smith, Cong. Rsch. Serv., R43324, Tribal Jurisdiction Over Nonmembers: A Legal Overview 12 (2012) ("As a general rule, Indian tribes lack criminal and civil jurisdiction over *nonmembers*." (emphasis added)).

348. *See, e.g.*, *Cherokee Nation Celebrates Tribal Citizens During Annual Holiday Awards Ceremony*, Cherokee Phoenix (Sept. 2, 2023), https://www.cherokeephoenix.org/news/cherokee-nation-celebrates-tribal-citizens-during-annual-holiday-awards-ceremony/article_dadf447c-490a-11ee-91b6-bb2a06060788.html [https://perma.cc/FM6T-5VS8] ("Each year, the Cherokee Nation pauses to pay recognition to Cherokee citizens . . . .").

349. *Id.* (emphasis added).

350. *Tribal Rolls*, Citizen Potawatomi Nation (emphasis added), https://www.potawatomi.org/government/tribal-rolls [https://perma.cc/U5XM-YJY2].

351. Nat'l Cong. Am. Indians, https://archive.ncai.org [https://perma.cc/TTD2-N96Y].

352. *Tribal Nations and the United States: An Introduction*, *supra* note 19, at 18.

353. *See, e.g.*, Grant D. Crawford, *CN, UKB Officials Explain Nuances of Dual Enrollment*, Tahlequah Daily Press (Nov. 4, 2020), https://www.tahlequahdailypress.com/news/cn-

"[t]he enrollment process . . . is the same, regardless of whether the applicant holds another tribal citizenship."[354] In contrast, the United Keetoowah Band of Cherokee Indians "does not allow [members] to hold a membership in another tribe."[355] The prohibitions that many tribes place on dual enrollment date back to an era when the federal government exercised substantial control over tribal internal affairs.[356] Today, however, tribes are free to establish their own criteria for membership, and tribal decisions on the merits of such restrictions indicate that tribes conceptualize other tribes' memberships as citizenships alongside their own.

The United States also recognizes tribal membership as a form of citizenship. The Biden Administration recently "recognize[d] the right of Tribal Nations to self-determination," and in doing so, it acknowledged that tribes "bring invaluable expertise on countless matters from how to more effectively meet the needs of their *citizens* to how to steward their ancestral homelands."[357] Various federal agencies also treat tribal *citizens* as interchangeable with tribal *members*.[358] Most concretely, federal Indian law frequently distinguishes between tribal members and nonmembers for purposes of tribal criminal and civil jurisdiction.[359] Such distinctions are difficult to explain if both tribal members and nonmembers are only equally situated Americans but are easily understood if these two groups are being divided based on tribal citizenship and noncitizenship.

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ukb-officials-explain-nuances-of-dual-enrollment/article_c6b49c78-e4a5-56d5-a83d-e63fd5ba73f2.html [https://perma.cc/W58A-2YK6].

354. *Id.*

355. *Id.*

356. *Id.* (describing how when the United Keetoowah Band of Cherokee Indians (UKB) "wanted to be known as a federally recognized tribe," it was told by BIA "that [it] had to have exclusivity [of membership] and to keep [its enrollment] rolls separate from Cherokee Nation to get funding"); *see also The Encyclopedia of Oklahoma History and Culture: United Keetoowah Band*, OKLA. HIST. SOC'Y, https://www.okhistory.org/publications/enc/entry?entry=UN006 [https://perma.cc/XM5F-GYYM] (explaining how "the UKB received congressional recognition in 1946" and that "President Harry S. Truman appointed W. W. Keeler as chief of the Cherokee Nation in 1948").

357. Exec. Order No. 14,112, 3 C.F.R. 703, 703-04 (2024) (emphasis added).

358. *See, e.g.*, *Office of Tribal Relations*, U.S. DEP'T AGRIC., https://www.usda.gov/tribalrelations [https://perma.cc/2YQ5-7SS4]; *Intergovernmental Affairs: Tribal Affairs — American Indian and Alaska Native (AIAN)*, U.S. CENSUS BUREAU, https://www.census.gov/about/cong-gov-affairs/intergovernmental-affairs/tribal-aian.html [https://perma.cc/K5F3-L44R]; *Tribal and Rural Radio*, FED. COMMC'NS COMM'N, https://www.fcc.gov/general/tribal-and-rural-radio [https://perma.cc/3KVG-DGQ4].

359. *See, e.g.*, SMITH, *supra* note 347, at 12 ("As a general rule, Indian tribes lack criminal and civil jurisdiction over nonmembers.").

International law has also indirectly recognized tribal citizenship through UNDRIP. UNDRIP provides that "Indigenous peoples . . . have the right to belong to an indigenous community or nation" and "the right to determine their own identity or membership . . . ."[360] In combination, these provisions suggest that the parties to the United Nations must respect tribes' conceptions of their own membership, including a citizenship-based understanding. Tribes cannot "belong to an indigenous . . . nation" that can "determine [its] own identity" if states adhering to UNDRIP refuse to recognize tribal citizens as such.[361]

Tribal membership satisfies the third element of citizenship because tribal members are afforded certain rights by—and owe certain duties to—their tribes beyond those of nonmember residents of Indian reservations. Tribal governing documents generally allow for democratic participation in governance and the right to run for office.[362] Many tribes use their revenue streams to provide various entitlements to their members; some tribes even provide members with direct financial support.[363] All of these guarantees and benefits clearly constitute "rights" for the purposes of understanding citizenship.

Tribal members can also owe duties to their tribe, even if such duties are often less obvious from an outside perspective. Tribes govern their internal affairs, particularly with respect to their members.[364] Tribes could impose a tax on their members[365] or prohibit certain behaviors. Tribal members are therefore subject to rules and regulations that nonmember residents of Indian reservations may not be.[366] Tribal members have a duty to conform to these tribal

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360. G.A. Res. 61/295, arts. 9 & 33, *supra* note 210.

361. *See id.*

362. *How Are Tribal Governments Organized?*, *supra* note 324.

363. *See* 25 U.S.C. § 2710(b)(2)(B)(ii) (2018) (providing that "net revenues from any tribal gaming" can be used "to provide for the general welfare of the Indian tribe and its members"); *see also* 25 C.F.R. § 290.1 (2024) ("This part contains procedures for submitting, reviewing, and approving tribal revenue allocation plans for distributing net gaming revenues from tribal gaming activities.").

364. *See* United States v. Kagama, 118 U.S. 375, 381-82 (1886); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 71 (1978) ("[T]ribes remain quasi-sovereign nations which, by government structure, culture, and source of sovereignty are in many ways foreign to the constitutional institutions of the Federal and State Governments.").

365. *Answers to Frequently Asked Questions About Native Peoples*, NATIVE AM. RTS. FUND, https://narf.org/frequently-asked-questions [https://perma.cc/R9PU-Y3TD].

366. *See* Karina Brown, *Sovereign Justice: The Growing Power of Tribal Courts*, STATESMAN J. (Nov. 6, 2022, 5:00 AM PT), https://www.statesmanjournal.com/story/news/local/oregon/2022/11/06/sovereign-justice-the-growing-power-of-tribal-courts-umatilla-indian-reservation/69594311007 [https://perma.cc/7YS3-3QL5].

laws, and those who ignore them can be subject to their tribe's civil and criminal jurisdiction, potentially facing consequences such as fines, imprisonment, banishment, or disenrollment.[367]

While tribal membership satisfies all three elements of citizenship, it does not fit well within the traditional legal and scholarly paradigm of citizenship as a status granted through either birthright or naturalization.[368] Tribal membership is instead acquired through a process known as "enrollment."[369] Tribal enrollment processes typically require an individual or their parents/guardians to apply for membership by filling out a form, providing appropriate documentation, and perhaps paying a fee.[370] Some tribes require those seeking enrollment to prove lineal descent,[371] meaning that individuals can only become members by virtue of one or more of their ancestors holding tribal membership.[372] Other tribes require those seeking enrollment to prove blood quantum,[373] meaning

367. *Id.*

368. *See, e.g.*, *Citizen*, *supra* note 234 (suggesting that a citizen must be "either native or naturalized"); Lenard, *supra* note 56, at 81 (discussing legal distinctions between birthright and naturalized citizenship in binary terms); Gibney, *supra* note 288, at 653 (indicating that British citizenship can be acquired only through birth or naturalization); Saman Hashemi, Note, *Denaturalization and the Negative Effects of Widespread Insecurity in Citizenship for Naturalized Citizens*, 50 Hastings Const. L.Q. 113, 130 (2023) (presenting a dichotomy between birthright and naturalized citizens).

369. *See Tribal Enrollment Process*, U.S. Dep't Interior, https://www.doi.gov/tribes/enrollment [https://perma.cc/K4VU-AR5L].

370. *See, e.g.*, *Tribal Enrollment*, Sault Ste. Marie Tribe Chippewa Indians (Apr. 12, 2024), https://www.saulttribe.com/membership-services/tribal-enrollment [https://perma.cc/Y37S-GZJ8].

371. "Lineal descent" is a tribal-membership requirement which can be met by "anyone who descends from a tribal ancestor." Desi Rodriguez-Lonebear, *The Blood Line: Racialized Boundary Making and Citizenship Among Native Nations*, 7 Socio. Race & Ethnicity 527, 533 (2021). Tribes with a lineal-descent requirement may have different evidentiary standards for establishing descent. *See id.* Additionally, "[l]ineal descent is necessary but not always sufficient baseline criteria for contemporary tribal citizenship." *Id.* One recent study of tribal-membership requirements found that thirty-one percent of sampled tribes had a lineal-descent requirement. *Id.* at 534.

372. *See generally id.* (tracking the landscape of tribal-membership requirements).

373. "Blood quantum" is a tribal-membership requirement which can be met by anyone who has sufficient percentage tribal or Indian ancestry. *Id.* at 528. Tribes with a blood-quantum requirement may have different evidentiary standards for establishing blood quantum. Desi Rodriguez-Lonebear found that fifty-eight percent of sampled tribes had a blood-quantum requirement, with membership-eligibility thresholds ranging from 1/32 to 5/8 tribal blood. *Id.* at 534. For an in-depth discussion of the real-world impact of blood-quantum requirements on the lives of tribal members, see generally Tailyr Irvine, *Reservation Mathematics: Navigating Love in Native America*, Nat'l Museum Am. Indian, https://americanindian.si.edu/developingstories/irvine.html [https://perma.cc/S4FL-PS8W].

that individuals can only become members by virtue of meeting a certain threshold of Indian or tribal "blood," as recorded in official documents.[374]

Tribal enrollment processes suggest that tribal membership is not definitively a birthright because enrollment typically requires some kind of affirmative action by or on behalf of those eligible for membership.[375] Moreover, membership eligibility is not inherently tied to either one's location of birth or the citizenship status of one's parents. No tribes currently allow for an individual to be enrolled "solely by virtue of having been born within [the reservation's] geographic borders."[376] Children who have only one tribal-member parent are frequently ineligible for enrollment.[377] It is even possible for a child of two tribal-member parents to remain unenrolled given that enrollment can involve governmental approval rather than an automatic grant of status to those who are eligible.

Enrollment is also not clearly akin to naturalization, which is when "a foreign-born person . . . attains citizenship by law."[378] After all, few would claim that a child who was born on a tribe's reservation to two enrolled parents residing on the reservation is "foreign-born," even if said child's parents may need to apply to enroll their child as a tribal member.[379]

Tribal membership can still be understood as a form of citizenship even if it does not easily fit within the birthright/naturalization dichotomy. This dichotomy is more useful as a description of how individuals *typically* obtain citizenship than a statement about how citizenship *must* be obtained. Additionally, tribal membership falls comfortably within the general underlying principle of the birthright/naturalization dichotomy: a person can obtain citizenship through birth, or they can subsequently become a citizen. Tribal members be-

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374. *See* Rodriguez-Lonebear, *supra* note 371, at 529-30 (examining the origin and history of tracking blood quantum).

375. *See, e.g.*, Bureau of Indian Affs., *Tribal Programs*, U.S. Dep't of Interior 4-5 (1984), https://www.bia.gov/sites/default/files/dup/assets/public/raca/pdf/idc010108.pdf [https://perma.cc/44XF-APDR] (indicating that tribes "may authorize . . . those persons who meet established membership requirements . . . to qualify automatically for enrollment as a member of the tribe, but such *enrollment should be initiated by the person seeking to be enrolled or by someone acting on his behalf*" (emphasis added)).

376. *Birthright Citizen*, Black's Law Dictionary (12th ed. 2024); *see* Rodriguez-Lonebear, *supra* note 371, at 533-34 (finding no tribal residency requirement that does not include a requirement of "lineal descent plus . . . tribal homeland residency").

377. *See* Irvine, *supra* note 373 (explaining tribal blood-quantum requirements and their effects on the dating lives and child-rearing plans of Native Americans).

378. *Naturalized Citizen*, Black's Law Dictionary (12th ed. 2024).

379. *See* Irvine, *supra* note 373.

come citizens through enrollment. This process occurs after birth, but the conditions for enrollment are frequently tied to the conditions of their birth.

3. Understanding Disenrollment as Citizenship Revocation

This Note argues that disenrollment can be viewed as a form of citizenship revocation, even if it is not the prototypical example. Both involve a government stripping an individual of their citizenship. A tribal government is undoubtedly a form of government, and, as established in the previous Section, tribal membership is a form of citizenship. The only real difference between citizenship revocation and disenrollment, then, is that the former is generally understood to involve states because it is a term used in international law, whereas the latter involves tribes because it is a term used in Indian Country. Tribes are not states, but instead some lesser form of sovereign subject to the plenary power of Congress.[380] In the narrowest sense, then, disenrollment is not literally equivalent to citizenship revocation because a key actor is different. In a broader sense, however, citizenship revocation can be understood as any action taken by a polity to sever its relationship with a particular subject.

This conclusion is supported by the fact that disenrollment and citizenship revocation have significant practical similarities. A tribal member stripped of their membership and a citizen stripped of their citizenship both lose their right to residency.[381] Both may also lose various political rights such as representation and democratic participation.[382] Although scholars have not discussed it in detail, a government that strips a citizen of their citizenship also

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380. *See* Cherokee Nation v. Georgia, 30 U.S. 1, 17-18 (1831); *see also* McGirt v. Oklahoma, 591 U.S. 894, 910-11 (2020) (describing instances of congressional regulation and control of tribal governments).

381. *See* Duro v. Reina, 495 U.S. 676, 696 (1990) ("[T]ribes . . . possess their traditional and undisputed power to exclude persons whom they deem to be undesirable from tribal lands."), *superseded by statute*, Act of Nov. 5, 1990, Pub. L. 101-511, § 8077(b)-(d), 104 Stat. 1856, 1892-93 (temporary legislation), *and* Act of Oct. 28, 1991, Pub. L. 102-137, 105 Stat. 646 (permanent legislation), *as recognized in* United States v. Lara, 541 U.S. 193 (2004); Press Release, *supra* note 125; Lavi, *supra* note 60, at 409.

382. *See* Roberts v. Kelly, No. 2013-CI-CL-003, slip op. at 7 (Nooksack Indian Tribal Ct. Oct. 17, 2013), https://turtletalk.blog/wp-content/uploads/2013/10/roberts-v-kelly-order-granting-defendants-sic-motion-to-dismiss.pdf [https://perma.cc/82K2-5WCV] (discussing how disenrollees, while not rendered "stateless" due to their possession of United States citizenship, "lose[] critical and important rights" such as "the right to vote in tribal elections"); Macklin, *supra* note 58, at 33 (describing how in Canada, "[e]ven if the state does not move to expel the denationalized Canadian immediately, the *right* to remain (*like the right to vote*) is extinguished at the moment citizenship is revoked" (second emphasis added)).

presumably denies this individual access to citizen-only entitlements, just like tribes deny disenrollees access to tribal services.[383]

Beyond the definitional and practical similarities between disenrollment and citizenship revocation, it is also *useful* to understand disenrollment as a form of citizenship revocation. This approach allows tribal officials and members, advocates and journalists, and scholars and practitioners of federal Indian law to draw upon a wider body of theory and comparisons when considering disenrollment. Specifically, Part III will argue that tribes should look to international norms on citizenship revocation when considering how to limit disenrollment.

III. WHY TRIBES SHOULD LOOK TO INTERNATIONAL NORMS

Equating disenrollment to citizenship revocation is only relevant to Indian Country if tribes have a reason to consider an international perspective. This Part therefore discusses *why* tribes should choose to adopt international norms on citizenship revocation to address disenrollment. First, it will briefly explain that tribal governments can and do look beyond Indian Country for sources of inspiration by providing several examples in nondisenrollment contexts. Next, it explains that tribes can directly benefit from looking to international norms because embracing these norms will promote due process. Finally, this Part claims that tribes can indirectly benefit from looking to international norms because embracing these norms will promote tribal sovereignty.

A. Existing Efforts to Strengthen Tribal Sovereignty

The argument that tribes should look to international norms on citizenship revocation is not merely academic. It has practical appeal and a real chance of adoption. Tribal governments are not static entities limited to their historical practices.[384] While many tribes' present governmental structures trace their origins to past federal efforts to impose uniformity across Indian Country, partic-

383. *See, e.g.*, Mike Baker, *A Tribe's Bitter Purge Brings an Unusual Request: Federal Intervention*, N.Y. TIMES (Jan. 2, 2022), https://www.nytimes.com/2022/01/02/us/nooksack-306-evictions-tribal-sovereignty.html [https://perma.cc/5XYT-X9C3] (describing how the Nooksack "cut off educational aid, health services, [and] financial stipends" to disenrollees).

384. *See* Goldberg, *supra* note 310, at 458; JILL DOERFLER, THOSE WHO BELONG: IDENTITY, FAMILY, BLOOD, AND CITIZENSHIP AMONG THE WHITE EARTH ANISHINAABEG 15 (2015); Fletcher, *supra* note 26, at 12.

ularly through the IRA,[385] tribes can and do refine their policies and amend their governing documents.[386] In the Self-Determination Era, tribes are free to engage in political reforms without federal oversight, including reforms meant to limit disenrollment.[387] The key to ensuring that tribes limit their power to disenroll therefore lies in convincing tribes that embracing such limitations is to their benefit.

In recent years, tribes have looked beyond the United States's borders to find inspiration for strengthening their sovereignty. For example, the Muscogee (Creek) Nation passed a tribal resolution adopting UNDRIP and translated UNDRIP into the Mvskoke language "as an exercise of the Nation's sovereign rights with the ultimate goal of removing the legal and cultural obstacles that prevent the Muscogee people from continuing their traditional and ceremonial life."[388] The Pasqua Yaqui Tribe provides another example. Tribal members descend from Native Americans in both Arizona and Sonora and engage in cultural practices without regard to the "imaginary line" of the United States-Mexico border.[389] The tribe has therefore long clashed with the federal government regarding tribal border crossings.[390] In 2009, the Pasqua Yaqui reached an agreement with the U.S. Department of Homeland Security "re-

385. Washburn, *supra* note 21, at 592 ("[Felix S. Cohen's] most stubborn legacy was his work in helping draft the IRA constitutions that continue to govern many tribes today.").

386. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 155 (discussing how the Federated Tribe of Graton Rancheria "amended its constitution in advance of opening its casino and, while not completely disavowing disenrollment, did establish provisions that strictly limit that possibility").

387. *See, e.g.*, *id.*; Rolando Hernandez, *Confederated Tribes of Grand Ronde Amend Constitution, Limit Tribal Disenrollment*, OR. PUB. BROAD. (Jan. 4, 2023), https://www.opb.org/article/2023/01/04/confederated-tribes-of-grand-ronde-amend-constitution-limit-tribal-disenrollment [https://perma.cc/S8M5-H3T3] (discussing an interview with Cheryle Kennedy, the chairwoman of the Confederated Tribes of the Grand Ronde).

388. A Tribal Resolution of the Muscogee (Creek) Nation Adopting a Declaration on the Rights of Indigenous Peoples and Directing Said Declaration into the Mvskoke Language, Res. No. TR 16-149 (2016) (Muscogee (Creek) National Council), https://creekdistrictcourt.com/wp-content/uploads/2019/08/TR16-149.pdf [https://perma.cc/Y2JV-3XHW]; *see also generally Mvskoke Este Catvlke Vhakv Empvtakv Enyekcetv Cokv (Declaration on the Rights of Indigenous Peoples)*, MUSCOGEE (CREEK) NATION (Mar. 16, 2019), https://creekdistrictcourt.com/wp-content/uploads/2019/08/Mvskoke-DRIP-031619.pdf [https://perma.cc/4D4P-JS9R] (translating the Declaration on the Rights of Indigenous Peoples into the Mvskoke language).

389. Hallie Golden, *This Tribe's Land Was Cut in Two by US Borders. Its Fight for Access Could Help Dozens of Others*, AP NEWS (May 13, 2023), https://apnews.com/article/tribes-border-crossing-regulations-a015d6b900b525b68d32edd9b20fofdc [https://perma.cc/Y5MK-7MH4].

390. *See id.*

garding the acceptance of a Pascua Yaqui Enhanced Tribal Identification Card . . . for border-crossing purposes."[391] This agreement required the Tribe to conform its travel practices with the United States's post-9/11 border-security practices.[392] Today, the Pasqua Yaqui is advocating for a tribal-specific border-crossing process which could ideally provide a template for other tribes in similar situations.[393] These case studies suggest that tribes are ready, willing, and able to look beyond Indian Country when it is beneficial.

Some may argue that tribes that embrace external principles of governance are engaging in self-assimilation. But this argument fails to consider that tribes, like all other polities, have always evolved in response to changing conditions.[394] Voluntary adaptation does not require the abandonment of tribal identity or tradition, and arguments to the contrary threaten tribal sovereignty by framing Indigenous peoples as historical artifacts rather than living communities. Tribes adapted to the arrival of Europeans to North America, the establishment of the United States, and federal practices meant to assimilate and erase Native Americans.[395] Tribal efforts to endure and thrive in the face of a changing world are central—not contrary—to tribal sovereignty.

This Note argues that tribes should *choose* to look to international norms on citizenship revocation as guidance for addressing disenrollment. So long as this choice is truly a choice, tribes can only strengthen themselves through the exercise of self-determination. This Section has explained that tribes have looked beyond Indian Country in other contexts when given the right incentives. The following Sections therefore explain *why* tribes should look beyond Indian Country in this context: embracing international norms on citizenship revocation can directly benefit tribes by bolstering good governance and indirectly benefit tribes by furthering tribal sovereignty.

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391. *Enhanced Tribal Identification Card Program*, Pascua Yaqui Tribe, https://www.pascuayaqui-nsn.gov/enrollment/enhanced-tribal-identification-card-program [https://perma.cc/7H7L-EGEZ]; *see also* Press Release, U.S. Dep't of Homeland Sec., Department of Homeland Security and the Pascua Yaqui Tribe Announce a Historic Enhanced Tribal Card (July 30, 2010), https://www.dhs.gov/archive/news/2010/07/30/department-homeland-security-and-pascua-yaqui-tribe-announce-historic-enhanced [https://perma.cc/9AAC-SAXJ] (announcing the issuance of the first Enhanced Tribal Card).

392. *See Enhanced Tribal Identification Card Program*, *supra* note 391; Press Release, *supra* note 391.

393. Golden, *supra* note 389.

394. Wilkins & Wilkins, *supra* note 6, at 1.

395. For an account of the role of Native Americans in United States history, see generally Ned Blackhawk, The Rediscovery of America: Native Peoples and the Unmaking of U.S. History (2023).

B. Direct Benefits

Tribes could directly benefit from embracing international norms on citizenship revocation because adopting these norms will strengthen due process and the rule of law. A common criticism of tribal-disenrollment efforts is that they often lack due process.[396] Due process is "[t]he conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights."[397] Many tribal-disenrollment efforts involve officials creating rules in direct response to the situation at hand or failing to rely on any rules at all.[398] This lack of due process undermines the legitimacy of tribal-disenrollment efforts, blurring the line between tribal decision-making and personal or political agendas.[399] This degradation in good governance can extend beyond a single disenrollment effort, leading to future disenrollments or cycles of disenrollment and reenrollment.[400] Even more damaging, tribes that disregard due process in the context of disenrollment often suffer from a decline in rule-of-law values throughout their government.[401] Without the rule of law, tribal institutions like free and fair elections and neutral courts may quickly deteriorate.[402]

International norms on citizenship revocation offer a helpful framework for how tribes could strengthen due process in the context of disenrollment, thereby improving long-term prospects by promoting the rule of law. Ironically, despite the federal government's questionable past with respect to disenrollment, the United States has had relatively strong protections against unchecked citizenship revocation for much of contemporary history.[403] In America, the only

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396. *See, e.g.*, Reitman, *supra* note 47, at 796-98; Smith, *supra* note 173, at 42.

397. *Due Process*, BLACK'S LAW DICTIONARY (11th ed. 2019).

398. *See, e.g.*, Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 ILR. 6047, 6048 (No. 04-CA-1017) (Saginaw Chippewa Indian Tribe of Michigan Ct. App. Jan. 7, 2005) ("These [disenrollment] proceedings did *not* provide any of the meaningful elements of due process."); John v. Garcia, No. C 16-02368, 2018 WL 1569760, at *1, *2-3 (N.D. Cal. Mar. 31, 2018).

399. *See, e.g.*, Baker, *supra* note 126.

400. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 91-100 (describing the Chukchansi's history of disenrollment and reenrollment).

401. *See, e.g.*, *id.* at 93-94 (describing briefly the Chukchansi's disputed election).

402. *See, e.g.*, *id.* at 87-88 (describing how a disenrollment effort led the Nooksack Indian Tribe to cancel a constitutionally mandated election and terminate a tribal judge "without cause").

403. *See, e.g.*, Afroyim v. Rusk, 387 U.S. 253, 267-68 (1967) (holding that Congress lacks the constitutional power to strip a person of citizenship); Taylor Koper, *The Denaturalization Section*, 89 UMKC L. REV. 743, 756-59 (2021).

ground for loss of citizenship is fraud in the naturalization process.[404] If the federal government wants to denaturalize a citizen due to alleged fraud, it "carries a heavy burden" of proving its case[405] with "clear, unequivocal, and convincing" evidence that does "not leave 'the issue . . . in doubt.'"[406] The denaturalization process must also comport with the Federal Rules of Civil Procedure, which lay out a variety of due-process requirements demanded by the Fifth and Fourteenth Amendments.[407] Tribes should look to these procedural safeguards, as well as similar standards adopted by other nations, to ensure they do not violate the rights of all of their tribal members in attempting to disenroll some of them.

While tribes should create systems that guarantee due process to those facing disenrollment, it is important to note that due process is not inherently outcome-determinative, meaning that something more is necessary to address disenrollment fully. A tribal-court case from the Nooksack Indian Tribe's years-long and ongoing disenrollment controversy showcases this fact.[408] In *Roberts v. Kelly*, the Nooksack Tribal Court of Appeals held that the disenrollment procedures created by tribal officials lacked "the due process notice requirement" and "the right to representation" and "were not properly adopted in accordance with the strict requirements of the Nooks[a]ck Constitution."[409] These issues did not halt the Tribe's efforts to remove members, but instead prompted officials to "modify[] the tribe's disenrollment ordinance and then forward[] it to the secretary of the interior for validation."[410] The Nooksack's disenrollment controversy was ongoing as of 2024.[411] This example demonstrates that even tribes that offer robust due-process protections to those facing disenrollment must still answer the fundamental questions of whether and when disenrollment is warranted.

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404. *Afroyim*, 387 U.S. at 267 n.23; Costello v. United States, 365 U.S. 265, 283-84 (1961).

405. *Costello*, 365 U.S. at 269.

406. *Id.* (alteration in original) (quoting Chaunt v. United States, 364 U.S. 350, 353 (1960)).

407. Koper, *supra* note 403, at 756-59; *see Costello*, 365 U.S. at 284-85.

408. *See* WILKINS & WILKINS, *supra* note 6, at 108-14.

409. 12 NICS App. 33, 41 (No. 2013-CI-CL-003) (Nooksack Tribal Ct. App. Mar. 18, 2014), https://www.codepublishing.com/WA/NICS/html/12NICSApp/12NICSApp033.html [https://perma.cc/SGA3-SAHB].

410. WILKINS & WILKINS, *supra* note 6, at 113.

411. Matthew Smith, *Nooksack Tribe Criticized over Eviction of Disenrolled WA Families*, FOX 13 SEATTLE (Oct. 29, 2024, 8:50 AM PDT), https://www.fox13seattle.com/news/nooksack-eviction-disenroll [https://perma.cc/YDR3-MYYD].

C. Indirect Benefits

Tribes should answer fundamental questions about disenrollment with reference to international norms on citizenship revocation because this approach will indirectly benefit them by strengthening their sovereignty over time. In *choosing* to embrace these norms, a tribe maintains its right as a tribal sovereign to make its own decisions. In choosing to embrace *international norms*, a tribe demonstrates that it accepts the responsibilities of a state sovereign. By confronting the disenrollment epidemic using this method, tribes can better align their sovereignty with state sovereignty. This alignment would strengthen tribes by furthering self-determination and ideally helping to restore previously diminished aspects of tribal authority.[412]

Tribes that embrace international norms on citizenship revocation would still be "defin[ing] [their] own membership" and could choose to allow for disenrollment under certain circumstances.[413] After all, many countries permit citizenship revocation in specific situations, and no two revocation regimes are the same.[414] Tribes would remain free to create a system that suits their histories, traditions, and needs. But citizenship-revocation literature has also emphasized that states' citizenship-revocation power is not unlimited, both as a normative matter and under international law.[415] Tribes that bind themselves to international norms on citizenship revocation would therefore need to voluntarily accept limitations on their actions, as tribes "do not shoulder enforceable obligations under the major human rights treaties."[416] By imposing limitations on their actions, tribes would demonstrate that tribal sovereignty is akin to state sovereignty, with all of the accompanying power *and* restrictions, rather than a concept unique to federal Indian law.

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412. *See* Fletcher, *supra* note 26, at 16 ("Expansions of tribal sovereignty . . . *must be earned*.").

413. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978) (citing Roff v. Burney, 168 U.S. 218, 222-23 (1897)); Cherokee Intermarriage Cases, 203 U.S. 76, 94-96 (1906)).

414. *See* 8 U.S.C. § 1451 (2018); Gerard-René de Groot & Maarten Peter Vink, *A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union* 1-46 (CEPS Paper in Liberty & Sec. in Eur., Paper No. 75, 2014), https://cdn.ceps.eu/wp-content/uploads/2015/01/No%2075%20ILEC%20Loss%20of%20citizenship%20final%20MAP%20(1).pdf [https://perma.cc/UE2A-4Y9C]; Maarten Peter Vink, Luuk Van Der Baaren, Rainer Bauböck, Jelena Dzankic, Iseult Honohan & Bronwen Manby, *GLOBALCIT Citizenship Law Dataset*, Cadmus EUI Rsch. Repository (2021), https://hdl.handle.net/1814/73190 [https://perma.cc/8X8B-NZBG].

415. *See, e.g.*, Honohan, *supra* note 63, at 365-66; Carey, *supra* note 259, at 900; Lenard, *supra* note 261, at 367.

416. Singel, *supra* note 175, at 590.

Tribes that embrace international norms regarding citizenship revocation may increase their legitimacy in the eyes of the American public. Tribal efforts to remove members have created intense media scrutiny of tribes' internal affairs and caused some to question tribal sovereignty and self-governance.[417] Disenrollments encourage a return to familiar, colonial-style arguments about the need for federal action to protect "the best interests of . . . the Indians."[418] Tribes must address this negative attention regardless of its merits because, as explained by Matthew L.M. Fletcher, a law professor at the University of Michigan, "[t]ribal sovereignty is robust, but limited by the preferences of the outside American culture."[419] "Expansions of tribal sovereignty" therefore "must be earned."[420] While some tribal-sovereignty skeptics may never be satisfied, many Americans have little knowledge of tribes, and public opinion can have a major impact on the success of tribal ventures.[421] Turning to widely accepted international standards may aid in the effort of correcting public opinion about tribal self-governance.

In looking to international norms regarding citizenship revocation, tribes may also increase their legitimacy in the eyes of the global community. Increased international recognition of Indian tribes is important because it puts pressure on the federal government to continue supporting tribal sovereignty rather than curtailing it. While foreign states cannot force the United States to make any specific policy decisions regarding Indian Country, they can exert influence in international bodies such as the United Nations. The United Nations can in turn establish universal standards and influence public discourse surrounding indigeneity. The long-term value of this norm-setting function can be seen in UNDRIP, which has become "an unavoidable parameter of reference when dealing with indigenous peoples' rights."[422] By adhering to international norms, tribes can therefore help ensure continued international support for Indian Country as well as Indigenous peoples more generally.

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417. *See, e.g.*, Dunaway, *supra* note 13; Hilleary, *supra* note 8; Reitman, *supra* note 47, at 799.

418. Reitman, *supra* note 47, at 799.

419. Fletcher, *supra* note 26, at 16.

420. *Id.* (emphasis omitted).

421. *See, e.g.*, Billy J. Stratton, *Ignorance, Cultural Misunderstanding and the Vicious Cycles of the Native American Experience*, HILL (May 29, 2019, 11:15 AM ET), https://thehill.com/blogs/congress-blog/politics/445874-historical-ignorance-cultural-misunderstanding-and-the-vicious [https://perma.cc/S83L-9DWR].

422. Felipe Gómez Isa, *The UNDRIP: An Increasingly Robust Legal Parameter*, 23 INT'L J. HUM. RTS. 7, 16 (2019).

IV. HOW TRIBES COULD APPLY INTERNATIONAL NORMS

Given that tribes can strengthen their sovereignty by embracing international norms on citizenship revocation, the most important question is how tribes might choose to *apply* these norms to their individual circumstances. After all, much of the current discourse surrounding citizenship revocation is influenced by national-security and statelessness concerns, neither of which has a clear equivalent in Indian Country. Moreover, much of the current discourse surrounding disenrollment is influenced by the legacy of colonialism and the proliferation of Indian gaming, neither of which has a clear equivalent on the global stage. The following analysis will therefore evaluate how tribal governments could choose to translate international norms and scholarly literature on citizenship revocation to Indian Country while accounting for the distinctive aspects of both.

More specifically, this Part will explain how theories of citizenship revocation and the approaches of states engaging in this practice can provide tribes with guidance as to how to restrict disenrollment. It will first use the lens of international norms to evaluate four general rationales for why tribes might choose to engage in disenrollment—lack of blood quantum, fraud, error in enrollment, and dual enrollment. It then analyzes the unique considerations implicated when tribes functionally disenroll deceased members as part of efforts to formally disenroll current members. Finally, this Part offers a specific practice used by some countries with citizenship-revocation regimes which would also benefit tribes—statutes of limitations.

A. Evaluating Rationales for Disenrollment

While scholarly literature and news coverage on disenrollment often emphasizes the influence of money and politics,[423] tribal governments engaging in this practice typically do provide neutral explanations for their actions.[424] In any individual case, a tribe's rationale for disenrolling a member could be pretextual. In the aggregate, however, these rationales provide a useful framework for evaluating how current disenrollment practices differ from international norms on citizenship revocation. If tribes want to strengthen their sovereignty in the context of disenrollment, a useful place to start may be addressing situations where their rationales for targeting members depart from the theories of citizenship revocation and the approaches of states engaging in this practice.

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423. *See, e.g.*, Galanda & Dreveskracht, *supra* note 8, at 410; Dunaway, *supra* note 13.

424. *See* WILKINS & WILKINS, *supra* note 6, at 67-71, 78.

According to Wilkins and Wilkins, tribes' rationales for disenrolling members include "[l]ack of blood quantum," "[f]raud in enrollment," "'error[s]' in enrollment," and "[d]ual enrollment."[425] These four rationales do not include every possible circumstance in which a tribe might attempt to engage in disenrollment.[426] Nonetheless, they capture the vast majority of circumstances, at least based on publicly reported disenrollments.[427] This Section will therefore discuss these four rationales and the relevance of international norms on citizenship revocation to each in turn.

1. Lack of Blood Quantum

A common rationale for disenrollment is lack of blood quantum.[428] This Section briefly introduces the concept of blood quantum before explaining why it does not offer a complete explanation of Indian identity. It then delineates how disenrollments for lack of blood quantum raise difficult questions regarding both the history of blood-quantum practices and the contemporary limitations of these calculations. Finally, it argues that blood-quantum disenrollments largely cannot be justified using international norms on citizenship revocation based on three insights from citizenship-revocation literature.

First, "blood quantum" measures the proportion of a person's ancestry that was affiliated with a particular tribe, or was "Indian" more generally, as recorded in some official document, commonly called a "base roll."[429] Modern tribal base rolls are frequently derived from Indian census rolls created by BIA, with varying degrees of tribal input.[430] These records, which documented and quan-

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425. *See id.*

426. *Id.*

427. To provide an example, some tribes have banished members from their reservations for certain criminal activities. *See id.* at 12-13. These tribes could theoretically disenroll such members instead.

428. *Id.* at 67-71, 78 (listing known instances of disenrollment and involved tribes' official rationales).

429. *See* Eva Marie Garroutte, *The Racial Formation of American Indians: Negotiating Legitimate Identities Within Tribal and Federal Law*, 25 AM. INDIAN Q. 224, 224-25 (2001).

430. *See Indian Census Rolls, 1885-1940*, NAT'L ARCHIVES (Oct. 9, 2014), https://www.archives.gov/research/census/native-americans/1885-1940.html [https://perma.cc/LW2A-9LYS]; *see also* Rodriguez-Lonebear, *supra* note 371, at 531 (describing the federal government's role in creating and modifying base rolls); Alexandra Harmon, *Tribal Enrollment Councils: Lessons on Law and Indian Identity*, 32 W. HIST. Q. 175, 177-79 (2001) (outlining the federal government's role in determining tribal membership in the case of the Colville Reservation enrollment campaign); Nicole J. Laughlin, *Identity Crisis: An Examination of Federal Infringement on Tribal Autonomy to Determine Membership*, 30 HAMLINE L. REV. 97, 99, 103-

tified Native Americans' identities, were central to the United States's project of Indian erasure.[431] Although tribes are now free to "define [their] own membership,"[432] many continue to require their members to meet certain blood-quantum requirements.[433]

The rationale of disenrollment for lack of blood quantum appears simple: if tribal members must have a certain amount of tribal or Indian ancestry, then an individual found not to meet this threshold should not be a tribal member. This reasoning results in mass disenrollments when a tribe applies it to entire families based on shared ancestry[434] or amends their blood-quantum requirements such that some members no longer qualify.[435] Tribes engaging in such disenrollments often frame their actions in terms of protecting tribal sovereignty, self-determination, and rule of law.[436] Tribal-membership requirements are *requirements*, not suggestions, and blood-quantum requirements are seemingly impartial given that blood quantum is typically calculated using federal records of Indian status.[437]

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05 (2007) (describing the creation of enrollment commissions in the implementation of the 1877 General Allotment Act); Horace B. Durant, Bureau of Indian Affairs Special Agent Horace B. Durant's 1907 Durant Roll Field Notes, at vii-viii (Raymond C. Lantz ed., 2014) (explaining that Special Indian Agent Horace B. Durant was tasked with taking the census of August 1, 1908, of the Ottawa and Chippewa Indian Tribes of Michigan).

431. *See, e.g.*, Patricia Nelson Limerick, The Legacy of Conquest: The Unbroken Past of the American West 338 (1987) ("Set the blood quantum at one quarter, hold to it as a rigid definition of Indians, let intermarriage proceed as it has for centuries, and eventually Indians will be defined out of existence. When that happens, the federal government will finally be freed from its persistent 'Indian problem.'"); Rodriguez-Lonebear, *supra* note 371, at 528 ("In the United States, the social construction of race and origins of White supremacy are inextricably tied to the settler-colonial projects of Indigenous erasure and African slavery."); Esther M. Pearson, *Native American Injustice and the Mathematics of Blood Quantum*, *in* Human Dignity: Establishing Worth and Seeking Solutions 301, 308-09 (Edward Sieh & Judy McGregor eds., 2017) (suggesting that the United States "had participated, perhaps intentionally, in scientific and social racism leading to the deliberate and systematic destruction of [Native American] culture" through shifting approaches to blood quantum).

432. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978) (citing Roff v. Burney, 168 U.S. 218, 222-23 (1897); Cherokee Intermarriage Cases, 203 U.S. 76, 94-96 (1906)).

433. *See* Rodriguez-Lonebear, *supra* note 371, at 534.

434. *See* Minke, *supra* note 172, at 213.

435. *See* American Indian Nations: Yesterday, Today, and Tomorrow 25 (George Horse Capture, Duane Champagne & Chandler C. Jackson eds., 2007).

436. *See* Beekman, *supra* note 16; Peacher, *supra* note 16.

437. *See* Rodriguez-Lonebear, *supra* note 371, at 531.

The facial fairness of blood-quantum disenrollments is undermined by the fact that federal records of Indian status are not an objective measure of Indian identity.[438] When tribes calculate blood quantum using Indian census rolls, they must reconstruct the past based on an often-incomplete picture painted by federal agents.[439] In order to create Indian census rolls, federal agents had to translate tribal understandings of community to a recordkeeping format that reflected the federal government's racialized understanding of Indian identity.[440] These agents had varying approaches to this task and presumably different degrees of success.

To be clear, this Note does not claim that Indian census rolls, or tribal blood-quantum requirements more generally, are inherently illegitimate. Instead, this Note emphasizes that blood quantum is at best a shorthand for identity, not a complete explanation.[441] The limitations of blood quantum

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438. *See, e.g.*, *Indian Census Rolls, 1885-1940*, *supra* note 430 ("[The Commissioner of Indian Affairs'] constant harping suggests [that Indian census rolls had] continuing inaccuracies. . . . [They] may or may not be considered a list of all those people who were officially considered 'enrolled.' . . . But, it is also clear that the numbers had varying meaning."); Harmon, *supra* note 430, at 179 (discussing how the Colville Indian Reservation's base roll was produced via "a prolonged discourse" between the federal government and community members that the author would "characterize as incomplete mutual education and accommodation"). Alexandra Harmon's account indicates that at least some federal records of Indian identity were created via compromise rather than fiat. *See* Harmon, *supra* note 430, at 179. The federal government set "ground rules for enrollment and overrode some [tribal] decisions for failing to comport with those rules." *Id.* However, the federal government also "relied on Indians' answers," meaning that its records "embodied Indians' thinking about tribal relations, including their diverse and changing reactions to the government's legal guidelines." *Id.* Indian decision makers, however, had "diverse and vacillating thoughts about the official criteria for enrollment." *Id.* at 190.

439. *See, e.g.*, Pearson, *supra* note 431, at 305 (describing how the federal government's reliance on Indian census rolls "to determine Indian status" created "an opportunity for problems and inaccuracies").

440. *See, e.g.*, Harmon, *supra* note 430, at 178 ("Colville enrollment was part of a national undertaking that had many local variants. . . . Although Indian councils were not the universal procedure for generating tribal rolls, they were common."); DURANT, *supra* note 430, at vii (describing how Special Indian Agent Horace B. Durant completed the task "of determining all the living descendants of those persons found listed on the 1870 Census and Annuity Payment Record of the Grand River, Mackinac, Sault Sainte Marie and Traverse Bands of the Ottawa and Chippewa Indians of Michigan").

441. For a more thorough explanation of why blood quantum does not offer a complete explanation of Indian identity, see, for example, Fletcher, *supra* note 26, at 5-6, which offers a comparison between two hypothetical individuals to illustrate how blood-quantum requirements can be "comically arbitrary." *See also* Terry P. Wilson, *Blood Quantum: Native American Mixed Bloods*, *in* RACIALLY MIXED PEOPLE IN AMERICA 108, 116 (Maria P.P. Root ed., 1992) ("Before the White man's coming there was intermarriage and interbreeding across group

magnify the need for tribes to look to international norms and literature on citizenship revocation when considering how to restrict blood-quantum disenrollments.

Tribal blood-quantum requirements are common in Indian Country[442] but lack a clear equivalent elsewhere. One study found that 334 tribes have some form of blood-quantum requirement while 110 tribes use "non-blood quantum rules," such as lineal descendance or residency, in lieu of or in addition to blood-quantum rules.[443] In some tribes, blood quantum is a key part of members' personal identities.[444] At the same time, blood-quantum requirements also enable Native Americans' status as tribal members to come under question in ways that other forms of citizenship do not.[445] An individual seeking to become a naturalized citizen of the United States will need to answer questions about their personal background and direct relations.[446] But an individual seeking to become a tribal member may also need to answer questions about their parents, grandparents, great-grandparents, and even more distant ancestors, regardless of their personal relationship with these ancestors and the reliability of historical documentation.

Disenrollment based on lack of blood quantum raises the practical question of how to determine blood quantum with certainty. Any individual facing disenrollment must have been originally enrolled. Blood-quantum disenrollments therefore inherently involve current tribal officials questioning determinations made by either their predecessors or federal officials. Tribes could benefit from deference to past conclusions made by individuals who may have been aware of

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lines, and no one marked the offspring as mixed blood or kept an accounting of blood quantum to determine tribal membership or degree of culture or acculturation. These notions were introduced by Europeans and Euro-Americans."); KATHERINE ELLINGHAUS, BLOOD WILL TELL: NATIVE AMERICANS AND ASSIMILATION POLICY 11 (2017) ("The Anishinaabeg's own understanding of who was a 'Chippewa' had little to do with biology or blood and much to do with culture and lifestyle.").

442. Rodriguez-Lonebear, *supra* note 371, at 534.

443. *Id.*

444. *See* James F. Hamill, *Show Me Your CDIB: Blood Quantum and Indian Identity Among Indian People of Oklahoma*, 47 AM. BEHAV. SCIENTIST 267, 268 (2003).

445. *See* Gerald Torres, *American Blood: Who Is Counting and for What?*, 58 ST. LOUIS U. L.J. 1017, 1020-23 (2014); *see also* Adoptive Couple v. Baby Girl, 570 U.S. 637, 641 (2013) ("This case is about a little girl (Baby Girl) who is classified as an Indian because she is 1.2% (3/256) Cherokee.").

446. *See generally Thinking About Applying for Naturalization? Use This List to Help You Get Ready!*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Feb. 2024), https://www.uscis.gov/sites/default/files/document/guides/G-1151.pdf [https://perma.cc/AE2L-XMZU] (providing various topics that will be discussed when applying for naturalization).

pertinent information that did not survive to the present. Governing documents may not reflect well-known circumstances within a tribe, such as a child's biological parentage in cases of illegitimacy, adoption, or parental remarriage.

Indian census rolls can produce an astonishing amount of confusion in the absence of any living witnesses to their creation. For example, in 1907, Special Indian Agent Horace B. Durant was tasked with "determining all the living descendants of those persons listed on the 1870 Census and Annuity Payment Record of the Grand River, Mackinac, Sault Sainte Marie and Traverse Bands of the Ottawa and Chippewa Indians of Michigan."[447] In completing this assignment, Durant accumulated more than four thousand pages of "notes and correspondence he received regarding the descendants of the heads of household listed on . . . the 1870 Census."[448]

Durant's field notes vividly depict the challenges inherent in relying on Indian census rolls to calculate blood quantum. Some individuals lacked English names altogether; others' names were crossed out and replaced.[449] "Charlotte La Coy," for example, was actually "Augusta La Coy," while "John Ike" was actually "Georg High."[450] Individuals' Indian names were frequently misspelled.[451] Many women would have presumably married and taken on different surnames and may have been counted twice, or perhaps not at all.

Durant relied on correspondence with those willing and able to write back to him in English, and individuals' responses demonstrate various priorities and nuances. One man replied to Durant asking for work as a dishwasher or potato peeler.[452] A grandmother wanted to ensure that no "money belonging to [her grandsons was] diverted from their benefit."[453] Durant personally believed that one family was entitled to enrollment despite not being listed on the 1870 roll "because of the adherence of their grandfather to the Brittish Cause in war of 1812."[454] Durant could not find records of another family at all.[455]

Even if Indian census rolls are consistently reliable sources for identifying Native Americans, many scholars have emphasized that blood-quantum *calcu-*

447. DURANT, *supra* note 430, at vii.

448. *Id.*

449. *Id.*

450. *Id.* at 28, 321.

451. *See id.* at 210, 213, 527.

452. *Id.* at 511.

453. *Id.* at 350.

454. *Id.* at 344.

455. *Id.* at 582.

lations were often determined by human choice and error as much as ancestry.[456] A former chief of the Cherokee Nation described how many full-blood Cherokees who lived during the Allotment Era[457] "registered as a quarter, eighth or sixteenth blood so they could sell their property."[458] Many mixed-blood Cherokees in turn "registered as a full blood so that they could have their land restricted and nontaxable."[459] The Cherokee Nation is now a lineal-descendancy tribe, minimizing the implications of such decisions today,[460] but this history nonetheless speaks to wider issues when relying on tribal rolls for accurate calculations of blood quantum.

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456. *See, e.g.*, Pearson, *supra* note 431, at 305-06; ELLINGHAUS, *supra* note 441, at 68 ("Ross Swimmer, a former chief of the Cherokee Nation of Oklahoma, has also described how 'a lot of ingenious Cherokees who were full blood, registered as a quarter, eighth or sixteenth blood so they could sell their property. And a lot of those who really were a quarter or an eighth or a sixteenth and who didn't want to pay taxes registered as a full blood so that they could have their land restricted and nontaxable.'" (quoting *Firsthand Accounts: Membership and Citizenship*, *in* AMERICAN INDIAN CONSTITUTIONAL REFORM AND THE REBUILDING OF NATIVE NATIONS 166, 181 (Eric D. Lemont ed., 2006))); *cf.* Lorinda Riley, *When a Tribal Entity Becomes a Nation: The Role of Politics in the Shifting Federal Recognition Regulations*, 39 AM. INDIAN L. REV. 451, 467 (2014) ("Furthermore, by using professional standards to dismiss descendency rolls, the [Office of Federal Acknowledgment (OFA)] is effectively saying federally created documents used for federal purposes are not reliable evidence to meet the [federal acknowledgment process (FAP)] criteria.").

457. The Allotment Era is the period from "the late 1800s" to the "early 1900s" in which "the federal government parceled out millions of acres of Native American lands to individual Native Americans in an effort to break up reservations." Nat. Res. Revenue Data, *Native American Ownership and Governance of Natural Resources*, U.S. DEP'T INTERIOR, https://revenuedata.doi.gov/how-revenue-works/native-american-ownership-governance [https://perma.cc/U4C5-KZ34]. "Under the Dawes Act and other tribe-specific allotment acts," the federal government held lands allotted to individual Native Americans in trust "for a specified period of time, usually 25 years." *Id.* After this period, however, "the land became subject to state and local taxation," which commonly resulted in its acquisition by non-Native Americans. *Id.* Additionally, "non-allotted lands were often declared 'surplus land' . . . [and] opened . . . to homesteaders." *Id.* The Allotment Era is typically thought to begin with the enactment of the General Allotment (Dawes) Act of 1887, ch. 119, 24 Stat. 388, and end with the enactment of the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (codified as amended in scattered sections of 25 U.S.C.). *See* Nat. Res. Revenue Data, *supra*. During the Allotment Era, Indian tribes lost ownership of around ninety million acres of land. *See id.*

458. ELLINGHAUS, *supra* note 441, at 68.

459. *Id.*

460. *Tribal Registration: Frequently Asked Questions*, CHEROKEE NATION, https://www.cherokee.org/all-services/tribal-registration/frequently-asked-questions [https://perma.cc/82G9-SU7H].

The United States itself has questioned the accuracy of Indian rolls created by its officials in the past century and a half.[461] In the early twentieth century, federal agents and Native Americans of the Colville Reservation discussed how the United States's understanding of "Indian blood" differed from tribal understandings of belonging.[462] This dialogue culminated in a membership roll for the Colville Indian Tribe.[463] In 1966, the Hollomans and their cousins, the Emersons, "applied for enrollment as members of the Colville Indian Tribe."[464] After the Colville Indian Tribe's Tribal Council enrolled these individuals, BIA "learned . . . that there was a discrepancy in the blood degree of one of [their] common ancestors."[465] At the behest of BIA, the Tribal Council eventually disenrolled the Hollomans and Emersons.[466] BIA later "discovered and corrected another error" which "resulted in a determination that [they] were eligible for tribal membership."[467] The Tribal Council then reenrolled the Hollomans and Emersons.[468]

The federal government's skepticism of relying on "federally created documents used for federal purposes" in Indian Country continues today.[469] In recent years the U.S. Department of the Interior's Office of Federal Acknowledgment, which is responsible for evaluating petitions by groups seeking acknowledgment as federally recognized Indian tribes, has used the professional standards of historians and genealogists when determining whether petitioners descend from a historical tribe.[470] These standards have excluded "evidence such as the California Judgment Rolls created by the [Department of the Interior] and the Department of Justice for use in a U.S. federal court case to disburse federal debts to Indians."[471]

Given the limitations of blood-quantum records, tribes could benefit from significantly restricting or ceasing blood-quantum disenrollments. International norms on citizenship revocation can provide tribes with a framework for why

461. *See, e.g.*, Holloman v. Watt, 708 F.2d 1399, 1401-02 (9th Cir. 1983); Riley, *supra* note 456, at 467.

462. *See* Harmon, *supra* note 430, at 179.

463. *Id.*

464. *Holloman*, 708 F.2d at 1400.

465. *Id.*

466. *Id.* at 1400-01.

467. *Id.* at 1401.

468. *Id.*

469. Riley, *supra* note 456, at 467.

470. *Id.* at 461, 466.

471. *Id.* at 466-67.

such a move is necessary. In particular, citizenship-revocation literature offers three insights which collectively suggest that blood-quantum disenrollments cannot easily comport with international norms on citizenship revocation.

a. Blood-Quantum Disenrollments Are a Form of Citizenship Annulment

The first insight that citizenship-revocation literature provides is that blood-quantum disenrollments do not neatly fit within two of the three major theories for justifying citizenship revocation—national-security theory and retributivism theory—and can only fit within contract theory if they are understood as some kind of citizenship annulment.

At the outset, the national-security theory struggles in the context of disenrollment, particularly where blood quantum is involved, as there is no clear *threat*, at least in comparison to terrorism and other forms of political violence that this theory contemplates.[472] Tribal officials engaging in blood-quantum disenrollments generally talk in terms of process and status, not substantial harm.[473] Perhaps tribal members having insufficient blood quantum could be understood as a more general kind of threat to tribal identity, but such a threat does not involve any *actions* on the part of targeted individuals and lacks clear immediacy given that these members have often been enrolled for years or decades. Moreover, the national-security theory is fundamentally focused on the *individual*, while blood-quantum disenrollments frequently cast a much wider net.[474] It is one thing to say that an individual threatens the community through their actions; it is quite another to say that a sizable fraction of the community threatens the community through their existence, as this claim raises the question: who is to say? To the extent that tribal members having in-

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472. *Cf.* Patrick Weil, *Denaturalization and Denationalization in Comparison (France, the United Kingdom, the United States)*, 43 PHIL. & SOC. CRITICISM 417, 418, 425 (2017) (noting British use of citizenship revocation against citizens "linked to military or terrorist groups" and American use of the practice against citizens who have committed "crime[s] against humanity").

473. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 93 ("Harold Hammond, a tribal council member, declares, 'We didn't disenroll anybody. We just corrected our paperwork.'"); Letter from Ross Cline, Sr., Nooksack Indian Tribe Chairman, to Michelle Bachelet Jeria, High Comm'r for Hum. Rts., United Nations [1] (Feb. 4, 2022), https://nooksacktribe.org/wp-content/uploads/2022/02/2.4.22-United-Nations-Ltr.pdf [https://perma.cc/U4KJ-VJA7] ("The people in question are not indigenous. That is why they are not Nooksack citizens . . . .").

474. *See, e.g.*, *132 Elem Pomo Indians*, *supra* note 108 (discussing how a disenrollment effort targeted 132 Elem Pomo Indians).

sufficient blood quantum can threaten a tribe, the threat is of a fundamentally different kind than those contemplated by national-security theory.

Retributivism theory also seems ill-suited to explain blood-quantum disenrollments, as tribal officials engaging in disenrollment for lack of blood quantum typically do not allege that targeted members were engaging in crime.[475] This Note's author is unaware of any tribes that criminalize the status of having insufficient blood quantum. Moreover, if a tribe were to enforce such a law, it could violate ICRA, which allows for habeas challenges in federal court "to test the legality of [a person's criminal] detention by order of an Indian tribe."[476] Of course, a tribal member with insufficient blood quantum could have committed a crime if they were aware of this discrepancy at the time of their enrollment, but then this is fraud, which is discussed later.[477] In general, however, a theory based on punishing criminal behavior is ill-suited to justify action taken due to a person's fixed status.

A contractual theory of citizenship revocation could, in theory, justify blood-quantum disenrollments by understanding blood quantum as a necessary part of the citizenship contract. In the United States, Canada, and the United Kingdom, among other countries, major politicians have promoted variations of the idea that "[c]itizenship is a privilege, not a right."[478] A privilege, of course, can be rescinded. If a tribal member never satisfied the tribe's enrollment requirements, then one could argue that they are not entitled to the privilege of membership.

The contract theory, however, is not without its flaws. Political scientist Patti Tamara Lenard argues that citizenship should not be understood as a contract for two reasons.[479] First, "the state is immeasurably more powerful than the naturalizing individual," meaning that there is unequal bargaining power in any metaphorical contract negotiation.[480] Second, "neither party to this contract will have a perfect record of carrying out its part of the bargain."[481] If citizens cannot typically dismantle the state for failing to protect their rights, then

475. *Cf.* Lavi, *supra* note 259, at 809 (discussing citizenship revocation as a form of punishment).

476. 25 U.S.C. §§ 1302(a), 1303 (2018).

477. *See infra* Section IV.A.2.

478. Macklin, *supra* note 58, at 9 (quoting *Theresa May Strips Citizenship from 20 Britons Fighting in Syria*, GUARDIAN (Dec. 22, 2013, 11:47 PM EST), https://www.theguardian.com/politics/2013/dec/23/theresa-may-strips-citizenship-britons-syria [https://perma.cc/G9NL-PDNU]).

479. Lenard, *supra* note 261, at 379-80.

480. *Id.* at 380.

481. *Id.*

the state cannot typically revoke citizenship from individuals who fail to meet the requirements of citizenship.[482]

Beyond citizenship-revocation scholarship, at least one national court of last resort has expressed skepticism of a contract-theory approach to citizenship revocation.[483] In a case involving the temporary disenfranchisement of certain prison inmates, the Supreme Court of Canada pushed back against the argument that citizens' illegal actions could impact their citizenship, using language that invoked both retributivism and contract theory:

> The social compact requires the citizen to obey the laws created by the democratic process. But it does not follow that failure to do so nullifies the citizen's continued membership in the self-governing polity. Indeed, the remedy of imprisonment for a term rather than permanent exile implies our acceptance of continued membership in the social order.[484]

A contract-theory understanding of blood-quantum disenrollments also begs the question of *when* the breach of contract occurs. A tribal member either meets their tribe's blood-quantum requirement or does not. The only factor that can change is each party's knowledge of the truth. Under contract theory, the best framework for justifying disenrollment due to lack of blood quantum is therefore that this practice functions as a form of citizenship annulment, meaning that a tribal member who lacked sufficient blood quantum could never have formed a membership "contract" with the tribe in the first place. Internationally, citizenship annulment is relatively common in response to fraud based on the idea that it "is not so much a penalty, as much as it is a kind of correction of a naturalization permitted in error. Put differently, citizenship is not withdrawn so much as it is declared null and void."[485] This logic could be applied to Indian Country by arguing that individuals who do not meet tribal blood-quantum requirements should never have been enrolled in the first place.

Citizenship annulment, however, can fail to account for reliance interests. According to Lenard, while citizenship annulment might seem to be a return to the status quo, in fact, "as time progresses, naturalizing and naturalized individuals develop relations in their new home . . . and these relations come over time to underpin their legitimate expectation that they will be permitted to

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482. *See id.*

483. Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, para. 47 (Can.).

484. *Id.*

485. Lenard, *supra* note 261, at 379.

stay."[486] This means that "returning to a status quo ante is factually impossible, and demands to return to it look like a demand for punishment."[487] The challenges inherent in "returning to a status quo ante"[488] are evident in cases of disenrollment for lack of blood quantum. Is the status quo supposed to be before the individual in question was enrolled? If so, tribes may struggle in instances where the members they are seeking to remove are former tribal leaders or other important community figures.[489] What about cases where not only an individual has discrepancies in their blood quantum, but entire families?[490] Are past tribal decisions legitimate if they were decided by voting majorities comprised of individuals who were never actually tribal members? These difficult questions lack clear answers. Tribes can avoid having to answer them by striving to avoid blood-quantum disenrollments.

b. Blood-Quantum Disenrollments Are Disproportionate

The second insight that citizenship-revocation literature provides is that the blood-quantum rationale for disenrollment does not fit well with a proportionality assessment of citizenship revocation. In this context, "proportionality" can be understood as a limitation on states' citizenship-revocation power meant to ensure that revocation does not unduly harm the targeted individual or their family in comparison to the gravity of the state's reason for engaging in revocation.[491] Put simply, states should not use citizenship revocation to upset the status quo—in which the targeted individual is a citizen—without good reason.

The European Court of Justice (ECJ), one component of the Court of Justice of the European Union,[492] has endorsed a proportionality assessment when

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486. *Id.* at 380.

487. *Id.*

488. *Id.*

489. *See, e.g.*, Kohlruss, *supra* note 2; Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 ILR 6047, 6048 (No. 04-CA-1017) (Saginaw Chippewa Indian Tribe of Michigan App. Ct. Jan. 7, 2005); *132 Elem Pomo Indians*, *supra* note 108.

490. Alexander v. Confederated Tribes of Grand Ronde, 13 Am. Tribal L. 91, 94 (No. C-14-002) (Confederated Tribes of the Grand Ronde Community of Oregon Tribal Ct. Sept. 1, 2015), *rev'd*, 13 Am. Tribal L. 353 (No. A-15-008) (Confederated Tribes of the Grand Ronde Community of Oregon Ct. App. Aug. 5, 2016); *Snowden*, 32 ILR at 6049-50; *132 Elem Pomo Indians*, *supra* note 108.

491. Lenard, *supra* note 261, at 375.

492. *The Court of Justice of the European Union: Ensuring the Protection of EU Law*, *supra* note 345, at 4.

evaluating state citizenship-revocation efforts on the grounds of fraud.[493] In *Rottmann v. Bayern*, the ECJ upheld the legitimacy of citizenship revocation by reason of fraud for European Union member states.[494] However, the ECJ also cautioned that national courts should consider whether such an action "observes the principles of proportionality" on a case-by-case basis.[495] Judges were therefore instructed to consider the consequences of citizenship revocation on both the individual who committed fraud and their family.[496] More specifically, the ECJ held that

> it is necessary to establish, in particular, whether th[e] loss [of citizenship] is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality.[497]

The last factor lacks relevance in the context of disenrollment, but this general approach provides a valuable perspective with respect to blood-quantum disenrollments.

If governments should consider the consequences of citizenship revocation for targeted individuals and their families in cases of fraud, where wrongdoing is alleged, then governments should logically do the same when no wrongdoing is alleged. As previously discussed, when tribes remove members for not meeting blood-quantum requirements, they typically do not allege that such individuals' lack of tribal or Indian blood constituted a grave offense—only that they were never qualified for enrollment as a technical matter.[498] The fact that some tribes have disenrolled families for not meeting blood-quantum requirements despite allowing non-Indian adoptees to become tribal members drives this point home.[499] This suggests that disenrollments for lack of blood quantum do not align with "principles of proportionality" because this practice targets individuals who have not committed any offense against the tribe, can impact the membership of targeted individuals' family members, and often occurs years or even decades after enrollment occurred.

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493. Case C-135/08, Rottmann v. Bayern, 2010 E.C.R. I-1467, ¶ 55.

494. *Id.* ¶ 54.

495. *Id.* ¶ 55.

496. *Id.* ¶ 56.

497. *Id.*

498. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 93.

499. *Id.* at 89.

c. *Blood-Quantum Disenrollments Are Arbitrary Under Nondomination Theory*

The third and final insight provided by the citizenship-revocation literature is that disenrollment for lack of blood quantum does not comport with nondomination theory. In this context, nondomination theory considers citizenship "a necessary protection against arbitrary interference" by the state or other actors.[500] This understanding of citizenship "creates a strong presumption against revocation," even in instances which would not result in statelessness, because "[a] person whose citizenship is revoked loses" the protections of citizenship, and revocation "imposes a new status on them."[501]

Nondomination theory is a minority position in citizenship-revocation literature, but it seems particularly applicable in Indian Country because of the unpredictable nature of many blood-quantum disenrollments. An individual's ancestry is fixed, and their blood quantum is theoretically fixed. Still, tribal officials' interpretations of the records can change. This is clearly "an unchecked capacity for exercise of the will over another," and therefore arbitrary for the purposes of nondomination theory.[502] Moreover, disenrollees lose "specific protections against day to day interference by the[ir tribe], becoming in effect a subject."[503] A clear example of such an interference is the case of the Nooksack disenrollees, who lost their right to housing.[504]

The insights provided by citizenship-revocation literature collectively suggest that tribes seeking to comport with international norms on citizenship revocation will struggle to justify blood-quantum disenrollments. The literature suggests that blood-quantum disenrollments only fit within contract theory, and only to the extent that such disenrollments are a form of citizenship annulment. But fitting blood-quantum disenrollments within this framework renders this practice vulnerable to existing critiques of contract theory and citizenship annulment. Critically, blood-quantum disenrollments fail to account for reliance interests. This shortcoming is not merely academic: the European Union has given weight to reliance interests through the principle of proportionality.[505] Finally, looking beyond the most common understandings of citi-

500. Honohan, *supra* note 63, at 356.

501. *Id.* at 365.

502. *Id.* at 362.

503. *Id.* at 365.

504. *See* discussion *supra* Section I.C.1.

505. *See* Case C-135/08, Rottmann v. Bayern, 2010 E.C.R. I-1467, ¶ 55.

zenship revocation, blood-quantum disenrollments are arbitrary and therefore impermissible under nondomination theory.

2. Fraud

This Section discusses how tribal disenrollment on the grounds of fraud can be understood through the framework of international norms on citizenship revocation. While fraud is the strongest basis for disenrollment based on citizenship-revocation literature and the practices of most nations with active citizenship-revocation regimes, it is not without constraints.

The 1961 Convention on the Reduction of Statelessness's general prohibition on rendering individuals stateless via citizenship revocation includes two caveats, one of which is when citizenship "has been obtained by misrepresentation or fraud."[506] This exception implies that, as a matter of international law, citizenship revocation on grounds of misrepresentation or fraud is distinct from other justifications. Furthermore, most members of the international community "permit revocation in cases where citizenship has been attained fraudulently."[507] Even staunch critics of citizenship revocation accept that "[w]ith regard to cases involving the fraudulent acquisition of citizenship . . . states will be entitled to denationalise (and perhaps deport) . . . where doing so does not violate its moral duties . . . and where the terms on which citizenship was originally offered were fair."[508] A sovereign's power to revoke citizenship on grounds of fraud "is seen purely as a means to guarantee the consistency of the naturalisation process against applicants who do not respect the rules."[509] Tribes should not feel a need to hold themselves to a different standard.

However, if tribes may remove members for fraud in enrollment, then the scope of this power should be defined. *Black's Law Dictionary* defines "fraud" as "[a] knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment."[510] Based on this definition, an individual who writes on their enrollment application that one of their parents is a tribal member despite knowing that this is false is committing fraud, at least assuming that their enrollment under these circumstances would

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506. Convention on the Reduction of Statelessness art. 8, ¶ 2, Aug. 30, 1961, 989 U.N.T.S. 175.

507. Lenard, *supra* note 56, at 77.

508. Carey, *supra* note 259, at 900.

509. Fargues, *supra* note 304, at 357.

510. *Fraud*, BLACK'S LAW DICTIONARY (12th ed. 2024).

harm the tribe. While this example suggests that enrollment fraud is a straightforward issue, it involves significant difficulties in practice.

Snowden v. Saginaw Chippewa Indian Tribe of Michigan highlights some of these challenges. This 2005 case from the appellate court of the Saginaw Chippewa Indian Tribe of Michigan "gr[e]w out of an attempt by the Tribe to disenroll two deceased Tribal members . . . and their descendants."[511] The legal question was "whether the Tribal Council's power to disenroll currently enrolled members is limited to the narrow grounds *expressly* identified in the Tribal Constitution."[512] But neither the justices nor the parties were aware of *any* tribal constitutions which "contain[ed] any express provision to disenroll on such basic grounds like 'fraud' and 'mistake.'"[513] The justices ultimately held that "there is a very, very limited *implied* power to disenroll on grounds of fraud and mistake that inheres in the right to enroll itself."[514] Nevertheless, the circumstances that produced this case were not resolved, as the parties were only seeking an answer as to the relevant standard for disenrollment, not whether fraud or mistake *actually occurred*.[515] The dispute continued until at least 2013, when a tribal judge decided that "[f]our members . . . two elders and two who are deceased . . . w[ould] be removed from the membership rolls," alongside "40 descendants."[516]

Tribes seeking to disenroll members on grounds of fraud may benefit from looking to international standards to add credibility to their actions and reduce the likelihood that accusations of "fraud" are used to obscure more questionable types of disenrollment. A strong starting point is the ECJ's factors for national courts to consider when evaluating the proportionality of citizenship revocation: consequences on both the individual who committed fraud and their family, "the gravity of the offense," and "the lapse of time between the naturalisation decision and the withdrawal decision."[517] The concerns of the European Union obviously differ from those of tribes. Tribal courts, however, might consider voluntarily adopting similarly high standards given that "the

511. Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 ILR 6047, 6048 (No. 04-CA-1017) (Saginaw Chippewa Indian Tribe of Michigan App. Ct. Jan. 7, 2005).

512. *Id.*

513. *Id.* at 6050.

514. *Id.*

515. *Id.* at 6050-51.

516. Rick Mills, *Tribal Judge Strips Four, and 40 Descendants, of Membership*, MORNING SUN (Nov. 4, 2013, 6:52 AM), https://www.themorningsun.com/2013/11/04/tribal-judge-strips-four-and-40-descendants-of-membership [https://perma.cc/2XJ5-F259].

517. Case C-135/08, Rottman v. Bayern, 2010 E.C.R. I-1467, ¶ 55.

American indigenous right of tribal citizenship is sacrosanct"[518] and Indigenous persons have a "right to belong to an indigenous community or nation."[519]

While fraud may be a legitimate reason to disenroll individual members in narrowly defined circumstances, it is unlikely that mass disenrollments can fall within the scope of fraud under either the term's plain meaning or as it is used in the context of citizenship revocation. Since fraud requires a "knowing misrepresentation" or "knowing concealment,"[520] a tribe seeking to disenroll a group of its members would have to prove that each individual tribal member was aware of the deception—a high bar to clear. If a tribe is seeking to disenroll a father and his sons, for example, a tribal attorney or enrollment committee might be able to prove that the father lied about his parentage on his enrollment application, but this does not necessarily mean that any of his sons committed *fraud*; they could have been minors with no knowledge of their grandparents when they were enrolled. If tribal courts were to adopt standards such as the ECJ's, they would consider the impact of disenrollment on the targeted individual *and* their family, the severity of the alleged fraud, and when the fraud was supposedly committed. Under these standards, this type of disenrollment would likely be restricted to extreme cases.

3. Error in Enrollment

The phrase "error in enrollment" is incredibly vague as a rationale for removing a member from a tribe. This explanation raises questions as to who made the "error" and whether it was material. If the "error" was a tribe enrolling an individual who was then believed to have had sufficient blood quantum, then the guidance on lack of blood quantum would be most relevant.[521] If the "error" was a tribe enrolling an individual who knowingly misrepresented their status, then the guidance discussed on fraud would be more applicable.[522] In general, when confronting new situations implicating disenrollment, tribes would benefit from looking to the ECJ's "principle[] of proportionality" to constrain this practice given the potentially immense impact of disenrollment on individuals and their families.[523]

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518. *NNABA Resolution*, *supra* note 14, at 1.

519. G.A. Res. 61/295, art. 9, *supra* note 210.

520. *Fraud*, *supra* note 510.

521. *See supra* Section IV.A.1.

522. *See supra* Section IV.A.2.

523. Case C-135/08, Rottman v. Bayern, 2010 E.C.R. I-1467, ¶ 55.

Tribes may also benefit from increasing the clarity of their disenrollment standards to ensure that this practice is only applied under predictable circumstances. If, as the appellate court of the Saginaw Chippewa Indian Tribe of Michigan suggested, tribal constitutions do not generally "contain[] any express provision[s] to disenroll on such basic grounds like 'fraud' and 'mistake,'"[524] then a good place to start might be constitutional amendments or tribal ordinances that address whether such practices are permissible. Looking abroad, states' laws regarding denaturalization for fraud tend to be reasonably clear and easily accessible online,[525] suggesting that tribes should provide similar transparency and providing those interested in such reforms with a good starting point for further research.

As a relatively straightforward example, the United Kingdom's Home Office recently released internal "guidance . . . about deprivation of British citizenship under section 40 of the British Nationality Act [of] 1981."[526] Without taking a position on the merits or faults of the United Kingdom's citizenship-revocation regime, which is much discussed in citizenship-revocation literature,[527] this guidance offers a useful illustration of the kinds of questions that tribes considering disenrollment should answer. In particular, its section concerning "[d]eprivation on the grounds of fraud, false representation or concealment of material fact" defines the relevant terms, addresses factors for consideration, discusses international-law principles that may counsel against citizenship revocation under certain circumstances, provides potential mitigating factors, and explains how investigations should be conducted.[528] Critically, this guidance provides *prior* notice. As was discussed in Section III.B, tribes often develop procedures in *response* to disenrollment rather than engaging in disenrollment only if it is consistent with well-established procedures.[529]

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524. Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 ILR 6047, 6050 (No. 04-CA-1017) (Saginaw Chippewa Indian Tribe of Michigan App. Ct. Jan. 7, 2005).

525. *See, e.g.*, 8 U.S.C. § 1451(e) (2018) (providing denaturalization as a penalty for a criminal conviction of naturalization fraud); *Deprivation of British Citizenship: Version 3.0*, U.K. HOME OFF. 10-16 (Oct. 18, 2024), https://assets.publishing.service.gov.uk/media/67165c834a6b12291ed99818/Deprivation+of+British+citizenship.pdf [https://perma.cc/XCY2-YRM6] (providing an explanation of the relevant standard for the United Kingdom). *See generally* de Groot & Vink, *supra* note 414 (summarizing the relevant standards of European Union member states).

526. *Deprivation of British Citizenship: Version 3.0*, *supra* note 525, at 10-16.

527. *See, e.g.*, Weil & Handler, *supra* note 68, at 295-99 (surveying the resurgence of denaturalization proceedings in the United Kingdom).

528. *Deprivation of British Citizenship: Version 3.0*, *supra* note 525, at 10-16.

529. *See supra* note 398 and accompanying text.

4. Dual Enrollment

The fourth rationale for disenrollment that this Note will evaluate is dual enrollment. Dual-enrollment disenrollments occur because many tribes' governing documents explicitly prohibit dual enrollment as part of their membership criteria.[530] The Navajo Nation Code, for example, provides that "[n]o person, otherwise eligible for membership in the Navajo Nation, may enroll as a member of the Navajo Nation, who, at the same time, is on the roll of any other tribe of Indians."[531]

International norms on citizenship revocation suggest that disenrollment may be justified if a member is enrolled in another tribe since such restrictions are not unique to Indian Country. Historically, many countries revoked the citizenship of those who held more than one national allegiance.[532] Even today, some countries still prohibit dual citizenship, although such prohibitions are not always enforced.[533] To provide an example of a well-enforced prohibition on dual citizenship, Japan requires individuals possessing both Japanese and foreign nationality to renounce one of their citizenships by their twenty-second birthday (or "within two years after the day when he or she acquired the second nationality" if they acquired the second nationality after they turned twenty).[534]

State restrictions or prohibitions on dual citizenship may be based in skepticism of citizens with divided loyalties[535] or the belief that dual citizenship is fundamentally unfair.[536] In Indian Country, these "divided loyalties" and "un-

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530. *See* Becky Morgan, *2020 Census Includes Tribal Affiliations*, Nat'l Indian Council on Aging (Jan. 27, 2020), https://www.nicoa.org/2020-census-includes-tribal-affiliations [https://perma.cc/7H76-XWAC] ("[M]ost tribes do not currently permit 'dual enrollment,' or membership in more than one tribe.").

531. 1 N.N.C. § 703 [1 Navajo Nation Code § 703 (2010)], https://www.nnols.org/wp-content/uploads/2022/05/1-5.pdf [https://perma.cc/V8WB-RFZX].

532. *See, e.g.*, Macklin, *supra* note 62, at 436 ("Naturalized citizens who resumed residence in the country of origin were also denaturalized on the basis that they had forsaken their allegiance to the country of immigration."); Irving, *supra* note 289, at 382 ("[Australian] [r]evocation laws, past and present (and the disqualification of dual citizens from parliament) were built upon the principle that allegiance must be singular.").

533. Martin Weinmann, *Barriers to Naturalization: How Dual Citizenship Restrictions Impede Full Membership*, 60 Int'l Migration 237, 238 (2021).

534. *The Choice of Nationality*, Japanese Ministry Just., https://www.moj.go.jp/ENGLISH/information/tcon-01.html [https://perma.cc/77JT-JDTH].

535. *See* Irving, *supra* note 289, at 382; Macklin, *supra* note 58, at 51; Macklin, *supra* note 62, at 436.

536. *See* Lenard, *supra* note 253, at 108.

fairness" rationales can be analogized to concerns regarding tribal members with more than one identity or those who might "double dip" on benefits. Tribes that prohibit dual enrollment may do so for either, both, or neither of these concerns. But it is worth discussing that both explanations for prohibitions on dual enrollment raise questions when tribal membership is evaluated as a form of citizenship.

The most readily apparent issue with applying a divided-loyalties rationale to Indian Country is that this skepticism could only extend to those with more than one *tribal* loyalty. This is because every living tribal member, or perhaps essentially every living tribal member, also has United States citizenship.[537] For this justification to apply the way it does in the context of citizenship revocation, one must view tribal membership as fundamentally different from United States citizenship.

The divided-loyalties rationale also represents a departure from at least some tribes' traditional treatment of identity. Many tribes have long histories of intermarriage with related, allied, or neighboring tribes.[538] In some cases, a member of one tribe could become a member or even a leader in another through such marriages.[539] Today, however, some tribes' governing documents bar dual enrollment despite such past cultural practices. Tribes are, of course, free to restrict their membership as they choose, regardless of their traditional treatment of identity. However, current prohibitions on dual enrollment may

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537. This Note's author is not aware of any tribal members without United States citizenship, although one could imagine such a case occurring if a tribal member were to voluntarily renounce their United States citizenship. *See* 8 U.S.C. § 1481 (2018) (allowing United States citizens to "lose [their] nationality by voluntarily performing [certain] acts with the intention of relinquishing United States nationality"). But given the relatively small number of Americans who renounce their citizenship every year, *see* Helen Burggraf, *Why Are Fewer American Nationals Renouncing Their US Citizenship?*, LOCAL (Feb. 9, 2024), https://www.thelocal.com/20240209/why-fewer-american-nationals-are-renouncing-their-us-citizenship [https://perma.cc/DD8B-C2AD] ("More than 30,000 Americans have given up their US citizenship over the past decade . . . ."), and the relatively small population of Native Americans in the United States, *see* Andrew Van Dam, *The Native American Population Exploded, the Census Shows. Here's Why.*, WASH. POST (Oct. 27, 2023, 6:00 AM EDT), https://www.washingtonpost.com/business/2023/10/27/native-americans-2020-census [https://perma.cc/R73Y-427N] ("The number of Americans claiming Indigenous heritage jumped from 5.2 million in 2010 to 9.6 million in 2020 . . . ."), such circumstances are likely extraordinarily rare.

538. *See, e.g.*, PATTY LOEW, INDIAN NATIONS OF WISCONSIN: HISTORIES OF ENDURANCE AND RENEWAL 99-100 (2d ed. 2013).

539. *See, e.g.*, Alta P. Walters, *Shabonee*, 17 J. ILL. STATE HIST. SOC'Y 381, 381, 388 (1924) (explaining that Shabonee, whose father was Ottawa, became a Pottawatomie chief after marrying the daughter of a Pottawatomie chief).

be a legacy of federal oversight over tribal membership rather than a restriction affirmatively adopted by tribal members.[540] Accordingly, those policies may be worth revisiting with an eye toward ongoing discourse in citizenship-revocation literature questioning the idea that a divided-loyalty justification should merit citizenship revocation.[541]

Applying an unfairness rationale to Indian Country seems logical and does not obviously contradict any international norms on citizenship revocation. But it does raise a fundamental question: *unfair to whom?* If a prohibition on dual enrollment is to prevent members from double dipping, then are tribes with limited tangible benefits less likely to permit dual enrollment? While the cultural value of tribal membership may be immeasurable, many tribes have scarce financial resources and may therefore provide relatively few services to their members directly.[542] But there is no clear evidence that such tribes are more likely to allow dual enrollment.

Alternatively, a concern about double dipping may be based on services offered to tribal members by the federal government. The United States has long discouraged dual enrollment precisely for this reason.[543] But in the Self-Determination Era, this justification does not seem compelling. After all, some tribes currently allow dual enrollment,[544] so the federal government presumably has a method to account for dual-enrolled members in its funding of tribal programs and provision of services.

If a tribe does choose to permit disenrollment on the grounds of dual enrollment, it should be aware that some tribes may not allow members to be removed from their rolls. An individual could therefore be disenrolled from one tribe despite deep familial and cultural ties through their mother because their father enrolled them as an infant in another tribe. There is no centralized database of tribal governing documents, and some tribes do not make such information publicly available. The possibility that some federally recognized Indian tribes prohibit voluntary relinquishment of membership therefore cannot be dismissed.

Some tribes, however, have already taken this possibility into account. The Waganakising Odawak Tribal Code of Law requires that tribal members relin-

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540. *See, e.g.*, Crawford, *supra* note 353.

541. *See, e.g.*, Gibney, *supra* note 288, at 652.

542. See Off. of C.R. Evaluation, *Broken Promises: Continuing Federal Funding Shortfalls for Native Americans*, U.S. Comm'n on C.R. 18 (Dec. 2018), https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf [https://perma.cc/EG5U-4CS8].

543. *See, e.g.*, Crawford, *supra* note 353.

544. *See, e.g.*, *id.*

quish their membership with any other tribe pursuant to a constitutional prohibition on dual enrollment.[545] The code "considers [the relinquishment] requirement to have been met," however, if a tribal member "has made every possible effort to be removed from the other tribe's roll" because some Canadian First Nations "refuse to remove . . . member[s] . . . from their tribal roll."[546] This exception, though presumably the result of specific circumstances, indicates that tribes can adjust their understandings of membership and disenrollment when beneficial.

B. Disenrolling the Dead

Section IV.A evaluated four *rationales* for disenrollment through the lens of international norms and literature on citizenship revocation. This Section discusses a particular *kind* of disenrollment through the same lens. Specifically, this Section evaluates situations in which tribes disenroll a deceased member, either directly or by implication, when questioning the membership status of the deceased's living descendants. International norms do not support this practice because it has no readily apparent equivalent abroad and cannot comport with the principle of proportionality, given the complete lack of an "offence."[547]

Tribal-disenrollment efforts which implicate deceased individuals merit special attention. Wilkins and Wilkins divide disenrollments into two categories: "nonpolitically motivated disenrollments," which may be justified when there is due process, and "politically motivated disenrollments," which can never be justified.[548] Disenrolling the dead, whether done as the direct result of political motivations or presented as a mere correction of blood-quantum calculations, is an inherently political act because tribes cannot receive any nonpolitical benefits from doing so. When a tribe disenrolls a member, they "destroy their identity—their everything."[549] The dead cannot defend themselves from this destruction of identity. Unfortunately, the inability of deceased

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545. 1 Waganakising Odawak [Little Traverse Bay Band of Odawa Indians] Tribal Code of Law Introduction (2024), https://ltbbodawa-nsn.gov/wp-content/uploads/2023/03/Vol.-1-TITLE-I.-LTBB-CONSTITUTION-AND-INTRODUCTION.pdf [https://perma.cc/N76V-RE58]; 2 *id.* § 2.110, https://ltbbodawa-nsn.gov/wp-content/uploads/2023/03/Vol.-2-TITLE-II.-CITIZENSHIP-TRIBAL-ENROLLMENT.pdf [https://perma.cc/4XYN-EKMF] .

546. 2 *id.* § 2.110(D).

547. *See* Case C-135/08, Rottman v. Bayern, 2010 E.C.R. I-1467, ¶¶ 55-56.

548. Wilkins & Wilkins, *supra* note 6, at 5.

549. Galanda & Dreveskracht, *supra* note 8, at 390.

tribal members to speak on their own behalf may make them attractive targets for disenrollment. A deceased tribal member whose name is written on a century-old Indian census roll may have dozens of descendants who are now enrolled tribal members. Instead of individually litigating the disenrollment of every member of an entire family, tribal officials could simply remove tribal membership from all of them by questioning the status of a deceased shared ancestor.[550]

There is no clear equivalent to disenrolling the dead outside of Indian Country. At least one country, the United States, has a law addressing postmortem changes to citizenship status, but this law concerns the *granting* of citizenship, not its *revocation*.[551] Specifically, "a person who serves honorably in the U.S. armed forces during designated periods of hostilities and dies as a result of injury or disease incurred in or aggravated by that service may be eligible for posthumous citizenship."[552] When posthumous citizenship is granted, it is declared to have applied "as of the date of his or her death."[553] This grant may qualify a person's spouse and children "for immigration benefits under special provisions of the [Immigration and Nationality Act]."[554] The possibility of postmortem citizenship may suggest that citizenship status can *change* after death, but it certainly does not support the idea that citizenship status can be *lost* after death.

Given that there is no clear equivalent to disenrolling the dead outside of Indian Country, tribes looking to evaluate disenrollment through the lens of international norms on citizenship revocation should return to the principle of proportionality. From this perspective, disenrolling the dead can never be justified because a proportionality assessment is inherently comparative, and a deceased person has done nothing against which to compare whether disenrollment might be merited: the dead can commit no offenses and make no mistakes.

Under certain circumstances, disenrolling the dead may also violate the spirit of international prohibitions on statelessness.[555] Tribes, of course, are not

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550. *See, e.g.*, Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 ILR 6047, 6048 (No. 04-CA-1017) (Saginaw Chippewa Indian Tribe of Michigan App. Ct. Jan. 7, 2005).

551. 8 U.S.C. § 1440-1 (2018).

552. *Chapter 8—Posthumous Citizenship (INA 329A)*, U.S. Citizenship & Immigr. Servs., https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-8 [https://perma.cc/S5KL-A73T].

553. *Id.*

554. *Id.*

555. *See* Convention on the Reduction of Statelessness art. 8, ¶ 2, *supra* note 506, 989 U.N.T.S. at 179.

parties to the Convention on the Reduction of Statelessness, but the restrictions embodied in this convention have become a default principle underpinning citizenship-revocation practices[556] despite this convention not enjoying universal ratification.[557] If tribes want their sovereignty to be treated akin to state sovereignty, then they should respect the same limitations states have on rendering individuals stateless.

Disenrolling the dead may violate the statelessness norm because tribal members have only universally held U.S. citizenship since 1924.[558] Disenrollment literature has noted that all tribal members are U.S. citizens, meaning that tribal governments cannot render anyone stateless.[559] Even if this is true for all tribal members alive today, it is not true for all tribal members who have ever lived.

In *Elk v. Wilkins*, the Supreme Court held that "Indians not taxed" were not "born subject to the jurisdiction of the United States" despite being born there.[560] Such Indians were therefore "not born citizens" of the United States.[561] For most of American history, tribal members could therefore only acquire U.S. citizenship through naturalization.[562] Congress did not grant all Native Americans citizenship until the Indian Citizenship Act of 1924.[563] Thus, if a tribe were to disenroll a member who died prior to June 2, 1924,[564] it would presumably render this individual stateless in the eyes of the present tribe if this member had not previously acquired U.S. citizenship through naturalization.

Denial of membership under this specific set of circumstances is not merely a hypothetical. In *Alexander v. Confederated Tribes of Grand Ronde*, a trial court

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556. *See, e.g.*, Weil, *supra* note 56, at 2; Macklin, *supra* note 62, at 434; Carey, *supra* note 259, at 897.

557. *See* Convention on the Reduction of Statelessness art. 8, *supra* note 506, 989 U.N.T.S. at 179.

558. *See* Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253 (codified as amended at 8 U.S.C. § 1401).

559. Reitman, *supra* note 47, at 849; *see also* Roberts v. Kelly, No. 2013-CI-CL-003, slip op. at 7 (Nooksack Tribal Ct. Oct. 17, 2013), https://turtletalk.blog/wp-content/uploads/2013/10/roberts-v-kelly-order-granting-defendants-sic-motion-to-dismiss.pdf [https://perma.cc/A22N-F6ZV] ("A person who is disenrolled from her tribe loses access to the privileges of tribal membership, but she is not stateless."). *But see* discussion *supra* note 537.

560. 112 U.S. 94, 102, 109 (1884) (first quoting U.S. CONST. art. I, § 2; and then quoting McKay v. Campbell, 16 F. Cas. 161, 163 (D. Or. 1871) (No. 8,840)).

561. *Id.* at 109 (quoting United States v. Osborne, 2 F. 58, 61 (D. Or. 1880)).

562. *Id.* at 102.

563. Indian Citizenship Act of 1924, 43 Stat. at 253.

564. *Id.*

for the CTGR faced the question of whether a long-dead tribal leader had been a tribal member.[565] Chief Tum-walth, or Tumulth, was "a leader of the Cascade Indians and a person of historical relevance to Tribal history."[566] In 1855, Tumulth signed the Treaty with the Willamette Indians in which the Cascade Indians agreed to cede their lands in exchange for a future "permanent home."[567] The treaty terms eventually led to the establishment of two reservations for the Cascade Indians: the Coast Reservation and the Grand Ronde Reservation.[568]

In 2015, Tumulth's descendants appealed a disenrollment decision by the CTGR's Enrollment Committee.[569] The court determined that, while Tumulth had been *eligible* to become a member of the CTGR, he had never met the Tribe's residency requirement because he had never relocated to the Grand Ronde Reservation.[570] Leaving aside that Tumulth's relocation was presumably interrupted when the U.S. Army illegally executed him,[571] this decision implies that all Cascade Indians were stateless between the ratification of the Treaty with the Willamette Indians on January 22, 1855,[572] and the creation of two reservations for the Cascade Indians in 1857.[573] The tribal court ruled that those Cascade Indians could not have been members of the present-day Confederated Tribes of Siletz Indians or the CTGR until they physically relocated to one of the reservations.[574] When the Cascade Indians ceded their previous territory,

565. Alexander v. Confederated Tribes of Grand Ronde, 13 Am. Tribal L. 91, 94 (No. C-14-022) (Grand Ronde Community of Oregon Tribal Ct. Sept. 1, 2015), *rev'd*, 13 Am. Tribal L. 353 (No. A-15-008) (Confederated Tribes of the Grand Ronde Community of Oregon Ct. App. Aug. 5, 2016).

566. *Id.*

567. Treaty with the Willamette Indians art. 1, Jan. 22, 1855, 10 Stat. 1143, 1144.

568. *Alexander*, 13 Am. Tribal L. at 94.

569. *Id.* at 94, 96-97.

570. *Id.* at 100.

571. *Id.* at 94-95.

572. *See* Treaty with the Willamette Indians, 10 Stat. at 1143.

573. *Alexander*, 13 Am. Tribal L. at 94-95.

574. *Id.* at 100 ("[T]he Willamette Valley Treaty relates to the creation of a still-to-be-determined reservation and future federally-recognized tribe (the CTGR Reservation and Tribe). Although many Cascade Indians did become members of the CTGR, and Chief Tumulth and his descendants were eligible to become members of the CTGR if they so desired and relocated, there still existed a requirement for CTGR membership that the relevant individuals relocate to the future CTGR reservation to qualify for CTGR membership.").

they therefore presumably lost any claim they had to being citizens of a state under international law.[575]

The disenrolled members of the CTGR ultimately prevailed on appeal.[576] A CTGR appellate court reversed the trial court's decision, everyone ultimately had their membership restored, and the Tribe recently amended its constitution to limit disenrollment.[577] The tribal appeals court did not address the issue of statelessness, instead holding that "the Tribe is prevented by the equitable principles of laches and estoppel from reopening, after 27 years, the issue of the enrollment status of the lineal (and lateral) ancestors [of the appellants]."[578] In finding that the Tribe could not revisit a 1986 enrollment decision in 2013, the tribal appeals court addressed the issue effectively in a manner that can serve as a model for other tribal courts.[579] The following Section on statutes of limitations will address a similar approach in further detail.

C. Statutes of Limitations

In addition to using international norms to evaluate the merits of different rationales for disenrollment, tribes may also benefit from looking abroad for examples of citizenship-revocation regimes which are limited by statutes of limitations. Statutes of limitations are laws which "bar[] claims after a specified period."[580] Such laws "are designed to promote justice by preventing surprises

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575. *See* Montevideo Convention art. 1, *supra* note 242, 49 Stat. at 3100 (requiring a state to have "a defined territory"); *see also State*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("*The area geographically within defined territorial boundaries* with a set of political institutions and rules by a government through conformance laws." (emphasis added)).

576. *See* Hernandez, *supra* note 387 ("In the case of the 86 members who were disenrolled, a tribal appeals court did eventually reverse that disenrollment decision.").

577. *Id.*

578. Alexander v. Confederated Tribes of Grand Ronde, 13 Am. Tribal L. 353, 355 (No. A-15-008) (Confederated Tribes of the Grand Ronde Community Ct. App. Aug. 5, 2016). Laches is an equitable doctrine that allows courts to "deny relief to a claimant with an otherwise valid claim when the party bringing the claim unreasonably delayed asserting the claim to the detriment of the opposing party." Legal Info. Inst., *Laches*, CORNELL L. SCH., https://www.law.cornell.edu/wex/laches [https://perma.cc/JYC8-EU2Q]. Estoppel "is an equitable doctrine . . . that prevents one from asserting a claim or right that contradicts what one has said or done before, or what has been legally established as true." Legal Info. Inst., *Estoppel*, CORNELL L. SCH., https://www.law.cornell.edu/wex/estoppel [https://perma.cc/U9F5-SURE].

579. *Alexander*, 13 Am. Tribal L. at 356.

580. *Statute of Limitations*, BLACK'S LAW DICTIONARY (11th ed. 2019).

through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared."[581]

Globally, statutes of limitations on citizenship-revocation actions are uncommon but far from unknown.[582] According to an empirical study of citizenship-revocation standards in the European Union, eleven member states have a statute of limitations for citizenship revocation in cases of fraud.[583] The statutes of limitations range from one to twenty years and were established by both statute and case law.[584] Even in European Union member states that do not have explicit statutes of limitations, the ECJ's decision in *Rottman v. Bayern* implies that revocation is only justifiable within a certain period after the original grant of citizenship.[585] In particular, the *Rottman* court instructed national courts to consider "the lapse of time between the naturalisation decision and the withdrawal decision" when evaluating proportionality.[586]

The benefits of statutes of limitation seem particularly compelling when applied to enrollment disputes in Indian Country because individuals are often enrolled as children,[587] and membership can be contingent on tracing one's ancestry back to a decades-old base roll created by long-dead BIA officials in consultation with long-dead tribal members.[588] One example of the time-related challenges presented by many disenrollments is the Elem Indian Colony of Pomo Indians's attempt to disenroll 132 of its members.[589] The targeted families included "four Vietnam war veterans."[590] Given the average age of Vietnam War veterans, it may have been impossible for these individuals to fully defend whether they were truly tribal members, as their enrollment applications were likely submitted decades prior, meaning that much of the relevant evidence

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581. Ord. of R.R. Telegraphers v. Ry. Express Agency, 321 U.S. 342, 348-49 (1944).

582. de Groot & Vink, *supra* note 414, at 8.

583. *Id.* at 11-14 (listing European Union member states that allow for citizenship revocation in cases of fraud and indicating that eleven of these member states have a time limit on such actions).

584. *Id.* at 8, 11-14.

585. *See* Case C-135/08, Rottman v. Bayern, 2010 E.C.R. I-1467, ¶ 56.

586. *Id.*

587. *See, e.g.*, *Application for Tribal Membership Enrollment*, Lac du Flambeau Tribe 1-3 (2020), https://www.ldftribe.com/uploads/files/Enrollment/USE-LDF-Tribe-Membership-Application-2.pdf [https://perma.cc/EBB7-CESE] (allowing for a parent or guardian to enroll an eligible child to the Tribe).

588. *See* Harmon, *supra* note 430, at 175-79.

589. *132 Elem Pomo Indians*, *supra* note 108.

590. *Id.*

may have been lost or discarded long ago.[591] Such efforts to disenroll longtime tribal members not only pose a significant threat to those members' due-process rights but also threaten tribes themselves by forcing every member to always fear potential disenrollment based on previously unknown family history. Statutes of limitation cannot, in and of themselves, solve disenrollment. But in combination with previously discussed lessons offered by international norms on citizenship revocation, tribes seeking to address disenrollment can confront this issue for themselves in a principled and just manner while promoting their sovereignty.

CONCLUSION

Tribes, as sovereigns, have the "right to define [their] own membership for tribal purposes."[592] Many in Indian Country argue that this tribal right includes a subsidiary power to disenroll.[593] However, while tribal sovereignty may *enable* disenrollment, it does not inherently *justify* this practice. Tribes must instead decide for themselves whether disenrollment is permissible.

Tribal membership is a form of citizenship, and disenrollment can be understood as a form of citizenship revocation. Tribes can therefore benefit from looking to international norms and literature regarding citizenship revocation when considering disenrollment. Embracing these norms would promote due process and the rule of law. Even more importantly, it would promote tribal sovereignty by aligning it with state sovereignty and demonstrating that tribal governments are worthy of respect in the United States and on the international stage.

International norms and literature on citizenship revocation provide tribes that are interested in confronting the problem of disenrollment with a framework under which to consider how they might restrict their power to disenroll. Under this framework, some rationales for disenrollment are more legitimate than others. Blood-quantum disenrollments cannot comport with international norms and citizenship-revocation literature. Disenrollment on the grounds of fraud may be permissible where the alleged fraud constitutes legal fraud. Dual-

591. *See* Nat'l Ctr. for Veteran Analysis & Stat., *Profile of Vietnam War Veterans*, U.S. DEP'T OF VETERANS AFFS. 3 (July 2017), https://www.va.gov/vetdata/docs/SpecialReports/Vietnam_Vet_Profile_Final.pdf [https://perma.cc/23F7-64N9] ("Vietnam Veteran ages range from 55 to 97 years old.").

592. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978) (citing Roff v. Burney, 168 U.S. 218, 222-23 (1897); Cherokee Intermarriage Cases, 203 U.S. 76, 94-96 (1906)).

593. *See, e.g.*, WILKINS & WILKINS, *supra* note 6, at 5; Washburn, *supra* note 47, at 229; Norman et al., *supra* note 49, at 12.

enrollment disenrollments can be analogized to prohibitions against dual citizenship but lack strong underlying justifications. In general, tribes should strive to comport with the principle of proportionality: disenrollment causes immense harm for questionable benefits, and so this practice should be restricted to extreme circumstances and constrained by procedural protections for targeted individuals. If tribes aim to obtain the benefits of a more complete form of sovereignty, then they must also accept the responsibilities that a sovereign owes its citizens.