

INDIAN NATIONS, THE UNITED STATES AND CITIZENSHIP

by
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In the beginning, the question of how to view Indian nationhood and citizenship wasn't a question at all. We are reminded that how things came to be the way they are evolved in a history entirely outside the control, and indeed outside the view, of the indigenous peoples of the world, and that the evolution of the idea of citizenship and its application to indigenous peoples is an idea which has been created and molded to suit the needs of people other than the subjects.

In some areas of Indian Country, the concept stirs deep passions. There are many among the Haudenosaunee who deny that they are citizens of any country other than their own, while some, notably Oklahoma Indians, assert dual citizenship regularly. Still others are confused about their citizenship, and regularly reply that they are United States citizens without thought of their indigenous nation.

The reason for this state of confusion lies not so much in the absence of information as in the fact of vagueness about how and why indigenous peoples of the Americas were confronted with the idea of citizenship. Citizenship was, and for many Indian peoples remains, an alien idea, and for good reason.

Lawyers can argue about the exact legal definitions which cloud the term. Social historians can affirm that at the time of the Columbian encounter at the end of the fifteenth century, citizenship was practiced on the European continent was predictably different from the concept as used today. The world's indigenous peoples are, of course, a special case, even though indigenous peoples worldwide suffer similar problems coping with the intrusions of states. As the history of the European expansion and subsequent invasions of the Americas, Asia and Africa (as well as numerous places such as Australia and islands without number) they encountered peoples all over the globe.

It is extremely enlightening, for the purpose of determining the identity of the Indigenous nations (as opposed to the extent of the rights and obligations of **citizenship**), that we begin our tale at the beginning. The

most interesting work on the subject of European law as it existed during the centuries leading to the Columbian era is a work by Harold J. Berman entitled *Law and Revolution: The Formation of the Western Legal Tradition* (1983). This work covers a lot of territory but, on the subject of citizenship, Berman points out that during the centuries prior to Columbus legal customs had arisen on the continents which spoke to the issue of citizenship.

In feudal Europe, there arose a peculiar way of viewing the land. In some sense, land and country were indistinguishable. England was, in the custom of the day, the sum of its parts, and its parts were Sussex, Essex, etc.. The people who represented those parts were the aristocracy, thus York was not only a geographic area, but also a person. When the king ordered, as he sometimes did, "Go and fetch York," everyone in the kingdom knew who he was talking to about. Feudal relationships define humans as assets which belong to the land, or **go** with the land. The centuries have blurred our ability to understand that in 12th century France a person was born to a place, that place was ruled by an aristocrat and the aristocrat was, at least in theory, beholden to a sovereign.

Thus, the sovereign owned the kingdom, it was his to do with as he pleased in theory or as he could get away with in practice. A serf born to a district was perceived as a person who **went** with the property. He was, in effect, little better than a chattel slave, a person owned by a military aristocracy which, during some periods, held unlimited sway over his life and property. Beginning about the eleventh century, this began to change in some parts of Europe.

One of the elements of change was the rise in Europe during these centuries of cities. The cities were unlike the rural subdivisions of the kingdom in that gradually they obtained a degree of autonomy from the system of feudal lords. In time, the cities came to be, in practice, havens from the arbitrary and sometimes brutal rule of the aristocrats. A practice arose which enabled a person who found his way into the confines of a city and who was able to survive for a year and a day became a **citizen** (literally from the Greek, meaning a person who lives in a city), and in time citizenship meant that the city state guaranteed that person certain rights. Predictably, the first right was against capture and forced reenslavement at the hands of his former master. [**This is a very general treatment of this somewhat complex and highly variable subject, but then this is a short paper. Berman goes into it at length.**]

Thus far in this story, there are no indigenous peoples. Although there are numerous distinct peoples on the European continent, and although at one time in European history it can be successfully argued that some of these peoples were indigenous in the sense they occupied the land as a distinct people prior to some colonization, for our purposes there were no peoples who were **indigenous** in the modern sense of that word on the European continent following the Crusades. "Indigenous peoples" is really a term we

were forced to invent to distinguish the peoples which occupy a land mass at the time of the European invasion from other peoples, some of whom do not exist at the beginning of that invasion.

The first modern indigenous peoples were the Gaunches of the Canary Islands. The Gaunches are almost forgotten in American history, but certainly belong in the introduction to any history of the invasion of the Americas. When the Spanish (with some French assistance) first landed on the Canary Islands in 1402, there was a population of about 80,000 Gaunches. The wars to conquer them lasted until 1496 when their final stronghold fell. They were as much victim to the epidemic diseases of Europe as to the Spanish arms, but they were unquestionably victims. Some historians have argued that their descendants can be found on the Canary Islands and the Azores Islands, but the Gaunches are extinct as a distinct people. The Gaunches, it can be said, had no rights.

The history of the indigenous peoples of the Canary Islands is a very neat package. It has a beginning, a middle, and, for all practical purposes, an end. The Portuguese discovered an uninhabited island they named Madieras because it was covered with forest. They colonized it with some volunteer settlers. Within a short time they cleared the island by burning it to the ground and a few years later were raising enough sugar cane to become the number one exporter of refined sugar in the world. Money flowed to the Portuguese crown and a very profitable investment called **colonization** had been born. Before long it became clear that to make this investment truly profitable there needed to be a source of cheap labor. The cheapest labor at the time was slave labor and that's where the Gaunches came into the picture.

The Gaunches were attacked because they possessed islands which were thought to be potentially profitable possessions and because they were a source of slave labor. The attack on the Gaunches was pure theft and slavery. No one, not even the Spanish, bothered to explain it in terms of advancing Christianity or bringing the benefits of Civilization to the benighted. In that regard the history of the Canary Islands is as refreshingly blunt as in the fact of their conquest and annihilation was brutal.

Christopher Columbus was married to the daughter of one of the governors of one of the Azores Islands and is rumored to have engaged in the slave trade. The Gaunches, as was mentioned earlier, mostly succumbed to diseases like smallpox and like indigenous peoples to follow, didn't make satisfactory slaves because of the death rate. The Spanish quickly adjusted by importing slaves from Africa where smallpox, chicken pox and a score of other **childhood** diseases were already known and where the peoples had developed some immunity to them. A fairly thorough discussion of the Spanish behavior in these eastern Atlantic islands is found in Alfred W. Crosby's excellent book, *Ecological Imperialism: The Biological Expansion of*

Europe, 900- 1900 (1986).

From the Canary Islands and the Azores Columbus set sail for the Asia mainland and landed, instead, on the islands of the Caribbean where he encountered, we all know, a people he mistakenly dubbed Indians. A pattern of behavior which had been established during the war against the Gaunches was then initiated by the Spanish against first the peoples of the Caribbean and then the indigenous peoples of the mainland. The results were, of course, devastating. On some of the islands, the entire population was wiped out, or at least virtually wiped out, by the twin demons of European-introduced epidemic diseases and Spanish cruelty. A pretty good account of that story is found in Karl Sauer's *The Early Spanish Main*.

The Indians presented an interesting dilemma when a dispute between the clergy and the military arose around the identity of the Indians. Bartolome de Las Casas, a priest, circulated accounts of Spanish cruelty which were published in Western Europe and eventually became a source of embarrassment to the Spanish crown. The crowns then ordered a debate before the Council of the Indies to settle the question whether the American Indians were indeed human beings possessed of a soul, and therefore, rightfully the charges of the Holy Roman Catholic Church, or, as some conquistadors asserted, sub-humans who had no rights whatever.

The conquistadors hired Gines de Sepulveda as their attorney. He argued forcefully that Indians are sub-humans. Las Casas argued they had souls and intelligence and can be socialized to be servants of both the crown and the church. (The best short telling of this story is found in *Aristotle and the American Indian*, by Lewis Hanke.) No one argued the Indians are distinct peoples possessed of rights against both church and crowns, and no one questioned to whom the lands belonged. All understood under the doctrines of that time that the land was Spanish land. Somewhat consistently with this line of thinking, centuries later when Spanish colonies became states, most of them included the indigenous peoples as their citizens immediately, in their first constitution.

The English colonization had a slightly different history from the Spanish in both flavor and on the subject of citizenship. The English were watching and envious of Spanish success at plunder in what they called the "New World." English adventures across the Atlantic had to wait. By 1565, Spain was the most powerful country on the Atlantic, commanding an empire greater than Rome at its zenith. When a French colony was attempted in Florida, the Spanish arrived and massacred everyone.

The English were undaunted. Beginning about 1565, entrepreneurs sold stock in London to finance a venture to invade Ireland. The source of wealth in Ireland was to be the forest products said to be in abundance there, and the lure to some of England's landless poor (victims of a growing process known as enclosure) to an adventure in a foreign land. In Ireland, the English

encountered their first indigenous people. The rural Irish were Catholic, a folk who continued to possess a number of cultural traits of their ancestors. Before long the invading English discovered that the indigenes were seriously flawed in their national character. They were, according to reports flowing into London, pagans in spirit, probably not Christians at all, and rumored to be cannibals.

The purpose of these slanders against the Irish was to provide an excuse to do violence to them in order to drive them from their lands. One of the complaints against the Irish was that they do not improve the land as Englishmen do, and therefore, do not have as much right to it. If the Gauchos were to provide Spain with practice in their treatment of the Indians of Latin America, the Irish provided the English with practice in their treatment of the Indians of North America. An excellent history is by Nicholas P. Canny, *The Elizabethan Conquest of Ireland: A Pattern Established 1565 - 1576*.

The English arrived in what they called New England a generation or so after the defeat of the Spanish Armada in 1588. They immediately proceeded to take the land in a way which was, at that point, wholly English. Instead of arguing about whether Indians were human or not, they concentrated on the land itself. Indians were basically unfortunately in the way of English possession of the land. Every conceivable excuse was mustered to dispossess the Indian of this land, excuses which had worked during the enclosures in England and the wars in Ireland. Acre by acre the Indians were driven from the land just as the poor in England had been (and continued to be) and the Irish had been (and still are). There was not much discussion in this early phase of history about citizenship, pro or con. An excellent account of the English in early New England is found in William Cronon's *Changes in the Land: Indians, Colonists and Ecology of New England*.

The invasion of North America is told almost entirely from the eyes of the invader. During the early years, when the English and Dutch and Swedes and French were weak the Indians insisted on treaty relationships, on a separation of law and territory. Thus, the earliest agreements have the air of treaties, and the earliest treaties reflect Indian thinking about cultural diversity and the right to continue as distinct peoples. An early treaty is the now-famous Two Row Treaty between the Dutch and the Haudenosaunee (Iroquois) and the original Silver Covenant Chain, both of which declare that the relationships are equal to equal or, in modern terms, state to state.

The Europeans were pragmatists. If treaties served to cement relations, then treaties were to be made. Although it took nearly two centuries for the colonies to become established enough to challenge the Indians, English colonists doggedly coveted the land. Unlike the Spanish, who coveted Indian labor and subservience, the English coveted mostly land. There are exceptions, but generally this was the flow. The Spanish debated whether the Indians were human. The English simply accepted that the Indians were not

English.

Thus, the Indians were not only not seen as citizens, the idea never really gained much currency among the colonists that the Indians would ever be English citizens. The Indians belonged to America, not to England. America was not England, not its land and not its people. That ideological underpinning of British governmental organization and ethnocentrism was to be a major factor which would stimulate the American Revolution.

Pragmatism ruled the day, however, and the English were pristinely pragmatic when it came to doing whatever was necessary to liberate the Indian from land. An excellent account of the transmigration of European thinking to the Americas, especially North America, is found in Francis Jennings' *The Invasion of America -- Indians, Colonialism, and the Cant of Conquest*.

It has been argued (see Jennings' early trilogy) that the Seven Years War was the first world war. Jennings argues that the English crown claimed France had invaded British territory by building a fort at Duquesne because the land in question was part of an Iroquois empire, and the Iroquois empire was British territory. The crown never claims the Iroquois are British citizens, however. Land and citizenship are clearly separate under the conditions created by overseas empires and an evolving theory of law which finds the states coming to ownership of the idea of citizenship for their own purposes.

At the time of the American Revolution, there is no question the Americans viewed the Indians as distinct peoples, and that they, at least, viewed the Indian nations as distinct nations. Both the Articles of Confederation and the Constitution of the United States reflect this reality. The new Constitution was sought and organized primarily to advance imperialism. It was, on the one hand, a reaction to tax revolts and to organize an effective army which could deal with issues surrounding what it euphemistically calls the "western lands." The Western Lands, let us be clear, was Indian Country. The first major American military engagements were against Indians by armies invading Indian nations.

The history of U.S. treatment of Indian nations during the 19th century is long and complicated because of the number of different Indian peoples involved, but fundamentally simple in terms of the process which was repeated hundreds of times across the United States. The U.S. government deployed military garrisons on the edge of Indian territories and encouraged frontiersmen to enter and start conflict with the Indians. When the conflict arose, the army reacted by attacking the Indians. The best account of this process I know is found in *A History of the Indians and the Untied States* by Angie Debo. The Indians were attacked and killed, enslaved and abused, their land seized and their children forced into alien schools solely because they possessed land other people wanted.

The U.S. Constitution treats Indians as non-citizens, and Indians remained non-citizens until 1924. From the time of formation of the United States to the present, the issue of citizenship for Indians has been dealt with by the U.S. government entirely to its own interest. With the possible exception of early court decisions, later ignored, that Indian nations were legitimate in the eyes of the law, the United States has generally acted as though Indian nationhood is simply an inconvenient anachronism of history. Indian nationhood is inconvenient because, if the Indian nations are legitimate, U.S. designs for Indian land and labor are not legitimate. Thus, U.S. Indian policy has ignored Indian nationhood whenever possible, even to the point of simply declaring Indian nations no longer exist during the Termination Era.

During the nineteenth century, when the problem of how to steal Indian land without appearing to steal it was a major consideration, the United States passed laws which enabled non-Indians to sue Indian nations for damages arising out of acts of violence during these conflicts, but denied Indians the standing to sue non-Indians. Indians were clearly non-citizens during this century and, so long as an Indian continued to maintain his rights as an Indian, he was considered a non-person in the eyes of U.S. law. It was possible for an Indian to become a person. He need only take an allotment of land and renounce his Indian citizenship. Once a citizen of the United States, an Indian was no longer considered an incompetent because he was no longer an Indian! The U.S. government even constructed a legal concept that Indians, as Indians, are incompetent to manage their own affairs and the federal government has a responsibility to manage their affairs for them. This insult had the practical application that it allowed the government to transfer the use of significant amounts of Indian assets to non-Indian hands. It became the much vaunted "trust responsibility" theory which some Indian lawyers seized upon as a way to channel federal dollars to Indians (and Indian lawyers) during the 1970s and which was put to rest during the Reagan years. The **trust** responsibility is really an insult. To benefit from it, Indians are forced to plead diminished capacity on the basis of race.

Indian nations, on the other hand, have become mystified about their own legitimacy. Most Indian leaders act unaware that over the centuries a few states (about 177 at last count) now claim to own the entire globe. They have a conspiracy among them that whatever goes on inside the territories they claim is nobody's business but their own. Thus, Brazil claims as citizens Indians who have never heard a word of Portuguese and have never heard of Brazil. Other countries of the world such as Indonesia and India have been recruited into the scheme of things. Thus indigenous peoples have no rights in the world because nation states simply have declared them to be illegitimate and thus have declared all the theft, murder, dispossession, oppression, cruelty and coercion directed against indigenous peoples, past and present, to be legitimate, actions which are wholly the internal affairs of the state and not a cause for complaint at the international level.

In addition, citizenship has become the excuse these criminal states have

used to justify their actions. Just as Sepulveda argued it was acceptable behavior to enslave Indians because enslavement also brought the benefits of civilization, states today argue it is acceptable to take Indian land without due process of law, to deny recognition to an Indian nation as a nation, and to do whatever it wants, in the name of plenary power and in the name of international law which effectively bars Indian nations from bringing actions in international forums for even the most outrageous crimes. Although the idea of citizenship may have started as a limitation on the powers of an aristocracy to seize persons and force them to servitude, by the nineteenth century the idea of citizenship became solely owned by the states which were in an international conspiracy to possess the planet at the expense of all the indigenous peoples.

The question is probably incorrectly drawn when framed around whether Indians are citizens. The question should not be whether Indians enjoy the rights under U.S. law, but whether and when Indians enjoy rights under their Indian nationhood. Indian nations are denied legitimacy solely because they committed the crime of owning land somebody else wanted and surviving after the land was taken. Having failed to physically disappear, the Indian nation is now urged to disappear legally, culturally, and psychologically.

The question about citizenship should center around the rights the Indian nations and citizens (if that's the proper term) had prior to the colonization and subsequent reservation period. Certainly Indians enjoyed standing as persons in their relationships with all peoples prior to that time. Certainly Indian individuals were viewed as full adults in the eyes of whatever decision making process they engaged, and even peoples of different cultures never discriminated against each other in the fundamental ways Indians suffered discrimination and racism at the hands of the United States.

The law around Indian citizenship came at a time when the empires of the world were at their zenith. When the League of Nations was formed, imperial states were faced with the enormous problem that they had militarily occupied most of the world's population, but had not defined membership or nationhood in a satisfactory way. It became popular to declare that everyone born in the world is entitled to **citizenship** in some country or other, an idea embraced by the Wilson administration. Subsequently, the people of Puerto Rico were granted U.S. citizenship in 1917. The Indians were even more problematic, being neither a colony nor a territory from which the United States had any intention of ever evacuating or withdrawing from and comprised of peoples who held a potential claim for very large portions of the claimed U.S. territory.

The obvious answer satisfied both the Indians and the liberals who wanted to see **better** treatment of the Indians. Making the Indians citizens opened the road to correcting a long list of injustices around standing in court and civil rights and also opened the door to the forced assimilation policy which came to be known as Termination. The Indian Citizenship Act of 1924 is worded in

such a way it can be construed to confer on Indians the **RIGHTS** of U.S. citizenship -- specifically rights against unlawful seizure, the right to due process, habeas corpus, to travel overseas, to be a person in the eyes of the law -- but does not diminish the Indian's individual rights under his Indian citizenship.

Those rights are not well defended by the Indian leadership in recent years, and have not been clearly defined as a political agenda. International forums have debated the issue with very little input from the legitimate Indians. Indeed, pretenders have represented themselves as Indian leadership while the legitimate Indian leadership stayed home. Indians logically have a right to all the rights and privileges they enjoyed prior to the armed robbery which characterizes U.S./Indian relations of the past, and Indian leadership should move to identify those rights and press for them. Indian leadership needs to understand that when they stand as Indians for Indian rights they are in direct conflict with U.S. aspirations, and that an Indian allegiance to the United States is secondary to their allegiance to their own nations because the former by nature seeks to eliminate the latter.

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