

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

state governments “give” or “grant” sovereignty to American Indian Tribes by recognizing them. However, recognition does not grant sovereignty to tribes. Sovereignty is intrinsic to American Indian Tribes, predating the sovereignty of the United States. According to the Handbook of Federal Indian Law,

Perhaps the most basic principle of all Indian law, supported by a host of decisions hereinafter analyzed, is the principle that those powers which are lawfully vested in an Indian tribe are not in delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished. Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation... From the earliest years of the Republic the Indian tribes have been recognized as "distinct, independent, political communities" and, as such, qualified to exercise powers of self-government, not by virtue of any delegation of powers from the Federal Government, but rather by reason of their original tribal sovereignty. Thus treaties and statutes of Congress have been looked to by the courts as limitations upon original tribal powers or, at most, evidences of recognition of such powers, rather than as the direct source of tribal powers.⁶²

It is clear that even United States Federal Indian Policy affirms that external recognition is not the source of tribal sovereignty. Tribal sovereignty is intrinsic.

The “Casino-Monger” Fallacy

The old stereotype of the teepee-dwelling, buckskin clad, Indian on the plains is quickly giving way to a new stereotype of the money hungry, casino owning Indian on land seized from non-Indian neighborhoods. This fallacy presumes that all Indians want casinos and that all tribal efforts are ultimately based around casino development.

There are many tribes that have taken advantage of the opportunities for economic development from casino gaming, using the profit to operate tribal services and provide for their citizens, not unlike many states have done. However, there are