

# DE-COLONIZING THE MINDSET

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Presentation to the Alliance for Colonial Era Tribes

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# Introduction

- There has never been an all-purpose definition of “Indian” or “Indian tribe” for federal purposes
- The need for formal definitions of "Indian" and "Indian tribe" derived from the policy goals of the federal government
- The inclusion of a **federal acknowledgement** requirement poses a **direct threat** to the right and sovereignty of all tribes, and creates a particular challenge for non-BIA listed tribes by attempting to link tribal sovereignty to federal acknowledgement



# 4 Main Points

1. The **legitimacy** of state recognized tribes is **frequently attacked** despite the fact that state and colonial recognition predates federal recognition.
  2. The Federal Acknowledgement Process persists in **functioning as a barrier** to historically well documented tribes seeking to achieve federal recognition.
  3. In light of the current political landscape, **alternative means** for recognition **are necessary** to protect the inherent rights and sovereignty of historic non-BIA listed tribes
  4. Inherent Rights are **not dependent** on Federal recognition.
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# Inherent Rights

## ALL Indigenous Peoples have inherent rights

- Because the foundation of colonial governments requires those entities to ignore the inherent rights of Indigenous Peoples, these governments—such as the United States government—have a tendency to ignore some Indigenous Peoples, and recognize others
- The United States legal system has long viewed Indigenous Peoples as inferior to people of European descent, and as people deserving of lesser rights
- The fact that the United States legal system has taken this approach to Indigenous Peoples does not make the inherent rights of Indigenous Peoples vanish; it merely means they have been ignored



# *Inherent Rights*

"Remember that unrecognized tribes have the same status as terminated tribes. The ultimate question may not be whether recognized tribes are for or against unrecognized tribes, but whether recognized tribes are for or against themselves and their own future."

*-Terry Anderson & Kirke Kickingbird (1978)*



# Inherent Rights, Self-Determination & International Law

- Much of the legal framework around the rights of Indigenous Peoples has been developed in international law.
- The right of self-determination—for all peoples—has been acknowledged in:
  - the United Nations Charter;
  - the International Covenant on Economic, Social and Cultural Rights;
  - the International Covenant on Civil and Political Rights; and
  - the Vienna Declaration and Programme of Action
- The International Covenant on Civil and Political Rights provides that:
  - Ethnic, religious, or linguistic minorities “shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”
  - Nowhere in this covenant are these rights declared to be dependent on the country’s acknowledgement of Indigenous Peoples as such



# Inherent Rights - The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

## UNDRIP Article 3: Fundamental Right of Self-Determination

- The right to self-determination includes the right to not “be subjected to forced assimilation or destruction of their culture.”
  - Indigenous Peoples “have the right to practise and revitalize their cultural traditions and customs.
  - Indigenous Peoples have the right to “manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies.
  - Indigenous Peoples further have the right to participate in all “decision-making in matters which would affect their rights.”
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"Indigenous peoples have the  
right to determine their  
own identity."

*-UNDRIP, Article 33 (1)*



# UNDRIP in the United States



The United States initially objected to the passage of UNDRIP, noting that it already recognizes these rights



Since becoming a signatory to UNDRIP, the United States has misappropriated its aspirations.



The United States has failed to implement UNDRIP in accordance with the spirit and principle of the Declaration by recognizing only federal tribes.



# The Importance of Self- Determination



Allowing the definition of who is and who is not Indigenous to be created by a government that has largely opposed Tribal self-governance and self-determination is to allow the rights of all Indigenous Peoples to be shrunk or expanded as that government sees fit.

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- Self-determination is protective, because “[I]ndigenous peoples are vulnerable to hostile majoritarian interests.”
  - Indigenous Peoples are vulnerable to—and sometimes adopt and perpetuate—such hostile interests regardless of whether they are federally recognized.
- Unfortunately, Tribes that are federally recognized have on occasion opposed efforts of Tribes seeking recognition.
  - This too runs counter to the principles of self-determination.
  - Furthermore, the lack of federal recognition for many unrecognized Tribes is a result of the fact that “the federal recognition process is painfully unwieldy [and] often takes decades to resolve.”





# Federal Policy Eras & Their Impacts on the Definition of “Indian” and “Indian Tribe”



## Treaty Making

1778-1871



## Removal & Reservation

1830/1849



## Allotment & Assimilation

1871



## Termination

1953



## Self-Determination

1960-Present



# "Indian" and "Indian Tribe"

- Over time, the federal government's use of the terms "acknowledgement" and "recognition" has evolved from elusive to rigid.
  - Upon examining the evolution of the government's attitude towards Native Americans and Alaska Natives from the founding of the United States to present, history reveals a correlation between the increasing formalization of these terms and the government's policy goals.
- The formalization of the Federal Acknowledgement Process influenced the way in which the government defines "Indian" and "Indian tribe."
  - While "acknowledged" and "recognized" did not always carry the weight they do today, the government has implicitly incorporated these formalized terms into the definitions of "Indian" and "Indian tribe".



# *Montoya* to IRA to Federal Acknowledgement

- In *Montoya v. United States* (1901), the Court determined whether the Native Americans in question belonged to a "band, tribe, or nation in amity with the United States".

*"By a 'tribe' we understand a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory; by a 'band,' a company of Indians not necessarily, though often, of the same race or tribe, but united under the same leadership in a common design."*

- Congress passed the Indian Reorganization Act (IRA) (1934). There were key differences between the original draft and final draft but it ultimately formalized Montoya's race-based standard.
- Department of Interior (DOI) developed formal regulations governing the process by which tribes could become federally recognized (1978).



# Issues with Federal Acknowledgment

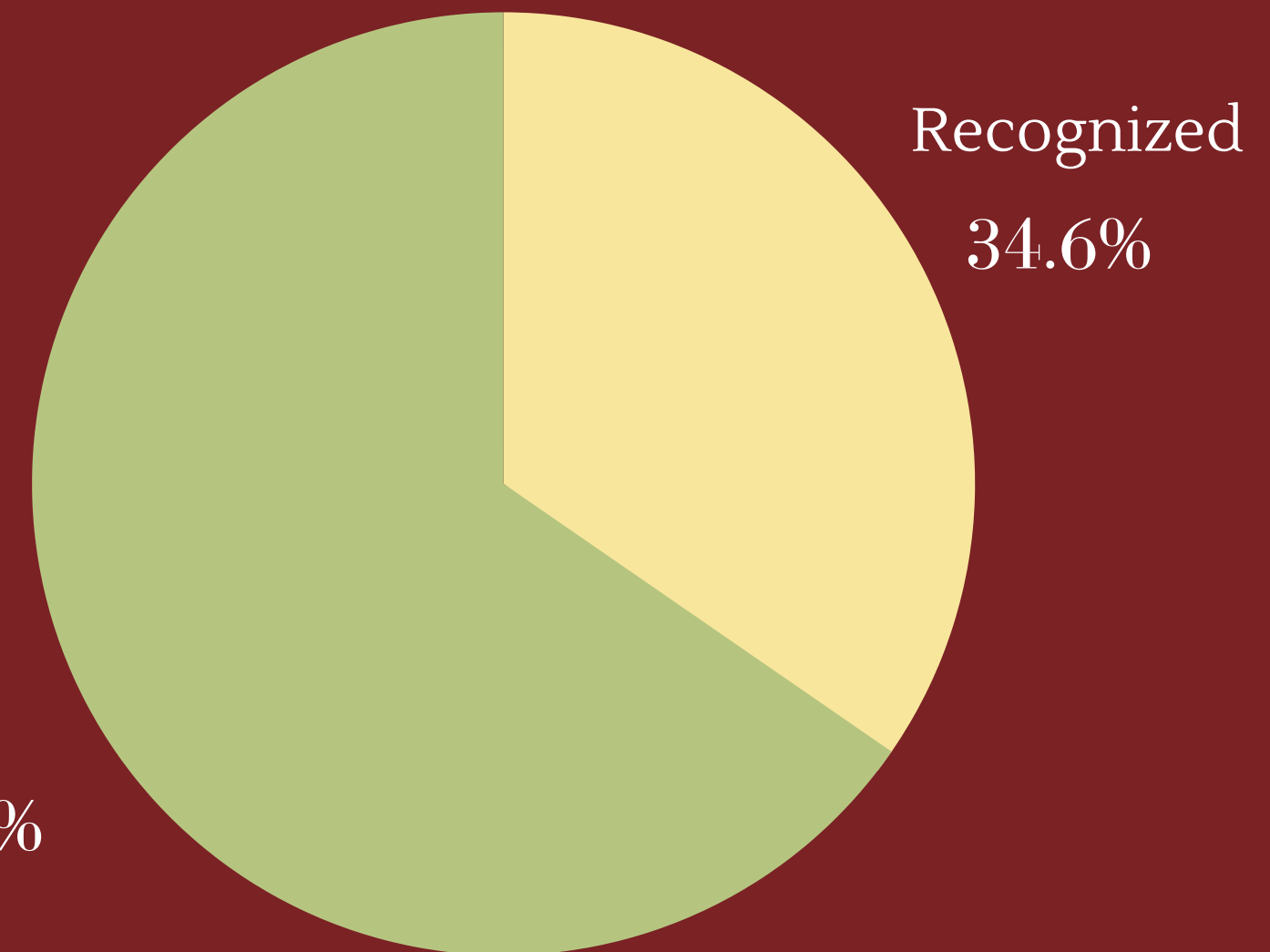
The process for Federal acknowledgment directly contradicts the modern federal Indian policy of self-determination, and infringes upon the inherent sovereignty of all tribal nations.

Only 52 cases in the last four decades have been determined. Of those determinations, the federal government granted 18 petitions for recognition and denied 34 others.

The process and the requirements are burdensome.

As a result, the government frequently ignores the inherent rights of non-federally recognized tribes contributing to the federal government falsely linking tribal sovereignty to federal acknowledgement as if the government delegates tribal authority and affirms tribal legitimacy.

Denied  
65.4%



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1978-2020

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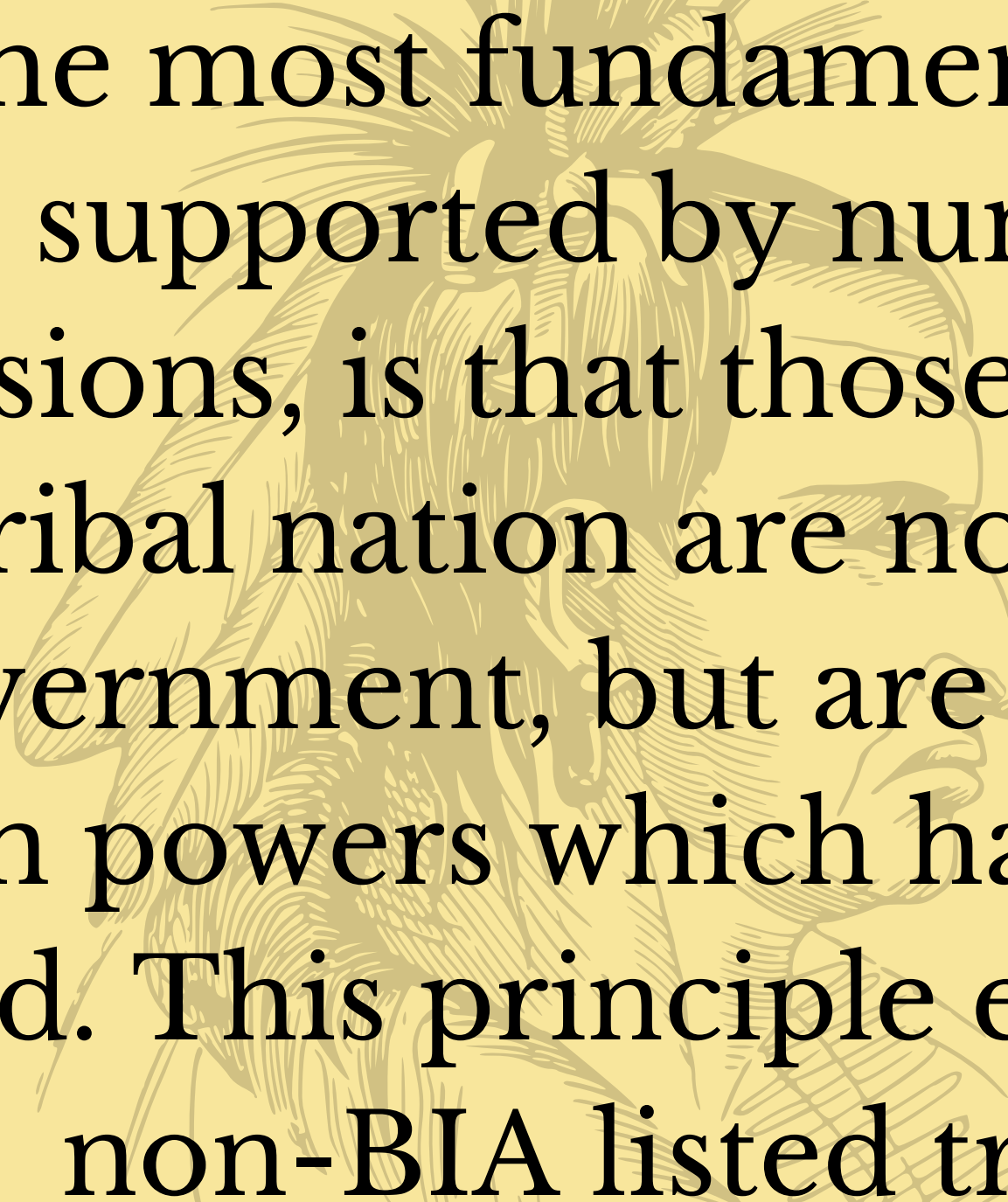


# Recognition & Its Modern Implications

- Today, federal acknowledgment or recognition refers to the formal political act of affirming a tribe's legal status as an independent political community, and institutionalizing the government-to-government relationship between the federal government and tribe.
- The problem with the modern definition of tribe—as the federal government commonly uses it today—is that it typically refers only to federally recognized tribes.
- The government frequently ignores the inherent rights of non-federally recognized tribes.
- Such a definition directly contradicts the modern federal Indian policy of self-determination, and infringes upon the inherent sovereignty of all tribal nations.







Perhaps the most fundamental principle of Indian law, supported by numerous Supreme Court decisions, is that those powers lawfully vested in a tribal nation are not delegated by the federal government, but are instead inherent sovereign powers which have never been extinguished. This principle extends equally to non-BIA listed tribes.



# The Importance of State Recognition

State recognized tribes strive to protect their culture, provide service to members, preserve the environment, defend inherent tribal rights and sovereignty, and adamantly support federally recognized tribes.

## OPPOSTION

1. Non-historical
2. Lack of lineal descendant requirements for enrollment
3. State recognition is unconstitutional





# Support

- State recognized tribes maintain rigorous enrollment standards
- Many have sustained communities in their aboriginal homelands
- United States Departments of Housing and Urban Development, Labor, Education, and Health and Human Services are bound by statutes and regulations to provide funding for state-recognized tribes.
- The extension of these benefits, protections, and privileges to state-recognized tribes affirms their tribal identities and inherent sovereignty.

State Recognized tribes struggle to defend their legitimacy against not only non-historic groups seeking recognition, but also against certain initiatives within Indian Country.

# Conclusion



Before the United States' founding, before the establishment of the federal government, and long before the introduction of the federal acknowledgement process, there were tribal nations.

The modern concept of federal acknowledgement inadvertently perpetuates colonial policies by allowing the government to define the scope of a tribe's sovereignty. It operates as a threshold inquiry and places non-BIA listed tribes at the mercy of a government that formalized definitions with the primary goal of eliminating tribal authority all together.





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