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The Mississippi Choctaw: A Case Study Of Tribal Identity Problems

PHILIP LUJAN and L. BROOKS HILL

Nineteenth-century expansion of the United States moved many Native Americans west of the Mississippi;¹ that series of events concealed the large numbers of these people who remained in their southern homelands. Throughout the southeastern United States particularly are pockets of Native Americans. Most of these groups suffer from their absentee status.² These people are often deprived of federal assistance provided their western counterparts, and, because of reduced numbers, less federal assistance, and cultural differences, do not often have the power to overcome their poor circumstances. With the current, national trend toward cultural pluralism and ethnic identity, these absentee groups are struggling more vigorously to regain their identity, respect, and federal attention.

This paper examines the case of one absentee Native American band struggling to establish its identity and directions for a more prosperous future, and to project the legal, economic, and other social implications of their situation. Two major sections comprise this paper: The first section describes the current status of this group. The salient issues entailed by

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their current status are identified in the second section. Methodologically, the study is primarily historical and preliminary: From the historical description we attempt to conceptualize the situation in terms which will facilitate more empirically oriented field research.

CURRENT STATUS

The present confusing status of the Mississippi Choctaw derives from a unique historical relationship with the federal government and a modern legal contest with the state government over jurisdiction. To understand their specific historical relationship, one must consider the general treatment of Indians by the federal government. Although it may appear tedious, this overview is also necessary to understand two recent Choctaw cases. Many minor legal technicalities will be summarized but not discussed to render the complex total situation more comprehensible.

Historical Review

The Choctaws trace their legal relationship with the federal government to 1786 when the first in a series of treaties was signed.³ The act of signing a treaty was an implicit recognition by the federal government of the autonomous and self-governing authority of Indian tribes. When the U.S. was still a relatively weak nation it needed sufficient tranquility on its borders to insure stable growth. The practice of treating with Indian tribes did not cease until 1871 when the U.S. government felt secure. The treaty of 1786 defined the northern border of the Choctaw Nation. Following this initial treaty, a series of seven others culminated in the Treaty of Dancing Rabbit Creek in 1830. The Treaty of Dancing Rabbit Creek ceded the last of the tribal land held in Mississippi which was 10,500,000 acres. This figure, when added to the territory ceded by the various previous seven treaties, totaled 23,119,964 acres.⁴

The Dancing Rabbit Creek treaty was the final mechanism to accomplish the removal of the Choctaw from Mississippi. Unquestionably, the governmental policy encouraged removal;

however, to avoid another Cherokee tragedy a provision allowed individual Choctaw families to remain in Mississippi. Persons opting for this alternative were allowed 640 acres per head of household and a lesser acreage for children and other family members who remained in the household. Those Choctaws remaining became citizens of the state and forfeited their trust status in five years. Most of the Choctaws moved to Oklahoma, but approximately 5,000 remained in Mississippi.⁵ The option to join their departed tribesmen in Oklahoma, plus federal incentives, were enough to pare the original 5,000 population to around 2,000 by the early 1900s.⁶ There is little controversy that the federal relationship with these remaining Choctaws was severed; however, the treaty contained no provision concerning their future disposition. Several individuals who represented themselves as Choctaws unsuccessfully sought recognition and thus federal benefits. This group of people was separate from those full-blood Choctaws who remained under the provisions of the 1830 treaty.

For the most part, the Mississippi Choctaws lived in poverty and anonymity among their rural neighbors. Unfortunately, this anonymity extended to the Mississippi state government. In the Supreme Court case of *Winton v. Amos*,⁷ the court noted that the remaining Choctaws were denied state services and all social and political privileges. This apparent lack of responsibility by the state prompted the Mississippi congressional delegation to secure federal aid for the Mississippi Choctaws. If obtained, this would place them de facto within the traditional Bureau of Indian Affairs (BIA) framework for providing trust services. To assess the situation, the BIA sent special agents to the Choctaws in 1908 and 1916. This action was prompted by the initial filing in district court of the *Winton* case which preceded the Supreme Court final decision date of 1921. Their reports of the poor economic and health conditions prompted federal action. In 1918 Congress passed a relief act which appropriated money for the establishment of an Indian agency for the construction and maintenance of day schools, for the purchase of land, and for the encouragement of farming and industry.⁸ The agency was established quickly and seven day schools, one in each of the Choctaw communities, were built by 1930. A BIA hospital was opened in 1929. Moreover, between 1918 and 1931, Congress passed twelve specific appropriation acts for the Mississippi Choctaw.⁹

At this time the Choctaw benefited from a change in federal Indian policy. The Indian Reorganization Act (IRA) of 1934 represented an attempt to strengthen tribal governments and to recognize their inherent autonomy.¹⁰ This act changed the assimilationist policy of the Indian allotment era by ceasing allotments and extending the trust status of Indian lands indefinitely. It also provided an organizational charter for Indian governments and delegated congressional power to the Secretary of the Interior to create reservations. The Mississippi Choctaw voted to organize under the provisions of the IRA in 1935. Four years later the Interior Department sponsored an act which placed all of the land purchased for the Mississippi Choctaw since 1918 in trust by the United States.¹¹ A government report¹² stated that one of the purposes of the 1939 act was to facilitate matters if the Choctaws chose to organize under the IRA. The final link in this chain of federal events was a proclamation issued by the Secretary of the Interior on December 4, 1944,¹³ which recounted past federal action and declared Choctaw lands to be an Indian reservation for the benefit of the Mississippi Choctaw.

Since 1944, the Mississippi Choctaws with federal assistance have worked steadily to develop the services provided by the tribal government. A demographic survey performed in 1974 revealed that 3,783 Choctaw Indians of at least half-blood lived on or near the seven village communities.¹⁴ The seven communities which remain as cultural centers are Bogue Chitto, Bogue Homa, Conehatta, Pearl River, Red Water, Standing Pine and Tucker. A fascinating statistic provided by the study is that 80 percent surveyed speak Choctaw in their homes as the primary language. In contrast only about 7 per cent primarily speak English in the home. Bilingual Choctaw-English programs are offered in elementary schools and a recently completed Choctaw high school. The tribal government is housed in a modern complex of office buildings built with the aid of federal assistance.

A significant effort of the Choctaws has been the establishment of a tribal court system. Law enforcement is provided by the tribal members who are trained and salaried by the BIA. The tribal Court of Indian Offenses is established and supervised by the Secretary of the Interior to enforce a code developed by the BIA. In 1974 a tribal jail was completed, eliminating the necessity of using local county jails considered unsafe for

Choctaw inmates.¹⁵ A juvenile offender program was initiated in 1968 using the facilities of a recently completed tribal youth center as well as tribal foster homes. However, a recent (1977) court decision suspended tribal law and order and the tribal court system's operation. Both tribal operations have been resumed with the final Supreme Court opinion which was handed down Friday, June 23, 1978.

Recent Cases

Since 1944 the Mississippi Choctaw have enjoyed the advantages of federal recognition and trust status; health benefits, education, and general federal development support. This increased federal support has brought needed jobs to the reservation. Nothing had arisen to question the basis of federal support prior to 1972. The legal issue of Choctaw status arose as a consequence of a complex sequence of events that involved a civil suit and a criminal case. Specifically, the federal trust status question arose in a civil suit initiated in 1972 by the federal government acting in its trust capacity and as a result of two Choctaw individuals indicted by both federal and state courts for an identical incident that occurred in 1975.

Events leading to the civil suit began in 1965. The Choctaw tribal council, pursuant to federal regulations, established a governing body necessary for participation in the Department of Health, Education and Welfare's housing programs. To facilitate the building of more homes on a specific grant amount, a non-profit development company was incorporated in 1970. This corporation was incorporated under Mississippi law to perform the actual construction of the Choctaw homes. The decision to incorporate under state law was a serious tactical error, because other options were available to the tribe. The development corporation was subsequently awarded a large contract, and construction of homes began. The State Tax Commission then assessed the corporation a tax based on the federal contract. The corporation and the tribal council ignored the assessment citing their tribal status and their special exemption which had been passed by the Mississippi State legislature in 1968. This exemption, apparently lobbied for by the Mississippi Choctaw, was a tactical error also. Given the federal status of the tribe, the state act was superfluous for it

only strengthened the state's impression that its laws had effect on the reservation.

The Tax Commission subsequently filed a notice of a tax lien against the corporation for approximately \$19,000. Neither the corporation nor the tribe attempted to pursue state remedies. Thus, in 1972, the United States, in its role as trustee, filed an action in federal district court seeking an injunction against the state tax commission.¹⁶ For procedural reasons the district court did not allow the federal government to pursue the action. The development corporation proceeded, and the court eventually ruled in favor of the corporation. The court then enjoined the tax commission from pursuing any assessment action. The tax commission appealed the decision to the United States Fifth Circuit Court of Appeals. At the appellate level the tax commission prevailed. In reversing the lower court's decision, the higher court held that the development corporation did not partake of the sales tax exemption granted the Choctaw Tribe in 1968; it was a separate entity incorporated under and bound by Mississippi law. If the decision had stopped there, the Choctaws merely would have needed better legal advice concerning their federal status in future business ventures. However, the court continued and further stated that the tribal character and federal relationship of the Mississippi Choctaw ceased with the signing of the Treaty of Dancing Rabbit Creek in 1830. Furthermore, this termination of federal status was not determined by either the Indian Reorganization Act or the Department of Interior's proclamation of 1944, classifying the Choctaw lands a reservation and the tribe federally recognized.

The court reasoned that only "Tribes" could organize and partake of the advantages afforded by the Indian Reorganization Act. Since the "official" Choctaw tribe had removed to Oklahoma, what remained in Mississippi was merely an assemblage of Choctaw individuals. They were not a tribe but state citizens. Thus the Interior Department's proclamation also was null and void, because it derived its basic authorization for granting of reservation status from the Indian Reorganization Act. This decision created a unique situation, because Indian tribes usually sue the federal government for recognition. Here the federal government actively endorsed recognition, while the state courts declared such endorsement was without legal effect. Although dissatisfied with the result, the

Solicitor General's office did not appeal the Circuit Court's decision. They decided that a criminal case would present a better fact situation upon which to proceed. Thus the initial civil case questioning Choctaw tribal status had a rather anticlimactic ending.

The Fifth Circuit Court of Appeals' broad holding concerning Choctaw tribal status was revitalized within a criminal context. A Choctaw criminal case reached the Supreme Court in two separate actions, which were consolidated because of the similarity of their issues: *United States v. John*¹⁷ and *John v. Mississippi*.¹⁸ In these cases, the essential issue was the question of federal versus state jurisdiction. This issue, in turn, revolved around the legal status of the Choctaw tribe. For the sake of clarity, the facts of the case and the complex jurisdictional issue will be summarized.

In 1975, two Choctaw men, Smith John and his son Harry Smith John, were indicted and tried before a federal district court for assault with intent to kill within Indian country. The defendants were charged with assaulting a non-Indian, Artis Jenkins, who was attempting to collect a debt upon Choctaw trust land. The jury acquitted the defendants of the assault with intent to kill charge but convicted them of a lesser offense of simple assault. They were sentenced to 90 days and fined. The sentence was served and the fine paid.

The defendants appealed the conviction because they contended exclusive jurisdiction over simple assault by an Indian occurring in Indian country lies with the tribal court. They did not contest the jurisdiction of the federal court in Indian country but did challenge the extension of federal jurisdiction through the lesser included offense. This is the case titled *United States v. John*. The appeals court rendered its opinion on October 11, 1977.¹⁹ It denied the appeal holding that the Choctaw lands where the incident occurred are not "Indian country" and, that therefore, the federal district court had no jurisdiction over defendants to try them on any charge. This opinion agreed with the Mississippi Supreme Court decision reached earlier: Both decisions validated state jurisdiction and negated federal jurisdiction.

The assertion of state jurisdiction began in April, 1976, when the defendants were indicted by a Mississippi county grand jury. The charge was aggravated assault under Mississippi statutes. This indictment was based on the identical incident concerning

Artis Jenkins for which the defendants had been tried and sentenced in federal court. In the defendants' procedural attempts to dismiss the charges, double jeopardy and exclusive federal jurisdiction over the offenses were the issues in question. All of their arguments were denied and they were tried in state court, convicted, and sentenced to two years in the state penitentiary. This conviction was appealed to the Mississippi Supreme Court based on their previous arguments to have the charges dismissed. The State Supreme Court reached its decision prior to the Fifth Circuit Court of Appeals decision in *United States v. John* (discussed above). The state court held that Choctaw land was not Indian country, and, therefore, the federal court had no jurisdiction. This opinion rendered moot the defendant's double jeopardy and exclusive federal jurisdiction arguments. Both men served eight months of their state sentence and were released on bond pending the outcome of their appeal. One of the defendants, Harry Smith John, is now deceased.

SALIENT ISSUES

Despite the complex procedural aspects of the criminal cases, the central question for the Mississippi Band of Choctaw is whether the sequence of federal actions begun in 1918 and ending in 1944 were legally sufficient to reestablish them as a tribe. Even though this question was answered in June, 1978 in their favor, the implied problems deserve continued concern, because analogous situations with other tribes continue to surface around the Indian Country. The salient issues are the viability of the legal system as a tribal remedy, the legal sufficiency of federal action, and Indian law problems in general. From the basis of these legal concerns, this section will examine some related economic and social implications.

Legal Issues

The Mississippi Choctaw's struggle for legal and cultural recognition is a classic example of the frustration associated with the ineptness of our adversary legal system. The American legal system is not designed to handle policy questions such as

those involved in Indian cases. The ideals of the system are the establishment of factuality and the application of precedent to the factuality. This is accomplished, insofar as possible, through the application of objective criteria and a plethora of technical procedures. Concerning Indian tribes, the system has many shortcomings. For example, expense and delays are serious problems because tribes have little tribal money and often need rapid solutions. The criminal cases presented above were begun in 1975 and finalized in 1977. Three years is a long wait for a decision which will affect tribal planning and federal funding.

Through the application of the doctrine of precedence, time also becomes a serious factor. Past decisions function as a constraint on future decisions. Having precedent or a line of cases which substantiate one's case gives a considerable advantage. In the volume of Indian cases this is still a problem. The quantity of cases is misleading, because the federal government recognizes over three hundred and sixty tribes. Every tribe is unique and, despite certain similarities, generalizations are dangerous. Thus, an ill-advised law suit, advanced by a tribe with a weak case, can hurt other tribes with entirely different circumstances or lead to unnecessary cases filed out of confusion. Although decisions are formally limited to the particular case, as a practical matter they often have the effect of establishing law for all tribes.

Because the stakes of legal litigation are high, each side must exploit every procedural advantage possible. This compounds the time and cost problem. More substantially, however, minor procedural points can force a decision without an examination of the actual merits of the case. Where this works to the advantage or disadvantage of both sides, tribes are often seeking a definitive statement of their situation which is not conclusively provided in procedural histories. Considering these problems at a personal level, the Indians are perplexed by a system which is so procedurally oriented, which avoids a definite conclusion, which determines their fate in abstract concepts, and which makes decisions in remote places.

Several legal issues from the criminal case deserve attention. To discuss all of the arguments and variations of those arguments presented by the various interests in these cases is not feasible. Briefs were filed by the State of Mississippi, the United States, the individual Choctaw defendants, and the Mississippi Choctaw tribe. Anyone wishing to pursue the

issues in detail should read the briefs. However, during oral argument before the Supreme Court, interest centered around the arguments concerning the Indian Reorganization Act.²⁰ Because of its importance to the High Court and to the Choctaw, we will examine this aspect and extend its implications.

The Fifth Circuit Court of Appeals and the Mississippi Supreme Court both construed the Indian Reorganization Act as being limited to Indian tribes living on reservations which were in existence in 1934. Section 7 of the act authorized the Secretary of the Interior to create new reservations on lands purchased pursuant to the IRA. The use of this section to justify the Interior Department's proclamation of 1944, which recognized the Mississippi Choctaw as a tribe, was used by the tribe. The state, however, maintained that Section 7 applied only to Indians living under federal tutelage as well as Indians who did not wish to give up their tribal affiliation. In this respect, the state of Mississippi claimed that, since the Treaty of Dancing Rabbit Creek, the Mississippi Choctaws did not live under federal tutelage. The tribe, on the other hand, argued that to accept the state's contention would render Section 7 meaningless; it could only be applied to situations which did not involve federal recognition.

The argument considered toughest by the defendant's co-counsel, Richard B. Collins, concerned Section 19 of the IRA.²¹ This provision defined "Indian," for the purposes of the Indian Reorganization Act, as members of tribes, their descendants living on reservations in 1934, and all other persons on one-half or more Indian blood. The latter clearly appears to include the Mississippi Choctaws. However, it causes problems for the tribe because previous Supreme Court decisions have asserted that the special Indian status is a political relationship and not a racial relationship. Thus, tribal citizenship, which is traced through the tribe to the treaty relationship with the federal government, is not simply based on individual ancestorship of Indian people. The state has maintained all along that the Choctaws are racial Indians, not political Indians. The lawyers arguing the tribe's racial position assert that the phrase still refers to a political connection, because Congress was attempting by their definitions to insure that the act had a broad beneficial effect but was still limited to descendants from an

Indian tribe close enough to justify the special status. Thus, Indians of a blood quantum less than one-half were not sufficiently, politically related to the Indian tribal problems which justify their trust status. These definitional problems may appear insignificant, but they attracted the court's attention. These problems further provide an excellent example of the difficulty of litigation to focus on substantive concerns, rather than legal minutiae.

The jurisdictional conflict surrounding the status of Indian tribes continued from the 1830s with the early Cherokee cases. The precedent established in early cases is still applied. The main proposition is that, without express congressional consent, state law has no application on Indian reservations.²² The plenary power of Congress to control Indian affairs and the guardian-ward concept were established also. At first only an analogy, the guardian-ward relationship has provided the legal doctrine to justify recognition of tribal governments and provision of federal services. The notion of the federal government acting as the trustee for Indian interests was functional also as a convenient means to advance federal superiority over the states. Through the courts, the federal government has consistently and jealously guarded its superintendance of the Indian-trust relationship against state intrusion. When Indian tribes have lost in court they have primarily lost relative to the federal government's power, and not the states'. Despite the confusion, Indian tribes have benefited from the conflict between the federal and state governments. They also realize that, if someone must regulate, the federal government is preferable to the state. Thus, the legal framework was established to allow the federal government to regulate almost every facet of Indian people's lives. This regulation has brought both frustration and satisfaction to Indian people.

The federal-state conflict over Indian status has resolved itself into an uneasy truce. In the western states, with a large concentration of Indian reservations, practically every situation in relationship to tribes has been litigated. States have always resented the existence of what they consider to be "islands" of federal jurisdiction within their territory.²³ National forests, federal enclaves, and military bases are tolerated; their existence to the national welfare is direct. However the perpetuation and promotion of Indian tribal sovereignty has always tried the

patience of the states. This is particularly vexing to the states because the Supreme Court has resolved consistently ambiguity of documents in favor of Indian people. The High Court will usually defer also to the supposed expertise of the federal administrative branch concerning the discharge of the trust responsibility.

In fairness to the states, it should be noted that the unique relationship between the federal government and Indian tribes is a peculiarity within our political system. In fact, the relationship represents an anomaly to the modern and consistent desire for uniformity; instead of deriving from a singular perspective, the relationship was fabricated as a combination of differing perspectives to meet the needs of both Indian people and the federal government. Nowhere else has a government that has conquered an indigenous native people given those people local governing power and legal recognition. Mississippi is relatively new to this anomalous area of federal law. But, like her sister states with Indian reservations who have probed limits of their state sovereignty in relationship to Indian tribes, the threat to Mississippi sovereignty is clear.

The threat to tribal survival and sovereignty is also clear. Mississippi has demonstrated its inability by past behavior to provide full citizenship and recognition of the tribal concerns for survival. Indian people have fared well in the Supreme Court. They are accustomed to losing at every level until they reach the Supreme Court. The complex historical background of the Mississippi Choctaw and their present legal position embodied in the two criminal cases recently before the Supreme Court fit this pattern well. The High Court's resolution temporarily favors the Indian, but in another day on other issues the inherent controversies will surface over again, informally or formally, depending on the strategies employed by the different parties involved.

Economic and Social Implications

The legal issues confronting the Mississippi Band of Choctaw closely relate to the economic issues. As the case of *Chata Development Corporation v. Mississippi Tax Commission* revealed, the tax exempt status of the corporations is very important.²⁴ If several corporations are formed within Indian reservations,

each tax exempt and competing with other existing businesses, not only does the state lose revenue from the Indians but from other businesses which pay taxes as well. Other extensions of tax exemptions are likely also, for rulings in cases in other states have permitted exemptions from state income tax derived from activities within the reservation and from taxes on cigarettes.²⁵ The impact of the tax exemptions will ultimately affect the limited state tax base and entire economy of a sparsely populated, rural, agricultural county.

Without tax revenue, other issues surface. How, for example, does the county provide services in areas of questionable jurisdiction? Chances are that the county will provide few, if any, services, thus worsening the circumstances of the Indians. A favorite ploy of the states and counties has been the attempt to direct Indians desiring state services to the local BIA offices. In reality, states are obligated to provide services to Indian people, even though they are non-taxed. Arizona, which contains the majority population of the Navajo reservations, has led the unsuccessful state resistance to the extension of state services to Indians.

The jurisdictional problems are also irritating to counties which realize they have very little control over how the Indians use their land. They may confound zoning provisions, oversaturate the community with certain businesses, or minimize use of non-Indian lands adjacent to reservation lands outside of state control. Many Indian tribes view zoning practices and the enforcement of environmental protection laws as an unfair limiting of tribal industrial development. Tribes late to the industrial development area feel regulations are specifically aimed at restricting tribal development. An analogous situation arises over fish and game laws. Now that their lands are recognized as reservations, Mississippi Choctaws will be exempt from state fish and game regulations: state licensing, seasonal limitation, and bag limits illustrate the exemptions.

When federal money moves into a poor, rural county, other problems surface. Because federal salaries are nationally competitive, the federal money tends to inflate the local economy, artificially producing disparities which create difficulties for many of the citizens who cannot match the inflationary cycle. Oftentimes, non-Indians hold the federal jobs and return to the general community where the salary disparity is more conspicuous. Not only are the economic disparities

apparent, but community members who seek those lucrative jobs encounter federally-sanctioned preferential hiring of Indians.

A final and even more perplexing economic problem stems from tribal competition for federal monies. The federal budget is conceived as a limited pie; the more times one cuts it up, the smaller the pieces for each one served. Thus, other Indian tribes may not fully support the Mississippi Choctaw in order to keep from sacrificing their own welfare. In fact, during the recent Mississippi Choctaw litigations, government agencies such as HEW and HUD scrutinized federal assistance to a group in questionable status. Had these agencies not investigated, other Indian tribes may well have initiated inquiry concerning federal support for an unrecognized group. To non-Indian observers, the tendency to presume Indian unity is likely, but thus very inaccurate. The politics among Indian groups, even intra-tribally, is often divisive and non-productive. Thus, one tribe may keep another from obtaining federal money to protect their own self interest.

Accompanying the legal and economic issues are several social and political implications. Because of the economic problems associated with their tax exempt status, their lack of controlled land use, the inflated economy, and a general misunderstanding of the rationale for special Indian privileges, local communities are often hostile in their discrimination against Indians. This discrimination, in turn, creates a distance between the Indians and other members of the community which perpetuates distrust and misunderstanding by each group. One of the particularly salient issues, for example, involves the overculture's "theft" of orphaned Indians. Adoption and foster home laws are established by the states. Because of their poverty, Indians often cannot meet such standards, especially requirements concerning specific minimum ratios of home floor square footage and window space. Given these inadequacies, the Indians cannot adopt orphans of their fellow tribal members. In fact, on most reservations under state control, over ninety per cent of Indian children up for adoption go to non-Indian families. This creates cultural transmission and maintenance problems, as well as grave distrust of the overculture.²⁶

People in our society generally resent special prerequisites unless they are receiving them. When these same people see the

preferential treatment of Indians by the federal government, they react negatively. This reaction is not limited to the public majority but to other ethnic minorities, especially Blacks. Were one to survey the non-Indian residents of the Choctaw-occupied counties in Mississippi, the level of ignorance about the federal government's relation to Indians would demonstrate well this basic aspect of discriminatory behavior. This problem grows when it is confused with the different notions of civil rights in the South. To most southerners, civil rights refers to forced integration and is identified with Blacks. This concept of civil rights is inapplicable to the guardianship the federal government maintains regarding Indians; in fact, the federal policy toward Indians is the continued maintenance of their separateness. This distinction is typically misunderstood, thus perpetuating and intensifying the aggravation over special privileges.

Internal tribal politics also confounds the unity of Indian groups. The problems often result from the curious efforts of Indians and the federal government to graft the political system of the overculture onto their tribal political system. The product of this grafting is often unwieldy, violates cultural norms deeply entrenched, and leads to non-productive in-fighting. One example of these difficulties is nepotism. Select families traditionally tend to dominate Indian tribes. That approach is inconsistent with the procedures of democratic government and often produces intense family controversies and power struggles. In some instances, democratic elections have created new political groups eager to extend their influence into areas formerly held by traditional family or other leadership groups. Half-bloods or less, whose participation was traditionally limited, are now able to participate fully. The impact of this will be aggravated further by the increasing intermarriage rate. Indeed, someday such people could hypothetically vote the tribe out of existence and liquidate its assets.

The internal and external social and political issues which confound the Mississippi Band of Choctaw tend to generate a broader problem of which way to turn. If they seek assimilation into the broader culture of the area, they are confounded by the ignorance and distance between them and the non-Indians of their communities. If they seek segregation and cultural separation, then they must devise a means to unify

their scattered populations and channel their political activities constructively and collectively. Vacillation of federal Indian policy certainly does not clarify this situation; but without this assistance, their chances are weakened.

CONCLUSION

This paper investigated the implications of recent litigation about the tribal identity of the Mississippi Choctaw. The legal, economic, and other social issues which confront this tribe are complicated and pervasive. Although generalization from one case is dangerous, the litigation and implications will probably recur in various fashion throughout the country. To recognize aspects of the broader intracultural and intercultural problems involved may assist Indians and non-Indians to address their mutual problems more humanely and fairly.

NOTES

1. See Grant Foreman, *Indian Removal: The Emigration of the Five Civilized Tribes of Indians* (Norman: University of Oklahoma Press, 1953).
2. A splinter group of a larger tribe who did not move with the main body of the tribe is called an absentee group or band.
3. See Angie Debo, *The Rise and Fall of the Choctaw Republic* (Norman: University of Oklahoma Press, 1961); and Grant Foreman, *The Five Civilized Tribes* (Norman: University of Oklahoma Press, 1934).
4. *United States v. State Tax Commission of the State of Mississippi*, 505 F. 2d 633, 639, (1974).
5. *Ibid.*, 640.
6. *United States v. John*, 560 F. 2d 1202, 1208, (1977).
7. *Winton v. Amos*, 255 U.S. 373 (1921).
8. 40 Stat. 561.
9. Brief of the Mississippi Band of Choctaw Indians as Amicus Curiae, *John v. Mississippi*, No. 775-575, 46 U.S.L.W. 3276; and *U.S. v. John*, No. 77-836, 46 U.S.L.W. 3401, at p. 9.
10. 25 U.S.C., subsections 461-79.
11. 53 Stat. 851.
12. House Report No. 194, 76 Cong., 1st Sess.
13. F.R. Doc. 44-19063.
14. *U.S. v. John*, No. 77-836, 46 U.S.L.W. 3401, at p. 8.
15. *Ibid.*, p. 11.
16. *U.S. v. State Tax Commission of Mississippi*, 505 F. 2d 633, 636, (1974).
17. *U.S. v. John*, No. 77-836, 46 U.S.L.W. 3401.
18. *John v. Mississippi*, No. 77-575, 46 U.S.L.W., 3276.

19. *U.S. v. John*, 560 F. 2d 1202 (1977).
20. Telephone interview of Philip Lujan with Richard A. Collins, co-counsel for defendants John and son, June 23, 1978. The following information regarding the oral arguments before the Supreme Court were provided by Collins.
21. *Ibid.*
22. Congress in 1953 provided a general assumption of jurisdiction by states over reservations known as Public Law 280, 67 Stat. 588-90, 18 U.S.C. §§ 1162, 28 U.S.C. §§ 1360. Five states were included mandatorily in the act: Alaska, California, Minnesota, Nebraska and Wisconsin.
23. Under P.L. 280 ten states extended full or partial jurisdiction over reservations. They are: Nevada, Florida, Idaho, Iowa, Washington, South Dakota, Arizona, Montana, North Dakota, and Utah. Because of retrocession (Florida and Nevada) and tribal challenges to state assumption of jurisdiction, reservation status should be checked individually.
24. See pp. 41-43 above.
25. *McClanahan v. State Tax Commission*, 411 U.S. 164 (1973), *Fox v. Bureau of Revenue*, 87 N.M. 261, 531 P. 2d 1234 (N.M. Ct. App., 1975).
26. National Congress of American Indians, *Position Paper of NCAI on Retrocession and Public Law 280*, adopted at P.L. 280 meeting, Denver, Colorado, November, 1975. *Arizona v. Hobby*, 221 F. 2d 498 (D.C. cir. 1954), *Morton v. Ruiz*, 415 U.S. 199 (1974), *Acosta v. San Diego County*, 272 P. 2d 92 (1954), and *State ex rel Williams v. Kemp*, 78 P. 2d 585 (1938).