Kay WalkingStick on Indian Law

At the turn of the century my grandfather, Simon Ridge WalkingStick, a lawyer in Tahlequah, Oklahoma, was hired as a Cherokee interpreter for the implementation of the Curtis Act, which parcelled out “Indian Territory” to those individual tribal members who would allow themselves to be numbered and registered. The land that remained after this parceling was then given or sold to white homesteaders and businesses. Indian Territory was no more, and Oklahoma became a state. My grandfather took the job because he saw the inevitability of statehood and wanted to get his tribe the fairest shake possible. He wanted to ensure that those registrants who spoke only Cherokee knew exactly what they were signing.

Many Cherokees, however, didn’t sign. Some lived outside Indian Territory and felt they had nothing to gain by making the trip to Tahlequah. Others mistrusted white people—the Trail of Tears was only sixty years in the past. These people were often traditionalists who wanted to retain the old ways. Their tribal lands and their way of life were being taken from them. Furthermore, numbering and registering was a humiliating process, and its purpose was to control people. Even so, the only way one can prove one is a Cherokee today is to produce a registration number of an ancestor and through such documentation be accepted as a tribal member. The children and grandchildren of those who did not register cannot prove they are Indian.

Now the numbering and registering have returned to haunt us. On November 29, 1990, President Bush signed into law the Indian Arts and Crafts Act, which states that a person who exhibits Native American art for sale must be able to prove, through tribal membership or tribal certification, that the maker is indeed an American Indian. If a person not certified as an Indian is convicted of selling Native American arts or crafts, or of exhibiting them for sale, he or she and the exhibiting space—whether commercial or nonprofit—are subject to a $250,000 fine and up to five years in jail. The members of no other racial group in the United States have ever had to prove their ethnic heritage in order to sell their art.

The goal of the act is to update a law on the books since 1935, its purpose to promote and protect Indian arts and crafts and to prevent misrepresentation. At present, there are no regulations for defining or imposing the new law—legislators have yet to decide, for instance, how objects made by Indian artists who are citizens not of the United States but of Mexico, Canada, or South and Central America will be sold here, and whether or not the law applies to film, video, performance, and computer-generated art. According to Geoffrey Stamm, of the Indian Arts and Crafts Board (IACB), which will handle complaints, the formulation and implementation of regulations will take about a year. Until then, the chances of anyone being brought to trial are negligible.

Once the regulations are in place, however, individuals will be able to make a complaint to the IACB, and tribes will be able to bring civil suit. And the regulations are not intended to address the basic premise of the law, which is problematic. For there seems to be no consistent rule for tribal membership among the hundreds of tribes in the United States. The conditions of membership are decided by each sovereign tribal nation. To be a tribal member of the Salish of Montana, for example, one must have been born on the Salish reservation. In order to be a Hopi, one’s mother must be a Hopi tribal member. This means that if your father is Hopi and your mother is...
Salish and you were born in Saint Louis, you cannot be a member of
either tribe, even though you are a full-blood Native American.

In addition, many tribes are not recognized by the government, some
tribes that were formerly recognized are no longer, and some are recog-
nized by their state but not by
Washington. The net result is that
many people who identify them-
sew themselves as Indian are not recognized
as such by the federal government.
(It often happens that Indians in
need of the assistance that the
government has promised native
peoples through treaty cannot re-
cieve this aid, for they cannot prove
their Indian identity.) Furthermore,
there are Native Americans who
reject the whole idea of formal
tribal membership to the extent
that they see it as a foreign, bu-
reaucratic imposition alien to their
own traditions of thought.

This problem in the classification
system on which the law is based
is accompanied by considerable
worry over how it will be applied.
A foretaste has been provided by
an organization called the Native
American Art Alliance (NAAA), out
of Santa Fe, which has been vocif-
erously leading a fight to prevent
nonregistered Indian artists from
selling their artwork as "made by
Native Americans." The NAAA has
made accusations against many
prominent artists. This July they
were able to prevent the opening
of an exhibition at Santa Fe's
Center for Contemporary Art by the
Cherokee artist Jimmie Durham, on
the grounds that Durham is not
registered—this despite the fact
that the NAAA has no judicial
power (it is only a political lobby-
ning group); that the IACB, ac-
cording to Stamm, will not support any
civil or criminal charges under the
law until the regulations are com-
plete; and that the law allows an
exhibition venue to protect itself
from civil or criminal suit simply by
printing a disclaimer that although
the artist identifies him- or herself
as Native American, he or she is
not a registered member of a tribe.

The most convincing voice I have
heard in support of the law is that
of the Mohawk artist and educator
Richard Glazer-Danay. Glazer-
Danay doesn't want his culture
defined by the art of non-Indians.
He doesn't want his grandchildren
to pick up an art book and see a
painting by a non-Indian who
claims to represent Indian culture.
The law is intended to prevent this
possibility, but its long-term effects
may also be negative. We do have
to prevent non-Indians from mar-
ting American Indian-style ob-
jects as authentic. We must protect
collectors of Native American art.
We have to stop fraudulent
behavior; surely no one would
argue that view. Yet through this
law some of our most important
artists may be stopped from ex-
hibiting their work and affirming
their identity. How are we to get
them out of the tribal membership
trap written into the law?

It is our Cherokee custom to con-
sider the welfare of the next seven
generations in all the decisions we
make. Grandfather WalkingStick may
have made the wrong decision in
taking translation work in Table-
quah—but he was trying to foster
the long-term common good of his
tribe, within the framework of turn-
of-the-century federal Indian policy.
That policy was based on the eco-
nomics of real estate, with little
regard for the individual Indian.
This present law is also about eco-
nomics. Its intention is to protect
the individual Indian artist and crafts-
person, but it is crippled, and may
end up hurting our fellow artists.
The law needs to be reexamined to
work for the long-term common
good of Native American people.

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