

occasionally enslaved alongside Africans, their identities being lost amid slave records and the assumption that accompanied being named in such a document.

There are those who maintain that all of New Jersey's Indians left in the early 1700's. Others have stated that when the residents of the Brotherton Reservation departed in 1801, there were none left behind. In both instances, we have clear evidence (as cited in the previous response to the fallacy of the "Last Indian") that remnant communities remained. The agreement of September 23<sup>rd</sup>, 1823, between the Muhheconnuck Tribe (Stockbridge Nation of Wisconsin) and the Brotherton Indians who took refuge among them, makes specific reference to the benefits of that agreement being bestowed upon them and any of their "scattered brethren in the state of New Jersey, to them and to their offspring stock and kindred forever..." indicating an awareness of the continuing presence of those Lenape who refused to leave the state.

In many instances, there is sufficient documentary evidence to overturn any assertion of the "None Left Behind" fallacy. Sadly, there is political pressure from non-Indians, and some Indians, to ignore this evidence and continue to perpetuate the fallacy. Scholars who have upheld this error on record, are at risk of negatively impacting their reputation if it is proven that they missed obvious proof of continuing indigenous communities in areas where they previously claimed none existed. Additionally, quite often for emotional, political and economic reasons, there is a desire to perpetuate sole claim to a tribal legacy among Indian groups that descend from those who migrated away from ancient tribal homelands. Because the descendants of the emigrants have frequently had more recent treaty contact with the federal government (because of that migration) they unjustly assume sole claim of the tribal heritage over the remnant communities that stayed in the homeland.

### ***The Fallacy of the "Federal Standard"***

Today, many assume that the only "real" Indians are those who are members of federally recognized tribes. The assumption is that if you were really a tribe, then you would be recognized by the federal government as such. Federal recognition indicates that a tribal government has a "government to government" relationship with the United States of America and that the tribe and its citizens are eligible for special federal benefits, privileges, protections, and even federally issued identification cards.

However, there are tribes which gained federal recognition only within the last few years; does that mean they were not “really Indian” prior to that recognition? There are tribes which have lost federal recognition (called “termination”); does that mean that they are no longer “really Indian?” In 2007, there was a bill in Congress to “terminate” the Cherokee Nation of Oklahoma; would its success have meant that the members of that tribe were suddenly no longer “really Indian?” Obviously, an Indian is an Indian whether the federal government has a treaty relationship with their tribe or not. However, even today, there are hundreds of tribes who have applied for such recognition and whose status has been under review for decades. The current concept of tribal federal recognition was developed in the 20th century and shifts with political winds. The truth of the matter is there are many tribes that were federally recognized early on, which would have great difficulty meeting the current federal standards being applied to recent applications for recognition.

What many don't know is that among tribes with no federal recognition, there are about 40 state recognized American Indian Tribes and about 200 additional tribes which also have a continuous community, proven ancestry, and are acknowledged by other tribal governments and sometimes even European governments which had colonies in North America. Many eastern tribes of first contact had a treaty history with colonial governments that were not honored by the newly formed United States. Forced migrations and the “Indian Wars” of the western frontier provided many tribes with a “treaty status” with the United States. This typically meant that Indian Rolls were created and kept by the federal government for those tribes. However, tribal communities of the colonial period that remained in the east often had no contact with the military or federal authorities and were not enumerated in the manner their western cousins were.

Between the Congress, The Bureau of Indian Affairs (BIA), and the Federal Courts, the modern criteria to determine tribal legitimacy is essentially that a tribe must be able to demonstrate that, since at least the year 1900, it has been a continuous community of descendants from an historical American Indian tribe, or confederation of historical tribes, have an internal history of acknowledging the authority of that community upon its members, and have principally occupied a contiguous geographical area throughout that period.<sup>61</sup> While the criteria seems to be straight forward, getting a successful application through the federal acknowledgement process today typically takes decades of work and costs petitioning tribes millions of dollars and years of heartache. While the Congress and the

courts prefer to allow the BIA to assume responsibility for tribes petitioning for federal acknowledgment, the process has been criticized for being unfairly difficult and unpredictable by the General Accounting Office, the Office of the Inspector General, the Congressional Research Service, as well as by leading scholars. The average successful petitions that once occupied a single note book, now are tens of thousand of pages long. What was initiated as a method to assist federally unrecognized tribes has evolved into an ever-more demanding bureaucratic barrier preventing the recognition of legitimate tribes.

There are many examples of the individual with a single great-great-grandparent listed on an old federal tribal roll, having no other American Indian ancestors since then, not having any current relationship to the continuing tribal community; and yet, if the Indian ancestor's tribe merely uses a "lineal descent" standard for enrollment, that person can be declared a member of a "federally recognized tribe" along with their descendants after them, and receive all of the special benefits and protections reserved for American Indians by the federal government. However, there are non-federally recognized tribes with well documented histories and genealogies, and which have far more stringent membership enrollment requirements than some federally recognized tribes. Moreover, some non-federally recognized tribal communities maintained such a high level of isolation that their endogamy rate for the past 150 years is much higher than many federally recognized tribes. While it is the right of every American Indian Nation to set its own criteria for enrollment, in the face of such disparity, it is unreasonable to use federal recognition as the sole standard of American Indian tribal legitimacy.

The injustice of the fallacy of the "Federal Standard" leaves many legitimate tribes without a voice at the federal level, prohibits their legal possession of eagle feathers (which, given the spiritual significance attributed to such feathers for some tribes, is denial of their religious freedom), denies that their verifiably authentic art and craft work can be sold with an "American Indian Made" label, and leaves them struggling to assert their identity and sovereignty. For those with documented historical proof of their legitimacy, this is truly an atrocity.

### ***The Fallacy of "Giving Sovereignty"***

This fallacy is related to the fallacy of the "Federal Standard." This is the erroneous assumption that the federal or