

Indian Identity
Who's drawing the boundaries?

BY REKHA BALU

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American Indian law is replete with ironies:

Tribes look to the U.S. government for recognition as nations, the same government that assumed many of their lands and possessions.

Descendants of American Indians must apply to become citizens of tribes, yet they are citizens of the United States simply by being born.

And, most ironic, an entire body of law exists about American Indians that they had no part in shaping.

According to some Indian scholars, the explanation for these incongruities is that, in the eyes of the U.S. government, "American Indian" is not a racial classification. It is a means of defining the government's political relationship with Indians--the balance of which rarely has been tipped in the Indians' favor.

Key to understanding this relationship is the concept of tribal sovereignty. Although the dictionary defines sovereignty as "supreme and independent political authority," the sovereignty granted to American Indians is far less absolute.

As outlined in *The Rights of Indians and Tribes* (published by the American Civil Liberties Union), sovereignty for tribes entails the right to:

- Form tribal governments
- Determine tribal membership
- Regulate tribal and individual property
- Assess taxes
- Establish law enforcement systems
- Regulate domestic relations
- Regulate commerce and trade
- Exclude nonmembers from tribal territory.

Yet, at the same time, Congress holds the power to revoke a tribe's recognition and declare it nonexistent or place it under the jurisdiction of the federal government.

Caught in the Middle

Because the tribes rely on funding for educational, social, and public works services from the federal and state governments, they have been dubbed "dependent sovereigns." State

and federal money directed to tribes finances such crucial services as the development of sanitation and sewage systems the providing of adequate health care, and the establishment of schools on the reservation or transportation to schools in neighboring areas.

In a sense, these services are viewed by the U.S. government as reparations for its past undermining of tribal governments and cultures: For example, it wasn't so long ago--from about 1930 to 1960--that tribal children were sent to boarding schools that forbade them to speak their native languages and taught them nothing about their Indian culture.

Philip Deloria, head of the American Indian Law Center in Albuquerque, New Mexico, is one of a number of Indian law experts who questions whether the United States ever intended to maintain the sovereignty of tribes. "The United States has always had the notion that tribes were temporary," he says. "It's part of that assimilation mentality."

Ironically, in resisting assimilation in favor of pressing for fuller sovereignty, the tribes have had to survive without the real benefits of either.

Services distributed through the Bureau of Indian Affairs and other agencies devoted to American Indians resemble municipal services and are not meant to substitute for benefits from federal entitlement programs nor preclude Indians from receiving state services. Yet, a 1972 study by the Office of Management and Budget found that only 78 of 1,000 federal assistance programs were serving the tribes.

"[States] should treat Native Americans like their other citizens," says Tova Indritz, former Federal Public Defender in New Mexico. "But with limited state resources, they think tribes should take care of themselves."

Under the umbrella of "dependent sovereign," the tribes also have come up short. The amount of funding for many government programs that benefit Indians is determined by U.S. Census figures. In 1991, the Bureau of Census reported that American Indians were undercounted by 5 percent in the 1990 Census, which is about 98,000 people.

The ramifications of the undercount--underfunding--provide a good illustration of how nebulous the concept of sovereignty can be. The tribes may be "sovereign," but with inadequate funding, they are left unable to fully serve their members.

Individual Identity

Congress dissolved more than 100 tribes between 1954 and 1966, stripping them of the status and the funding necessary to establish internal governments, claim land bases, and provide social services. The termination of tribes in this way left many Indians with no home and, consequently, no sense of identity.

Although the Nixon administration put an end to the termination policies, all but two of the tribes had to file numerous lawsuits against the U.S. Department of the Interior to regain recognition.

Today, because status as a member of a federally-recognized tribe provides monetary as well as psychological benefits, membership has been quantified and officialized. (To receive federal and state services, applicants must be card-carrying tribe members.)

For membership in some tribes, a candidate must show proof that one of his or her parents is a full-blooded member of the tribe; other tribes ask for a document that proves a relative is a member of the tribe. Some tribes require that even children born to enrolled parents on the reservation petition for membership, as they may be too many generations removed from a full-blooded tribe member to qualify.

Enrollment requirements that are document driven tend to dehumanize the concept of identity and diffuse any sense of home, some Indian scholars say.

"[Enrollment] was a more powerful statement when [tribes] were receiving no benefits," Deloria says.

When faced with such laborious enrollment requirements and the potential isolation of their children, Indians who have descended from several tribes may base their tribal affiliation not on which tribe represents their primary heritage, but on which has the less arduous enrollment requirements.

Not surprisingly, the politics of tribal enrollment have created a certain amount of enmity among Indians--those with closer blood ties are thought by some to be "purer" Indians. Yet many Indian activists have been quick to say it is foolish for Indians to criticize one another for a cultural and racial dilution that was initiated by non-Indians.

In her 1995 photo essay, *Apertures*, Theresa Harlan wrote, "Identity politics is an invention of the U.S. government." Ultimately then, identity is defined not by a constitution nor rules, but by belief and pride in one's own cultural heritage.

Sidebar 1: To Enroll:

For most Indians, the task of petitioning for membership in a tribe requires extensive research. Some tribes require a connection to the father's side of the family; others require matrilineal descent. Some, such as the Hopi Tribe, require that the candidate have at least one parent who is a full-blooded Hopi, or that both of his or her parents be half-blooded Hopis.

If you are helping a client prepare to petition for membership, you (or your client) can obtain the names, addresses, and telephone numbers of the more than 500 federally-recognized tribes from the Bureau of Indian Affairs Tribal Enrollment Division; call 202/208-3702.

The length of the admissions process will depend on the particular tribe's constitution.

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