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Cover Photograph: Anaconda Old Works in 1885, with two children seated in the foreground. The smelter effluents devastated water quality from its inception. (Courtesy of the Montana Historical Society, Helena)

Exiling One's Kin: Banishment and Disenrollment in Indian Country

David E. Wilkins

What are First Nations, American Indian tribes, or Native American nations? Are they distinctive racial and ethnological groups, corporate entities, sovereign polities, or extended families? In fact, they are a fluid, if variegated, amalgam of all of the above. Each tribal nation is, in reality, a self-defined social group, thus the defining criteria—blood quantum, shared history, clan membership, language differentiation, geographical locale, religious distinction—for what constitutes legitimate and accepted participation, citizenship, or membership in the tribal group will vary from nation to nation. Three general criteria that many would agree are central for the term *tribal nation*, however, are the ideas that these are unique aggregations of people who are in some way biologically or ancestrally related to one another; who share a common cultural affiliation; and who inhabit or spend considerable time on particular lands often deemed vital to their spiritual history. In other words, First Nations, broadly described, are communities of related kin who view the world through a shared cultural paradigm and relate closely to a particular sacred territory.

In these basic respects, tribal nations, like other indigenous peoples around the world, are fundamentally differentiated from states. Not only are states relatively recent in origin in human history, but they also tend to have much larger populations—so large, in fact, that they include multiple categories

David E. Wilkins (Lumbee) is the McKnight Presidential Professor in American Indian Studies at the University of Minnesota. He holds adjunct appointments in law, political science, and American studies. He wishes to express his thanks to Joan Howland, Rosemary Rogers, and especially Laurie Newbauer, who helped format this essay.

of people, including ethnic groups, social classes, and others. According to Richard Perry, it is the internal differentiation of societal groups that really distinguishes states from First Nations: "States not only incorporate populations that are different from one another to begin with, but often, despite a tendency to eradicate cultural differences within the populace, they foster internal differentiation in power and wealth.[1]

If Native nations are indeed communities of kinfolk that are ancestrally, culturally, psychologically, and territorially related, then it would appear that the grounds on which to sever or terminate such a fundamentally organic and deeply connected set of human relationships would have to be profoundly clear and would, in fact, rarely be carried out given the grave threat such banishments or disenrollments—the literal depopulation of a community's inhabitants—would pose to the continued existence of the nation.

In this essay, we will critically examine the recent surge of banishments, disenrollments, disenfranchisements, expulsions, exclusions, and denials of membership that tribal government officials have engaged in or are engaging in in the United States. The purpose of the essay is to answer or at least shed considerable light on the following queries: (1) why are these occurring at the apparently heightened rate they are? (2) what are the rationales being used to justify such expulsions of tribal citizens? (3) how do these banishment or disenrollment proceedings comport with the tribes' own political and constitutional history? and (4) how do the current proceedings compare or contrast with traditional ways Native nations exiled individuals?

Before proceeding, we must acknowledge three incongruous operational premises: first, as sovereign nations, tribal governments retain as one of their core powers of self-governance the right to decide who may or may not be legally and culturally considered citizens/members of their nations;[2] second, many tribal nations, under their powers as sovereign governments and as property owners, also reserved in their treaties and constitutions the right to exclude nonmembers from reserved or trust lands, with stipulated exceptions for certain federal officials carrying out duties outlined in treaties or statutes;[3] third, the federal government, under the constitutionally

[1]Richard J. Perry, *From Time Immemorial: Indigenous Peoples and State Systems* (Austin, 1996), 5.

[2]*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

[3]*Solicitor's Opinions*, "Powers of Indian Tribes" (Washington, DC, 1934).

problematic doctrine of congressional plenary power,[4] has reserved to itself the power to trump both of the first two premises and overturn or interfere with a tribe's membership decisions when the administration or distribution of tribal property or federal entitlements is involved, or for the purposes of adjusting rights in tribal property.[5]

EXILE, BANISHMENT, EXPATRIATION: A HISTORICAL PERSPECTIVE

Worldwide, the political, religious, or military leadership in societies has reserved to itself or shared the power to authoritatively expel individuals, families, or even entire groups from their respective nations or states as a punitive measure for what were considered grave offenses by officialdom. As such, enforced removal or dismissal from one's native land entailed a devastating loss of political, territorial, and cultural identity, since those so ostracized were utterly deprived of the security and comfort of their own families, clans, and communities, as well as their religious or ethnic groups.

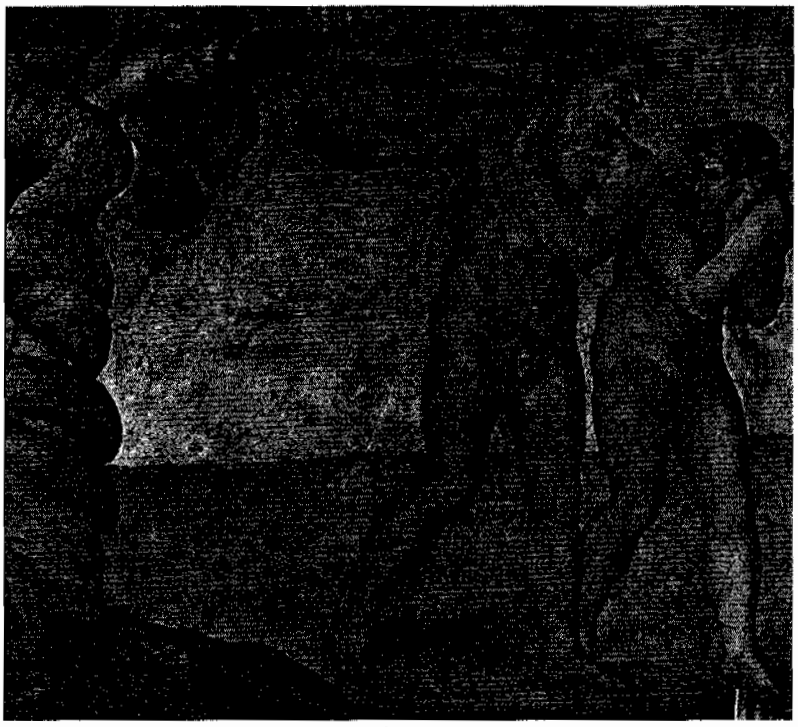
One of the most widely known cases of formal exile, as described in the Bible, was, of course, God's banishment of Adam and Eve from the Garden of Eden for their act of disobedience. Another famous banishment described in the Bible resulted from Cain's killing of his brother Abel, which compelled God to banish Cain and to place a shaming "mark" on him.[6]

Early Greeks and Romans used exile as a form of punishment for major crimes such as homicide, although ostracism—a

[4]I say constitutionally problematic because when a branch or agency of the federal government is exercising what amounts to virtually absolute—plenary—power over tribal governments, their resources, or their peoples, this, by definition, violates the essence of democratic government, which is based on the concept of limited government. Absolute power is fundamentally irreconcilable with both democracy and tribal sovereignty. Associate Justice Clarence Thomas, in his concurring opinion in the recent *U.S. v. Lara* decision [541 U.S. 193 (2004)], acknowledged as much when he correctly noted that nothing in the Treaty or Commerce clauses supports the Court's majority view that the U.S. claim to plenary power over tribes is moored in these doctrines.

[5]Felix S. Cohen, *Handbook of Federal Indian Law,* reprint ed. (Albuquerque, 1972), 98.

[6]Edward M. Peters, "Prison Before the Prison: The Ancient and Medieval Worlds," in *The Oxford History of the Prison: The Practice of Punishment in Western Society,* ed. Norval Morris and David J. Rothman (New York, 1995), 11.



Michelangelo portrayed the expulsion of Adam and Eve from the Garden of Eden on the ceiling of the Sistine Chapel in Rome.

variant of exile—was sometimes imposed for political reasons as well. Among Romans, prolonged, if not permanent, voluntary physical exile was one way to avoid the death penalty.[7]

Voluntary expatriation is, therefore, a unique case of emigration, "where what is sought is not primarily the advantages of the place to which one goes, but essentially freedom from whatever disadvantages prevailed at home."[8] This "voluntary" aspect of Indian exile will not be explored in this essay, although it is certainly a subject worthy of further attention, as evidenced by the current crop of studies that examine the continuing exodus of Indians from their reservation homelands to metropolitan areas.[9]

[7]Roger Scruton, *A Dictionary of Political Thought* (New York, 1982), 161.

[8]Ibid.

[9]See, e.g., Terry Straus, ed., *Native Chicago*, 2d ed. (Chicago, 2002) and Susan Lobo and Kurt Peters, eds., *American Indians and the Urban Experience* (Walnut Creek, CA, 2001).

Holland also employed banishment with verve from the Middle Ages to the early 1800s, although the practice gradually diminished in use because of "an awareness that one did not solve the problem by just banishing someone from a small jurisdiction. . . ."[10] But during its heyday, 97 percent of the Amsterdam court's public, noncapital cases between 1650 and 1750 included banishment. For example, a person convicted of adultery or concubinage in local courts could receive a punishment of a fifty-year banishment.[11]

American Indian nations also practiced banishment or exile (*disenrollment* is a legal term that did not appear until the 1930s), although the scant available documentary evidence suggests that, given the familial, egalitarian, and adjudicatory nature of tribal societies—which were more focused on mediation, restitution, and compensation aimed at solving "the problem in such a manner that all could forgive and forget and continue to live within the tribal society in harmony with one another"—permanent expulsion of tribal members was rarely practiced.[12]

Given the kin-based nature of First Nations and the fact that many Native societies refused to employ centralized and coercive methods of dispute resolution or formal institutions of social control, tribal citizens generally acted with great care in how they behaved towards one another. The fear of being socially ostracized or treated as an outcast was generally sufficient to maintain relatively peaceful interpersonal behavior.

However, since perfect interpersonal relationships have never existed in any human society, conflicts and disruptions occasionally arose in tribal communities sufficient to justify banishment. The Iroquois Great Law of Peace, the oldest living constitution in the world, contains several provisions addressing the subject.[13] Section 20 describes what the penalty would be if a chief of one of the Five Nations committed murder. The other chiefs, if possible, were to assemble at the place where the homicide occurred to depose the offending chief. If this could not be accomplished, the chiefs were to

[10]Herman Diederik, "Urban and Rural Criminal Justice and Criminality in the Netherlands Since the Middle Ages: Some Observations," in *The Civilization of Crime: Violence in Town and Courts Since the Middle Ages*, ed. Eric A. Johnson and Eric H. Monkkonen (Urbana, IL, 1996), 158.

[11]Peter Spierenburg, "The Body and the State: Early Modern Europe," in *The Oxford History of the Prison*, 62.

[12]Vine Deloria, Jr. and Clifford Lytle, *American Indians, American Justice* (Austin, TX, 1983), 112.

[13]See www.law.ou.edu/hist/iroquois.html for one version of the Iroquois Constitution.

discuss the crime at the next council session. The war chief was then selected to remove the chief from office and to remind the deposed chief that his female relatives were also negatively affected by his actions, since his crime was a stain upon his entire family. His title of chieftainship was then extended to a sister family.

The war chief was also charged with making the following statement to the now despised individual:

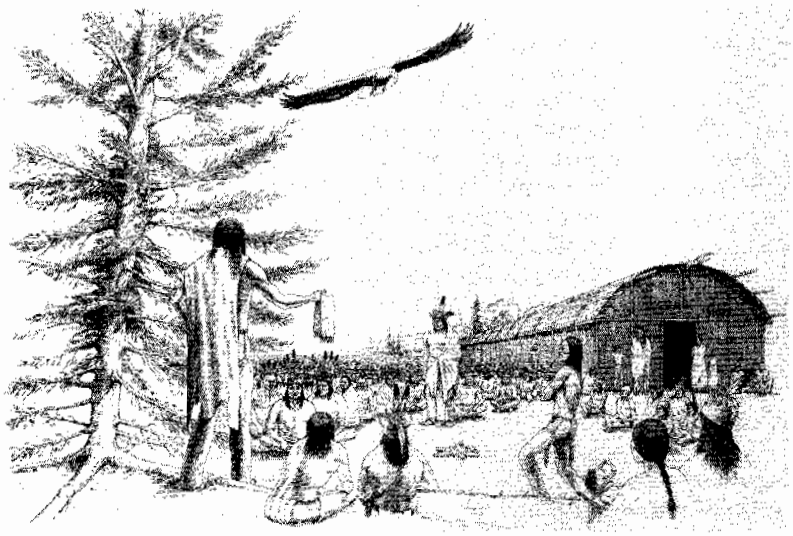
> So you, ..., did kill ....., with your own hands! You have committed a grave crime in the eyes of the Creator. Behold the bright light of the Sun, and in the brightness of the Sunlight, I depose you of your title and remove the horns, the sacred emblem of your chieftainship title. I remove from your brow the deer's antlers which was the emblem of your position and token of your nobility. I now depose you and *expel* you and you shall depart at once from the territory of the League of Five Nations and nevermore return again [emphasis added]. We, the League of Five Nations, moreover, bury your women relatives because the ancient chieftainship title was never intended to have any union with bloodshed. Henceforth, it shall not be their heritage. By the evil deed that you have done they have forfeited it forever.[14]

The Great Law also contains provisions regarding voluntary emigration and the punishment that might be meted out to adopted members of the Confederacy. With regard to voluntary emigration, section 21 declares, "When a person or family belonging to the Five Nations desires to abandon their Nation and the Territory of the Five Nations they shall inform the chiefs of their Nation and the Council of the League of Five Nations shall take notice of it." Interestingly, the chiefs reserved the right, in effect, to recall and reintegrate such individuals by sending forth a messenger bearing a belt of black shells to the émigrés. Upon hearing the messenger and seeing the belt, the émigrés understood that this was an order "for them to return to their original homes and to their Council Fires"[15]

Finally, section 75 speaks to the rights of adopted members of "alien nations" who, upon formal adoption, were to

[14]Ibid.

[15]Ibid.



The Iroquois Confederacy was established by Huron prophet Deganawidah (called "Peacemaker"). Peace was maintained through the Great Law of Peace, which was written on wampum (in Peacemaker's hand) and passed down through the generations. ("Peacemaker Presents His Vision," drawing by John Kahionhes Fadden)

be extended hospitality and considered "members of the Nation" and accorded "equal rights and privileges" in all ways except the right to vote in the Council of the Chiefs of the League. Adoptees were always to be on their best behavior and were not to cause "disturbance or injury." If they were found to have caused such a disturbance, their adoption, individually or collectively, could be annulled and they would be "expelled" by an appointed war chief who would make the following statement to the offending individual or group:

> You, ...(naming the nation), listen to me while I speak. I am here to inform you again of the will of the Five Nations Council. It was clearly made known to you at a former time. Now the chiefs of the Five Nations have decided to expel you and cast you out. We disown you now and annul your adoption. Therefore you must look for a path in which to go and lead away all your people. It was you, not we, who committed wrong and caused this sentence of annulment. So then go your way

> and depart from the territory of the Five Nations and away from the League.[16]

Similarly, the Cheyenne people had occasion to banish or exile tribal members who had murdered another Cheyenne. Again, it was a procedure rarely used, however, given the fact that, historically, murder was rarely committed in Cheyenne society. In fact, for one extended period—1835–79—there were only sixteen recorded killings—evidence, say Llewellyn and Hoebel "of the conflict between the aggressive personal ego of the individual male and the patterns of restraint which were ideationally promulgated by the culture."[17]

Thus, when a killing did occur, it was a devastating cultural shock to the entire nation that affected the community spiritually. "The killing of one Cheyenne by another Cheyenne was a sin which bloodied the Sacred Arrows, endangering thereby the well-being of the people. As such it was treated as a crime against the nation."[18] Llewellyn and Hoebel graphically described the impact: "When a murder had been done, a pall fell over the Cheyenne tribe. There could be no success in war; there would be no bountifulness in available food. 'Game shunned the territory; it made the tribe lonesome.' So pronounced Spotted Elk; so assent all Cheyennes. There is a brooding synonym for 'murder' in Cheyenne, [Cheyenne word] *putrid*. Such was the murderer's stigma."[19]

Although Llewellyn and Hoebel report that as soon as the murder had occurred, the tribal leaders would gather as a group to announce the banishment sentence, the authors admit that they were unable to learn precisely what transpired procedurally during these meetings. They pondered, for example, whether the perpetrator had an opportunity to present evidence in a trial-like setting. Although they could not find answers to these important questions since no living Cheyenne had participated in an actual banishment session, they were able to learn that Cheyenne banishment was not as absolute as many had believed.

Banishment among tribal peoples had often been perceived as the equivalent of a death sentence, but, as the Cheyenne discovered, that often depended on the social and physical

[16]Ibid.

[17]Karl N. Llewellyn and E.A. Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (Norman, OK, 1941), 132.

[18]Ibid.

[19]Ibid., 133.

environment into which the offender was exiled. For instance, banished Cheyenne could sometimes be warmly received by neighboring Arapaho or Dakota so that they were not literally isolated. Nevertheless, banished Cheyenne certainly felt undeniably "homesick" and would seek—and were often allowed—to return to Cheyenne society if they met certain conditions. In other words, exile, even of murderers, was typically not a permanent sentence. The expulsion was usually of an indeterminate length, although it generally lasted from five to ten years, depending on three factors: (1) the absence of intent or premeditation (the death may have been accidental, or caused by drunkenness); (2) the presence of provocation (the killer had been goaded into action); and (3) the character of the murderer (a decent man who had been provoked or who had killed accidentally vs. a so-called bully murderer—a man who had killed intentionally and with a degree of malice).[20] Llewellyn and Hoebel maintain that the "remission of banishment was preceded by eloquent presentation of the wretched condition of the banished man and his family, cut off as they were from association with the tribe."[21]

The chiefs retained the power to pardon exiled persons, but only after they had secured the consent of the Cheyenne military associations and the approval of representatives of the victim's family. The readmitted member could engage in many tribal functions but was permanently barred from certain activities: renewals of the Arrows, or eating or smoking from a Cheyenne utensil, lest it pollute or stigmatize the next user.[22]

Llewelyn and Hoebel concluded their discussion of banishment and commutation among the Cheyenne by referring to it as a "technique of multiple excellence." They noted that "by removing the murderer it lessened provocation to revenge; it disciplined the offender; allowance was made for the return of the culprit, but only when dangers of social disruption were over . . . the result was sociologically sensible, and the recorded handling of the cases compares in effective wisdom not unfavorably with that more familiar to the reader in his own society."[23]

The Cherokee nation is another tribal group that has been written about extensively. Rennard Strickland's study, *Fire & the Spirits*,[24] details the evolution of Cherokee law from pre-

[20]Ibid., 137–44.

[21]Ibid.

[22]Ibid., 167.

[23]Ibid., 158.

[24]Rennard Strickland, *Fire and the Spirits: Cherokee Law from Clan to Court* (Norman, OK, 1975).

contact to contemporary times. In detailed tables dealing with four distinctive types of deviation in Cherokee law—spirit, community, clan, and individual—Strickland identifies the legal authority that addresses the deviation, the punishment to be meted out, and the enforcement agent who carries out the prescribed punishment.[25]

Behaviors that were considered deviations included theft of sacred objects, women's taboos, assaults, hunting violations, witchcraft, arson, marriage within one's clan, sex crimes, and murder. Sanctions ranged from name calling, public disgrace, whipping, and sickness for lesser offenses, to stoning, mutilation, and—the ultimate penalty—death for more serious offenses. Among the thirty listed offenses, "possible expulsion" was a sanction, along with whipping, insult, and outlawry,[26] for only one type of offense: "food and field regulations, refusal to work, contribute share of work and crops."[27] Interestingly, while death could be imposed for numerous deviations, including treason, arson, and witchcraft, expulsion was mentioned only once.

One final example appears in the classic novel *Waterlily* by ethnologist Ella Cara Deloria, which details life among the Dakota before white contact. Near the end of the book, the author describes a situation during the winter, when Waterlily accompanies a war party on a trek toward Blackfeet country. When a blizzard forces them to set up camp quickly, a small family group of "strange people" comes into their midst—strange because they are so isolated from their home community. The troupe consists of a mature married couple, in their fifties, their two daughters (one with child), and three small children.

They have been forced to come in because they are hungry, but, as Deloria describes it, it is clear after listening

[25]Ibid., 35–39.

[26]Strickland describes "outlawry" as the placing of "individuals guilty of specified crimes beyond the protection of the tribe" (ibid., 170–71). This was a longstanding procedure utilized by Cherokees before white contact. When an individual was declared an "outlaw," that person could be killed by any person within the Cherokee Nation. The killer of an outlaw would not be subject to any penalties under tribal law. In the 1830s, Chief John Ross relied on this sanction and applied it to those Cherokees accused of "political crimes" like selling tribal lands or negotiating treaties without the consent of the entire nation.

[27]Ibid., 36.

to the husband and observing the ill-mannered children that something is amiss in the family's circumstances. Deloria writes, "After they had gone, the warriors agreed that the man was probably a degenerate character who lived away from civilization, that is to say, the camp circle, because of some crime against society! It was impossible that his wife at her age could be mother of those small children, and since the man was the only male, the conclusion was inescapable: 'something very bad' was the way the warriors voiced their suspicion, carefully avoiding the ugly equivalent of 'incest.'"[28]

The author does not state whether this family, or the husband and wife, had been banished or had gone into voluntary exile. But what is clear is that incest was an offense serious enough to lead to exile because it violated the kinship norms of a civilized people and that this forced or voluntary exile had terrible repercussions on the outcasts. As Waterlily muses, "Here were people unquestionably at their worst—and they did not know it! They did not know enough to care how they must appear to the party they had evaded; they were unconscious of being judged by them. It was a tragic thing, to stay alone like this, in a benighted state. It was better to stay with other people and try to do your best according to the rules there."[29]

It is clear, then, that although tribal nations historically had the power to exclude, banish, or exile individuals, it was a power they rarely used, due to the spiritually cohesive nature of tribal collectives and the assortment of informal sanctions that were in place that generally worked to ensure peace and social order in the society. Ostracism, public ridicule, or the destruction of a culprit's lodge, weapons, or other implements, was generally sufficient to resocialize the offending individual or family and restore harmony to the community. Even when banishment was employed in Iroquois and Cheyenne societies, it could, under certain circumstances, be of limited duration. If the offending party showed genuine interest in rectifying the situation, he or she would be eligible for reintegration into the community after a period of time had lapsed, certain conditions had been met, and the injured party's family consented.

[28]Ella Cara Deloria, *Waterlily* (Lincoln, NE, 1988), 214.

[29]Ibid., 216.

TRANSITIONING FROM TRADITIONAL TO CONSTITUTIONAL GOVERNMENTS: BANISHMENT IN THE EARLY 1900s

A number of studies[30] have been written that track the profound changes that Native nations underwent as, first, European states and, later, the United States sought to influence and coercively modify or eliminate tribal attitudes, languages, properties, and institutions of governance. In the early 1930s three dedicated employees in the Department of the Interior—John Collier, Nathan Margold, and Felix Cohen—successfully convinced Congress and a number of Native nations to accept major reforms in federal Indian policy via the tribes' adoptions of formal constitutions and charters of incorporation authorized under the Indian Reorganization Act (IRA) of 1934.[31]

Through these new documents, it was enshrined in tribal organic law that tribal policymakers, as federally recognized leaders, had the governmental capacity to establish their own member criteria and had the inherent power to decide who could remain on tribal land. Now there was, at least until the brief termination era of the 1950s, no question that Native peoples would decide the fundamental question of both citizenship and residency requirements for their nations. Although a number of Indian nations, including the Iroquois Confederacy and the Creek, Cherokee, Choctaw, and Chickasaw, had adopted written constitutions long before the 1934 IRA, and another fifty or so tribal communities had written constitutions or constitution-like documents before the IRA became law, within less than a decade of that act's passage approximately 133 Native nations adopted constitutions and charters of incorporation. According to one knowledgeable source, while the number of tribal nations with constitutions has increased, up to approximately 320, another 240 Native communities continue to govern themselves without a formal constitution.[32]

[30]See, e.g., Angie Debo, *A History of the Indians of the United States* (Norman, OK, 1970); Peter Iverson, ed., *The Plains Indian of the Twentieth Century* (Norman, OK, 1985); Sharon O'Brien, *American Indian Tribal Governments* (Norman, OK, 1989); and Peter Nabokov, ed., *Native American Testimony: A Chronicle of Indian-White Relations from Prophecy to the Present, 1492–1992* (New York, 1991).

[31]Public Law 73-383, *U.S. Statutes at Large* 48 (1934): 984.

[32]Elmer Rusco, *A Fateful Time: The Background and Legislative History of the Indian Reorganization Act* (Reno, NV, 2000), 301.

Interestingly, a comprehensive computer search of 281 American Indian and Alaskan Native constitutions reveals that the words *banish, exile,* and *exclusion* are completely absent from these documents. Rather, we find *loss of membership* (150 references in constitutions—membership could be "lost" because of excessive absences, failure to visit or maintain actual contact with the tribe, non-participation in the tribe's economic activities, dual enrollment in more than one tribe, etc.); *expel* or *expulsion* (16 references—for neglect of duty or misconduct); *disenrollment* (6 references—for dual membership or lack of blood quantum); *disenfranchisement,* and *removal.* These terms typically are found in those sections of constitutions dealing with the legislative powers of the councils and in the various tribes' membership provisions. Interestingly, of the 150 loss-of-membership provisions, 42 percent (63 references) appear in the constitutions of Alaska Native nations; 17.3 percent (26 references) are lodged in California tribal constitutions, and 9.3 percent (14 references) are present in the organic documents of various Oklahoma tribal nations.

Not surprisingly, there is a significant amount of diversity in the rationales used by tribal officials to disenroll or expel tribal members; typically either a majority of the tribal council or "the community" as a whole could expel tribal citizens for "good reason," which generally meant for such offenses as neglect of duty, or gross misconduct. In some cases, expelled persons were entitled to a hearing so they could learn the reasons they were being disenfranchised and could argue against the decision.

More often, provisions in the IRA constitutions regarding loss of membership tend to emphasize the "voluntary" aspect, in which tribal members might decide to emigrate in order to permanently separate themselves from their birth nations. In some cases, tribal governments allowed for readmission; in other situations, tribes informed voluntary emigres that they would not be allowed to rejoin the nation later.

Many of the IRA and other tribal constitutions contain clauses that refer to the power of the tribal council to remove or exclude "any non-members of the Tribe whose presence may be injurious to the people of the reservation."[33] Importantly, until the present surge of banishments and disenrollments, provisions addressing a tribe's power to exclude non-Indians from tribal lands were far more prevalent in tribal constitutions than language regarding the expulsion of bonafide tribal members.

[33]Hualapai Constitution & By-Laws, 1955.

BANISHMENT IN THE 1990S AND BEYOND: THREE NATIVE CASE STUDIES

In 1978, the U.S. Supreme Court handed down two major decisions that dramatically addressed the external and internal sovereignty of Native nations. In relation to external sovereignty, tribes learned to their great dismay, in *Oliphant v. Suquamish*,[34] that they were now without the inherent power to exercise jurisdiction over non-Indians who committed crimes on tribal lands. In *Santa Clara Pueblo v. Martinez*,[35] however, the Supreme Court reaffirmed tribal governments' internal sovereignty by asserting that they retained as one of their inherent powers the right to decide who could or could not be citizens of their nations.

In the 1970s, tribal governments already had other essential self-governing powers (taxation, regulation of hunting and fishing rights, formation of governments, administration of justice) supported by Congress and the courts. Now *Santa Clara* emboldened them to become more emphatically proactive or retaliatory in their efforts to clarify their membership rolls by modifying their constitutions' membership criteria or enacting tribal ordinances detailing the grounds on which tribal members could be disenrolled or banished.

Perusal of contemporary law and literature reveals four major reasons that tribal governments used to justify the exclusion or disenrollment of tribal members: (1) family feuds; (2) racial criteria and dilution of blood quantum; (3) criminal activity (e.g., treason, drug sales or abuse, gang involvement); and (4) financial issues (e.g., problems related to distribution of tribal gaming assets or judgment funds). Of course, in some disenrollment cases, tribal councils or judicial bodies may, and often do, invoke more than one reason to justify their expulsion of tribal members.

Case 1: Tlingit Community: Crime

In a widely publicized case in 1993, two seventeen-year-old Tlingit tribal youth who had been convicted in state superior court in Washington for assaulting and robbing a Domino's Pizza deliveryman and faced sentences of up to five-and-one-

[34]435 U.S. 191 (1978).

[35]436 U.S. 49 (1978).

half-years were instead turned over to Rudy James, a fifty-eight-year-old Klawock native, who purported to be a tribal judge of the Tlingit Nation.[36] Jones had convinced the state judge that if the young men were bound over to him, they would "undergo a traditional Tlingit punishment: banishment on remote, uninhabited islands, while contemplating their sins and hewing logs with which to build Whittlesey (the victim's surname) a house."[37]

Even as James convened a panel of eleven other Tlingit elders to determine the precise context for the banishment, which amounted to removal to remote islands for a period of twelve to eighteen months, "a firestorm of rumor, innuendo, and [dis]information erupted, revealing rifts both within the Tlingit tribe and between the Tlingits and mainstream society that threatened the success of the experiment before it had even begun."[38]

Questions arose around whether James had the authority to act on behalf of the Tlingit people, since he was not an officially recognized judge. Evidence also emerged that James and several other tribal judges had histories of bad debts and, in some cases, criminal records, and there was a question of whether banishment was even a part of Tlingit culture. Finally, Klawock's lone federally recognized Tlingit organization, the Klawock Cooperative Association, sent a letter distancing itself from the case.[39]

On May 1, 1995, the Court of Appeals of Washington ruled that the two boys would still have to serve a state-sanctioned prison term once their banishment had ended.[40] However, on October 3, 1995, the trial judge who had originally referred the boys to the tribal judges ordered their banishment to cease and sentenced them to state prison. The boys were given terms of fifty-five and thirty-one months, and received credit for having served nearly two years. Finally, they were held jointly liable for $35,000 in restitution to Whittlesey.[41]

[36]Stephanie J. Kim, "Sentencing and Cultural Differences: Banishment of the American Indian Robbers," *John Marshall Law Review* 29 (1995): 239–67.

[37]*Time Magazine* (August 1, 1994), 74.

[38]William C. Bradford, "Reclaiming Indigenous Legal Autonomy on the Path to Peaceful Coexistence: The Theory, Practice, and Limitations of Tribal Peacemaking in Indian Dispute Resolutions," *North Dakota Law Review* 76 (2000): 593.

[39]*The Economist* (August 13, 1994), A29.

[40]*State v. Roberts*, 894 P.2d 1340 (Wash. App. Div. 1 1995).

[41]Bradford, "Reclaiming Indigenous Legal Autonomy," 596.

The judge preempted the banishment because he believed there were flaws in the way it was being carried out that "threatened its credibility and integrity." For example, one of the boys came to the mainland and applied for a driver's license. The judge had also been informed that the two had received visits from relatives throughout their banishment.[42]

Case 2: Tonawanda Band of Seneca Community: Treason and Political Corruption

The Tonawanda Band of Seneca Indians, part of the Iroquois Confederacy, were parties to a federal court of appeals case in 1996, *Poodry v. Tonawanda Band of Seneca Indians*[43] that, in the words of Judge Cabranes, placed before the Second Court of Appeals "a question of federal Indian law not yet addressed by any federal court: whether an Indian stripped of tribal membership and 'banished' from a reservation has recourse in a federal forum to test the legality of the tribe's actions. More specifically, the issue is whether the habeas corpus provision of the Indian Civil Rights Act of 1968 . . . allows a federal court to review punitive measures imposed by a tribe upon its members, when those measures involve 'banishment' rather than imprisonment."[44]

In 1995, the district court had dismissed the applications of five Seneca, Peter L. Poodry, David C. Peters, Susan La Framboise, John A. Redeye, and Stonehouse Lone Goeman, who had been summarily convicted of "treason" and sentenced to permanent banishment from the reservation in 1992. The petitioners, upon their banishment, had filed applications in federal court asserting that the band's banishment order was a criminal conviction that violated their rights under the Indian Civil Rights Act (ICRA). They unsuccessfully sought habeas corpus relief provided under the ICRA with the district court, which concluded that permanent banishment was not a sufficient restraint on liability to trigger the ICRA's habeas corpus provisions.

The banished Seneca then appealed this ruling to the Second Circuit Court of Appeals, which vacated the district court's finding by holding that banishment was indeed a severe enough punishment involving sufficient restraint on the liberty of those banished to qualify as "detention," and thus permit federal review under the ICRA's habeas corpus

[42]Kim, "Sentencing and Cultural Differences," 262, n. 128.

[43]85 F.3d 874 (2d Cir. 1996).

[44]Ibid., 879.

rule. The case was sent back down to the district court for a resolution based on the merits. The appellate court said, in effect, that the lower court had "erred" in dismissing the banished individuals' petitions for writ of habeas corpus on jurisdictional grounds.[45]

First, some historical background is warranted to establish the grounds on which the individuals were banished. In the latter part of 1991, a conflict erupted on Tonawanda lands when the petitioners made accusations against members of the Council of Chiefs and the chairman of the council, Bernard Parker. The council is the primary legislative body of the nation. The petitioners accused the council members of "misusing tribal funds, suspending tribal elections, excluding members of the Council of Chiefs from the tribe's business affairs, and burning tribal records."[46] Allegedly, the petitioners, in consultation with other tribal members, then formed a parallel legislative body, the "Interim General Council of the Tonawanda Band."

A few weeks later, on January 24, 1992, Poodry, Peters, and LaFramboise stated that they were accosted at their homes by groups of fifteen to twenty-five Seneca who gave them notice, in writing, that they were henceforth banished from the Seneca Nation (the other two petitioners received the same notice in the mail). The language in the banishment notice is reminiscent of the language spelled out in the Great Law of Peace described earlier in this paper. The 1992 statement read as follows:

> It is with a great deal of sorrow that we inform you that you are now banished from the territories of the Tonawanda Band of the Seneca Nation. You are to leave now and never return. According to the customs and usage of the Tonawanda Band of the Seneca Nation and the HAUDENOSAUNEE, no warnings are required before banishment for acts of murder, rape, or treason. Your actions to overthrow, or otherwise bring about the removal of, the traditional government at the Tonawanda Band of the Seneca Nation, and further by becoming a member of the Interim General Council, are considered treason. Therefore, banishment is required. According to the customs and usages of the Tonawanda Band of Seneca Nation and the HAUDENOSAUNEE, your name is

[45]Ibid.

[46]Ibid., 877–78.

> removed from the Tribal rolls, your Indian name is taken away, and your lands will become the responsibility of the Council of Chiefs. You are now stripped of your Indian citizenship and permanently lose any and all rights afforded our members. YOU MUST LEAVE IMMEDIATELY AND WE WILL WALK YOU TO THE OUTER BORDERS OF OUR TERRITORY.[47]

The banishment notice was signed by six of the eight Council of Chiefs members. The two who did not sign, Corbett Sundown and Roy Poodry, were either too sick to sign—the council's explanation for their silence—or had been excluded from the council's meeting where the banishment was set—the petitioners' explanation.

The crowds were initially unsuccessful in forcibly evicting the three petitioners. However, the petitioners asserted that they and their family members were then harassed and assaulted by the chiefs and their supporters. One of the petitioners was literally "stoned," electrical services were terminated at their homes and businesses, and they were allegedly denied health services and benefits.[48] These events set the legal stage for the federal court's intervention.

The court of appeals rendered a detailed opinion that addressed the relationship between tribal sovereignty and congressional plenary power, the impact of the ICRA and the habeas corpus proviso, and the vitality of the *Santa Clara* precedent. Of importance for this essay, of course, is how the court addressed the issue of *treason* and the meaning of *banishment* for tribal citizens. The chiefs said the petitioners had been convicted of treason because they had engaged in "unlawful activities," including "actions to overthrow, or otherwise bring about the removal of the traditional government" of the Tonawanda Band.[49]

In describing "permanent banishment," the court compared that with denaturalization proceedings started when individuals have obtained U.S. citizenship illegally or through willful misrepresentation, or cases in which native-born American citizens must forfeit their citizenship for having committed major offenses. Both are exceedingly harsh measures reserved for the most egregious of offenses. The court described the petitioners' banishment as "the coerced and peremptory

[47]Ibid., 879.

[48]Ibid., 878.

[49]Ibid., 889.

deprivation of the petitioners' membership in the tribe and their social and cultural affiliation. To determine the severity of the sanction, we need only look to the orders of banishment themselves, which suggest that banishment is imposed (without notice) only for the most severe of crimes: murder, rape, and treason."[50]

In ruling that permanent banishment as a punishment for treason amounted to a sufficient restraint on liberty to invoke federal jurisdiction in a petition for a writ of habeas corpus, the court reiterated that this was a novel question with potentially lasting significance for tribal citizens should the Supreme Court deny a writ of certiorari, which it did later that year.[51] Judge Cabranes noted that "this is especially true at a time when some Indian tribal communities have achieved unusual opportunities for wealth, thereby unavoidably creating incentives for dominant elites to 'banish' irksome dissidents for 'treason.'"[52] This is a slightly veiled reference to the gaming resources that some tribes are amassing. Interestingly, there is no discussion in the opinion about gaming per se.

Although the court concluded that the petitioners deserved the right to have the merits of their claims heard by the district court, it also held that the sovereign immunity of the Tonawanda Band must be respected and that the nation could not be sued without its express consent.

Finally, the court sent a stern warning to those tribal governments that attempt to use cultural difference to justify what the judges viewed as diminutions of essential civil rights of individuals. In the court's words, "Here, the respondents (Council of Chiefs) adopt a stance of cultural relativism, claiming that while 'treason' may be a crime under the laws of the United States, it is a civil matter under tribal law; and that while 'banishment' may be thought to be a harsh punishment under the law of the United States . . . it is necessary to and consistent with the culture and tradition of the Tonawanda Band."[53]

The court was not persuaded by these cultural arguments. While acknowledging that tribes are unique political and cultural entities, it more forcefully declared that "the respondents wish to use their connection with federal authorities as a sword, while employing notions of cultural

[50]Ibid., 895.

[51]117 S. Ct. 610 (1996).

[52]Ibid., 897.

[53]Ibid., 900.

relativism as a shield from federal court jurisdiction."[54] Judge Cabranes recognized that tribal governments have the right to govern, to establish their own criteria for citizenship, and to regulate their lands and exclude outsiders. But he also acknowledged a "responsibility" for those "American citizens subject to tribal authority when that authority imposes criminal sanctions in denial of rights guaranteed by the laws of the United States."[55]

Robert Porter, a Seneca law professor, has said that the unprecedented *Poodry* decision "goes to the very heart of whether an Indian tribe has the inherent authority to determine its own membership."[56] The fact that the parties willingly entered the federal judicial system seeking resolution of this tribal dispute, in his words, "undoubtedly has jeopardized Tonawanda Seneca sovereignty."[57]

Case 3: The Tigua Community: Gaming Revenue and Alleged Lack of Blood Quantum

The Tigua, relative newcomers to the world of federally recognized tribes—they were formally acknowledged in 1968 (82 Stat. 92)—inhabit territory southwest of El Paso, Texas. Their banishment conflagration formally began in 1993, when the tribe's leadership failed in their efforts to negotiate a compact with Texas Governor Ann Richards. Despite their diplomatic failure, the tribe proceeded to build a bingo hall and later expanded the operation to include pull-tab gaming, blackjack, and other gambling activities.[58] Within a short period of time, the Tigua's gaming operation was bringing in an estimated sixty million dollars annually. It would continue to be successful until it was shut down by federal officials in 2002 for failure to comply with the Indian Gaming Regulatory Act because of the tribe's inability to forge a gaming compact with the state.[59] That is another story.

[54]Ibid.

[55]Ibid.

[56]Robert Porter, "Building a New Longhouse: The Case for Government Reform Within the Six Nations of the Haudenosaunee," *Buffalo Law Review* 46 (1998): 880.

[57]Ibid.

[58]Everett Saucedo, "Curse of the New Buffalo: A Critique of Tribal Sovereignty in the Post-IGRA World," *The Scholar: St. Mary's Law Review on Minority Issues* 3 (2000): 79–80.

[59]Ross E. Milloy, "Texas Casino Shut Down as Hope for Reprieve Dies," *New York Times*, February 13, 2002.

This article is more concerned with the combination of gaming revenue, sacred objects, and sibling camaraderie that would ensnare this small nation in a bitter banishment struggle. In 1990, a twenty-seven-year-old Tigua member, Marty Silvas, was named a war captain and was given the responsibility to be caretaker of one of the tribe's most sacred objects, a drum. Three years later, his brother, Manny Silvas, who was the tribe's lieutenant governor, was suspected by the Tribal Council of having misappropriated $70,000 of the tribe's money. The council and the tribal chief, Enrique Paiz, were split on whether the accusations were true, but the council eventually voted, over Paiz's vigorous objection, to deny Silvas the opportunity to run for reelection.

Because Paiz had supported his embattled lieutenant governor, the council then took the unprecedented step of removing him from office as well. As a result of these actions, Marty Silvas then called for the entire council to step down, and he hid the sacred drum he had been entrusted with as war captain. He also refused to join in a tribal ceremony. While the tribe was exploring legal means to recover the sacred item, it wiped Marty Silvas' name from the tribe's rolls and sent tribal police to remove him from tribal lands in May 1996.[60] Silvas was ordered at gunpoint to reveal where he had hidden the drum. When he refused, "he was driven by car to the edge of the reservation and told that he was no longer a part of these people . . .[and that he] did not belong here anymore."[61]

The banishment conflict expanded dramatically in 1996 as the tribe's wealth increased and as the new Tigua governor, Vince Muñoz, consolidated his power. The banishment zeal soon included many additional families, and pitted two factions against one another: those who supported the Silvases and Chief Paiz, and those who supported the council and Governor Muñoz. As Everett Saucedo reports, "the tribal leaders confirmed the families' fears when they announced they would reexamine the tribal rolls in order to correct alleged disparities created by the inclusion, in tribal membership, of those who did not meet blood-line requirements. Those who lacked the minimum blood requirements were to be removed from the tribe's rolls."[62]

As the conflict continued to expand in 1998, several of Marty Silvas' supporters were first fired from their govern-

[60]Ibid., 81.

[61]Pamela Colloff, "The Blood of the Tigua," *Texas Monthly* (August 1999), 131.

[62]Ibid., 81.

ment jobs and then, four days later, officially banished for allegedly lacking the necessary requirement of Tigua blood. Some of those banished were given small financial settlements, and they departed voluntarily. But several other families fought the banishment proceedings in state district court. Their suit, however, was dismissed.

Armed with this judicial ruling, the tribe more aggressively sought to banish certain families and individuals that were still on tribal lands until all had been forcibly evicted. One of the last to be expelled was Grace Vela who, by January 1999, faced nearly unrelenting pressure from tribal police officers to leave. Finally, on February 18, police officers literally knocked down Vela's front door, placed her in handcuffs, and removed her from tribal lands.[63]

When Governor Muñoz was asked whether his government's decision to banish those members had anything to do with consolidating his power base or the tribe's fiscal affairs, he insisted that he was acting under "pressure from the Bureau of Indian Affairs," which, he alleged, "had threatened to reduce the tribe's federal funding unless the membership rolls were reexamined."[64] But according to Saucedo, who wrote a lengthy article on this case, neither the BIA or the tribe would comment on the issue, declaring that it was an "internal tribal matter."[65]

BANISHMENTS AND DISENROLLMENTS IN THE TWENTY-FIRST CENTURY

In various regions of Indian Country—on numerous California rancherias, among the Paiutes of Nevada, the Sac and Fox of Iowa, the Oneida of New York State, the Minnesota Chippewa, and the Sauk-Suiattle and Lummi of Washington State—banishment and disenrollment proceedings have been occurring at a heightened pace.[66] In California alone, at least

[63]Saucedo, "Curse of the New Buffalo," 84.

[64]Ibid.

[65]Ibid., 84–85.

[66]See, e.g., Valerie Taliman, "Las Vegas Paiutes Oust Entire Council," *Indian Country Today*, July 20, 2002; James May, "Tribal Recall: Members Disenrolled after Financial Dispute," *Indian Country Today*, December 18, 2003; Richard Walker, "Lummi Chairman Reelected: Council May Revise Banishment Policy," *Indian Country Today*, February 19, 2004; James May, "Disenfranchised Tribal Members State Protest," *Indian Country Today*, February 20, 2004; Sarah Kershaw and Monica Davey, "Plagued by Drugs, Tribes Revive Ancient Penalty," *New York Times*, January 18, 2004.

four thousand American Indians have been disenrolled from their tribes in recent years.[67] The reasons for contemporary disenfranchisement of tribal members coincide with the ones discussed earlier, ranging from those steeped in traditional philosophical and sociological values to others that reflect new economic and societal forces that tribal governments must address.

TABLE 1

Tribal Nation	Rationale for Banishment/ Disenrollment
Las Vegas Paiutes (Nevada); Sauk-Suiattle(Washington)	Alleged Failure to Meet Minimum BloodQuantum Requirement
Oneida Nation (New York); Redding Rancheria; Enterprise Rancheria; Maidu Barry Creek Rancheria; Mono-Chukchansi of Table Mountain Rancheria; Pechanga Band of Luiseno Indians; Santa Rosa Rancheria Tachi (California); Sac & Fox (Iowa)	Alleged Failure to Meet Minimum Blood Quantum Requirement; Financial Issues; Family Conflicts; Political Reprisals
Mille Lacs Band Ojibwe; Grand Portage Ojibwe; Boise Forte Band Ojibwe (Minnesota); Viejas Band (California)	Violent Criminal Activity
Lummi Tribe (Washington); Upper Sioux Community (Minnesota)	Drug-Related Criminal Activity

[67]Michael Martinez, "Claim Power Struggles Have Stripped Them of Gaming Profits," *Indian Country Today*, January 20, 2006.

Each of these tribes and the specific disenrollment rationales and procedures they are utilizing deserve specific and detailed treatment, but lack of time and comprehensive and comparative data does not permit such a systematic inquiry here. What is evident is that, historically, the power to banish one's kin was utilized only in the rarest of circumstances, and even then the expelled sometimes were given the opportunity for readmission to the nation. Since tribal nations were, in effect, extended families, the idea of permanently expelling one's own relatives was not a decision made lightly. Tribal values and norms stressed the use of much less traumatic forms of punishment to restore proper social behavior.

However, as tribal nations continue to expand, with their citizens becoming more differentiated through intermarriage, exposure to and appropriation of certain Western values via popular culture, media, and democratic institutions, and with the oftentimes disruptive role of capital via gaming revenues, smoke shop dollars, and claims settlements, some tribal governments have felt compelled to consider more dramatic sanctions such as banishment, disenrollment, or disenfranchisement as one means to cope with these modified and profound societal conditions.[68]

Certainly there are brazen examples where tribal councils and chief executives have acted maliciously and unjustifiably to banish some tribal citizens on the most spurious of grounds—personal feuds, greed, political power struggles.[69] In one of the harshest cases, the Temecula Band of Luiseño Mission Indians of the Pechanga Indian Reservation of California have disenrolled "over 130 adult members of the Tribe (almost 15% of the Band's population) and their families have lost their membership, and along with it their primary source of income, health care, education, and housing support."[70]

Such actions violate not only indigenous values and traditions, but the basic civil and human rights of those banished. On the other hand, some tribal governments have very reluctantly arrived at the decision to institute or modernize and formalize their banishment proceedings as a way to address difficult social problems, and they have been careful in drafting ordinances and spelling out the conditions and due process

[68]Thanks to Tom Biolsi for his insights on the way modernization appears to be affecting some tribal nations.

[69]See, e.g., *Quair v. Sisco*, 359 F. Supp. 2d 946 (E.D. Cal. 2004) and *Shenandoah v. Halbritter*, 366 F.3d 89 (2d Cir. 2004).

[70]*Salinas et al. v. LaMere et al.*, Superior Court for the County of Riverside, case no. 427295 (March 17, 2005).

The Temecula Band of Luiseño Mission Indians of the Pechanga Indian Reservation of California have disenrolled almost 15 percent of the band's population.

safeguards to which all tribal members, even those facing banishment, are entitled.

The Grand Portage Band of Chippewa, who live in northern Minnesota, typify a tribe that has wrestled mightily with this issue and has arrived at a decision—largely because of rising crime and social disruptions by a small segment of their population—to formally add a new title on "exclusion" to their laws. The tribe's twelve-page law may well be the most detailed exclusion ordinance of any Native nation. It explains why the law became a necessity; describes who may be removed, the extent of the exclusion, and the reasons for expulsion; and outlines the procedural process for the banished individual and for enforcement.

The preamble to the law declares that "in order to properly secure the peace, health, safety and welfare of the residents of and visitors to the band's territory, it is necessary to establish procedures and standards for the removal and exclusion from the lands subject to the territorial authority of the band those persons whose conduct or associations

become intolerable to the Community and threaten the peace, health, safety and welfare of the Band."[71] The preamble states that the purpose of the law is to provide "standard criteria to review and identify persons who may pose such threats and to establish standards of removal and exclusion which are appropriate and proportionate to the threat posed by such persons."[72] The new law provides due process protections to any person facing expulsion.

Section 5202, titled "Grounds for Exclusion," specifies eighteen offenses that can be causes for exclusion, including, but not limited to, the following: disruption of any religious ceremony or cultural event; "personal, impertinent, slanderous or profane remarks" to Tribal Council members; gang activity; sale or distribution of illegal drugs; "mining, prospecting, or cutting timber" without tribal authorization; threatening or intimidating conduct or words to band members or others; child molestation; sexual abuse; homicide; rape; designation as a level 3 sex offender, etc.[73]

Importantly, explicit due process stipulations are spelled out, including written notice and a hearing that allows the individual to address the council, call witnesses, present evidence, and question and challenge the witnesses who are testifying against the person. Expelled individuals have the right to request that the council rescind or modify the expulsion order "once every year after it has been entered." The order may then be changed or terminated only if the excluded person can demonstrate "that the act or omission which constituted the grounds for the exclusion has been resolved, corrected, or is no longer an issue" or that the person no longer poses a threat to the citizens or residents of the band's territory.

According to Norman W. Deschampe, the tribal chairman, peace and quiet have been restored since the tribe banished a mother, two mature sons, and a family friend who had been involved in a tribal fracas. This was the culminating event that compelled the tribe to craft its exclusion law.[74]

[71]"Exclusion" (copy of this ordinance in author's possession).

[72]Ibid.

[73]Ibid.

[74]Kershaw and Davey, "Plagued by Drugs, Tribes Revive Ancient Penalty," 23.

CONCLUSION

Tribal nations have existed in the Americas for untold millennia. And as long as they have been here, each of these original nations has sought to maintain political stability, economic vitality, and cultural integrity. The expulsion of offenders was never in widespread use as a tool for dealing with disharmony, since longstanding traditions and customary practices helped resolve disputes before they became intolerable.

Yet today a wave of banishments has been unleashed, leading to the legal and cultural exile of thousands of tribal citizens. The recent spate of disenrollments has prompted an organized response by some of the disenfranchised and their allies. On May 21, 2005, hundreds of Indians from all over the nation—many of whom had been disenrolled—met in Temecula, California, site of the greatest number of what many consider egregious and unjust disenrollments, in a show of solidarity with one another and to protest the disenrollment process when it fundamentally violates basic human and cultural rights. Expressing the view that corruption in some tribal governments, often spawned by greed for additional gaming revenues, was the prime culprit in the current surge of disenrollments, the participants vowed to fight for the human and civil rights of all tribal people who have been wrongfully terminated from their tribal nations.

Some tribes have reluctantly determined that disenrollment is a mechanism they may sometimes have to employ to maintain community stability, and they have carefully constructed clear guidelines and procedures for carrying out this most difficult of tasks. In other cases, however, tribal officials are—without any concern for human rights, tribal traditions, or due process—arbitrarily and capriciously disenrolling and banishing tribal members as a means to solidify their own economic and political bases and to winnow out opposition families who disapprove of the tribal leadership's policies.

One commentator has proposed a set of strategies—in the form of institutional structures and policies—that might provide solutions for the membership conundrums currently enveloping many tribes. The first suggestion is that tribal governments that operate under constitutions should "incorporate enrollment policies into their constitutions."[75] This

[75]Brendan Ludwick, "The Scope of Federal Authority over Tribal Membership Disputes and the Problem of Disenrollment," *The Federal Lawyer* 51 (October 2004): 44.

would "include the right to be secure in membership but also may protect members' basic democratic rights, such as participation in tribal elections and the right to benefit from tribal services."[76] The Ysleta Del Sur enrollment provision established in 1997 is one example of how this might work.

Second, tribal governments should consider establishing or fortifying institutional barriers to separate elected officials from tribally operated business enterprises. An example would be to create a corporation to manage economic development and to select a board of directors who would be directly accountable to the tribe's leadership. The early corporate charters that a number of tribes established under the IRA are an example of a process that could be modified to provide a clearer separation of powers that might provide more protection for the individual civil liberties of tribal citizens.

Third, "and perhaps most important, an effective safeguard against tribal disenrollment is an independent tribal authority that has the power to review the tribal council's enrollment decisions."[77] An independent tribal court with co-equal power would be the most appropriate institution to wield such authority.

As Native nations continue to mature, let us hope that they will carefully weigh and factor in their own indigenous traditions and values, focusing on the core principles of fairness, justice, moral equality, and respect for dissenting opinions.

[76]Ibid.

[77]Ibid., 45.