

THE CHANGING FACE OF TRIBAL IDENTITY: STATE RECOGNITION OF INDIAN TRIBES

AARON MASON
Northwestern Oklahoma State University

State governments are beginning to provide formal recognition to non-federally recognized Indian tribes. This essay examines the actions of nine different states and asks why this recognition is extended to some groups while being denied to others. It also looks at why states are doing this in the first place. Moreover, the implications of this practice for the larger issue of American federalism are probed. Finally, the current state of this practice in the state of Oklahoma and its likely future are also examined.

INTRODUCTION

When one considers the many federal agencies which exist in the United States government, few of these agencies with perhaps the notable exception of the Internal Revenue Service, generate the brand of vehement and visceral controversy which is endemic to the Bureau of Indian Affairs (BIA). It is an entity charged with carrying out vast and varied responsibilities. Moreover, it is often provided with conflicting

and contradictory missions and is then criticized for its inefficiency, sloth, and mismanagement.

As the Bureau stands at the beginning of a new millennium and nears its 200th anniversary, it faces a number of unique challenges regarding changes in federal Indian policy. The primary impetus for this change in federal Indian policy and subsequently Bureau policy is due to a fundamental shift in federalism in the United States. The current trend of devolution which began in earnest in the early years of the Reagan Administration has in some ways created an atmosphere more conducive to tribal sovereignty and self governance. The return of power to state and local governments and the subsequent debates concerning preemption has caused many in the federal government to apply the same stance toward tribal governments. A number of bold legislative initiatives reflect this trend. Perhaps one of the greatest of these is the Indian Gaming Regulatory Act of 1988 (IGRA). This Act provides a statutory mechanism by which states and tribes may enter into cooperative agreements concerning gaming operations for their mutual economic benefit.

STATE-TRIBAL INTERACTIONS

This policy of permitting state governments a role in dealing directly with tribal governments represents a dramatic shift in traditional federal Indian policy. Until recently, interpretations by the federal judiciary of Article 1, Section 8 of the United States Constitution have repeatedly reinforced and reaffirmed the usual notion of the federal government in general and the Congress in particular as possessing plenary power concerning Indian affairs. In fact, the exclusiveness of the tribal-US Government arrangement is a relationship that some have described as being a "federalized one" in terms of its nature (Wilkins 1998, 77). With devolution, however, this idea has come under scrutiny and reconsideration.

Besides issues related to gaming and state-tribal sovereignty, other new issues in federal Indian policy are also emerging (McCulloch 1994, 112). One of the most interesting of these concerns the issue of official tribal recognition. The Bureau of Indian Affairs has the significant responsibility of providing formal recognition to various native groups,

bands, and tribes who wish to be eligible to receive funding as well as other benefits from the federal government. This function of the Bureau is facilitated through the BIA's branch of Acknowledgement and Recognition which reviews the applications of these groups seeking federal recognition. Again, traditionally the idea of recognition has been primarily considered to be an exclusive right of the federal government and generally accomplished via the Bureau of Indian Affairs. However, Congress has also seen fit to intervene and recognize tribal communities such as the Keetoowah Band of Cherokees of Tahlequah, Oklahoma, in 1950 (Leeds 1996, 1). Quite recently however, the idea of exactly who should grant recognition to tribal governments has come under renewed interest from outside of Washington, D.C.

More specifically, a number of states are beginning to become involved as participants in the process of the tribal-recognition process. Today, numerous state governments are finding it either useful or necessary to engage in the process of formal recognition with tribes within their state boundaries. However, this is not a completely new idea. In fact, the state of North Carolina provided legislative recognition to the Lumbee Tribe of Indians in 1953 (Wilkins 2007, 26).

This practice is beginning to gain acceptance and popularity in other states. According to the National Conference of State Legislatures, as of 2005, approximately 38 states had created state level agencies designed exclusively for dealing with tribal governments in their states. These Indian affairs commissions often times essentially perform some of the same tasks as the BIA at the federal level. In Oklahoma, the Oklahoma Indian Affairs Commission was created by the state legislature in 1967 for the purpose of acting as a liaison between the state's various tribal governments and the state of Oklahoma. More will be said regarding Oklahoma and its policy on state recognition of tribes later.

STATE INDIAN AFFAIRS COMMISSIONS

One of the primary functions of many of these Indian affairs commissions or agencies is to establish a government-to-government relationship between various tribes and the state. Secondly, the commissions are often charged with providing recognition to various native communities within the state. Lastly, they often attempt to promote and

encourage economic development activities between the state and tribal communities. Taken as a whole these actions would simply mimic the current relationship which tribal governments possess with the federal government.

However, a new aspect of this unfolding relationship should also be mentioned here. Many of the tribes which the states are recognizing are tribes which do not already enjoy the status of federal recognition. In other words, they are non-recognized tribes. According to the National Conference of State Legislatures, there are approximately 50 non-federally recognized tribes across the United States. This number is problematic since the criteria for and definition of state recognition differs so widely from state to state. The major question is why are the states doing this? It seems rather easy to see why states seek relationships with federally recognized tribes. Issues such as gaming and revenue sharing can sometimes constitute strong motivations for seeking relationships with these tribes. But what about non-federally recognized tribes? What is the motivation for this?

Exploring the aforementioned questions will constitute the focus of this work. In order to accomplish this, two primary questions will be posed. The first question considers how the process of state recognition works across the nation. Also related to this, what are the criteria involved for state recognition and how do states decide which tribes are offered recognition and which are not?

The second question will explore the overall issue of why states extend formal state recognition to non-federally recognized tribes. What is the rationale for this recognition? What are the benefits of this recognition? Likewise, what are the limitations of this recognition? After these questions have been explored, a few comments will be made regarding Oklahoma and its policies in this regard.

METHODOLOGY

In order to begin, the methodology employed in this study will be discussed. Thirty-eight surveys were mailed by parcel through the US postal system on Friday June 17, 2005. These particular 38 states were selected due to the fact that they possessed an Office of Indian Affairs or a Commission of Indian affairs of some type. The information

regarding which states had offices or commissions and which did not was gathered from a series of lists compiled by the National Conference of State Legislatures, the National Congress of American Indians and the Governors Interstate Indian Council. In addition, calls were made to each of the offices appearing on these lists to confirm and obtain the correct addresses and names of the offices and officials to be contacted. The study received a total of 30 completed surveys, or about 80 percent of the total surveys sent. These surveys were completed in two ways. The first involved the respondents filling the surveys out on their own time. The second involved a phone survey using the same questions. The states to which formal surveys were mailed are as follows:

Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming.

The fact that not all the surveys were returned is related to a number of factors. The most important of which concerns the fact that some of these commissions are not active full-time bodies. Some of the commissions such as the Idaho Council on Indian Affairs meet only once or twice a year. Others may convene at the request of the governor or some other official. As such, they do not have a full-time staff or other resources required to answer the survey posed by this research project. Therefore, it was necessary to augment the survey information.

In addition to these surveys, supplementary information was collected by conducting research inquires on the nature of the tribal-state relationship in each of the surveyed states. The official state web sites of the commissions as well as the web sites of various state-recognized tribes were used to accomplish this task. Also, the commissions themselves supplied complementary information in the form of official state reports and other government documents. Additional organizations such as the National Indian Gaming Commission provided a number of official reports and other material necessary to answer the questions posed by this research. Finally, a number of states which do not have an Indian Affairs Commission or Office of Indian Affairs were also contacted.

Officials in these states were sometimes interviewed or otherwise asked to give information relating to how the tribal-state relationship operates in their states.

It should be noted that the need to afford anonymity to the respondents of the surveys was of paramount importance. Regardless of the fact that the questions posed by the research are of an inquisitive nature, a number of those questioned sometimes revealed information which was confidential in nature. However, they intimated to me that they wished this information to be included in the results of this work. Therefore in order to retain the promise of confidentiality, the research which follows is designed to answer the original research questions in such a way as to not link the information with the respondents. At the same time, the research mentions the name of a state or official when it is proper and necessary to do so and when permission was given.

In addition, another important note regarding methodology should be mentioned here. This concerns the authority of the respondents to speak on the issue of tribal-state relations. The individuals comprising these bodies are in a strategic position to provide information in regard to the questions posed by this research project. This is attributable to the fact that many of them are members of both state and federally recognized tribes within the states which they represent. As such, they possess the unique advantage of holding both a state and tribal perspective on the issue of tribal-state relations. Therefore, it is assumed that these respondents do indeed speak with sufficient authority on this subject. In addition, the author of this work would like to express his gratitude toward those at these state agencies whose participation and assistance made this research possible.

Finally, it should be noted that the topic of this work is not stagnant. As with most political science research, the material contained within this work is somewhat time-bound. Administrators, statutes and policies may change from time to time. As a result, while its findings are helpful in understanding tribal-state relations, the data represent only a fraction of what should be studied in the future to gain a complete assessment of the situation.

DATA ANALYSIS

The survey results concerning state recognition of tribes are as follows.

- The total number of states surveyed was 30.
- Number of states which practice state recognition of tribes - 9.
- Number of states which once practiced state recognition of tribes in past but no longer do - 1.
- Number of states currently working on and establishing criteria and processes for state recognition of tribes - 2.
- Number of states which do not practice state recognition of tribes - 18.

NOTE: Oklahoma does not engage in the practice of state recognition of non-federally recognized tribes at the present time.

RESEARCH QUESTION 1: HOW DOES THE PROCESS OF STATE RECOGNITION WORK?

In terms of how state recognition is achieved, no single pattern or method emerges from the data collected. Of the nine states being considered, three states used either their state Commission or Office on Indian Affairs or some equivalent agency as the primary actor to "recognize" tribes in their state. For example, in North Carolina the primary responsibility for recognition lies with the North Carolina Commission on Indian Affairs. In Alabama, the primary authority who establishes recognition is the Alabama Commission on Indian Affairs. In Michigan, the determination of recognizing non-federally recognized tribes is the prerogative of the Michigan Department of Civil Rights. However, Michigan does not formally "recognize" these bands as in other states. Rather, the Michigan Department of Civil Rights seeks to determine possible funding for legitimate "tribal organizations." More will be said about this distinction in the following sections. In the two states of Georgia and Louisiana, the legislature is responsible for granting recognition. In the remaining three states of Vermont, South Carolina, and Virginia the process involves the combination of the state bureaucracy and or

at least one other institution. New York has two state recognized tribes but did not discuss the method regarding how recognition is achieved. Having considered how it is done, what are the various criteria for recognition? Overall, some basic criteria are utilized by most of the states surveyed. Of the nine states involved, most of them use the following standards and benchmarks or some similar variations thereof. A group seeking recognition:

1. Must have a membership list of at least 500 members.
2. Must have its origins in the state in which it is seeking recognition.
3. Must not have any members of a federally recognized tribe.
4. Must demonstrate that the group has remained as a distinct and separate society with its own legal and/or political system for at least the last 100 to 200 years.
5. Must have the genealogy of the membership list approved by a certified state approved genealogist.
6. Must compile a tribal history with its claims verified by an approved historian or anthropologist.

Thus, some commonality does exist concerning the recognition process. However, it is not uniform. According to the results of the survey, Georgia and Louisiana use perhaps the most streamlined process. In order to gain full state recognition, the process is much simpler than in the other seven states considered here. The power to grant full recognition lies exclusively with their respective state legislatures. For example, according to the Georgia State Code Section 44-12-300, "The General Assembly may recognize tribes, bands, groups or communities other than those stated in subsection (a) of this code section as the General Assembly deems appropriate." Thus, recognition is essentially accomplished by the will of the legislature.

RESEARCH QUESTION 2: WHAT IS THE RATIONALE FOR EXTENDING STATE RECOGNITION?

According to the data collected, the meaning of state recognition is not universal in nature. The value and importance of state recognition differs considerably from state to state. Overall, it is possible to say that

the benefits of state recognition fall into three general categories. The first of these concerns a general sense of legitimacy. Tribes who cannot receive federal recognition cannot really claim any status at all. The next best thing is state recognition. It can provide both the tribal leaders and their members with a sense of authenticity and at least a quasi-styled arrangement in a government-to-government relationship.

The second reason concerns the quest for federal recognition. Many of the tribes which can be classified as state recognized will most likely never gain federal recognition. This is due to a number of reasons. For instance, many are not able to verify their genealogy claims. Some cannot prove their continued existence as a separate political entity. Nonetheless, many state recognized tribes hope that they will one day be granted federal recognition. In their efforts to do so, they often hope that the legitimacy which state recognition provides them may in some ways assist them in their bid to obtain federal recognition. In some cases this strategy has worked. An example of this potential is the Jena Band of Choctaw. In the 1970's and 1980's, the state of Louisiana extended state recognition to this tribe. Using this status and other claims of legitimacy finally paid off. Eventually in 1995, the tribe gained federal recognition. In other cases, such efforts have not been as successful. However, the possibility of such success is sufficient to encourage many non-recognized tribes and bands to seek state recognition.

The third reason why some tribes and bands seek state recognition concerns the issue of tangible benefits. In general, however, most states do not provide many if any tangible or material benefits for state recognized tribes. Of the nine states which were involved in the survey who reported extending state recognition of tribes, only two provide any real material benefits for this recognition. The state of Michigan has created a process where it reserves the right to recognize "tribal organizations" which if they meet specific criteria can be made eligible for certain state funding and services. Federally recognized tribes are automatically eligible for these benefits. Non-federally recognized tribes can also be approved. North Carolina's approach to providing benefits to its state recognized tribes closely mirrors the federal-state relationship in some ways. North Carolina extends a number of benefits to its state recognized tribes. One of the most important of these is its so called SONS program. This acronym stands for Support Our Native Students. The goal of the SONS program "is to provide an educational opportunity for American

Indians whose educational and socioeconomic backgrounds might otherwise prevent them from successfully attending and succeeding in college” (Annual Report of North Carolina Commission On Indian Affairs 2004, 5). In order to be eligible for this assistance, students must complete an application, meet an income threshold, maintain a minimum GPA and “be an enrolled member of a North Carolina [state] recognized tribe” (Annual Report of North Carolina Commission On Indian Affairs 2004, 5).

Another benefit afforded to state recognized tribes concerns housing issues. The North Carolina Commission on Indian Affairs is responsible for managing funds appropriated by both the federal and state governments. These funds are used by the state of North Carolina to administer a tribal-state housing fund whereby members of North Carolina State recognized tribes can participate and receive housing assistance. It is a very unique program in that it is essentially a federally funded housing program which is administered by the state for the benefit of both federally and state recognized tribes. In many ways, it is indicative of how versatile and flexible the tribal-state relationship can be if innovation guides state policy. This policy innovation and willingness to work with its native communities relates to another example of a benefit for state recognized tribes. Recently, the North Carolina General Assembly has considered legislation which would permit members of state recognized tribes to fish on state recognized lands without state licenses. Having discussed the benefits of state recognition, what are the limitations of state recognition?

The major powers and prerogatives of federally recognized tribes are not afforded to their state recognized counterparts. Essentially, there is no pretense of sovereignty in any significant fashion for state recognized tribes. In general, states extending state recognition reserve the right to regulate these entities in a variety of ways. For example, state recognized tribes are subject to state criminal and civil jurisdiction. This is largely because state recognized tribes do not have judicial powers or police powers. For example, Section 139-104 (A) of the South Carolina State Code says that tribes recognized by the state

are subject to the civil, criminal and regulatory jurisdiction and the laws of the State of South Carolina, its agencies, and political subdivisions and the civil and criminal jurisdiction of the courts

of the State of South Carolina, to the same extent as any other person or citizen or land in South Carolina.

In addition, these tribes are explicitly forbidden from engaging in activities associated with federally recognized tribes such as gaming. Perhaps more importantly, one of the most significant powers which state-recognized tribes cannot exercise concerns tax related issues. Generally speaking, tax exempt status does not apply to state recognized tribes. However, a caveat should be issued here. Not all state recognized tribes are or should be categorized in such a universal fashion. There are some notable exceptions to this generalization. One of the most obvious of these exceptions involves the Lumbee Nation of North Carolina. The Lumbee Tribe is not federally recognized *per se*. However, most observers agree that it is indeed a legitimate Indian Tribal community which should receive the legal and political status which it is due. To begin with, it has a long history of recognition from the state of North Carolina. As was stated earlier, in 1953 the state provided this recognition. Even before that time however, the Lumbee had been governing themselves in ways in which most state-recognized tribes can only dream. The contemporary Lumbee Nation has a modern government which provides a vast array of services to its members. As such, both its long history with a state government and the scope and power of its government is not representative of the experiences of most state-recognized tribes.

Another point which should be made concerning state recognition of tribes involves the reason as to why states extend this form of recognition in the first place. Virtually all of the states surveyed stated that the primary reason is to provide some form of acknowledgement for those American Indian communities who for whatever reason are unable to meet the criteria for federal recognition. In some cases, it may be that recognition is offered because of constituent pressure. One particular respondent intimated that state recognition of tribes in some cases amounted to "doing favors for voters." In this regard, it seems rather trivial. Others stated that it is designed to truly "provide some sense of legitimacy" toward a group of its citizens who deserve distinction as a separate group of individuals. However, regardless of the motivations involved, the implications for federalism are significant. The obvious and most central point is that by extending any form of political recognition to tribes, states are now involved in a jurisdictional area typically

thought to be exclusively under the plenary power of Congress and the federal government.

OBSERVATIONS ON THE ISSUE OF STATE RECOGNITION

Overall, there are those who support and disagree with the policy of state recognition. What are the possible pros and cons of this policy for Indian Country and state governments in general? Those who support the idea of state recognition contend that such a policy holds a number of potentially positive aspects for tribal communities. First, many tribes such as the Lumbee are institutionally prevented from ever obtaining formal federal recognition due to a number of previous agreements and conditions imposed by the federal government. Thus, state recognition is for the time being the only hope tribes such as the Lumbee have of ever enjoying a recognized status. Secondly, state recognition of tribes can possibly help bridge the gap which may exist in the level of trust between states and Indian Country. The mutual distrust of these two sovereigns might be ameliorated and mitigated by the act of formally recognizing tribes as equal partners and sharing a government-to-government relationship with them.

A third argument involves the changing nature of American federalism. As has already been discussed at length, the effects of devolution have tended to empower state and tribal governments and to provide them with the desire to avoid the traditionally heavy-handed, top-down mandates of Congress. As such, states and tribes are seeking new and innovative ways to express their new-found freedom. The policy of state recognition may be one of these new innovative policies. If states and tribes are truly free and enjoy self determination, then they should be able to decide for themselves when, how, and with whom they choose to have formal political relationships and for what purposes.

The practice of state recognition is not without its critics, however. Many charge that a number of negative implications may arise out of such an arrangement. For example, they claim that the very notion of state recognition erodes away at the sovereign status of federally recognized tribes. This erosion occurs by allowing the states to interdict themselves between Indian Country and the federal government. This

concern is significant in that it constitutes one of the primary problems and paradoxes of traditional federal Indian policy. This paradox involves the twin problems of sovereignty and paternalism. On the one hand, the federal government is supposed to ensure the protection of Indian tribes. By virtue of treaties, judicial decisions and custom, the federal plenary power is to ensure that the politically weak tribes are protected from the dominant society which has in the past and may in the future seek to injure Indian Country. This protection is also accompanied by paternalism. This paternalism is of course a natural consequence of the power which the federal government exercises as the guardian of the tribes. At the same time, however, the federal government officially has endorsed the policy of self determination for tribes for the last four decades. Thus, the federal government should permit the tribes to make their own decisions. Of course, the two concerns of sovereignty and paternalism often conflict with each other.

The primary issue which the opponents of state recognition highlight concerns the undermining of the federal government's responsibility to defend tribes and provide services to them. They argue that state involvement in Indian Country undermines the essential and fundamental elements which Indian Country requires to survive in a society which they view as being both competitive and hostile to the tribes.

A second objection which some raise against state recognition concerns the notion of tribal unity and cultural unity within their tribes. For example, there is currently one official Osage nation. This tribe is headquartered in Pawhuska, Oklahoma. This tribe is federally recognized and is served by the Bureau of Indian Affairs. Thus, one band of Osage Indians considers itself to be the one, true and only legitimate representative of the Osage people wherever they may be disbursed around the globe. The Osage Nation of Oklahoma would have a major problem if another group of people claiming Osage descent and who could provide legitimate proof of their claim, which are not recognized as tribal citizens of the Osage Nation attempted to form their own tribal group under the banner of being state recognized. This would, in the minds of many federally recognized Osage constitute a serious threat to the integrity of the Osage government in Pawhuska. Put another way, just as Beijing and Taipei claim to be the one, true, legitimate representative of the Chinese people, they cannot both be the single representative of

the Chinese people. Thus when assessing which one really represents the Chinese people, one must decide which one is more legitimate. The same analogy applies here.

Related to this dilemma are the difficulties in defining who is a legitimate member of a particular tribal community, since the tribes themselves determine who is eligible for tribal membership (Utter 2001, 36). Consequently, no single federal definition exists regarding who is an Indian and who is not. As a result, the states have no template as to how to proceed concerning setting these guidelines themselves. This fact is further complicated by the issue of the so-called terminated tribes and their members who by governmental decree and past policies may no longer be regarded as Indians following the logic that "there can be no Indian without a Tribe" (Canby 1998, 9). Thus, the notion of state recognition of tribal communities seems to confuse an already complicated issue as to just exactly who or what constitutes an "Indian."

This confusion appears to be manifesting itself already in some states. For example, in Missouri there is a complex and confusing situation with a number of tribes and their exact status of being either recognized or non recognized. One of these cases involves the Northern Cherokee Nation of the Old Louisiana Territory. Also known as NC-NOLT, this organization claims status as a state recognized American Indian tribe in Missouri. It bases this claim upon a number of factors. The most important of these claims is predicated upon a number of documents in which the state government does indeed seem to confer this status upon them.

For example, in 1984, the Missouri House of Representatives issued a resolution (**Appendix 1**) in which the NCNOLT claims the state formally recognized the group as an Indian tribe. The NCNOLT base this claim upon the wording of the resolution. While a number of examples could be cited, I will restrict it to two primary justifications. In the first instance, the resolution says that the state acknowledges the existence of the tribe by writing that

these proud people have preserved a form of tribal government for the past 140 years and have further written a constitution and bylaws creating a new and working tribal government, incorporated into the State of Missouri in 1982 (**Appendix 1**).

This passage is significant in that it not only acknowledges the existence of the tribe but also that it recognizes the tribe as having a working government, both historically and in modern times.

The second important fact from these documents concerns the issue of continued recognition from multiple government agencies and officials. As was just stated, in 1984, the Missouri House of Representatives seemed to be granting recognition to the tribes. But, others have also seemed to do the same. For example, in 1983, one year before the House of Representatives resolution was passed, Governor Christopher Bond issued a similar proclamation. Many might be inclined to say that such proclamations do not constitute significant political importance. Rather, they tend to be of a ceremonial or aesthetic nature. However, the wording of this document might call this assumption into question. In the proclamation (**Appendix 2**), Governor Bond states that "Now, therefore, I, Christopher Bond, Governor of the State of Missouri, Do hereby acknowledge the existence of the Northern Cherokee Tribe as an American Indian Tribe within the boundaries of the State of Missouri, and do hereby proclaim June 24, 1983 as Northern Cherokee Recognition Day" (**Appendix 2**).

In this passage, the Governor clearly recognizes the tribe as being a modern day entity with whom the state has contact and at least some sort of relationship. Related to this, the Governor reiterates the words of the House of Representatives by saying that "They have continued a form of tribal government for the past 140 years" (**Appendix 2**). As such, the Governor also acknowledges that the tribe is a separate entity and has functioned as such for quite some time.

Subsequent governors and other officials have also given similar recognition since. For example, in 1996 Governor Mel Carnahan issued another proclamation (**Appendix 3**). In this document, the governor does a number of things. First, he states that the tribe has "continued a form of tribal government for at least the last 221 years" (**Appendix 3**). Secondly, he names the principal chief of the tribe and mentions that she gained her office by popular election within the tribe. Thirdly, he decides to "acknowledge the existence of the Northern Cherokee Tribe of the Old Louisiana Territory as an enduring American Indian tribe within the boundaries of the State of Missouri" (**Appendix 3**).

A final document from which the tribe claims state recognition involves that of the Cape Girardeau Proclamation of 1997 (**Appendix**

4). In this proclamation the Mayor of Cape Girardeau, Missouri also grants recognition to the tribe. This proclamation does not in and of itself constitute great significance. This is due to the fact that a city official such as a mayor does not possess the right to extend state recognition to an Indian tribe. However, the wording of the document is important in that the recognition which he extends is based upon the idea that others, namely the Governor and the Legislature, had already done so in the past.

Complicating the situation of the NCNOLT is the idea of a state-recognized tribe existing in more than one state at the same time. According to its official history, the NCNOLT once occupied lands in both Missouri and northern Arkansas. Subsequently, the tribe began to enroll members from Arkansas into its previously exclusive Missouri based tribe. As a result of this, tribal members and leaders began to seek official recognition from Arkansas state officials. In 1997, both the Governor of Arkansas and the Legislature had issued proclamations (**Appendix 5** and **Appendix 6** respectively) regarding the tribe. These Arkansas proclamations were almost entirely symbolic in nature. However, they do indeed demonstrate both the importance and significance of the NCNOLT in two different states.

What does all this mean? Does this confer a state recognized status upon the NCNOLT? The answer is vague at best. According to the facts, most impartial observers might argue yes. The NCNOLT does appear to have a series of government officials and agencies extending this recognition in writing. However, subsequent governors and legislators have claimed to have either rescinded or suspended this state recognition. They have argued that the prerogative of the legislature changes with elections. Likewise, governors may change their minds on this issue and the actions of one's predecessor do not dictate the agendas and policies of the succeeding governors. In addition, many in Jefferson City say that the issue of state recognition of Indian tribes is a matter which has not yet been fully decided upon. As such, they say that state recognition is not in and of itself a clear and substantive policy which the state should be undertaking at this time.

Another potential actor who could impact the future of the policy of state recognition of tribes concerns the sometimes capricious nature of the judiciary. For example, on February 17, 2007, a Virginia Circuit Court judge ruled that "an Indian tribe's reserved water rights cannot be

dependent upon a tribe's federal recognition status alone" (Whitehead, 2007). In this ruling, the state court seemed to be assuring state recognized tribes that they can assert certain rights under the federal "Winters Doctrine" which has traditionally served as a legal aid to tribes claiming water rights. Thus, it is possible that state recognition might inadvertently lead to state recognized tribes exercising powers that the architects of state recognition never envisioned or desired. If the federal courts rule in this fashion, who knows where it will lead?

OKLAHOMA AND STATE RECOGNITION

This same ambiguity has occurred in Oklahoma as well. In 2003, Oklahoma was home to 38 federally recognized tribes. As such, it is a state which is no stranger to tribal governments. However, in the administration of former Governor Frank Keating an interesting development occurred in terms of the issue of state recognition. In a rare initiative, Governor Keating signed a state resolution dealing with the Delaware Tribe of Indians who had applied for federal recognition after briefly losing their status as citizens within the Cherokee Nation. Please note that the Delaware Tribe of Indians should not be confused with the Delaware Nation located in Anadarko, Oklahoma. The resolution signed by the Governor only stated that the Delaware Tribe of Indians was a tribe which existed within Oklahoma. Does this mean that the governor and thus the state recognized the Delaware Tribe? That depends upon whom you ask. Some might argue that it does. However, the state is clear that it does not. In fact, the Oklahoma Indian Affairs Commission officially recommends that the State of Oklahoma should not formally create guidelines for state recognition of tribes in the future (Phone interview with the OIAC 4/4/06). This opposition stems largely from tribal leaders who generally oppose the notion of state recognition for some of the purposes stated earlier.

CONCLUSION

Having considered the aforementioned data, what conclusions may be reached? There are a number of possible lessons one may glean from

this study. The first of these concerns the state of American federalism. Nearly all observers note that the trend toward devolution is continuing in large measure. This study tends to support such a contention. In its attempts to "get out of the Indian Business" the federal government has sought to empower Indian tribes. Federally recognized tribes are consequently seeking greater power and autonomy to do more for themselves. Much of this can be seen in the economic power that Oklahoma tribes have begun to exercise via the use of enterprise trade zones such as the Choctaws in the Durant area.

In addition, the states are beginning to interact with them and to partner with them over a host of new and innovative policies which can be beneficial to both parties. But beyond this, a number of states are also deciding to engage in the policy of state recognition of non-federally recognized tribes. This is sometimes done to the chagrin of both federally recognized tribes as well as elements of the federal bureaucracy. However, this new policy represents in some ways the degree to which some states are seeing their role in a devolved federal system which permits them the right to decide new and controversial policies which most of them would not have even considered 20 years ago. As such, the policy of state recognition represents the acute nature of current devolutionary policy and the rising power of state governments.

A second important and related aspect revealed by this research, concerns what the author tends to call the "unintended consequences of state recognition." As is commonly known, many governmental actions can exert unintended consequences. Often times while even hoping to achieve a greater public good, government initiatives can have far reaching and unforeseen results. These results may be of both a positive and or a negative nature. For example, consider the passage of the Indian Gaming Regulatory Act of 1988. This Act provided for the statutory mechanism by which states and tribes would enter into cooperative gaming agreements. Inspired by this, states and tribes now engage in a host of other non-gaming related activities.

It would appear that the issue of state-tribal recognition efforts constitutes no particular exception to this rule. One of the ways in which this has been manifested concerns the issue of legitimacy. Can a state recognized tribe speak for the people of a particular tribe when a federally recognized tribe exists? Conversely, should the legitimacy of a state tribe always be considered inferior to that of a federally recognized tribe?

While the architects of state recognition probably did not intend for such dilemmas to evolve, nonetheless they have. As a result, while it was largely designed to help assist the legitimacy of non-federally recognized tribal communities in particular, in some ways it has contributed to a questioning of the legitimacy of tribal communities in general.

Finally, the issue of state recognition represents simply one more link in a long chain of diverse, conflicting and sometimes contradictory policies with which Indian tribes have been forced to contend. It represents a dramatic reversal from the strict adherence to an exclusively federal-tribal relationship to one which now permits the intervention and influence of state governments. Most observers say the jury is still out regarding the nature of state recognition and how it will ultimately impact Indian Country in general. This is largely because the issue of state recognition is a divisive one not only in terms of its meaning and significance, but also because of its implications in that it potentially stands to negatively affect the economic and political status of both Indian and non-Indian elites. Consequently, it is controversial as a policy and as such is not likely to be sanctioned in the state of Oklahoma anytime soon. Regardless of what perspective one assumes, the debate concerning state recognition will most likely continue to be hotly debated from all sides.

REFERENCES

- Annual Report of the North Carolina Commission On Indian Affairs. 2004.
- Canby, William. 1998. *American Indian Law*. St. Paul, MN: West Publishing Company.
- Jaimes, Annette. 1992. *The State of Native America*. Boston: South End Press.
- Leeds, Georgia Rae. 1996. *The United Keetoowah Band of Cherokee Indians in Oklahoma*. New York: Peter Long Publishers.
- McCulloch, Anne. 1994. "The Politics of Indian Gaming: Tribal-State Relations and American Federalism." *Publius*: 24: 99-112.
- Utter, Jack. 2001. *American Indians: Answers to Today's Questions*. Lake Ann, MI: National Woodlands Publishing Company.
- Whitehead, Bobby. 2007. "Judge Says State-Recognized Tribe Can Claim Water Rights." *Indian Country Today*. February 17.
- Wilkins, David. 1998. "Tribal-State Affairs: American States As Disclaiming Sovereigns." *Publius* 28(4): 55-77.
- Wilkins, David. 2007. *American Indian Politics and the American Political System*. New York: Rowman and Littlefield Publishers.

Appendix I

Missouri House of Representatives



Resolution

WHEREAS, the members of the Missouri House of Representatives are deeply honored to recognize the Northern Cherokee Indian people who have played a vital role in the rich tradition and history of this state; and

WHEREAS the Northern Cherokee are descendants of the great Cherokee nation, where survival against all odds has served as an example of pride and determination for all mankind to hold in awe; and

WHEREAS, the Northern Cherokee chose Missouri as their new home during the Trail of Tears, rather than settling in Indian territory which was reserved for them; and

WHEREAS, throughout this state's history, these noble citizens have represented our state in the armed services through several wars; and

WHEREAS, these proud people have preserved a form of tribal government for the past 140 years and have further written a constitution and bylaws creating a new and working tribal government, incorporated into the State of Missouri in 1962; and

WHEREAS, the existence of the Northern Cherokee Tribe has been fully acknowledged by the Governor of the State of Missouri as an American Indian Tribe within the boundaries of this state; and

WHEREAS, this tribe will undoubtedly play a major role in the future advancements and accomplishments of this great state; and

WHEREAS, it is entirely fitting and proper that this legislative body should pause to honor and recognize this great tribe, which has endured and will continue to do so in the face of many obstacles, as a example to all people;

NOW, THEREFORE, BE IT RESOLVED that we, the members of the Missouri House of Representatives, Eighty-second General Assembly, express our most sincere respect and admiration for the Northern Cherokee Indian people and further wish them much happiness and prosperity for the future; and

BE IT FURTHER RESOLVED that the Chief Clerk of the Missouri House of Representatives be instructed to prepare a properly inscribed copy of this resolution for the Northern Cherokee Tribe.

Offered by Representative Chris Kelly

I, Bob F. Griffin, Speaker of the House of Representatives, Eighty-second General Assembly, Second Regular Session, do certify that the above is a true and correct copy of House Resolution No. 279, adopted March 8, 1984.

Bob F. Griffin, Speaker



APPENDIX 2

Proclamation:
Office of the Governor
State of Missouri

WHEREAS, the Northern Cherokee Indian people are descendants of the Cherokee nation; and

WHEREAS, the Northern Cherokee settled in Missouri rather than in Indian territory; and

WHEREAS, the Northern Cherokee citizens of Missouri have represented our state in the armed services through several wars; and

WHEREAS, they are very much a part of the state's history and its future; and

WHEREAS, they have continued a form of tribal government for the past 140 years, and in 1979, wrote a constitution and by-laws creating a new and working tribal government which was incorporated as a not-for-profit tribal organization into the State of Missouri in 1982:

NOW, THEREFORE, I, CHRISTOPHER S. BOND, GOVERNOR OF THE STATE OF MISSOURI, do hereby acknowledge the existence of the Northern Cherokee Tribe as an American Indian Tribe within the boundaries of the State of Missouri, and do hereby proclaim June 24, 1983, as

NORTHERN CHEROKEE RECOGNITION DAY

In Missouri to recognize the tribe, its people and the contributions they have made to their home state, and we urge all Missourians to share in the celebration of this recognition,

IN TESTIMONY WHEREOF, I have hereunto set my hand and ceased to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, this 22nd day of June, 1983.



GOVERNOR

ATTEST:

SECRETARY OF STATE

APPENDIX 3



Office of the Governor
State of Missouri
Proclamation

WHEREAS, the Northern Cherokee Indian people are descendants of the Cherokee Nation West who first immigrated to Missouri Territory from the Old Cherokee Nation of the Southeast in the 18th century; and

WHEREAS, in the 19th century, the Northern Cherokee remained in Missouri rather than be removed to Indian Territory; and

WHEREAS, the Northern Cherokee citizens of Missouri have always represented our state in the armed services throughout every war; and

WHEREAS, they have played a vital role in the rich tradition and history of this state and shall be very much a part of the future; and

WHEREAS, they have continued a form of tribal government for at least the past 221 years, and in 1979, wrote a constitution and bylaws creating a new and working tribal government which was incorporated as a not-for-profit tribal organization into the state of Missouri in 1982; and

WHEREAS, they were recognized as an historic Missouri Indian Tribe by a Governor's Proclamation of 1983; and a Missouri House of Representatives Resolution of 1984; and

WHEREAS, the nation has flourished under their Principal Chief, Beverly Baker-Northup, who was first elected in 1984, and continues as Chief of the Northern Cherokee Tribe (Nation) today:

NOW, THEREFORE, I, MEL CARNAHAN, GOVERNOR OF THE STATE OF MISSOURI, do hereby acknowledge the existence of the Northern Cherokee Tribe (Nation) of the Old Louisiana Territory as an enduring American Indian Tribe within the boundaries of the State of Missouri, and do hereby proclaim June 22, 1996, as

NORTHERN CHEROKEE RECOGNITION DAY

in Missouri to officially recognize the tribe, its people, and the contributions they have made to their home state, and urge all Missourians to share in the celebration of this recognition.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the city of Jefferson, this 20th day of June, 1996



APPENDIX 4

Cape Girardeau Proclamation

PROCLAMATION

Whereas the Northern Cherokee Indian people are descendants of the Cherokee Nation West who first immigrated to Missouri Territory from the Old Cherokee Nation of the Southeast in the 18th century; and

Whereas in the 19th century, the Northern Cherokee remained in Missouri rather than be removed to Indian Territory; and

Whereas the Northern Cherokee citizens of Missouri have always represented our state in the armed services throughout every war; and

Whereas they have played a vital role in the rich tradition and history of this state, and shall be very much a part of the future; and

Whereas they have continued a form of tribal government for at least the past 221 years, and in 1979, wrote a constitution and bylaws creating a new and working tribal government which was incorporated as a not-for-profit tribal organization into the State of Missouri in 1982; and

Whereas they were recognized as an historic Missouri Indian Tribe by a Governor's Proclamation of 1983; and a Missouri House of Representatives Resolution of 1984.

Now, Therefore, I, Albert M. Spradling, III, Mayor of the City of Cape Girardeau, Missouri, do hereby acknowledge the existence of the Northern Cherokee Tribe (Nation) of the Old Louisiana Territory as an enduring American Indian Tribe, and do hereby proclaim June 22, 1997, as

Northern Cherokee Recognition Day

in Cape Girardeau, Missouri, to officially recognize the tribe, its people, and the contributions they have made to their home state, and I urge all citizens to share in the celebration of this recognition.



In Witness Whereof I have hereunto set my hand and caused to be affixed the Seal of the City of Cape Girardeau, Missouri, this 17 day of June A.D., 1997.

Albert M. Spradling III
A.M. Spradling III, Mayor

APPENDIX 5

STATE OF ARKANSAS
HOCEGANEH, DEHAGGONITTEH

PROCLAMATION

TO ALL TO WHOM THESE PRESENTS COME -- GREETINGS:

WHEREAS, the Northern Cherokee Indian people are descendants of the Old Settler Cherokees and the Cherokee Nation West who first immigrated to Arkansas Territory from the Old Cherokee Nation of the Southeast in the Eighteenth Century; and

WHEREAS, in the Nineteenth Century, the Northern Cherokee remained in Arkansas rather than be removed to Indian Territory; and

WHEREAS, the Northern Cherokee citizens of Arkansas have always represented our state in the armed services throughout every war; and

WHEREAS, they have played a vital role in the rich tradition and history of this state, and shall be very much a part of its future; and

WHEREAS, the nation has flourished under their Principal Chief, Beverly Baker Northup, who was first elected in 1984, and continues as Chief of the Northern Cherokee Tribe (Nation) today;

NOW, THEREFORE, I, Mike Huckabee, acting under the authority vested in me as Governor of the State of Arkansas, do hereby proclaim April 8, 1997 as

NORTHERN CHEROKEE DAY

in the State of Arkansas and urge all Arkansans to share in the calculations of our diverse Arkansas history.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed this ___ day of March, in the year of our Lord 1907.


MIKE HUCKABEE, GOVERNOR


SHARON PRIEST, SECRETARY OF STATE



APPENDIX 6

State of Arkansas
81st General Assembly
Regular Session 1987

H.C.R. 1003

By: Representatives Cook, Ammons, Curran, Hall, Diane Hudson, Allison, Broadway, Purdora, Davis, McJunkin, George, Terry Smith, Puqua, Hausam, McGehee, Dawson, Johnson, Milum, Baker, Whorton, and Hora

HOUSE CONCURRENT RESOLUTION

RECOGNIZING ARKANSAS' NORTHERN CHEROKEE DESCENDANTS OF THE NORTHERN CHEROKEE NATION OF THE OLD LOUISIANA TERRITORY FOR THEIR CONTRIBUTIONS TO THE STATE OF ARKANSAS.

WHEREAS, the Northern Cherokee of Arkansas are descendents of the Northern Cherokee Nation of the old Louisiana Territory; and

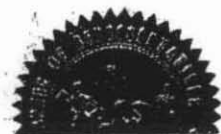
WHEREAS, John Ross, who later became Chief of the old Cherokee Nation in the southeast, wrote President James Monroe on November 2, 1819, referring to the Cherokee West of the Mississippi as "the Cherokee on the St. Francis River" because they lived in what is now southeast Missouri and northeast Arkansas; and

WHEREAS, since ancient times, the Cherokee have referred to themselves as "Ani Yunwiya" which means "the principal people"; and

WHEREAS, the Northern Cherokee of Arkansas have represented this State in the United States armed services through several wars,

NOW, THEREFORE,
BE IT RESOLVED AT THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-FIRST GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, THE SENATE CONCURRING THEREIN:

That Arkansas' Northern Cherokee descendants of the Northern Cherokee Nation of the old Louisiana Territory are hereby recognized for their contributions to and on behalf of this State and the United States of America.



M. Olive Cook