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Depopulation in Indian Country, 21st Century Style

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Depopulation in Indian Country, 21st Century Style



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by **David E. Wilkins**

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A strange thing is happening in and across Indian country: the number of federally recognized tribal nations continues to increase—the Tejon people of California were readmitted to the ranks in early January of this year, bringing the number of such groups to 566—while the population figures for existing federally recognized native peoples continues to decline because of the ongoing number of disenrollments of tribal members.

The disenrollment of ever-increasing numbers of Native citizens has, unfortunately, become a national phenomenon, with native nations in at least seventeen states engaging in the practice. But the small nations of California, over thirty at last count, are leading the charge in the dismemberment of their own peoples. The most disturbing case is that of the Chukchansi people, where over half the population—1,000+ individuals—have been dismembered in recent years.

The New York Times has weighed in on the subject recently, focusing, not surprisingly, on the California scene because of the sheer number of Native communities involved.

The position of tribal officials in California who spearhead such expulsions center around one of two issues: a claim that there are documentary errors involving those on tribal rolls, dating back to the allotment era; or the lack of sufficient blood quantum to justify ongoing membership.

By contrast, those who have been dismembered assert, that the official rationales are pretenses that are concealing what they say are the more realistic explanations for why they have been legally terminated. This includes that tribal governing officials seek to purge their rolls of individuals who challenge their authority; that they are looking to consolidate their political power base and to improve their economic status.

Dismembered natives have little legal recourse to contest their expulsion because native nations, under the Supreme Court's *Santa Clara v. Martinez* decision in 1978, are deemed the final arbiter on membership decisions. And although the 1968 Indian Civil Rights Act presumably extended to all "persons" in Indian country a modified version of the US Bill of Rights, the only remedy spelled out in that act is the writ of habeas corpus.

Habeas corpus has thus far not offered dismembered individuals any substantial or lasting justice, and since native nations are also sovereign, they can and frequently do invoke the doctrine of sovereign immunity.

Dismembered native citizens are also citizens of the states they reside in and have federal citizenship as well. Theoretically, natives should be the most protected class of individuals in the land, armed as they are with three distinctive layers of citizenship. Such, of course, is not the case.

In regards to native citizenship, however, tribal governments can and are wielding a power—the absolute power to terminate native citizenship—a power that not even the mighty United States government or state governments can wield over American citizens. As the Supreme Court held in *Afroyim v. Rusk* (1967), citizenship is an inviolable right, and while it can be given away, it cannot be taken away. In other words, involuntary expatriation, that is the

stripping of citizenship, is not an available penalty under any state or federal statute. As the court held, “in our country the people are sovereign and the government cannot sever its relationship to the people by taking away their citizenship.”

It is true that under federal law there are two routes whereby a US citizen can lose their citizenship: denaturalization and expatriation.

The other route, for natural born or naturalized citizens, is expatriation. An individual can lose their citizenship if they voluntarily perform any of the following acts “with the intention of relinquishing US nationality:” a) becoming a citizen of a foreign state; b) declaring an oath of allegiance to a foreign power; c) joining the military of a foreign state; d) working for a foreign government where one swears allegiance to that state; e) formally renouncing one’s nationality— normally done while one is literally in another country; or f) treason or subversion against the United States.

The question I pose is this: what does it mean that the United States, a very large, heterogeneous, secular state, has in place laws and policies that protect its citizens rights as citizens far more comprehensively than our much smaller, more homogeneous, and ostensibly more kin-based native nations?

Historically, our nations had in place customs, values, ceremonies that protected the integrity and personality of each member of the community. When conflicts arose or when offenses were committed we resolved them through peacemaking, mediation, restitution, ostracism, or negotiation. We rarely engaged in the legal, political, or cultural termination of the rights of fellow tribal citizens because they were, after all, related to us and we sought much less draconian means to deal with the issue in an effort to restore community harmony.

Native nations must find a way to restore or to create new cultural, political, and legal protections for existing citizens, and seek to reincorporate—by first apologizing and then making reparations to—the thousands of natives who

have been wrongfully dismembered. This is essential because the very concept of tribal sovereignty means that the people—the tribal community members themselves—are the sovereign, not the governing bodies of those nations. Tribal councils and other governing institutions have merely been delegated limited authority to fulfill the needs and to protect, not destroy, the rights of the people and do not have, or should not have, the power to sever their relationship to their people by taking away that most important of statuses—the status of belonging to, of having citizenship or membership in, an indigenous nation.

Professor David E. Wilkins holds the McKnight Presidential Professorship in American Indian Studies at the University of Minnesota. His recent book publications include American Indian Politics and the American Political System, 3rd ed (co-authored with Heidi Stark) (2010), Documents of Native American Political Development: 1500s-1933 (2009), and On the Drafting of Tribal Constitutions (by Felix Cohen) (2006).