

## **Uncivil Rights: The Abuse of Tribal Sovereignty and the Termination of American Indian Tribal Citizenship**

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### **Abstract**

Starting in the 1990s, an increasing number of Indigenous people have been removed from tribal rolls, denying them basic citizenship rights, including due process, private property rights, jobs, voting rights, and the like. Popularly known as disenrollment, these individual and family terminations have increased in number and frequency as casino tribes have increased their wealth, and federal courts have decided not to hear cases on individual civil rights violations pertaining to Indigenous peoples. Indians are supposed to be protected from their tribal governments by the Indian Civil Rights Act of 1968, but it is not enforced by many tribal councils, courts, or federal agencies. This paper analyzes the contributing factors to disenrollment, such as casino gaming and past federal termination policy, along with quantitative data on the numbers of Indians disenrolled from their tribes. Of the 80 or so tribes contained within the borders of the US that have disenrolled substantial portions of their citizenry, 24 of those are located in California. The question is whether there are commonalities to the cases involved in these purges, or if it is simply a matter of bad behavior on the part of some that is emulated by others.

*Keywords:* disenrollment, tribal sovereignty, Indian Civil Rights Act, termination, citizenship rights, human rights, casino gambling

### **Corrigendum**

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## Introduction

Indigenous civil rights attorney and blogger Gabe Galanda (August 27, 2014) recently remarked that academics have shied away from tackling the problem of disenrollment in Indian Country. He is both right and wrong. Some of us (Fletcher, 2012; Gonzalez, 2003; Hansen, 2012 and 2008; Mezey, 1996; Wilkins, 2004) have been working on exposing the issue from within the halls of academia, which afford us the protection of academic freedom. However, much more work could be done on the topic. Part of the reason for the paucity of literature on the issue, stems not from our lack of ambition, but because data are so hard to come by. Because tribal<sup>1</sup> governments have inherent sovereignty to govern as they please, they are not subject to sunshine laws that require transparency in government operations, open meetings, or open records requirements. This makes it difficult to collect data that would illuminate discussion and analysis of obscure or obfuscated practices.

My goal in writing this paper is to conduct what I believe is the first attempted quantitative analysis of variables related to the disenrollment phenomenon in California.<sup>2</sup> Though reductionist, quantitative methods can allow us to take a step back from what is at times an extremely emotional, contentious, and controversial topic. However, this requires that we exclude crucial political concepts that are difficult to measure quantitatively (though these can be measured qualitatively through ethnographic or participant-observation methodologies), such as greed, power, election fraud, and the like. Instead, I look at variables that can be ascribed a quantitative value (even if it is only dichotomous), such as whether a tribe has a casino, whether they were terminated, region within California, the type of constitution a given tribe has, and whether they have a tribal court. But most importantly – what is the percentage of the tribal citizenry that has been disenrolled? Of the variables considered, I maintain that termination is a key causal variable contributing to disenrollment from California Indian tribes.

## Literature, Concepts and Variables

The term disenrollment did not exist prior to the 1930s (Wilkins, 2004; Deloria, Jr., and Lytle, 1983). It refers to individuals – or even entire families – that have been removed from, or left off, official tribal citizenship rolls. In the words of Ron Alec, a spiritual elder for the central San Joaquin Valley inter-tribal community, and former chairman of the Cold Springs Rancheria of Mono Indians: “Sorry, Uncle, we forgot to write your name in there, you’re no longer a member” (tribalcorruption.com n.d.). Sometimes the term “dismemberment” (Wass, 2007; Wilkins and Wilkins, 2017) is used, based on the common use of the term “tribal membership” instead of citizenship. But make no mistake, an Indigenous person is a citizen of her/his tribal community in every sense of the word as it pertains to any other sovereign entity (nation or state), with the same presumed human rights protections (Fletcher, 2012; Wilkins, March 19, 2012). It is noteworthy that the only nations on Earth that disown and expel large percentages of their citizenry are Native American tribal governments that operate within the context of “domestic dependency” under the paternalistic colonization of the US government.

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<sup>1</sup> I use the words “tribe” and “tribal government” in a strictly legal sense. This should not be misinterpreted as support for colonization.

<sup>2</sup> Thank you to my research assistant for the Fall 2013 semester, Houa Vang, and to the many good people who have been fighting the battle for Indian civil rights for many years who contributed data to this study. This list includes; Susanna Contreras (Chukchansi), Cathy Cory (Chukchansi), Rick Cuevas (Pechanga), Lois Edwards (Mooretown), Robert Edwards (Enterprise), Bryan Galt (Chukchansi), Laura Wass (Mountain Maidu), and Frances Velasquez (Shingle Springs). Special thanks to *Fresno Bee* reporter Marc Benjamin for keeping the issue in the news, and for his excellent, in-depth reporting on the resulting political chaos and legitimacy crises.

Pre-modern societies around the world did practice banishment, exile, ostracism, and voluntary or involuntary migration, but it was rarely used (Wilkins, 2004; Wilkins and Wilkins, 2017). The erasure or denial of one's lineage or ancestry on paper by a tribal government is something entirely derived from the American colonial experience under the US Constitution. It is a cruel irony of the restoration of tribal sovereignty and self-determination. As a result, basic citizenship rights, including due process, private property rights, jobs, voting rights, and the like, are violated by the very governments that are intended to support them.

Technically, disenrollment should be a violation of the Indian Civil Rights Act of 1968 that was supposed to protect individual citizens from the abuse of power by their tribal governments. The intent of the law was to allow such abuses to be redressed by tribal and federal court systems by allowing standing to sue via its *habeas corpus* provision. However, the ruling in *Santa Clara Pueblo v. Martinez* (1978), upheld tribal sovereignty as it pertained to exclusive control over membership criteria. David Wilkins<sup>3</sup> (2004) maintains that the ruling “emboldened them [tribal governments] 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” (248). Once again, the practice of divide and conquer prevails over the collective rights of tribal communities to remain whole and intact.

Wilkins continues by saying:

Perusal of contemporary law and literature reveals four major reasons why 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 (Wilkins, 2004, 248).

However, despite these issues there is nothing to suggest that disenrollment will be a permanent condition of life in Indian Country. Since it is a policy problem, it is ultimately amenable to policy solutions and legal remedies. Civil rights are relatively easy to distribute if there is the political will to do so. But a great deal of decolonization and healing remains to be done. What is required is a return to traditional cultural practices, reconciliation, and a rejection of exclusionary politics and policies.

The main research question still needs to be answered: What are the causes of this phenomenon? I argue that disenrollment is tantamount to individual, rather than tribal, termination. However, casino gaming and the distribution of assets is an inextricable part of the context, if not a direct cause. In the methodological section I will evaluate the two, along with a few control variables, to determine if there are causal relationships and correlations between and among the variables. An alternative explanation for cases in Washington State (the Nooksak Tribe) and Oklahoma (Cherokee and Seminole freedmen) is race, but that does not seem to be an explicit consideration in California, so I could not measure it for this study. Another alternative hypothesis is “per-cap” payments to individual tribal citizens, which

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<sup>3</sup>Though David Wilkins is probably the foremost scholar on disenrollment politics, he fails to mention this in any of the three editions of his book *American Indians and the American Political System*. When I contacted him about it, he thanked me for noticing the oversight and said they would correct it in the next edition.

Wilkins and Wilkins discuss as a dichotomous variable in their 2017 book *Dismembered*. But it seems apparent in California that in some of the most egregious cases, fights over who gets the six-figure salaries to serve on tribal councils, or the disappearance of much larger sums of money via corruption, are bigger financial motivators than smaller per-cap payments that might only involve a few hundred dollars apiece.

### Casino Politics

Citizens were typically not removed from tribal rolls in California prior to the advent of casino gaming and class III compacts. Much of the funding for tribal governments came from the Bureau of Indian Affairs, based on population. Ergo, there were incentives and benefits such as “per-caps” to maintain tribal polities. The passage of Proposition 1A in the 2000 presidential primary election radically changed the dynamics of reservation-based casino gaming in California (Cummins, 2011). Once gambling contributed substantial sums to governmental revenue streams, the financial incentive to maintain enrollments was removed.

This level of self-determination was intended by the Indian Gaming Regulatory Act of 1988, and the process through which class III compacts are negotiated with state governments, resulted in a relative lessening of tribal sovereignty versus the state, known as the “casino compromise” (see Hansen and Skopek, 2011; Light and Rand, 2005). Consequently, states and federal agencies turn a blind eye to civil rights violations on reservation/rancheria lands. Naomi Mezey (1996) foreshadowed that this would be allowed to happen because traditional culture was not considered when the gaming law was made. Not only does the IGRA not strengthen tribal sovereignty, it also fails to produce long-term economic development for the tribes that need it most. In other words, the rich tribes get richer via a redistributive policy.

Whereas Mezey discusses the redistributions between tribes and states, and between competing reservations, Angela Gonzalez (2003) discusses the redistribution of rights and revenues within tribal communities. She links the practice of disenrollment directly to gaming policy and argues that it is a direct result of colonization:

[I]n the case of tribal casino development the big winners have been the tribes themselves. However, gains to the tribe through gaming development have sometimes been at the expense of tribal members. Even as the revenues from gaming have filled tribal coffers, they have precipitated issues of tribal membership and the right therein to share in the prosperity wrought by the windfalls of tribal gaming. My focus, then, is the involuntary disenrollment of tribal members associated with the creation of tribal gaming operations (Gonzalez, 2003, 124).

Much of the non-Native population remains ignorant of the situation. It is possible that civil rights violations and corruption committed by casino-owning tribal governments could eventually create a political backlash against them<sup>4</sup> among the gambling population of non-Natives, leading to a loss of revenue (Hansen and Skopek, 2011). Again, it should be stated

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<sup>4</sup> Such a backlash may be developing over Proposition 48, which is heavily funded by an odd coalition of anti-gaming interests and casino tribes that wish to restrict the entry of other tribes into the gambling market. Two of these tribes, Picayune Rancheria of Chukchansi Indians, and Table Mountain Rancheria, are among those that have been accused of disenrolling their citizens. If they help to generate such an anti-American-Indian gaming sentiment, they may ultimately be cutting their own throats economically.

that not all casino tribes disenroll or violate the rights of their citizens, but most of the tribes that do engage in this practice own and operate casinos.

## Termination

Termination of federal acknowledgement in the 1950s and 1960s is another artifact of colonization. It began with the passage of Public Law 280, which extended state law enforcement authority over reservations and rancherias in violation of their preexisting sovereignty, due to a perceived problem of lawlessness (Goldberg-Ambrose, 1997). This was then followed by House Concurrent Resolution 108 (1954), which permitted the dissolution of tribal governments. The California Rancheria Act of 1958 was subsequently passed, thus terminating some 41 California Indian tribal governments.<sup>5</sup>

Close to half of the terminated tribes were restored following a 1983 class action suit, known as the Tillie Hardwick ruling (*Hardwick et al., v. United States of America* 1983), after its main plaintiff, who was from the Pinoleville Pomo Nation. Some tribes, such as the Paskenta Band of Nomlaki Indians and United Auburn Band were restored later by other means. Still others never have been. As of 2014, 31 of the 41 terminated tribes have since been restored, with great disruption and historical trauma to their citizens, violation of their land rights, destruction of their records, and myriad other problems. It should not be a surprise if citizenship disputes arise from these conditions. Despite the issues that came with the restoration of tribal sovereignty, many of these tribes were able to establish casino operations, often with class III compacts. But once the termination genie was out of the bottle, it was hard to put it back. Terminated tribes and their citizens, based on having their collective and individual rights violated, learned a horrible lesson which has been repeated through the practice of disenrollment. This is why I say the practice has been devolved to tribal governments from other levels.

## Constitutions

One would think that constitutions would protect the rights of Indigenous citizens. The Indian Civil Rights Act is often included in tribal constitutions, but to no avail, as there are few ways to ensure its enforcement. The Bureau of Indian Affairs (BIA) refuses to intervene in disenrollment cases ostensibly out of deference to tribal constitutions. However, there are exceptions, such as when a tribe's constitution explicitly allows BIA intervention as a referee of sorts. The Cahto Tribe of the Laytonville Rancheria attempted to disenroll twenty percent of their member-citizens, but the BIA was called upon per their tribal constitution to block the abuse of sovereignty. This action was upheld in court, but was later overturned on appeal by the 9th Circuit, which cited the *Santa Clara* ruling, and then argued for a different interpretation of the Cahto tribe's constitution to the detriment of the disenrolled tribal citizens (*Cahto Tribe v. Dutschke* 2012).

The Honorable Ron Goode, Chairman of the North Fork Band of Mono Indians, a non-recognized tribe of 1,900 members from the Sierra foothills, argues that disenrollment is not something that should readily take place. He maintains that tribal constitutions are often

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<sup>5</sup>Tribes terminated in California included; Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West Creek, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville (Bear River), Ruffeys, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, and Wilton (*Hardwick v. USA* 1983).

intentionally not that well-written when it comes to protecting the rights of their citizens, so that people could later be disenrolled. He outlines some of the reasons why this was done:

Constitutions [of casino tribes] are frivolous, ambiguous and designed with this sort of empowerment. 2) Their constitutions are not based on their traditional practices and policies. 3) The enticement is the proposed financial gain of owning a casino, only the enticement is based on the more successful casinos, of which there are very few of those. 4) During enrollment, if your constitution is based on family heritage and not blood quantum then once each member is verified it should be very difficult to remove them from the rolls (Goode, 2014, personal communication).

A recent study (Tatum et al., 2014) devotes an entire chapter to defining and revoking tribal citizenship in constitutions. Many constitutions do in fact define the terms under which citizenship can be terminated, but generally not without having committed some transgression against the tribal community, and not without due process. “Some tribal nations do not have any option for revocation or surrendering citizenship – once a citizen, always a citizen. Tribes that include grounds for revoking citizenship list actions such as dual enrollment, misconduct, or ceasing to be a resident” (Tatum et al., 2014, 51). Some tribes permit disenrollment in the event of clerical mistakes or fraud, but these conditions appear in constitutions pretty rarely.

Though traditional societies had social contracts, the idea of a written constitution that has to be followed to the letter of the law is something unique to the American experience. Tribal societies in North America tended to operate much more under principles of common law, convention, and tradition, which were intended to promote reconciliation, not an abstract search for the truth via adversarial argumentation, like in the US system (Harvard Project, 2008). Though some constitutions pre-date the Indian Reorganization Act (IRA) of 1934, this is the origin for many of the tribal constitutions operating today (Tatum et al., 2014, p. 18). IRA constitutions essentially set up a council-manager form of government akin to cities in the United States, based on the Wilsonian corporate-statist notion of the politics-administration dichotomy. As such, they typically do not have separation of powers into three branches of government, only between an elected council and an appointed manager, the tribal administrator. Many of the bureaucratic functions, including the verification of citizenship, are carried out by committees of tribal citizen-members, rather than professional administrators. Without an independent judiciary it would seem that these tribes might have a tendency to violate the civil rights of their citizens, but this seems to not be the case. In fact, the quantitative model shows that though there are few California tribes with IRA constitutions, they do not typically disenroll their members, and those that do could probably be considered outliers. Tribes with IRA constitutions tended to not be terminated, with a few exceptions; Big Valley Band of Pomo Indians, Quartz Valley Reservation, and Wilton Rancheria. Perhaps this is part of the reason why tribal governments organized under this institutional framework are less likely to infringe upon the civil rights of their citizen-members.

### **Tribal Courts**

Tribal courts can go a long way in protecting the civil rights of their citizen-members. Though they are rule-bound, courts can make policy. Tribal court systems that also rule based on common law and traditional practices, which are typically designed to be more conciliatory, are able to prevent the disenrollment of their citizens. But like any other institution of government, this requires the political will of those involved. The “Nooksak 306” was a recent

example involving an extended family disenrolled by the tribal council of the Nooksak Tribe in Washington State because they had a Filipino ancestor. They were victorious in getting reinstated by the tribe's appellate court, which ruled that they were members under the tribe's constitutional requirements and traditions. However, despite the involvement of the BIA and federal courts, the issue remains unresolved.

Roughly 24 percent of the tribes in California have a viable court system (California Tribal Court Directory, 2014). This is not a great number, but perhaps can be explained by the fact that California tribes are still governed by Public Law 280, which is a termination-era statute that enables state authority over tribal sovereignty as it pertains to criminal matters (Goldberg-Ambrose, 1997). Hence, if there are tribal courts at all, they tend to be limited to regulatory policy or civil disputes. The disenrollment issue is further complicated by the fact that some of these courts in California have extremely limited jurisdictions and may not hear enrollment cases. Some tribes may not have their own courts, but belong to consortium courts. This may not be a bad thing, however, as they may be more objective when ruling on political issues affecting a particular tribe. They may even have non-Indians sitting as judges (Wilkins and Stark 2011) who may have a different perspective regarding citizenship than tribal governments currently do.

Disenrollment is a serious civil rights violation perpetrated by some tribal governments on their citizen-members. Key variables contributing to the practice likely include tribal casino ownership, a history of termination, lack of an IRA constitution, or a viable court system. The quantitative model discussed below attempts to get at why 24 of the 80 tribes that allegedly have disenrolled their citizens come from California. What is it about California tribes that make them more likely to disenroll their citizens?

## Data and Methods

Data are hard to come by concerning tribal membership issues and population. Tribal governments are not required to follow open records or transparency laws. Most citizenship rolls are kept secure and away from the public eye, even within the tribal community. The Bureau of Indian Affairs doesn't share such information either, on behalf of tribal sovereignty. Many tribal officials deny that they engage in the practice. "We don't disenroll" is a frequent response. They simply maintain that the disenfranchised citizens were never part of the tribal community to begin with. Or, they will use another euphemism like "banishment" to imply something different than the current reality (Wilkins and Wilkins, 2017). This adds insult to injury for those who have had their civil rights violated.

Nevertheless, the people who have been wronged are willing to talk, either to me or to reporters. So, personal communications, media reports, and blogs, comprise the basis for data on disenrollment. Even if they are not academic sources, they are the best we have. American Indian Rights and Resources Organization (AIRRO) and Original Pechanga maintain good reports on what happens with regard to membership disputes, with links to journalistic sources, such as *NDN News* and *Indianz.com*. The most complete list, though a bit dated now, came from Central Valley American Indian Movement (AIM) (Wass, 2007).

Data on population, which I used to calculate the percentage disenrolled, were available from several sources, including the San Diego State University Library (White, 2011). However, data are more readily available on other issues, such as Indian-owned casinos, constitutions,

which tribes were terminated and later restored, court systems, and the like. These sources include, state and federal websites, legal rulings, and interest groups.

## Cases and Variables

The units of analysis for this study are 106 federally acknowledged California Indian tribal governments. The dependent variable is the percentage of the tribal community disenrolled. This can mean that acknowledged tribal citizens were removed from the official membership rolls, or in the event a tribal government had their acknowledgment restored following termination, they could simply have been left off the revised rolls. The key causal variables include the presence of a tribally-owned casino, and whether a tribe was terminated under the California Rancheria Act of 1958. Control variables include region within the state of California (loosely based on the BIA's regional offices), whether the tribe has an IRA constitution resulting from the Indian Reorganization Act of 1934, and the presence of an authentic tribal court as determined by the California Tribal Courts Directory.

## Hypotheses

This study considers a main hypothesis regarding the cause of disenrollment. It pertains to both casinos and a history of termination/restoration. A secondary hypothesis considers the role of tribal constitutions and court systems in protecting due process and civil rights.

**H1: Casino-owning tribes that were terminated are likely to disenroll citizen-members.**

**H2: Tribal governments with IRA constitutions and viable tribal court systems tend to not disenroll their citizens.**

I expect to find my hypotheses substantiated. The question is to what degree they will matter. Though casinos are blamed for a variety of social ills, not all casino-owning tribes disenroll their citizens. We should be careful about blanket generalizations in that regard. Termination is likely to be a significant causal factor. In fact, I argue that disenrollments are but a continuation or devolution of the 1950s federal and state extinction/assimilation policy, just on an individual or familial level. The effects of termination are long-term, and have done permanent damage, contributing to current legitimacy crises in Indian Country. The presence of legitimate governance however, may indicate a possible solution to the problem.

## Analysis and Discussion

Roughly two dozen California Indian tribes<sup>6</sup> have been accused of disenrollment, having allegedly dismembered 3,096 citizens from tribal rolls totaling 12,549, or roughly 25 percent of the aggregate population of those tribes (see Table 1). To compute the percent disenrolled,

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<sup>6</sup> California tribes accused of disenrolling member citizens include; Bear River (Rohnerville) Wiyot, Berry Creek Rancheria of Maidu Indians, Big Sandy Rancheria, Cahto Tribe of Laytonville Rancheria, Cedarville Rancheria, Cold Springs Rancheria, Coyote Valley, Dry Creek Rancheria of Pomo Indians, Enterprise Rancheria, Guidiville Rancheria, Mooretown Rancheria, Pala Band of Mission Indians, Paskenta Band of Nomlaki Indians, Pechanga Band of Luiseno Indians, Picayune Rancheria of Chukchansi Indians, Pinoleville Pomo Nation, Redding Rancheria, Pit River Tribe, Robinson Rancheria of Pomo Indians, San Pasqual Band of Diegeno Indians, Santa Rosa Band of Cahuilla Indians, Shingle Springs Rancheria, and Table Mountain Rancheria. Sources: AIRRO 2014; Brennan, 2009; Native Strength, 2011; Original Pechanga, 2014; Tribal Corruption n.d.



which is the dependent variable for the advanced statistical analysis, we need the total population of the tribe, and the number of people disenrolled. Without either one of these, the percent disenrolled is considered missing data for the analysis. In some cases, the percent disenrolled was reported, and from that I could compute the missing figure as long as I had one of the other numbers.

Table 1: Population Data on California's Disenrolling Tribes

<b>Name of Tribe</b>	<b>Population</b>	<b>Citizens Disenrolled</b>	<b>Percent Disenrolled</b>
Bear River Wiyot (T)	96	*	*
Berry Creek	304	58	.19
Big Sandy (T)	495	30	.17
Cahto Tribe	129	26	.20
Cedarville Rancheria	35	2	.06
Cold Springs (T)	275	60	.22
Coyote Valley	225	100	.45
Dry Creek Pomo	970	143	.15
Enterprise	872	72	.08
Guidiville (T)	*	20	*
Mooretown (T)	240	85	.35
Pala Band	1065	160	.15
Paskenta Band (T)	300	70	.23
Pechanga Band	1370	560	.41
PRCI (Chukchansi) (T)	1600	1100	.69
Pit River	2400	*	*
Pinoleville (T)	305	30	.10
Redding (T)	261	76	.29
Robinson (T)	200	50	.25
San Pasqual	300	150	.50
Santa Rosa Cahuilla	140	35	.25
Shingle Springs	504	138	.27
Table Mountain (T)	290	130	.45
United Auburn (T)	170	*	*
Total: 24	12,549	3,095	.25

Compiled by author from various sources including; AIRRO, Native American Encyclopedia, Original Pechanga, and Wikipedia.

\*Missing data.

T = Terminated tribe under the California Rancheria Act of 1958. 12 out of 25 on this list were terminated.

Many of these tribes are located in the Central California region. Less than a third of casino tribes (17 of 59, or 29%) disenroll, less than 40% of tribes with a history of termination (12 of 31, or 39%) disenroll. But, if one looks at the subset of terminated tribes that own casinos, a substantial majority of these tribes (10 of 17, or 59%) have disenrolled citizens. On the other

hand, tribes with IRA constitutions and/or viable tribal court systems tend to not disenroll their citizens, suggesting that there are perhaps some inherent institutional protections that prevent the practice in these tribes (see Table 2). These also might have been contributing factors that prevented their termination in the first place, hence enabling them to survive with relative stability compared to the terminated tribes, which might have had some sort of institutional instability when the state of California was terminating tribes.

Table 2: Characteristics of Disenrolling Tribes vs. Non-Disenrolling Tribes

CA Indian Tribes	Casino	Terminated	IRA Constitution	Tribal Court*
Disenrolling Tribes (n=24)	17	12	1	4
Non-Disenrolling Tribes (n=82)	42	19	12	21
Total (n=106)	59	31	14	25

Compiled by author from various sources including; AIRRO, Native American Encyclopedia, Original Pechanga, and Wikipedia. Note: not all terminated tribes were restored.

\*Includes tribal consortium courts. Not all tribal courts necessarily hear membership complaints, but many do.

Half of the non-disenrolling tribes have a tribal court system and the preponderance of the IRA constitutions. Of the disenrolling tribes, only the Cedarville Rancheria has an IRA constitution, but is likely a statistical outlier due to the tragic nature of the case. At Cedarville Rancheria in Modoc County, Cherie Rhodes, a former tribal chairperson, and her son, were accused of corruption and embezzlement and ousted from their positions on the council and were in the process of being banished from the tribe and evicted from tribal housing when Ms. Rhodes shot and killed four people at the tribal government office. Another two people were stabbed when her gun jammed and she grabbed a knife out of the kitchen. Cherie Rhodes was found guilty and sentenced to death in California Superior Court (Comstock, April 10, 2017). She and her son remain banished (as their tribal community refers to disenrollment) to this day. If the tragic example of Cedarville Rancheria is excluded, the remaining disenrolling tribes do not have IRA constitutions. Only four of the disenrolling tribes have tribal court systems, roughly 17 percent of the total, meaning that 83 percent of tribes that are accused of disenrolling their citizens do not have viable court systems to protect the rights of their member citizens.

There is a moderate, statistically significant (at the .05-level) relationship between the dependent variable, percent disenrolled, and casino ownership (Pearson's  $r = .250$  and Kendall's tau  $b = .220$ ), and a history of termination (Pearson's  $r = .204$  and Kendall's tau  $b = .196$ ) (see Table 3). The Pearson's  $r (-.092)$  also shows a negative relationship between the IRA constitution variable and the percent disenrolled, though it is not statistically significant. There is a negative relationship between the termination variable and having a tribal court. The Pearson's  $r = -.210$  and is statistically significant. The Kendall's tau  $b$  also reflected a negative relationship ( $-.177$ ) but was not statistically significant. There is also an interesting inverse relationship between region and termination (Pearson's  $r = -.345$  and Kendall's tau  $b = -.340$ , both statistically significant at the .01-level), indicating that most of the terminated tribes are located in the north or central regions of the state, due to the way the data were coded. As it

turns out, most of the tribes with court systems or affiliations with consortium courts are located in the southern part of the state, and these tended to not be terminated. Not surprisingly then, there is a moderate, positive relationship between region and tribal court systems (Pearson's  $r = .361$  and Kendall's tau  $b = .271$ ) that is statistically significant at the .01-level. A caveat though, is that correlation does not necessarily mean causation.

Table 3: Correlations on Disenrollment Variables

		<b>%Disenrolled</b>	<b>Terminated</b>	<b>Casino</b>	<b>IRA Constitution</b>	<b>Tribal Court</b>	<b>Region</b>
<b>%Disenrolled</b>	Pearson r		.204*	.250*	-.092	.032	.042
	Kendall tau-b		.196*	.220*	.264	.884	.904
<b>Terminated</b>	Pearson r	.204*		-.023	-.067	-.210*	-.345**
	Kendall tau-b	.196*		-.023	-.067	-.177	-.340**
<b>Casino</b>	Pearson r	.250*	-.023		-.052	.086	.116
	Kendall tau-b	.220*	-.023		-.052	.139	.116
<b>IRA Constitution</b>	Pearson r	-.092	-.067	-.052		-.161	-.024
	Kendall tau-b	.264	-.067	-.052		-.153	-.028
<b>Tribal Court</b>	Pearson r	.032	-.210*	.086	-.161		.361**
	Kendall tau-b	.884	-.177	.139	-.153		.270**
<b>Region</b>	Pearson r	.042	-.345**	.116	-.024	.361**	
	Kendall tau-b	.904	-.340**	.116	-.028	.270**	

\*Correlation is statistically significant at the .05 level (2-tailed test). \*\*Correlation is statistically significant at the .01 level (2-tailed test).

N = 106. Minus sign simply reflects an inverse relationship.

In the regression model, the beta and t scores indicate a moderate, but statistically significant, causal relationship between casinos (beta = .237,  $t = 2.450$ ), termination (beta = .235,  $t = 2.288$ ), and the percent disenrolled variable. Unlike the correlations, this does indicate causality. Though the R-square is weak, that is probably due to the small sample size and the use of too many dichotomous variables. However, there is a clear distinction between the casino and termination variables, which show statistical significance at the .05-level, versus the IRA constitution, tribal court, and region variables, which function as control variables for the regression analysis and were not statistically significant.

Table 4: Regression Model of Disenrollment from California Tribes

Dependent Variable	Independent Variables	B	Std. Error	Beta	T
%Disenrolled	(Constant)	-.030	.047		-.629
	Casino	.061	.025	.237*	2.450*
	Terminated	.067	.029	.235*	2.288*
	IRA Const.	-.022	.036	-.060	-.611
	Tribal Court	.004	.020	.021	.201
	Region	.015	.020	.078	.728

R = .341

Adj. R-square = .075

F = 2.558\*

95% Confidence Interval for B

\*= Significant at the .05 level

With the first hypothesis, I posited that casino-owning tribes that had been terminated were more likely to disenroll citizens. The statistics, both descriptive and analytical, bear this out. On the flip side, with the second hypothesis I argued that tribal governments with IRA constitutions and viable tribal court systems likely would not disenroll their citizens. The data likewise substantiate these claims. The implications of the latter hypothesis indicate that institutional reforms designed to protect the rights of citizens from their governments are likely to prevent further civil rights violations. Imagine what could be achieved if the *Santa Clara* ruling was overturned and the Indian Civil Rights Act was actually enforced! Clearly the absence of viable tribal court systems in most of the California tribes has had a negative effect when it comes to civil rights protections.

### Conclusion: Decolonization and Traditional Culture vs. Adversarial Politics

The literature links disenrollment to colonization by demonstrating that as tribal sovereignty and self-determination increased, so did the disincentives for tribal governments to protect the human rights of their citizens (Gonzalez, 2003; Mezey, 1996; Wilkins, 2004). The restoration of terminated tribes through decisions like the 1983 Tillie Hardwick ruling, along with passage of the 1988 Indian gaming law, which on the surface appeared to be positive developments, have a dark side. The constitutions of some tribes are unable to prevent the abuse of power that leads to disenrollment. However, IRA constitutions (for reasons that I do not entirely understand) and viable tribal courts do seem to serve as a deterrent to such civil rights abuses. If nothing else, IRA constitutions can serve as a stand-in for continuity in tribal communities, and tribal courts can serve to illustrate the importance of institutional strength when it comes to protecting human rights.

The main contribution of this work is that it demonstrates the nexus between gaming and termination as twin causes of disenrollment. They co-vary. The findings of the quantitative model indicate that the long-term effects of termination are still being felt. That is why I argue that disenrollment is tantamount to individual-level termination. The federal government no longer terminates their recognition of Indigenous tribal peoples. They have instead devolved that practice to tribal governments. And just like during the termination era, people who are dismembered from Native communities are no longer considered American Indians. They are thus deprived of all the rights and liberties inherent in having citizenship in a recognized tribal community.

In today's world, civil rights are rights that government must provide and protect. Tribal governments, just like state governments, are not exempt from this standard. Article 33 of the UN Declaration on the Rights of Indigenous Peoples says as much by recognizing that "Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures" (UNDRIP 2006, 12). Many tribal governments have been taken in by modernist notions of political power, such as corporate statism, for instance. Power is seen as something desirable, to be held onto at all costs. To maintain power, politicians have to divide and conquer. There has to be an in-group and an out-group. In certain tribal polities, those who oppose the politicians in power find their citizenship rights and recognition terminated. In the words of former US President George W. Bush – an imperialist if there ever was one – "either you're with us, or your against us." There is no room for dissent. Those who vote the wrong way are simply removed from the polity.

The solution to this cancer of alien power structures in Indian Country is to decolonize. There needs to be a return to traditional culture, and it needs to be institutionalized through recursive practices. What this means is that traditional ways of governance need to be restored, and they need to supersede modern methods through repeated utilization, exercise and practice. The Navajo refer to this as the "life way," which is balanced, and often preferred to adversarial, legalistic politics, known as the "law way" (Harvard Project, 2008). Traditional cultures typically valued the contributions of every individual to society. As such, exclusion was reserved for only the rarest of circumstances (Wilkins, 2004; Wilkins and Wilkins, 2017). Unfounded individual terminations violate tradition. My recommendation for tribal polities is to manage their affairs using as much of the old ways as can be recalled, while relying on constitutionalism to interface with the outside world. Only then can the healing begin.

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