

# **American Indian Tribes in the United States: A Strange Situation**

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## **Introduction**

Speaking of American Indian tribes today nearly inevitably conjures colorful representations of warriors and elders, dwelling in teepees, scattered across the Southwest desert, wearing headdresses and dancing around a totem pole. Never mind the amalgamation of several cultures and practices, the Indian stereotype looks little like a person living in the modern world. Unfortunately, indigenous peoples represent less than 2% of the total United States (U.S.) population, and the closest encounter most Americans will have with an identifiable Indian in their lifetime will be in the media, or possibly a sports mascot.

Of course, American Indians do not go around shouting their tribal appurtenance on rooftops (though many will carry a Certificate of Indian Blood in their wallets). But American Indian policy in the U.S. has spent several decades attempting to separate indigenous populations from the general population, followed by several more imposing mainstream culture upon them and erasing signs that Indians ever existed.

The very policy process obscured American Indian identity from the onset. It was designed by the colonists, for the colonists, and ignores (or at least undermines) the existence of indigenous cultures by assuming that they could be replaced. As a matter of fact, the entire system relied on the Federal government to apply the same policy throughout the Nation. Even though the “Indian tribes” were put under the responsibility of the Federal government both as a precaution and a mark of respect, it was all too often understood as a disregard of local histories due to the ideological drive of settlers.

However inadequate, the political framework and discourse established during these early years has remained pervasive in dealing with American Indian tribes, most of whom are struggling to establish (or re-establish) their autonomy and identities in the contemporary world. At this point in history, American Indian tribes are not just ethnic groups in the United States; they are also legal entities and political units with the definitions this entails. They are possibly the most complex so-called minority in the U.S. with a wealth of individual histories, cultural ties and changing identities weaved together – today more so than ever.

In this article, I am providing a critical geographical account for tribal identity: I would like to untangle the geographical and political aspects of the concept of tribe, as I believe that it was in large part inspired by Indian Affairs and how policy has approached indigenous peoples.

I will first examine the legal definition of what is a U.S. American Indian tribe, with a special emphasis on the history of deferral Indian policy. The eras of reservation, removal and termination have geographical implications that cannot be overlooked when we speak of indigenous tribes today. With support from geopolitical theories, I will in turn examine the current issues in Indian country such as land restoration, tribal membership or citizenship issues as well as cultural preservation for attempts to solve the question of what it means to be an Indian in the twenty-first century, and how to put Native America back on the map.

## **Indians by Law**

For all the efforts of the U.S. government to integrate Native Americans into mainstream society, it has also created a precedent removing them from the mainstream legal process. The corpus of laws applying to American Indians is sometimes considered to be a separate area of expertise for

policymakers because it involves a plethora of documents predating the Nation's founding from a variety of agencies dedicated to Indian Affairs. Perhaps the most telling act of legislation in this respect is the Indian Citizenship Act of 1924 (8 U.S.C.A. § 1401(b) (1924)): until that time, the aboriginal Americans were in fact foreigners in the United States as they did not systematically obtain U.S. citizenship.

### **Where the American Indian Tribes Are**

One can only hypothesize on the number of tribes and their social organization prior to the arrival of colonial settlers from Europe. Broadly speaking, and for the sake of argument, we shall say that indigenous peoples occupied the entirety of the American continent. Even though they may not consider that statement to be entirely true, there is evidence of American Indian life in every state of the U.S. even in spaces not currently populated due to climate or relief.

As the colonies expanded and then fought the tribes for the land, indigenous peoples were still a relative majority in the landscape. However, once townships were established they became disallowed in the spaces occupied by settlers through the use of treaties. Those treaties established boundaries to the settlements as well as to the tribes' lands as settlers were trying to keep the peace, unaware of the extent of land and the numbers of the indigenes. This doctrine is summarized in a series of statutes collectively referred to as the *Indian Nonintercourse Act*. In those times, the territory of Indians was everywhere settlers were not.

In the newborn United States the Federal government was put in charge of Indian affairs: Article I, Section 8 of the U.S. Constitution states that "Congress shall have the power to regulate Commerce with foreign nations and among the several states, and with the Indian tribes." At that point in history, Indian tribes were not considered to be part of the general U.S. population, nor were they exactly foreign. Following the colonies' treaty-making on a nation-to-nation basis, tribes were still considered as somewhat powerful entities on par with the federal government, and only the federal government had an overarching sight on the land.

Settler groups had diplomatic envoys to mediate with tribal representatives (whose election was questionable), but for a large part of their history there was no clear definition of what an American Indian tribe was. In spite of the number of laws and statutes enacted for Indian Affairs, there was no single entity to deal with Indians. They have existed in a legal grey area that was decided *ad hoc* and fluctuated over time (Quinn 1990). The following cases are generally regarded as the most influential in defining the realm of Indian Affairs.

### **The Marshall Trilogy**

In a series of three landmark cases brought to the Supreme Court between 1823 and 1832, the situation of American Indian populations was further refined by law. The settler population had grown to overtake the indigenous population and territorial disputes became more frequent, leading to *Johnson v. M'Intosh* in which the court declared that the settlers had gained ownership of the land of the United States when they "discovered" the landmass – which indigenous peoples merely "occupied." In *Cherokee v. Georgia*, the court conceded that even though they do not own the land, indigenous people do retain their sovereignty in the United States. In *Worcester v. Georgia*, the court affirmed that the U.S. Federal government is the only political power which is entitled to dealing with the tribes, though that power does not entitle them to rule over indigenous populations or appropriate their land. Marshall stated that: "The very term 'nation,' so generally applied to them means 'a people distinct from others'" (31 U.S. (6 Pet.) 559, emphasis added)

The most explicit definition of how the U.S. government considered the tribes is stated in *Cherokee v. Georgia*:

*The Cherokees are a State. They have been uniformly treated as a State since the settlement of our country. The numerous treaties made with them by the United States recognise them as a people capable of maintaining the relations of peace and war; of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our Government plainly recognise the Cherokee Nation as a State, and the Courts are bound by those acts. (30 U.S. 1-2)*

And further:

*It may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases; meanwhile, they are in a state of pupilage. Their relations to the United States resemble that of a ward to his guardian. (30 U.S. 2, Emphasis added)*

In combination, the Marshall trilogy provides somewhat conflicting opinions (Pommersheim 1995), and very obtuse language (Fletcher 2006) illustrating just how difficult it is to properly situate indigenous tribes in the United States. Later evidence showed that the judges had trouble reconciling public opinion, presidential hopes and respect for the tribes in formulating their opinions (Burke 1969, Getches, Wilkinson and Williams, 1993).

As a result, it could be said that American Indians have been considered as legal aliens. In any case, they have historically been others. Geographically, they have inhabited within the United States territory, even though not all tribes were considered to have a territory (unless already established via treaty). Politically, they have resided under the umbrella of the United States, and they have been able to deal with the federal government directly, even though they had no contact person, and in the early years few tribes spoke any English, let alone had an understanding of U.S. laws and customs. Economically, they have been entirely dependent upon the federal and state governments, as they were not allowed to own any of the resources needed for them to thrive.

### **Settling the Tribes**

In order to permanently resolve their issues with Indians the settlers had to settle them into a way of life they could understand. Before the creation of the Bureau of Indian Affairs (B.I.A.), the Department of War was in charge of applying Indian policy; their actions were dictated by economic motives rather than legal considerations. Some tribes started moving westward in order to avoid conflicts, to the area designated as Indian country by the government. But when tribes were in the path of settlers, the army was then authorized by the *Indian Removal Act* (148 Stat. 411 (1830)) to forcibly remove tribes out of the territory they were occupying, into Indian country.

This set the course for policies which did not just lump Indian tribes together as a figure of speech. Indian Territory, which used to correspond in large part to the tract of land acquired in the Louisiana Purchase quickly shrunk to the size of what we now know as the state of Oklahoma and became inhabited by dozens of tribal groups from all Eastern States. Some tribes also became scattered across several states as their removal trip ended prematurely. The reservation era that followed gathered the remaining tribes of different cultures within the same tracts of land. Whether this was functioning under the assumption that indigenous peoples are all part of the United States people anyway or sheer ignorance of American Indian diversity is unclear, though both motives probably held true.

Reservations in combination with programs teaching English and non-Native religions further accelerated the process of erasing many Indian tribes from U.S. history, until federal Indian policy culminated in the plain and simple termination of the Indian title of hundreds of tribes (H.C.R. 108). This meant that in the eyes of the Federal government, the designated tribes were no longer considered American Indians. Arguably, these policies sought to literally eradicate all traces of indigenous peoples, diversity notwithstanding. They also blurred the definition of what an “Indian tribe” actually is since Indian ancestry no longer guaranteed Indian-ness by law, nor did exterior signs corresponding with Indian tribe such as language, religion or even living on a reservation.

To this day, there are still hundreds of tribes who are attempting to be acknowledged by the Federal government, as a result of outright termination, obfuscation from previous policies or due to poor historical surveying that never recognized them in the first place. In the second part of the twentieth century however, U.S. presidents have attempted to correct the mistakes of their predecessors, although some of the damage could never be reversed. A few tribes (such as the Klamath or the Menominee) managed to see their title being restored through lengthy court appeals, but a majority will never be reinstated.

### **The Meaning of Federal Recognition**

Detractors argue that these tribes are only interested in benefitting from federal help, as tribes are perceived to be receiving tax breaks, supplemental federal assistance and special privileges that are not otherwise available to the American population. The truth is of course more complicated, as each (recognized) tribe administers its own taxes, negotiates its own commercial contracts and receives different benefits due to their specific history. Indians conducting business off the reservation pay the same taxes as anyone else and casinos can only exist when allowed by the states (and as the Abramoff scandal showed, they are far from being a safe haven for Indians).

It can also be argued that if indigenous groups have survived several generations on their own, they can obviously live without these benefits. Federal tribal recognition is not only a convenient economic concept: it means that the tribes are legally able to create their own governments, adjudicate their own cases and create programs that are targeting the needs of their own communities. Most importantly, it establishes their identity as Indians and acknowledges their existence in the world as peoples defined on their own terms rather than a concept created in the media.

Federal recognition does also allow tribes to receive funds in order to maintain or preserve their cultures, which they could not otherwise receive. It also enables tribes to claim their ancestors’ cultural artifacts that have been stolen away to museums as well as their traditional burial sites. For the most enterprising tribes, it may also mean regaining control to lands confiscated or stolen in past centuries – provided they can leverage the legal and financial resources to do so; without Indian title, they would have no claim for the land.

### **Establishing tribal existence**

The Code of Federal Regulations contains the seven mandatory conditions for a tribe to establish its existence as a tribe. One of the many contradictions of this paragraph is that it requires from the tribes that they prove their existence as a tribe going as far back as 1900, even though there was no published list of federally recognized tribes until the original publication of part 25 of the C.F.R. in 1978 (25 C.F.R. § 83.6(b) (1978)). Above all, the tribes need to be both recognized as Indians internally and externally, and perhaps paradoxically they need to be already functioning upon the principles that they will have to live by once the tribe is federally acknowledged. Until this acknowledgement, tribes are considered Indian Groups (25 C.F.R. 83.1)

(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.

(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(d) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe.

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. (25 CFR 83.7)

The process is lengthy, unclear and its outcome scarcely in favor of the tribes because of conflicts of interests (Quinn 1992). In other words, the federal recognition of a tribe is only the recognition of its political power; and conversely political power is the only way to recognition. The tribal groups may (and shall, if they want recognition) exist theretofore as tribal groups who will somehow maintain a separate functioning society.

### **Working Within the Legal Framework**

Even though we are not all bound by Indian law, the legal framework usually offers a reliable structural basis for us to see the world. Laws and boundaries are points of reference in relation with which outsiders can situate themselves. If two neighbors have a dispute over a property line, they usually can refer to the plot survey in order to settle it. Nevertheless, conventions only reflect one reality that has been made official; there would be no dispute on the ground if the two neighbors did not have their own realities. Because Indian policy has been designed in favor of the other party, tribes have been attempting to re-establish their existence according to reference points that are meaningful to themselves.

Anthropologists and legal scholars may be called upon to testify in the federal recognition process. Their authority results from a similar institutional recognition process and their expertise resides in the real world (the field, the people). As such they act as intermediaries; they are warrants for

the existence of tribes which the federal government acknowledges is at least in part out of its reach. If they have not been previously exposed to the reality of the tribes, there is a risk that they deny the existence of an Indian group because it does not fit the established, official definition – thus turn the process into an ouroboros, a blind feed-back loop.

### **Existing in Discourse**

Of course, few people (unless they have a vested interest otherwise) would argue that Indian tribes only exist in policy. But it is also true that few people would know that a tribe exists if it is never mentioned as such. This idea has been expressed by Ian Hacking as “linguistic idealism” (Hacking 1975, 182) derived from George Berkeley’s empirical idealism (Berkeley and Turbayne 1977): “Linguistic idealism is the doctrine that only what is talked about exists; nothing has reality until it is spoken of, or written about.”

I believe that this idea is especially true in the multimedia age, where we learn about concepts on television or the internet long before we experience them. The media can manufacture issues and opinions and lobbies constantly attempt to sway the public debates on issues that oftentimes only tangentially affect the general population, if at all. Their campaigns are meant to raise the “awareness” of people, presumably because they were previously unaware of a problem.

Non-federally recognized tribal groups are not only deprived from economic claims, they are also deprived of a voice in the public debate. Through the recognition process, they are claiming that they exist in the discourse, in the collective imaginary of the United States, as modern peoples rather than antiquated stereotypes. The lack of acknowledgement is obviously problematic for the tribes and for politicians, but it also translates into a quandary for scientists, who often have to overlook non-recognized tribes in the research.

### **Working in the Grey Area**

I have experienced this issue personally as I wrote my dissertation. I was examining the language situation of indigenous tribes in the United States and in my own state of Louisiana, I came across several tribes that are not federally but state recognized (the United Houma Nation, Clifton Choctaw and Choctaw Apache of Ebarb) as well as individuals who claim Washa, Chawasha, and Koroa heritage even though these tribes are nowhere to be found in the landscape. Without my meeting them in person, I would have not been aware of the existence of these tribal groups just a handful of miles from my house.

The Chitimacha of Louisiana are a federally recognized tribe. They now number over seven hundred members (four hundred of whom live on the reservation) after being reduced to less than fifty members in the early twentieth century (Census 1930). Their language was deemed extinct in the 1940s by Morris Swadesh, a prominent linguist who was working on codifying the language when the last speaker died (Swadesh 1948, 230-231). But when one visits the Chitimacha reservation, they can see that the Chitimacha language is currently being taught in the reservation school and in many households thanks to a grant from the Rosetta Stone foundation. Many sources such as Ethnologue (Lewis 2009) still consider the language to be extinct.

As researchers, we are often driven to study remote areas, with little or no idea of what to expect once we study in the field. The same applies to areas closer to home: we are often misled by outsider representations which are certainly convenient but seldom accurate. Whether some areas of the world are understudied because they are poorly surveyed or poorly surveyed because they are understudied is probably not relevant. Current methodologies are designed to work within a structural (and institutional) framework that does not account for the small intricacies of everyday local interactions.

## Finding Better Anthro-geographical Methods

Geographers and anthropologists have studied Native American cultures ever since the inception of their respective disciplines. But once they had exhausted the study of surveyable tribes, indigenous studies became somewhat dormant for decades. Dennis Crow articulated in 1994 that the uniqueness of indigenous peoples led them to stay under the radar of scholars and politicians alike:

*This process of forgetting the history and current sociology of poverty and cultural contradictions of American Indians has defined the national identity of North American states and provinces, and only the great efforts of American Indian scholars, artists, community development personnel, and folks working for their community keep them from disappearing entirely. (Crow 1994).*

Steve Silvern later argued along the lines of other authors that indigenous tribes in the United States are a “third geographical scale” (Silvern 1999, 2). He argued that besides the Federal scale and the state scale, the tribal scale should be recognized as a full-fledged “scale” where politics happen.

In the last decade however, the vocabulary of scales has fallen into disfavor within the realm of geography. Speaking about Indian tribes in particular, putting tribes on a separate scale notably excluded non-federally recognized groups since they do not have political power *per se*. It also placed the tribal scale on the bottom of an imaginary hierarchical ladder due to their reliance on federal services. In other words, speaking of indigenous tribes in terms of scale only reinforced the hegemony of the federal government and could only follow the lines of established policy.

One alternative that has been offered is that of an ontological site. I believe that the ontological site offers a perfect solution to working with indigenous peoples and subaltern populations in general.

*A given site is always an emergent property of its interacting human and non-human inhabitants. Seen as a manifold (...) that does not precede the interactive processes that assemble it, (...) we can talk about the existence of a given site only insofar as we can follow interactive practices through their localized connections. (Marston, Jones and Woodward 2005, 425)*

Marston, Jones and Woodward, developed their idea of site following Schatzki (2002)’s theories on the organization of social life. The ontological site recognizes the multiplicity and complexity of social organization, and whereas previous scale technology would have required creating an endless set of scales to reflect the particularities of each situation, thinking in terms of site allows us to study each situation individually according to carefully chosen parameters. There are no pre-existing sites, they evolve in time and space, appear and disappear with the interactions of people.

Sites are flat, co-existing on the same plane and not organized in a hierarchy which often mirrors economic or political privilege. Seeing the world in terms of ontological sites recognizes the existence and equal importance of every social movement, however big or small. So-called “global” events do not uniformly occur everywhere across the globe, but rather have distinct iterations around the world, each with its own particularities. The English language for example, while spoken on every continent, is not the same whether your interlocutor is from Great Britain, Africa, America or Australia. Each of these variants is a site where English is spoken.

Indigenous peoples throughout the world are facing similar struggles, even though they have different paths due to their respective histories, geographies, ideologies. Their members, their ancestral

lands, their languages straddle the modern boundaries which were established by colonists with no regard for the beliefs of the aboriginal people whose territory they invaded.

## Conclusion

What is a tribe? The first definition in the Oxford English dictionary states that it is “a group of people forming a community and claiming descent from a common ancestor.” All indigenous groups in the United States follow this definition. Legally however, only tribal groups that have been recognized as such by the Federal government (the ultimate authority in the U.S.) can be considered “tribes.” This is a confusing terminology that has been handed down to us by several generations of policymakers and scientists alike. In many ways, it is just as inadequate as the term “Indian” itself. Unfortunately we cannot easily change these words, but we can change our attitude towards their referents. In the later part of the twentieth century, American Indian policy has been championing the self-determination of tribes, who can now form their own governments, establish their own membership rules and educate their own children. This is not sufficient to repair the damage that has been done by two centuries of adverse policies, but those who are now regarded as experts also need to change their behavior in order to rehabilitate Indian “tribes” to a definition that is close to its etymology.

We need to realize that the methods we use, the frameworks we work in, need to be adjusted in order to reverse the past tendencies of seeing subaltern groups such as indigenous peoples at the bottom end of a hierarchy of power. The concept of site provides a way for us to put all meaningful groups on the same plane of existence, and establish all political actions as equally valid.

Meanwhile, indigenous tribes will be able to re-assert their place in the landscape by reclaiming the lands and artifacts that have been taken away from them, and the very images of themselves that have been exploited in complete disregard of what the indigenous ways of life represent. Renaming geographical features and changing offensive mascots are but a few ways to decolonize the world we live in. If we all share this earth, we all have a part in changing it.

## References

- Berkeley, George and Colin Murray Turbayne (1977) *A Treatise Concerning the Principles of Human Knowledge*. Indianapolis: Bobbs Merrill Educational Publishing.
- Burke, Joseph C. (1969). The Cherokee Cases: A Study in Law, Politics, and Morality. *Stanford Law Review*. 21, no. 3, 500-531.
- Fletcher, Matthew L. M. (2006) The Iron Cold of the Marshall Trilogy. *North Dakota Law Review*, Vol. 82 (No. 4) Grand Forks, N. D.: University of North Dakota School of Law.
- Getches, David H., Charles F. Wilkinson, and Robert A. Williams (1993). *Cases and Materials on Federal Indian Law*. St. Paul, Minn: West Pub. Co.
- Halverson K, ME Puig, and SR Byers (2002). Culture Loss: American Indian Family Disruption, Urbanization, and the Indian Child Welfare Act. *Child Welfare*. 81 (no. 2).
- Lewis, M. Paul (ed.) (2009). *Ethnologue: Languages of the World*, Sixteenth Edition. Dallas, Tex.: SIL International.
- Pommersheim, Frank (1995) *Braid of Feathers: American Indian Law and Contemporary Tribal Life*. Berkeley: University of California Press.
- Quinn, William W. (1990) Federal Acknowledgement of American Indian Tribes: The Historical Development of a Legal Concept. *The American Journal of Legal History : Official Publication of the American Society for Legal History*. 34, 331-364.



- Quinn, William W. (1992) Federal Acknowledgment of American Indian Tribes: Authority, Judicial Interposition, and 25 C.F.R. § 83. *American Indian Law Review*. 17, (no. 1), 37-69.
- Swadesh, Morris (1948) Sociologic Notes on Obsolescent Languages. *International Journal of American Linguistics*. Vol. 14 (no. 4), 226-235.