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JOHN P. BOWES

LIVING WITH AMERICAN INDIANS AND AMERICAN INDIAN HISTORY

The following essay developed out of a lecture given on November 17, 2011 as part of the Chautauqua Lecture Series at Eastern Kentucky University. November 2011, like every November since 1994, was designated by proclamation as Native American Heritage Month. Working with the theme for the Chautauqua series, “Living with Others: Challenges and Promises,” the lecture focused on an idea relevant to the series and the month—the place of American Indians in the national historical narrative and its meaning for the place and perception of American Indian individuals and nations in the contemporary United States. This essay will build on that idea to explain how common misunderstandings regarding the contemporary social, economic, cultural, and political circumstances of Native American individuals and nations more often than not grow out of a particular ignorance of Native American history.

Heritage is a powerful word. In many respects it asks us to look at the past and in the process to downplay the present. It is not a problem to look at the past. It is a problem, however, when those backward glances harm or obscure the understanding of present circumstances and events. The cost is particularly high when, in looking backward, we exchange myth for reality. And when the topic is American Indian history, the general lack of knowledge about the past consistently leads most Americans to hold onto myth and misconstrue the legal, political, and even cultural position of American Indians in the present. The following essay explores contemporary issues such as identity and sovereignty through the lens of historical events in order to address some of the most prominent misunderstandings.

In early November, 2011, a symposium convened at Purdue University brought together historians, archaeologists, historical society employees, American Indian tribal representatives and the general public to discuss the 200<sup>th</sup> anniversary of the Battle of Tippecanoe, in which American forces under William Henry Harrison defeated an Indian force under the leadership of the Shawnee Prophet. Harrison had viewed the Prophet and his brother Tecumseh as dangerous instigators because of the Pan-Indian confederacy

they had crafted through religious and diplomatic means. One of the tribal representatives present at the Purdue symposium was Glenna Wallace, the current chief of the Eastern Shawnee Tribe of Oklahoma and a descendant of Tecumseh. When it was her turn to talk to those in attendance, she started with a simple message. “We are still here,” she asserted. “We are still alive and are proud to be Indian.” For the next twenty minutes she elaborated on the history of her people and their uncomfortable encounters with historical commemoration.

In the hours that followed her presentation, her assertion of Shawnee existence continued to stand out to those in attendance. Was such a declaration necessary? Surely Chief Wallace had traveled the hundreds of miles from Ottawa County, Oklahoma to do more than remind the citizens of Indiana that the Shawnees were not extinct. Yet questions of existence and identity are omnipresent for American Indian men and women in the twenty-first century. Caricatures of American Indians in popular culture and historical ignorance often lead non-Indians to ask the misguided question of whether or not any “real” Indians live in the United States. Numerous circumstances and historical events might provide ways to respond to that question, but it is best to start with an emphasis on 1924 when Congress passed legislation known as the Indian Citizenship Act. That legislation is crucial because of what came before it. Until that moment in time the United States government categorized Indians as the very polar opposite of civilization and citizenship.<sup>1</sup>

The words of Secretary of War John C. Calhoun from December 1818 represent well the core beliefs of Americans about their Indian neighbors for much of the eighteenth, nineteenth and twentieth centuries. In a report to the House of Representatives that focused on trade relations, Calhoun declared that, “by a proper combination of force and persuasion, of punishments and rewards, [the Indians] ought to be brought within the pales of civilization...Our laws and manners ought to supersede their present savage manners and customs.” The differences between savage Indians and civilized Anglos were clear to Calhoun and his colleagues—one relied on “the chase” while the other

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<sup>1</sup> “Indian Citizenship Act,” in Charles Kappler, comp. and ed., *Indian Affairs: Laws and Treaties* (7 vols., Washington, D.C., 1906), IV, 1165-66.

farmed; one held land communally while the other owned and understood the importance of private property; one adhered to heathen practices while the other was Christian.<sup>2</sup>

These are the beliefs that underscored the federal government's policy for the next century and more. The Indians must submit to civilization—indeed, civilization both literally and figuratively, would be the death of the Indian. President Andrew Jackson argued the former in December 1829 when he urged Congress to take up the issue of Indian removal. “Surrounded by the whites with their arts of civilization, which by destroying the resources of the savage doom him to weakness and decay,” he remarked, “the fate of the Mohegan, the Narragansett and the Delaware is fast overtaking the Choctaw, the Cherokee and the Creek.” In the 1880s, Captain Richard Pratt, the founder of the Carlisle Indian Industrial School, perhaps the most well-known boarding school for American Indian youth, coined a phrase that asserted the figurative death of Indians through civilization. “Kill the Indian in him and save the man,” became his slogan for an institution that saw approximately 10,000 Native students pass through its doors over the thirty-nine years it was open.<sup>3</sup>

In the decades between the statements made by Jackson and Pratt, the federal government pushed forward with policies that emphasized the confinement of Indians on reservations, the acquisition of land, and the military pursuit of any who resisted. But it was the policy of allotment that consistently forced the issue of citizenship more directly into the discussion of American Indian identity. This policy first appeared in the 1830 Treaty of Dancing Rabbit Creek with the Choctaws, reared its head again in treaties with the Shawnees, Delawares and Potawatomis in Kansas Territory in the 1850s and reached its culmination in the Dawes Act of 1887. In every incarnation, allotment had two main goals. First, break up communal reservations so that Indian men, women, and children would become private property owners and farmers. Second, free up any and all

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<sup>2</sup> Quotation from Calhoun's “Report On the System of Indian Trade,” December 8, 1818, in Richard K. Cralle, ed., *The Reports and Public Letters of John C. Calhoun* (New York, 1859), 18.

<sup>3</sup> Message from the President of the United States, December 8, 1829, in *Journal of the Senate*, 21 Cong., 1 sess., 5-22; Richard Pratt, “The Advantages of Mingling Indians with Whites,” in *Official Report of the Nineteenth Annual Conference of Charities and Correction* (Boston, 1892), 46–59; David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928* (Lawrence, KS, 1995).

unallotted land for sale to American citizens. But there was also a third critical element at work. In every application of this policy over the nineteenth century, the acceptance of an allotment put the individual Indian on the path to American citizenship and entailed the dissolution of any and all tribal ties. Theodore Roosevelt referred to allotment in general and the Dawes Act specifically as “a mighty pulverizing engine to break up the tribal mass.” To own land, to be an American citizen—from the standpoint of the American government—required the abandonment of what, in its eyes, made Indians Indian.<sup>4</sup>

This is why the Indian Citizenship Act of 1924 marked a dramatic shift in direction. The legislation signed by President Calvin Coolidge reads:

BE IT ENACTED by the Senate and house of Representatives of the United States of America in Congress assembled, That all non citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

For the previous one hundred and fifty years the policy of the United States was predicated on a simple idea—a person can be an Indian or an American. But he or she could not be both. Now, for the first time in the history of the United States, American Indians could become citizens without legally ending their tribal identity and membership.<sup>5</sup>

Then why does the question of who is or is not a “real” Indian linger nearly a century later? There may be two very simple answers. One is that writing a new status into federal law does not erase centuries of colonialism and cultural imposition. Another is that federal policy is no match for the popular images that have long infused American culture. Numerous Indian stereotypes have dominated the American public’s mind over

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<sup>4</sup> Full texts of the named treaties can be found in Kappler, *Indian Affairs: Laws and Treaties*, II; “An Act to Provide for the Allotment of Lands in Severalty to Indians on the Various Reservations,” *U.S. Statutes at Large* 24, 388-91; Theodore Roosevelt: “First Annual Message,” December 3, 1901, from Gerhard Peters and John T. Woolley, *The American Presidency Project*, online at <http://www.presidency.ucsb.edu/ws/?pid=29542>.

<sup>5</sup> “Indian Citizenship Act,” in Kappler, *Indian Affairs: Laws and Treaties*, IV, 1165-66.

the nineteenth and twentieth centuries. In the 1820s James Fenimore Cooper's *Last of the Mohicans* promoted and made popular the idea of the Vanishing Indian. Another predominant role is that of the helpful Indian, best illustrated in the more mythic aspects of the Pocahontas and Sacagawea stories. Then there is the Indian who is one with nature, personified by the famous environmental advertising campaign of the 1970s that saw Iron Eyes Cody standing silently shedding a lone tear as he watched Americans around him sully the environment with litter and other forms of pollution. Finally, and perhaps most influential of all is the savage Indian warrior of film, print and mascot alike who is a threat to Anglo womanhood, pioneer wagon trains and opposing sports team, even while exuding an aura of proud nobility.<sup>6</sup>

But rather than focusing on these more obvious examples, it is more powerful to listen to a group of fourth and fifth graders from Bloomington, Minnesota who were given a survey in 1991 by a local university professor. The children were asked about their impressions of American Indians. Here are just a few of their responses:

They always attacked pilgrims;  
Whenever they killed a cowboy, they scalped him;  
They had very weird customs;  
When the teacher told us they were still alive, it sure surprised me.

As Jim Northrup, an Anishinaabe Indian from Minnesota, remarks, “the survey results would be funny if they weren't so sad, sad if they weren't so funny.” Another point worth noting is that many of the children's observations were phrased in the past tense. Why might that be? It may be as simple and harsh as the fact that many non-Indians perceive American Indians to be people of the past. And as a result, Indians of the present must confirm over and over again that they are still Indian and still alive—that it is not just their heritage that is important and influential in today's world.<sup>7</sup>

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<sup>6</sup> One exploration of these ideas and more can be found in Brian W. Dippie, *The Vanishing Indian: White Attitudes and U.S. Indian Policy* (Lawrence, KS, 1991).

<sup>7</sup> Jim Northrup, *Rez Road Follies: Canoes, Casinos, Computers, and Birch Bark Baskets* (Minneapolis, 1999), 63-65.

Identity is one of many concerns for contemporary Native peoples. But perhaps one of the least understood aspects of American Indian existence is the principle of sovereignty and the political status of American Indian tribes in the twenty-first century. At present there are 565 federally recognized tribal entities established in thirty-three out of the fifty states. Yet despite this extensive and enduring presence, most Americans continue to question more than just their existence. More often than not they raise questions about status and accuse Indians of receiving “special treatment” from the federal government.

David E. Wilkins, a political scientist and a Lumbee Indian from North Carolina, provides an effective starting point for this phase of the discussion in his book, *American Indian Sovereignty and the U.S. Supreme Court*. “The cardinal distinguishing features of tribal nations,” he writes, “are their reserved and inherent sovereign rights based on their separate, if unequal, political status.” In short, American Indian peoples are a distinct minority population within the United States—they are indigenous and not immigrants, they maintain unique cultural practices, and approximately 1.9 million are members of recognized tribal entities. But it is the political sovereignty of the tribal nations that most prominently sets them apart from other minority groups in this country.<sup>8</sup>

Five different words within Wilkins’ statement deserve attention. Of those five, “sovereign” may be the least understood within the context of American Indian history and U.S. policy. The Oxford English Dictionary defines sovereign when used as an adjective as “Supreme, paramount; principal, greatest or most notable.” So the sovereign rights of tribal nations are supreme, paramount and principal rights. But what does that really mean within a specific historical context?<sup>9</sup>

One of the first places to turn is a famous decision rendered by the United States Supreme Court under Chief Justice John Marshall. In 1832, the Marshall Court issued one of the most critical legal rulings for future discussions of tribal sovereignty. In the course of asserting that the state of Georgia did not have jurisdiction over the Cherokee

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<sup>8</sup> David E. Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (Austin, TX, 1997), 27.

<sup>9</sup> Oxford English Dictionary Online, <http://www.oed.com>.

Nation, Marshall declared that the history of the United States even during the colonial era provided nothing “from the first settlement of our country, of any attempt on the part of the crown to interfere with the internal affairs of Indians.” More to the point, the United States government fully recognized tribal sovereignty through a policy based upon the negotiation of treaties.<sup>10</sup>

Treaties, then, serve as a cornerstone of tribal sovereignty within an American context. And the consideration of treaties brings the discussion back to Wilkins’ statement regarding the “reserved and inherent sovereign rights.” The words reserved and inherent are crucial to understanding the 375 acknowledged treaties signed and ratified by the U.S. government from 1781 to 1871. Indian tribes, nations and bands have an inherent, not a created, sovereign status. In other words, the United States at no point granted sovereignty to Indians through treaties. The act of treaty making as a means of reaching agreements over land cessions, boundaries or conflict was in and of itself a recognition of tribal sovereignty. And while in each treaty the tribe in question may have ceded and reserved certain powers or lands, at no point was sovereignty ever ceded. Tribal sovereignty was and is a continual status.<sup>11</sup>

But the core issue is more than just the difference between granting sovereignty and recognizing sovereignty. It is about perspective. In the battle over jurisdiction between Georgia and the Cherokee Nation in the 1820s and 1830s, Georgia was particularly infuriated by the Cherokee Nation’s adoption of a Constitution in 1827 that asserted its sovereign status. Georgia and its supporters, including Andrew Jackson, based their opposition on Article IV Section 3 of the U.S. Constitution, which states that, “no new State shall be formed or erected within the Jurisdiction of any other State.” Georgia argued that the Cherokee action was therefore unconstitutional. The Indians could not create a state within a state.<sup>12</sup>

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<sup>10</sup> Quoted in Stuart Banner, *How the Indians Lost their Land: Law and Power on the Frontier* (Cambridge, MA, 2005), 221.

<sup>11</sup> *Treaties and Other International Agreements: The Role of the United States Senate*, A Study Prepared for the Committee on Foreign Relations United States Senate, 106 Cong., 2 sess., 36.

<sup>12</sup> The debates in both the Senate and the House of Representatives can be found in the Register of Debates for the respective houses for the 21 Cong., 1 sess.



To make that argument, Georgia, Jackson and others had to commit to two intertwined misconceptions. First, they had to deny the inherent sovereignty of American Indian tribes in general and the Cherokee Nation in particular. The second and related misconception was that only a western-style constitutional government established or maintained sovereignty. From Georgia's perspective, the pre-existing Cherokee system of governance, based on clans as well as more localized village polities, had no sovereignty. But Cherokee sovereignty was not born in 1827 under the auspices of a paper document. And the same applies to every other tribal entity that may have altered its governing structure over the course of the past two hundred years in response to American policies.

Having dealt with “sovereign,” “inherent” and “reserved,” we can now examine “separate” and “unequal.” The word unequal reflects a particular reality of tribal sovereignty. Once again, the words of Chief Justice Marshall provide insight. This time, the important wording comes from his statement regarding the 1831 case of *Cherokee Nation v. Georgia*. According to Marshall, the Cherokees and other Indian tribes were best categorized as “domestic dependent nations.” The word dependent spoke to the power imbalance at play even as the word nation spoke to the sovereignty that Marshall would explain and defend more fully one year later. Over the course of approximately four hundred years, Indian tribes were defeated militarily, dispossessed of their lands, confined to reservations, at times forced to sign treaties, and defined as wards of the federal government. All of this created an often severely unequal relationship in regard to power. However, in the terms used by Marshall that still hold today, no manner of inequality can compromise the inherent sovereignty of a tribal nation.<sup>13</sup>

In the end, then, perhaps the primary source of both misunderstanding and tension is the word separate. American Indian tribal nations are indeed separate—the members of federally recognized entities hold dual citizenship with their tribe and with the United States. It is a separation based on the government-to-government relationship founded on treaties and inherent tribal sovereignty. It is a separation framed by the trust responsibility created by those same treaties. The federal government, under the auspices of that trust

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<sup>13</sup> Jill Norgren, *The Cherokee Cases: Two Landmark Federal Decisions in the Fight for Sovereignty* (Norman, OK, 2004), 98-111.

responsibility is supposed to do the following: represent the best interest of the tribes, protect the safety and well-being of tribal members and fulfill its treaty obligations and commitments. The treaties signed in the eighteenth and nineteenth centuries do not have an expiration date—therefore neither does the trust responsibility.<sup>14</sup>

Yet over the course of the twentieth century, and especially in the past four decades, American Indian tribes have fought to wrestle control over their affairs from the paternalistic policies of the Bureau of Indian Affairs—they have struggled for self-determination within the context of this trust relationship. The rise of Indian gaming revenue and other economic enterprises have allowed many tribes to assume control over social, educational, healthcare, and other services that have traditionally been the purview of the federal government in general and the Bureau of Indian Affairs specifically. And this economic success among a select few tribes has led to calls by some for the elimination of tribal sovereignty and the special relationship. So even as American Indian nations strive for self-determination, they also have to remind the American public that economic growth does not eliminate the trust obligations created by treaties.

It is no surprise, then, that tribal nations not only passionately defend their sovereignty but also assert the need for self-determination. They have good reason. The words of John C. Calhoun can once more illustrate a point—this time how the American government consistently sought to undermine tribal identity and existence. “The time seems to have arrived,” Calhoun argued in December 1818, “when our policy towards them should undergo an important change... Our views of their interest, and not their own, ought to govern them.” This idea that non-Indians know better than Indians what is best for Native peoples did not die with Calhoun. It is a defining theme in American history. Indian removal, reservations, allotment, the Indian Reorganization Act, Termination, and Relocation—from the 1820s to the 1960s American officials and religious reformers created policies that had little to no foundation in what American Indians wanted or needed as individuals and communities. And therefore the

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<sup>14</sup> *An Introduction to Indian Nations in the United States*, a publication of the National Congress of American Indians, online at [http://www.ncai.org/resources/ncai\\_publications/tribal-nations-and-the-united-states-an-introduction](http://www.ncai.org/resources/ncai_publications/tribal-nations-and-the-united-states-an-introduction).

preservation, protection, and assertion of sovereignty have been key elements in the resistance to such policies as well as the survival and revitalization of Native communities up to the present.<sup>15</sup>

Up to this point the discussion has targeted a more national discourse. But these topics are just as relevant in a state like Kentucky. The region now bounded by lines drawn in the late eighteenth century has a long history of occupation and settlement by indigenous peoples. Indeed, the Bluegrass and its surroundings were not simply a hunting territory through which Indians only passed on their travels. Nevertheless, Kentucky's state history has most often been written on a foundation of Indian violence and then absence. This has grounded a narrative that to this day marks Kentucky as a state whose Indian heritage is most often popularly defined by Indian frontier raids of the 1780s, the captivity of Jenny Wiley, and the passage of one portion of the Cherokee Trail of Tears through its western reaches. Yet in 2000, out of a population of a little more than 4 million, approximately 8,600 Kentuckians self-identified as being American Indian and/or Alaskan Native.<sup>16</sup>

The population of Kentucky contains members of federal and state recognized tribes. But Kentucky itself does not contain any tribal entities that have gone through a recognition process. And that is because there is not a procedure in place by which communities within Kentucky can apply for state recognition. There is a critical distinction here. Missing from the discussions of identity and tribal sovereignty up to this point are the Native men, women and children who are not members of a recognized tribal entity. In Kentucky, as in states throughout the Union, people in such a position have diverse family histories. They have ancestors who avoided removal in the 1830s by heading to and living in the mountains. They have ancestors who intermarried with non-Indians, which has resulted over time in a blood quantum that does not meet standards for membership in their ancestral community. In the early 1900s, some Native men and women refused to have their names written down on allotment rolls because they had too

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<sup>15</sup> Quotation from Calhoun's "Report On the System of Indian Trade," December 8, 1818, 18.

<sup>16</sup> Census information found at the U.S. Census Bureau Website:  
<http://www.census.gov/main/www/cen2000.html>.

much experience with the damaging results of having names inscribed on government documents. Their descendants are left without that paper trail required by the federal government and some tribal governments to prove their heritage. And in communities that delineate membership by lineal descent and not blood quantum, membership has been lost by marriage outside of the community.

Numerous attempts have been made in the past decade to pass legislation in Kentucky that would create a definition for American Indian in the state and then establish a process for state recognition. The proposed bill defining American Indians often leads to questions about whether such a definition is necessary. The second bill intending to establish a process for state recognition has raised strong opposition both in and out of the state.<sup>17</sup>

So why is such a definition deemed necessary by the Native community in Kentucky? It is necessary because the history of this state and the country has been in part a story of making Indians history. Whether through the more well-known military actions of the Plains Wars or through the lesser known cultural assaults of missionaries and boarding schools, the United States has more often than not sought either to kill the Indian or, to paraphrase Captain Richard Pratt, to kill the Indian and save the man or woman. So a better way of looking at the proposed legislation in Kentucky is that it is more than just a definition, it is an assertion of existence and identity.

The second bill sparked opposition in Frankfort partially out of the fear of Indian gaming. Allowing state recognition, the argument goes, will open the door to a process that ends with Indian casinos on every street corner from Pikeville to Paducah. The short response to that concern to this is that such a development is not legally possible. The Indian Gaming Regulatory Act of 1988 allows gaming for federally recognized tribal entities. It is not a program that grants any privileges or opportunities to state recognized tribal entities.<sup>18</sup>

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<sup>17</sup> These bills have been repeatedly proposed by State Representative Reginald Meeks but have not made it out of committee. In November 2010, the proposed bills were labeled BR 220, “An Act relating to the definition of ‘American Indian’” and BR 221, “An Act relating to recognition of American Indian tribes.”

<sup>18</sup> The full text of the Indian Gaming Regulatory Act can be found at <https://www.nigc.gov/general-counsel/indian-gaming-regulatory-act>.

A second source of opposition to the proposed bills in the Kentucky legislature might appear surprising. The Cherokee Nation of Oklahoma has made it very clear that they will oppose any and all state recognition procedures, specifically for those who claim Cherokee affiliations. The Cherokee Nation has seemingly taken on the role of a bully, attacking those who would attempt to achieve some manner of recognition similar to theirs. This is only one of several positions recently taken by the Cherokee Nation that might be considered less than popular.<sup>19</sup> But it is a stance that, whether right or wrong, is borne out of the historical context of battles over sovereignty. On the Cherokee Nation of Oklahoma's Website (in 2012, though no longer available), the Cherokee provide a summary of their position. The opening paragraph of that paper reads as follows:

A battle for what it means to be an Indian tribe and a struggle for benefits provided to Indians is currently being waged by groups seeking to take away the identity and benefits that have been reserved to federally recognized Indian tribes. Hundreds of false Indian groups are claiming to be sovereign tribes and are teaching their own fabricated culture and history as if it were Indian. They apply for and receive aid from the same sources that fund the historic treaty based obligations intended for Indians. Yet they do not measure up to the credentials required of true tribes.<sup>20</sup>

The title of the paper is "Sovereignty at Risk." Clearly the Cherokee Nation of Oklahoma believes it is in its best interest to assert its sovereign powers and declare its right to influence who can and cannot be considered Cherokee. More than that, however, the Cherokee Nation firmly believes that if it does not take this course than the very sovereignty of Indian tribes in general will be compromised. Many would argue that the Cherokee Nation has overstepped its bounds by encroaching on affairs outside of Oklahoma. And that may be true.

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<sup>19</sup> See the *New York Times* forum on the Cherokee decision to expel the descendants of African-American freedmen from their tribal rolls for an example of another controversial topic, "Tribal Rights vs. Tribal Justice," *New York Times*, September 15, 2011, <http://www.nytimes.com/roomfordebate/2011/09/15/tribal-sovereignty-vs-racial-justice>.

<sup>20</sup> "Sovereignty at Risk" can now be found at <https://archive.li/qo78>.

However, the Cherokee attacks against the enactment of a state recognition process in Tennessee and the possibility of a similar process in Kentucky are indicative of a complicated political conflict in the twenty-first century that has its origins in the history presented over the course of this essay. It is a battle with many causes—but looming over them all is the history of federal Indian policy. The United States has repeatedly attempted to eliminate Indian cultures and peoples from the landscape. And it is telling, therefore, that the Cherokee Nation of Oklahoma grounds its argument in issues of identity and sovereignty.

It is also worth noting that the Cherokee position relies on words like false and true as well as concepts like required credentials. American Indians of the present, like the rest of world, are living under the powerful influence of the past. As a result, the Cherokee Nation of Oklahoma, one of the most populous and powerful American Indian nations of the twenty-first century, remains caught in a web made largely by centuries of external impositions. Even a defense of tribal sovereignty cannot escape the language of the dominant American society seeking to determine what can be categorized as “real” and an American government intent on regulating American Indian lives.