

# Chapter 11

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## Unobtrusive Research

# Course Changes

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- No labs this week!
- No class Aug. 12<sup>th</sup>
- Meet in this class Aug. 14<sup>th</sup> to turn in paper. Do not be late!

# Three Types of Unobtrusive Research

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1. Content analysis - examine written documents such as editorials.
2. Analyses of existing statistics.
3. Historical/comparative analysis - historical records.

# Strengths of Content Analysis

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- Economy of time and money.
- Easy to repeat a portion of the study if necessary.
- Permits study of processes over time.
- Researcher seldom has any effect on the subject being studied.
- Reliability.

# Weaknesses of Content Analysis

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- Limited to the examination of recorded communications.
- Problems of validity are likely.

# Content Analysis

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- Coding scheme- what is your unit of analysis?
  - Word, sentence, paragraph, sentences
  - Manifest or latent content
- Counts
  - How many are there?

# Analyzing Existing Statistics

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- Can be the main source of data or a supplemental source of data.
- Often existing data doesn't cover the exact question.
- Reliability is dependent on the quality of the statistics.

# Comparative and Historical Analysis

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## **Cautions:**

- Can't trust the accuracy of records - official or unofficial, primary or secondary.
- Must be wary of bias in data sources.

# Comparative and Historical Analysis

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- Time matters
- Change over time
- Historically grounded understandings

# Constructed Culture?

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The Case of Santa  
Clara Pueblo Et Al.  
v. Martinez Et Al.

Maureen Clark

University of  
Minnesota

# Historical Background

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- Julia Martinez is a full-blooded member of the Santa Clara Pueblo and married a non-member American Indian from another pueblo. Based on the Santa Clara Pueblo's tribal membership ordinance her children are not members of the Santa Clara pueblo, despite the fact that they live and participate in the Pueblo Community.

# Equal Protection ?

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- If the Martinez children's father were a member of the Pueblo, they would have full citizenship status. Martinez and her daughter tried to get the ordinance changed so that it would be more inclusive and uphold the equal protection clause of the Indian Civil Rights act.

# Membership Ordinance of 1939

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- The ordinance of 1939 reads:
- 1. All children born of marriages between members of the Santa Clara Pueblo shall be members of the Santa Clara Pueblo.
- 2. All children born of marriages between male members of the Santa Clara Pueblo and non-members shall be members of the Santa Clara Pueblo.
- 3. Children born of marriages between female members of the Santa Clara Pueblo and non-members shall not be members of the Santa Clara Pueblo.
- 4. Persons shall not be naturalized as members of the Santa Clara Pueblo under any circumstances." (Civil No. 9717).

# Tribal Sovereignty wins

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- The US Supreme Court found that the tribal governments and courts had the jurisdiction to enforce the provisions of the ICRA. The court went on to state that the tribe has the right to define its own membership based on its rights as a sovereign entity. And, "Given the often vast gulf between tribal traditions and those with which federal courts are more intimately familiar, the judiciary should not rush to create causes of action that would intrude on these delicate matters" (436 U.S. 49).

# Why the tribe wins

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- While the Court found that, they had no jurisdiction Marshall did comment on the merits of the case. Noting that the District Court had found that the ordinance was reflective of “traditional values of patriarchy still significant in tribal life” (436 U.S. 49). Overall, the court felt that interfering with a tribe’s membership criterion would affect the tribe’s ability to survive as a “cultural and economic entity” (436 U.S. 49).

# Does Historical evidence support Marshals analysis?

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- Perceived to be patriarchal or patriarchal?
- While tribal governments and tribal courts are the best places to make decision about membership, what role did the government have in establishing membership ordinances in the first place?

# Historical evidence

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- Paula Gunn Allen challenges any beliefs that the Pueblo's were patriarchal. She states that the Pueblo's are "gynocratic" and further notes that "traditionally tribal lifestyles are more often gynocratic than not, and they are never patriarchal" (1992:2).

# Historical Evidence

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- US DISTRICT Judge Mechen, in his decision notes that based on the fact that historically (before 1939) membership cases were decided on a case-by-case basis and not based on gender of full-blooded parent, “in that sense, the establishment of any one rule must be seen as a break with tradition” (9717).

# Historical Evidence

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- Dozier found Pueblo to be matrilocal and matrilineal

# Who really wins?

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- However, the Martinez's did not intend for the IRCA to be interpreted as an attack on tribal traditional values. What the Martinez's were seeking was that the ICRA be interpreted to preserve cultural identity. Their point of contention is that the sex of the parent has little to do with their cultural connection to the Pueblo or the parents' willingness or ability to raise their children in the traditions of the Pueblo.

# Construction of Culture

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- Supreme Court used cultural relativism to refocus the “issue”
- Historical “evidence” did not support the idea that the Pueblo was traditionally patriarchal.
- US Government help establish Patriarchal Government

# The End

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- As Justice Doyle points out in his decision, “There is evidence that the ordinance was the product of economics and pragmatics” (540 F. 2d 1039). In the end, it is for the tribes to decide who is a member and who is not, but it is clear that the federal government has had a stake in helping to determine who is and who is not a tribal member.