7. A Creative State, Not a Welfare State: Creating a Constitution

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CHAPTER SEVEN

A CREATIVE STATE, NOT A WELFARE STATE

Creating a Constitution

The Lumbee Tribe of Cheraw Indians brings a lot of professional know-how so that it can become not a welfare state but a creative state. The American way is to improve things, produce a better product and improve the process. Our interest is to build people who are competitive in the American democratic society and who are competitive at all levels, whether it be business, industry or education. It is a multifaceted, integrated society, and the Lumbees want to continue that kind of interaction.

*Reverend Dr. Dalton Brooks, first elected chairman of the Lumbee Tribe, 1994*

After the national attention in the 1970s and 1980s gained by protests like the Trail of Broken Treaties and the Robesonian hostage taking, Americans had become more aware that many Indians lived in third-world conditions. Books like *Bury My Heart at Wounded Knee* and movies like *Little Big Man* and *One Flew over the Cuckoo’s Nest* helped show that these conditions were largely the fault of the federal government. For non-Indians those problems were far away, if not exactly long ago, but for Lumbees, they were omnipresent, and history presented few solutions. Leaders like D. F. Lowry, who had advocated for the Lumbee Act, did not want their people to suffer under the “services” provided by the federal government and federal recognition. Their vision of the Lumbee
future did not include federal services that could allow the United States to impose its will on the Lumbee people.

But younger Lumbee advocates believed that many of Robeson County’s problems could be addressed only if Lumbees could harness the full power of self-determination that federal recognition provided. Helen Maynor Schierbeck, in particular, had been an early advocate of the power of Indian-controlled education as a form of self-determination. Indeed, much of the civil rights activity of Lumbees and Tuscaroras had been focused on maintaining their independence within the public school system—an independence facilitated by racial discrimination but which provided a key way of exercising sovereignty, socially and politically. After desegregation and the obvious failures of the criminal justice system to support Indians’ constitutional rights, federal recognition became more urgent than ever.

Indian leaders have looked at federal recognition in the context of the history of colonization, justice, and self-determination. In 1961, dozens of tribal leaders, including Schierbeck’s father, Lacy Maynor, gathered at the American Indian Chicago Conference and wrote their own policy statement, “The Declaration of Indian Purpose.” It included a fundamental operating principle of sovereignty: American Indian peoples had exercised “the inherent right to live their own lives for thousands of years before the white man came.”¹ According to this historically rooted logic, an American Indian tribe should be able to define what a tribe is, and that tribe should define who its members are—in other words, Indians should define what an Indian is.

But over time, U.S. laws and policies have interfered with American Indians’ rights to exercise these basic principles of sovereignty. In one way, federal recognition policy is an attempt to repair this damage. Federal recognition is not welfare, a handout, or a racial preference—it is a reparation for the widespread calamities visited upon Native nations from centuries of colonization. Furthermore, American Indian people continue to experience those disasters. Federal recognition provides reparations such as health care, educational assistance, and economic development opportunities. When federal recognition works, American Indians become powerful economic, social, and political competitors—no longer can they be simply marginalized as racial minorities. When the federal government acknowledges the sovereignty that tribes have been articulating for centuries, tribes have a special place in the American political system that affords them distinct kinds of justice and opportunity.²

Many non-Indians, including some state governments, see these reparations as intrusions on their privileges to “pursue happiness” the way the
founding fathers intended. Often, these Americans have perceived recognition as a threat and fought back. Rather than challenge the federal government’s authority to recognize tribes, these opponents have affirmed the government’s power and instead attacked the legitimacy of tribes who seek federal recognition. As a result, discussions of federal recognition have devolved from considering how Indian tribes can best access reparations to ill-informed but influential debates about who is a “real Indian” and who is not. Those who are threatened by the prospect of federal recognition will quickly charge that Indian people who cannot achieve it are not “real Indians.” This distracting argument conjures a host of stereotypes and misrepresentations of sovereignty and law that, in the end, wind up influencing a process that was constructed to avoid those very ideas.

Federal recognition does not, in fact, determine who is a real Indian. It does not legitimize a tribe’s identity. Federal recognition does, however, determine which tribes are owed the kinds of services that provide a reparation for unjust treatment by federal policies designed to eliminate American Indian people. It does give a tribe’s inherent sovereignty a unique place within the American political system. According to the logic of federal acknowledgment, a group’s Indian identity and its continuous existence as a sovereign tribe are not the same thing—acknowledgment deals with the latter and tries to avoid the former.3

However, the officials who drive the Federal Acknowledgment Process (FAP) have not always been successful in combating the voices who continue to believe that recognition is a litmus test for a tribe’s legitimate history and identity. Even some other American Indians with federal recognition have taken up this view; they have fought for decades to maintain their self-determination against outside threats, and some believe that giving more tribes this unique status will only make their fight more difficult. The fact that these ideas about Indian identity have crept into the discussion of federal recognition today makes some Lumbees, and other Indians, think that federal recognition is yet another game, like white supremacy, fixed to give the colonizers an advantage. They feel that D. F. Lowry and those who believed that Lumbees did not need recognition might have been right after all.

And even those who continue to support recognition acknowledge that it is not an unqualified good—like so many aspects of Lumbee life, it is a tangled contradiction. But to understand how Native nations operate today, and why Lumbees in particular continue to pursue federal recognition, it is necessary to untangle the FAP’s purpose from a discussion about legitimate Indian identities. We do that by tracing how these discussions have changed and what the Lumbees’ role in them has been.
In the 1970s, federal recognition meant a variety of things but mainly that a group had a current and historical relationship with the federal government, typically through treaties or other acts of Congress, court decisions, or executive decisions by the Department of the Interior. As the twentieth century wore on, blood quantum measures of Indian ancestry or the way the group retained or displayed its Indian culture had little, if anything, to do with who was federally recognized. Instead, recognition acknowledged that the Indian group—however “close” or “distant” from its pre–European American contact shape it might be—was a political community with obvious leadership, a land base, and citizens of its own.

Of course, Indians in Robeson County had possessed a variety of relationships with the federal government for most of the twentieth century—formal ones like the recognition of the Original 22, the Lumbee Act, and Maynor v. Morton and informal ones like attendance at Carlisle Indian School. The state of North Carolina recognized Robeson Indians as a distinct entity, but because of the 1956 Lumbee Act, the federal government did not consider them a federally recognized tribe.

In 1975, a way out of this dilemma began to emerge. That year, Helen Maynor Schierbeck helped secure passage of the 1975 Indian Self-Determination and Educational Assistance Act. This law made self-determination, instead of termination or assimilation, the central focus of the federal government’s policy toward American Indian nations. Self-determination reinforced a tribe’s sovereignty—its ability to govern its own economic, political, and social affairs—while not threatening a tribal member’s citizenship in the United States and his or her right to pursue the same goals as other Americans. For example, rather than administering programs for Indians, this act allowed the nation’s more than 300 federally recognized tribes to contract with the Bureau of Indian Affairs to provide services themselves, giving them more control over their own education, child welfare, resource management, law enforcement, and other government functions.

Indians also wanted to make sure the 1975 act promoted self-determination by providing some coherence to the government’s federal recognition policy. The act thus created the American Indian Policy Review Commission (AIPRC), which attempted to standardize how federal Indian policy applied to the extremely diverse population of American Indians. Professor Adolph Dial was one of five tribal representatives on the twelve-member AIPRC. The commission dealt with federal recognition, among many other problems, and Lumbee attorney JoJo Hunt chaired the commission’s task force on federal recognition. She wanted to make the federal government accountable to all
the tribes that had suffered the effects of colonization, not just those that had negotiated formal agreements with the United States.

In 1978 the AIPRC recommended that the BIA set up the Bureau for Acknowledgment and Research, now known as the Office of Federal Acknowledgment (OFA), to receive and vet petitions from tribes unrecognized by the federal government. The OFA has since moved outside the BIA but is still housed within the Department of the Interior. The BIA now has no direct influence over the OFA’s decisions. According to George Roth, one of the OFA’s first staff members, the policy of federal acknowledgment begun in 1978 is founded on a specific definition of an Indian tribe: for the purposes of federal recognition, an Indian tribe is a political community—a nation—that has predated the existence of the United States. This definition of a tribe is not social, cultural, or racial. Roth wrote, “Federal acknowledgment is not about whether a group is Indian, or has a traditional culture, or can demonstrate Indian ancestry. . . . Recognition by the Federal government means recognition of status as a sovereign entity, entitled to a government-to-government relationship with the United States and, at least in part, politically and legally distinct from the state within which the tribe is located.”

In 1978, the Department of the Interior created criteria that tribes could use to meet this test of sovereignty. Interior officials did so against the backdrop of recent court cases between tribes and state governments over land illegally taken by the states. These decisions called on the federal government to award land to the tribes in question, a form of federal recognition that the Interior Department itself did not authorize. *Maynor v. Morton*, which awarded federal benefits to the surviving members of the Original 22, was similar to those cases, but its decision did not extend recognition to the whole Lumbee and Tuscarora community; rather, it affirmed the right of the Original 22 to the benefits due to them under the Indian Reorganization Act. The Interior Department wanted to avoid a situation where the judicial branch could overrule the executive branch’s authority. Given these legal challenges to federal and state actions, the Interior Department’s attorneys created their set of criteria for federal recognition to avoid challenges from petitioners, state governments, or others in federal court.

They relied on a political definition of an Indian tribe that was fairly consistent in federal Indian law: Indian tribes that sought recognition after 1978 had to prove that their ancestors exercised sovereignty before the founding of the United States and continued to do so, unbroken, until the present day. The criteria emphasize two elements of political distinctiveness: first, that the tribe has exercised consistent political authority over its members throughout its
history (treaties, for example, constitute evidence of political authority); second, that the tribe has been a distinct social community through time. There is abundant evidence for Lumbees’ social distinctiveness since the Revolution, but federal Indian law has privileged communities that descend from a tribe that existed at European contact or tribes that historically combined to form a larger community. Proving this connection in the Lumbee case has been less straightforward, as we have seen.8

Last, the regulations required that if tribes had been subject to “congressional legislation that expressly terminated or forbid the Federal relationship,” such as the termination legislation of the 1950s and 1960s, they could not qualify for the federal acknowledgment process. This criterion also helped inoculate the regulations from court challenge. After all, the Department of the Interior could not overrule Congress’s decision to legally bar a group from recognition. Therefore, it made tribes that had been subject to such legislation ineligible for the process.9 Neither Lumbee advocates nor Interior Department attorneys had a clear sense of whether the Lumbee Act of 1956, which recognized the group as Indians but did not provide for any benefits or services normally due to Indian tribes, made the group ineligible under this last criterion.

This distinction between a tribe as a political community and a tribe as a social and cultural community is vitally important to grasping the Lumbees’ engagement with federal recognition since the 1970s. Both definitions, political and cultural, are intertwined for Lumbee people, and at some points—such as during the Revolutionary War, Reconstruction, Jim Crow, and the Great Depression—Robeson County Indians clearly exercised political authority and a degree of sovereignty. Whether that authority was unbroken and whether it could be tied to a tribe that exercised that authority since European contact were more subjective. The state of North Carolina recognized and affirmed the Lumbees’ political and cultural distinctiveness in the nineteenth century. During the Great Depression and in the 1950s, both Congress and the BIA partially recognized Robeson County Indians in various ways. The basis for this federal recognition was Indians’ racial and social distinctiveness from whites and blacks.

All of these forms of recognition partially resonated with Lumbees’ own definitions of identity, but none of them fully embraced the totality of relationships to family, territory, culture, and history that Lumbees prioritize when they talk about who they are. Furthermore, for Indian people on the ground, their identities constituted more than who their leaders were and how their decisions were made. The 1978 federal criteria do not account for these everyday ways of knowing. OFA policy makers understand that federal criteria do not make up
the whole of Indian identity and that they serve a specific purpose, but Lumbees have a more difficult time understanding why their own ways of knowing who they are cannot be used to access the government-to-government relationship that will allow them to fully realize their self-determination, especially when the state and federal governments, at different points in time, have also acknowledged those ways of knowing.

Before 1978, any number of arrangements legitimized by Congress, the courts, or the Interior Department could constitute recognition. After 1978, the process narrowed, focused on the Department of the Interior and its legally driven questions of sovereignty and historic political authority. When it received a petition, the OFA conducted its own independent review of the evidence for a tribe’s claim of an unbroken exercise of sovereignty; its work went far beyond simply testing the petitioner’s claims or the claims of those who challenged a tribe’s petition. Often state officials who did not want to have to return land to a tribe or face other consequences of a tribe’s federal recognition would challenge a petition with their own evidence. Petitions comprised hundreds of pages of historical research that spoke to the applicant’s eligibility, and completing the petitions took professional research expertise, something that no tribes had at their disposal. Ultimately, the OFA could not evaluate more than four petitions every year. If a petitioning tribe could not demonstrate unbroken political authority to the satisfaction of the OFA, and if the OFA was unable to establish it through its own research, the Interior Department denied the tribe federal acknowledgment. OFA rulings are final; as of 2017, there was no way to challenge a decision, short of a lawsuit.

Some tribes, including the Lumbees, have also sought recognition through congressional law. The final criterion, about legislation forbidding the federal relationship, opened the door to Lumbees’ pursuit of federal recognition through Congress. Unlike the Department of the Interior, Congress does not have a set of criteria defining an Indian tribe. When Congress’s lack of a definition is combined with the OFA’s strict criteria and final authority, the denial of recognition can seem like a deathblow to a tribe’s ability to fulfill its potential for self-determination. It can even delegitimize the tribe’s identity in the minds of both other Indians and non-Indians. The system for federal recognition, suited to the government’s needs rather than Native peoples’, increases the pressure for success on individual tribes.

After the OFA opened for business, eighty-eight tribes petitioned for federal acknowledgment. Arlinda Locklear, a Lumbee attorney for the Native American Rights Fund who would go on to be the first Native American woman to argue a case before the U.S. Supreme Court, told a congressional committee
in 1983 that the OFA process “is vitally important to non-federally recognized Indian people. It is a service that was a long time in coming.”\textsuperscript{12} In theory, the standardized criteria removed the ambiguities and reversals of Indian policy that tribes had encountered before.

Julian Pierce, who had founded the Indian Law Unit at Lumbee River Legal Services, worked steadily with Arlinda and others on federal recognition in the early 1980s. In 1983 he also affirmed the need for a formal mechanism of federal acknowledgment and urged Congress to increase appropriations to the program. At the same time, Pierce pointed out another set of fundamental flaws in the recognition criteria—that the evidence required to demonstrate eligibility relied on observations of culture and ethnicity by non-Indians. Since, historically, white southerners had been focused on creating a biracial hierarchy, Indians had been compelled “to adopt strategies for survival that have left little to no official record of their ethnic history” as a distinct group. He warned that “unless the Bureau of Indian Affairs invests considerable energy in understanding the full impact of this history on North Carolina’s petitioning tribes, the fairness and integrity of the process can fail.” He continued, “The tribes cannot help but wonder whether the [BIA] can fully appreciate the radical differences Southern tribes exhibit from commonly accepted notions of tribalness.”\textsuperscript{13}

Some already acknowledged tribes were deeply suspicious of the FAP and its intentions to bring more Indians into the orbit of the federal government. Tribal leaders reacted in part to Ronald Reagan’s disproportionate cuts to the BIA’s budget. Known for wielding a heavy fiscal ax, Reagan proposed that the programs that funded Indian communities, which made up only .4 percent of the federal budget, absorb 3 percent of the national budget cuts, almost ten times their fair share. He gutted the potential of self-determination policy. Navajo chairman Peter McDonald said he would not mind seeing the BIA’s budget slashed, but he opposed cuts to programs designed to facilitate tribes’ self-sufficiency. Indeed, while the Navajo unemployment rate before the cuts had been a shocking 38 percent, it skyrocketed to 72 percent after 1982. Reagan’s political ideology made it unlikely that the OFA was going to receive any additional support for its work. Reagan showed no awareness of treaty or other obligations to tribes, simply treating Indian programs as line items to be cut. When one Native leader spoke out against the budget cuts, Reagan’s staff accused him of lacking “political sensitivity,” as if he were asking for favors rather than for the continuance of the federal government’s legal responsibility to tribes. In this climate, it was understandable that federally recognized tribes might fear that the FAP would further reduce their own operating budgets. Some began to argue that any tribes who could not prove their legitimacy by ancestry should
be excluded, even though recognized tribes had varying amounts of Indian ancestry themselves.  

The Lumbee Regional Development Association, the nonprofit founded to provide services to tribal members, had been encountering other tribes’ opposition to its pursuit of federal funds since 1970. Later, other regional organizations such as the United South and Eastern Tribes, a group of federally recognized tribes, articulated their opposition to federal funds for the Lumbees. Nonetheless, the LRDA persisted and worked with LRLS to represent the tribe’s federal recognition efforts. These organizations were aware of the challenges that Lumbee history posed to the existing federal recognition criteria.

In 1984, LRDA hosted a tribal referendum, and voters designated the association an Interim Tribal Council and authorized it to represent the tribe for the purposes of federal recognition. LRDA had already begun compiling a tribal membership roll. Membership in the tribe had two criteria: first, an individual had to descend from someone identified as Indian on one or more source documents dating from the turn of the twentieth century, such as Indian school enrollment records, census rolls, and church records; second, a member had to maintain substantial contact with the community, subject to the assessment of an Elders Review Committee. By 1986, 36,000 people, the vast majority living in Robeson and adjoining counties, had enrolled with LRDA and received enrollment cards signed by Adolph Dial, then chairman of the LRDA board.

After tribal members authorized the LRDA to represent them, Julian Pierce, anthropologist Jack Campisi, and researchers Wesley White Tawkhiray and Cynthia Hunt wrote a petition to the Office of Federal Acknowledgment. They consulted frequently with OFA staff, who provided technical assistance and advice about assembling a compelling petition to meet the criteria. Providing evidence for a connection to a historic tribe that had exercised its sovereignty on a continuous basis since 1789 was the most difficult criterion to meet. It was common knowledge that Lumbees descended from multiple historic tribes; BIA officials and the Lumbees knew that their ancestral communities had fragmented deeply at the time of European contact and that settlers did not do a particularly good job of keeping records about the Lumbees’ multiple tribal ancestors. Lumbee petition writers ultimately leaned on the opinion of anthropologist John Swanton, who in the 1930s emphasized the Lumbees’ connection with the historic Cheraw tribe. Other historians and anthropologists uncovered evidence that supported Swanton’s interpretation. Undoubtedly the community members whose ancestors came from across the South Carolina line, and not just from northeastern North Carolina and Virginia, could claim descent from the Cheraw people. By the 1980s, over 200 years of internal marriage had
meant that nearly all tribal members had ancestors who were from across the tribe’s historic territory, including Cheraws. Fundamentally, the petition that Pierce and others wrote never questioned whether members’ descent from a specific historic tribe was an appropriate criterion for legitimacy or acknowledgment, as much as Pierce himself wanted to rid the process of what he called “inappropriate notions of tribal existence and survival.” This was not the first time Lumbees had selected a history to meet the expectations of outsiders: the names “Croatan,” “Cherokee,” and even “Lumbee” and “Tuscarora” each point to a chosen aspect of the tribe’s past. Choosing to emphasize one history over another was part of resisting invisibility, telling the tribe’s story, and determining its future.

The petition took five years and a professional research staff of over fifteen people to complete; it consisted of a two-volume narrative report, one and a half file boxes of documentary evidence, and a sixteen-volume membership roll. LRLS and LRDA submitted the petition in December 1987, just weeks before Julian Pierce declared his candidacy against Joe Freeman Britt for superior court judge. After Julian’s death, LRDA asked Arlinda Locklear to represent the tribe in its federal recognition campaign.

Ultimately, Locklear suspected that when it came to federal recognition, the questions would be not only about the tribal members’ descent from a historic tribe or the nature of their government. The Lumbee Act, with its language that apparently forbade the federal relationship, still potentially posed an obstacle. The 1956 act acknowledged that Lumbees were Indians but did not allow the BIA to facilitate a government-to-government relationship with the tribe, limiting the community’s ability to pursue self-determination or assert its sovereignty as an Indian tribe. Locklear reasoned that if the 1956 act indeed forbade the federal relationship, then the Lumbees were not eligible for the Federal Acknowledgment Process, and Congress could (and perhaps, legally speaking, should) recognize the tribe through legislation. In that case, proving the other problematic criterion—that the Lumbees’ ancestors had exercised an unbroken political authority since 1789—would not affect their prospects of federal recognition.

Locklear’s basis for this strategy was Congress’s action to recognize a small tribe in Texas, the Ysleta del Sur Pueblo. In 1968, Congress had passed a law regarding Ysleta del Sur’s status as Indians, using language very similar to the Lumbee Act. Both laws read that “nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians . . . and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to [these]
Then in 1988, Congress considered a bill to recognize Ysleta del Sur, and the BIA testified that they were not eligible for the FAP because of this language that, they argued, forbade the federal relationship. Congress succeeded in passing the law, and Ysleta del Sur became a federally acknowledged tribe.20

The OFA never considered the Lumbee Act to be a barrier to the FAP, according to staff member George Roth. In fact, Roth and others had worked with the LRDA on the Lumbee petition, even traveling to Pembroke to make a presentation to tribal members about the process. But as of 1988, when Congress passed the law recognizing Ysleta del Sur, Arlinda Locklear did not know what conclusion the OFA planned to make. The office had not yet taken its first step to evaluate the Lumbee petition, which was to issue an “obvious deficiency review,” a letter outlining the gaps in documentation or proof that the petitioner needed to fulfill. Such reviews took many weeks, Roth recalled, even in relatively simple situations; in large and complex cases like the Lumbees’, they took a lot longer. The OFA staff were particularly interested in taking on the research challenge presented by the Lumbee petition; Roth remembered that their own independent reviews of evidence often turned up documentation that tribes themselves could not find, and they could shore up a petitioner’s argument. However, “if we found nothing [to support the claim] we’d have to say we found nothing,” Roth said.

With no word from the OFA, Locklear began researching another option, in case the OFA did not agree with the Lumbees’ evidence for continuous political authority and descent from a historic tribe. As the tribe’s chief advocate, knowing the enormous influence that federal recognition had on self-determination and the tribe’s reputation as “real Indians,” she had a responsibility to do everything she could to prevent the process from failing the Lumbees.21

Locklear concluded that Lumbees would never succeed in gaining the federal recognition to which they were entitled if the BIA did not endorse a congressional bill to recognize the tribe, as it had done with the Ysleta del Sur Pueblo. She insisted that the Department of the Interior formally rule on the tribe’s eligibility for the process, and she secured a letter from the Department of the Interior’s attorney in 1989 saying that, like Ysleta del Sur, Lumbees were not eligible for the FAP, because the Lumbee Act constituted the kind of termination legislation that made tribes ineligible for the process. “You are precluded from considering the application of the Lumbees for recognition,” the associate solicitor for Indian Affairs wrote.22 George Roth recalled the letter as a surprise; the OFA had begun reviewing the petition and fully expected to give it full consideration when the office was suddenly told by the Department of the Interior that the Lumbees were ineligible for the process. The OFA has never
ruled on whether the Lumbees’ ancestors exercised political authority prior to the formation of the United States or on the other evidence required to meet the recognition criteria.23

Because federal law recognizes a tribe’s sovereignty, as opposed to its identity, many have argued that only Congress can legitimately act to declare a government-to-government relationship with an Indian community. Lumbees took the 1989 opinion, which barred them from engaging in the FAP, and launched a dedicated effort to secure recognition through Congress. Congress, however, has never articulated a systematic approach to tribal acknowledgment; like other legislation, it hinges on political will.

Since 1991, the Lumbees’ congressional attempts to secure recognition have consistently proposed amending the 1956 Lumbee Act to allow for the BIA to provide services to the tribe. Some federally recognized tribes, including the Menominee of Wisconsin and the Mashantucket Pequot of Connecticut, have supported such a bill. The proposed bill was supported by some of North Carolina’s congressional delegation but not by everyone—Senator Jesse Helms, one of the most well-known southern conservative Republicans of the post–civil rights era, openly opposed the bill. The bill did not change the legal status of individual Lumbees—the state of North Carolina retained jurisdiction over all civil and criminal matters related to tribal members—but it acknowledged the sovereignty of the tribe and set forth funds for them to alleviate poverty, promote education, and pursue economic development, the key ingredients of self-determination. But the BIA and the Department of the Interior maintained their objection, insisting that rather than pass a law recognizing the tribe, Congress should void the Lumbee Act and force the tribe to go through the FAP. Despite these objections, the House passed the bill with an overwhelming majority. But in 1994, when it came before the Senate, Jesse Helms filibustered the bill and it died.24

After the failure of the 1991 bill, Lumbees continued to fight the BIA’s demands that Congress repeal the Lumbee Act and force the tribe to go through the FAP. Yet some tribes across the nation continued to support the Federal Acknowledgment Process and oppose Lumbee recognition through Congress. The OFA explicitly avoided making a tribe’s sovereign status subject to problematic standards of “Indian blood” and “Indian culture,” but leaders of federally recognized tribes still murmured that the Lumbees did not have enough of either to be legitimately Indian. Those tribal leaders seemed willing to ignore the fact that their own tribal communities did not match the standards of purity that they wished to impose on the Lumbees or other unrecognized tribes.25 Others began to point out this hypocrisy in the discussion about Indian identity.
Elmer Savilla, former president of the Quechan Indian Nation in California, wrote, “The objections [to Lumbee recognition] based on mixed-blood are not valid objections, because at this period in our history which tribe can point to its full membership as being 4/4 Indian? The simple truth is that there is no longer a tribe without mixed-blood members.” (A “4/4 Indian” is an individual without any non-Indian ancestry.) Savilla continued, “One argument for tribes to support federal recognition of the Lumbee is that politically we are a very small minority. Politically, we need their numbers. That is only one important practical reason to support them in their bid. However, the most important reason is a moral one: because it’s the right thing to do.”

Nevertheless, many tribes looked at the challenges facing their communities—language retention, loss of cultural integrity, poverty, lack of education—and did not want to expend their political capital supporting the campaign of another tribe to enter the system to which they belonged. Savilla saw Lumbee numbers as an asset to the goals of Native Americans as a racial minority, but when one considers that Native Americans are also part of individual nations that have their own priorities and cultures, the size of the Lumbee tribe might look like a threat to the small victories gained in this larger struggle against colonialism.

Non-Indians saw these disagreements in superficial terms, choosing to believe that “real Indians” stood together on issues and doubting the legitimacy of Indians who did not display unity, while ignoring the fact that division over a complex issue like federal recognition is logical and rational. In 1994 the executive director of the LRDA told a journalist, “Outsiders look at it as [Indians] not being united. The white race is not united. The Indian people have a right to debate their differences.”

The debate became national news in 1993 when a Lumbee teenager, Adrian Andrade, asked President Bill Clinton what he would do about Lumbee recognition at a televised event. Clinton was stumped and did not answer. But the president did his homework and sent Andrade a letter outlining his position, which was the same as the BIA’s: void the Lumbee Act and allow the Lumbees to go through the FAP. Adrian did not agree, and she said that while she was thrilled to get the letter, the president had disappointed her. The magazine The Nation took up the issue, and journalist Cynthia Brown wrote an in-depth article about the problems with the FAP that outlined the challenges that the Lumbees faced: their size and the political and administrative problems with the Lumbee Act. In response, an attorney for the Republican-controlled House of Representatives wrote a letter to The Nation’s editor, asserting that the Lumbees would never receive recognition, even if the administrative obstacles were
removed. “They bear few of the characteristics of an Indian ‘tribe,’” he wrote. “They have never had treaty or trust relations with the United States, or a reservation. They do not speak an Indian language, have had no formal political organization until recently, and possess no autochthonous ‘Indian’ customs or cultural appurtenances, such as a tribal religion.” The attorney’s remarks showed little awareness of the actual FAP criteria, but they evidenced how much the discussion of federal acknowledgment had become centered on identity issues that did not belong in the process. Indeed, Brown responded that such characteristics had nothing to do with federal recognition or the legitimacy of a tribe and that the Lumbees’ recognition by the state of North Carolina, over a century old at that point, constituted sufficient evidence of their “substantial continuous Indian identity.”

The debate continued on a local level. While some might assume that a large federal appropriation in the form of federal recognition would be welcomed by a county as poor as Robeson, local white businesspeople generally opposed these congressional recognition bills. Arlinda Locklear told a reporter that she believed the cause was the federal government’s rash overestimation of the cost of the bill. The Congressional Budget Office, for example, included funds for federal trust land in its estimates, which the bill precluded the Lumbees from receiving, as well as grants for law enforcement and other court services, which the Lumbee tribe would not administer. The CBO, she implied, undermined the bill’s support by inflating its cost to $1,000 per tribal member. Local whites further misinterpreted this figure—no Lumbees would be receiving a $1,000 check every year, she said. But the idea of Indians—perceived by some local whites as unworthy economic competitors for decades—receiving payment from the government incensed them and reduced local support for the bill. Indeed, Senator Jesse Helms would continue his opposition as long as conservative white voters in Robeson County also opposed it.

After Helms killed the 1991 recognition legislation, some members of the tribe voiced dissatisfaction with the LRDA as a tribal representative. As a nonprofit organization, the only role the association could truly fulfill was the administration of services and the maintenance of tribal enrollment. Since the board of directors was self-appointing, some tribal members felt it was unrealistic for it to represent the tribe’s interests to an outside body. Further, without a constitution that articulated the board’s powers, the group did not appear to function like a government. Indeed, Lumbee government had been “issue-driven,” according to Arlinda Locklear, for hundreds of years, until the idea of “continuous political
authority” emerged as a requirement for recognition after 1978. “There were individuals who came to express the community’s desire or position on particular issues but didn’t have a lot of across-the-board leadership. You had Indian ministers who led, you had Indian educators who led in their field, you had Indians who were elected to some local positions who had authority in that respect, but there wasn’t anything like a tribal chairperson who was acknowledged in all fields across all issues as authorized to speak on behalf of the Lumbee people,” she said. So while Lumbees had their own systems of authority and leadership that clearly asserted independence, they lacked a structure that matched the BIA’s notion of a tribal government that exercised continuous political influence over an autonomous entity.

In 1993, a group of educators, pastors, and other community leaders determined that an official constitution, under which the Lumbee tribe could operate, would help push recognition forward and prepare the community for what they felt would inevitably occur. Using a grant from the Methodist Church, they formed a constitutional assembly under the name Lumbee Tribe of Cheraw Indians (LTCI), echoing the historic tribe that the federal recognition petition emphasized. The LRDA cooperated with the group. The group’s leaders, including Pastors Jerry McNeill and Dalton Brooks, involved the churches first, and organizers sent letters to more than 100 Indian congregations asking for delegates to the constitutional assembly. Leaders knew that Indian churches were their longest-standing, most independent institutions, where kinship and place ties had remained fairly consistent. Their participation would be an organic, logical way to involve the whole community, which by that time had grown in size to over 40,000.

About thirty-five churches sent delegates to the meetings. Arlinda Locklear, who was a technical adviser to the LTCI, remembered that, not surprisingly, delegates approached the process with some mistrust. Saddletree, Fairmont, Pembroke, Prospect—each of these communities was very different and had maintained a degree of distinctiveness even through the previous efforts to find unity and tell a single story about who the Lumbee people are. “But within six months they had lost all of that,” Locklear said, and “had developed faith in each other and began working as a unit for the single goal of putting on paper the expression of the Lumbee people’s desire for governance. It was just the most amazing thing I’ve ever seen.”

According to Locklear, the LTCI came together with the intention of discovering what kind of government the Lumbee people would like to have—for example, did they want a tribal council that exercised all legislative, judicial, and executive power itself, or a government divided into branches? After dozens of meetings over the course of a year, delegates decided on a partitioned system
of government similar to that of the United States. The LTCI considered its constitution a draft, prepared in part to submit to the Bureau of Indian Affairs as the tribe’s governing document, which would be required if the new recognition bill before Congress passed and became law. To prepare for this possibility, the LTCI held its own vote to gain the tribe’s approval of the draft document. During Lumbee Homecoming in 1994, tribal members approved the draft constitution with a vote of 8,010 in favor and 223 against. Anyone over eighteen who was a tribal member could vote; the vote total represented more than 20 percent of eligible tribal members. Pembroke State University, now renamed the University of North Carolina at Pembroke, hosted the voting booths; tents were set up on the campus near Old Main.33

Voters also elected a tribal chairman under this constitution, Reverend Dr. Dalton Brooks, a cousin of Judge Dexter Brooks. Dexter and Dalton’s uncle Joseph Brooks had led the Siouan movement in the 1930s. As a child, Dalton remembered attending square dances and community meetings to raise money for the recognition effort. In effect, Dalton Brooks became not the “chief,” vested with power, but the chief spokesperson, a kind of diplomat formally recognized by the tribe to represent its interests. “I see myself as a person who expresses the interests, concerns and desires of the Indian people,” Brooks said. He had been involved in civil rights activism with his brother Martin Brooks, a physician, since the 1960s. He had his own distinguished career as a Baptist minister with the Burnt Swamp Baptist Association; his church, Dundarrach Baptist Church, was located on the border of Robeson and Hoke Counties, marginal to Pembroke and the Indian landowning wealth that supported churches like Mount Airy and others. Brooks had also served in the U.S. Marines, and he obtained his Ph.D. in physics from the University of Miami. He taught physics at UNC-Pembroke. After the school systems merged in 1988, he became the first chairman of the Robeson County school board; citizens looked to him as a self-effacing consensus builder, poised and level headed.34

Dalton and his brother Martin belonged to a generation of Lumbees who got an education and returned home to elected or administrative positions in government. Helen Maynor Schierbeck, Arlinda Locklear, Adolph Dial, JoJo Hunt, and many others were leaving legacies nationally. And for many decades, there had been those who tried to change the system from the outside—Janie Maynor Locklear, Horace Locklear, and Julian Pierce, for example. But by 1994, Lumbees were establishing themselves within the local systems of government at an unprecedented level. There was a Lumbee public school superintendent, a superior court judge, a state legislator, a chairman of the Robeson County commissioners, a clerk of the court, and even a sheriff.
Even though Arlinda Locklear remembers unanimity among the original constitutional delegates and the support of the LRDA, tensions still simmered over which organization—the LTCI or the LRDA—should exercise the powers of government. Those powers included representing the people to other governments and administering services and operating programs on the Lumbees’ behalf. The LRDA, in particular, opposed the referendum’s vote for chairman, saying that choosing a formal leader was premature without federal recognition. But the members of the LTCI disagreed, believing that formalizing a political structure that matched that of other recognized tribes would help alleviate problems the tribe was having in securing support for recognition across Indian Country, at the BIA, and in Congress.35

The LRDA’s opposition to the LTCI and its governing potential grew quickly after the 1994 referendum. Amid a fierce internal debate, the LTCI filed suit against LRDA in 1995; the LTCI wanted the state of North Carolina to recognize its status as the tribe’s elected governing body. Having outside recognition seemed critical for the tribe’s ongoing relationship with the state and for the ability of the LTCI (instead of the LRDA) to represent the tribe in federal recognition. Many Lumbee tribal members felt chagrin at the suit. Whatever LRDA’s faults, it did constitute a type of representative government, approved by tribal members to advocate for federal recognition. “When the issue of tribal government was placed in the courts, this action said that we didn’t have the ability to self-govern,” one LRDA board member wrote. “It is a typical example of an old adage—if you don’t make the decision, someone will make it for you. . . . Giving our authority to the courts rather than exercising our own self-govern ment is a sad legacy to our future generations.”36 But pursuing a strategy that would legitimate the tribal government in an American court was also logical. The LTCI argued that the suit was necessary because it sought the authority possessed by LRDA to represent the tribe; tribal members, who were also citizens of the state, had granted LRDA that authority in 1984 and had arguably transferred it to the LTCI in voting to approve the first constitution. The LTCI needed a court decision to affirm that legal argument.

Ultimately, the court found that neither the LRDA nor the LTCI was the governing body of the tribe but that each group had legitimate claims on the functions of government—the LTCI by virtue of the overwhelming endorsement of the draft constitution (a process that LRDA had never attempted) and LRDA by virtue of its long record of providing services. The court ordered LRDA to continue to represent the tribe for the purposes of federal recognition but only until “such time as the Lumbee Tribe selects, by the vote of the Lumbee People, a tribal council or other form of government . . . through
its own self-determination." While the ruling upheld the principle of self-determination practiced by the LTCI, in practice it nullified the governing powers that Lumbee voters had delegated to the group.

In 1998, the court created the Lumbee Self-Determination Commission, composed of equal numbers of LRDA and LTCI representatives plus a group of Indians not affiliated with either organization. The Self-Determination Commission’s first step was to survey tribal members, assisted by faculty and staff at UNC-Pembroke and UNC–Chapel Hill’s Institute of Government. The survey asked what kind of government people wanted—elected or appointed—and how representation should work, whether by district or at-large.

By November 2000, the Self-Determination Commission had come up with a system of representation and a form of government that suited its members. They decided on representation on a district basis, with the number of tribal council members in each district determined by the population of tribal members in that district. The commission drew the districts along settlement lines that stretched back to the eighteenth century but with names that mostly corresponded to official Robeson County township names. Four of the eighteen districts were for areas with concentrations of Lumbees outside of southeastern North Carolina—Charlotte, Greensboro, Raleigh, and Baltimore—and there was one at-large district.

The commission oversaw the robust elections process. The candidates for chairman were Pembroke’s mayor, Milton Hunt, who had stayed out of the controversy between the LTCI and the LRDA, and Reverend Jerry McNeill, the LTCI chairman following Dalton Brooks. Twenty-three council members and a tribal chairman were elected in November 2000; one council member was Jimmy Goins, who had discovered his brother Johnny’s body in their father’s home, the victim of an apparent suicide after Julian Pierce’s murder in 1988. Rod Locklear, one of the founders of LRDA, had moved to Maryland and was elected to represent the Baltimore Lumbee community. There were seven women elected and, journalists observed, a healthy mix of people affiliated with either the LRDA or the LTCI who were also church and business leaders, plus faces that were new to tribal affairs. Over 9,700 voters turned out from Robeson and adjoining counties, as well as Raleigh, Charlotte, Greensboro, and Baltimore. The turnout represented about 38 percent of the tribe’s voting population, which LRDA estimated at 25,000 people. Some 70 candidates ran for office.

In January 2001, the tribe organized its first inauguration. The ceremony was held at a state-owned facility in Lumberton, the county seat. Many tribal members thought a location in or around Pembroke, the historic center of Indian institutions, would be a more appropriate place for this landmark event.
But while Lumberton itself had not been a Lumbee-owned place, it had been the location of many breakthroughs and crises for Lumbee people in business and government. It was also a kind of neutral territory. Kent Chavis, treasurer for the Self-Determination Commission, said that he would like to see the new government improve its relations with “the grassroots level that reaches out beyond Pembroke.” Holding the ceremony in Lumberton may have been a kind of inclusive compromise, and for the next fifteen years many tribal government-sponsored events were held in Lumberton. Featuring Lumberton as a seat of Lumbee politics also extended the symbolic reach of Indian power into territory that whites had controlled.

The ceremony included many reminders of the community’s unique history and culture, including Helen Maynor Schierbeck reciting Lumbee history in story form for the children present. Willie French Lowery, songwriter and Lumbee poet, performed “Proud to Be a Lumbee.” He wrote the song in 1975 as part of a local arts education project sponsored by the LRDA; it epitomized the dreams and realities of Lumbee children and families. The crowd sang along and offered shouts and applause at the end. The ceremony, attended by over 600 people, also saw a full flowering of Lumbee ownership of tribal symbols, including blessings, music, and regalia, that signified the community’s distinctiveness and its unity.

A Robeson County district court judge, Gary Locklear, swore in the tribal council; the new chairman, Pembroke mayor Milton Hunt, was sworn in by superior court judge Dexter Brooks. “We are here to celebrate the most significant event in the history of the Lumbee Nation,” Jim Lowry, chairman of the Self-Determination Commission, told a reporter. Lumbee state legislator Ron Sutton told the new council members at the ceremony, “Things are not going to be easy. It’s going to take a lot of hard work, eating crow and giving and taking. You will have to forget your family ties, your political ties and think and do what’s best for the Lumbee people. If you take that approach on every issue, you will be successful.”

In the race for tribal chairman, Milton Hunt had defeated Jerry McNeill by only about 400 votes. Of his loss, McNeill said, “For seven years I have been trying to get it down to the vote of the people. I feel like my work has been accomplished. I will do what I can to make sure that this government still follows the people’s wishes.” Hunt had not been directly involved with the LTCI or the LRDA, but he had served nine terms as Pembroke’s mayor. He grew up in Pembroke and attended Pembroke High School, then became a successful drywall contractor and was elected mayor in 1983. He had also been chairman of the Robeson County Democratic Party.
Hunt’s tenure as mayor, which he continued during his term as tribal chairman, was widely regarded as tremendously successful. Between 1991 and 2001, Pembroke saw remarkable commercial development and a fourfold increase in its tax base, to $80 million per year. Hunt was also known for his zealous pride in Pembroke’s accomplishments, even going so far as to reject UNC-Pembroke’s overtures at collaboration because its non-Indian students and faculty might begin to see themselves as able to influence town affairs. He had never lived outside the town limits and made every effort to include his Pembroke High School classmates in town government. This close-knit community of leaders lasted for the thirty-three years of Hunt’s service as mayor, surviving the violence, controversies, and economic contraction of the Reagan-Bush years and engendering more economic growth in the Clinton years.

Yet Clinton’s NAFTA policy hit Robeson County especially hard in the late 1990s. Hunt saw the decline of manufacturing jobs in the area as a direct result of NAFTA and wisely encouraged commercial development from Lumbee-owned businesses in the health, banking, and retail sectors. By 2005, it suddenly seemed like Pembroke was the most popular town in the county. It had a McDonald’s, a Wal-Mart, and a public library, and there were even Lumbee-owned mansions lined up along the road from Lumberton to Pembroke, not far from where Bricey Hammonds allegedly shot Lacy Brambles in 1939 and where Henry Berry Lowry killed John Taylor in 1870.

Hunt declared that he would serve only one term as tribal chairman, and he hired one of the LRDA’s earliest board members, Ruth Dial Woods, as tribal administrator.43 The chairman and the tribal council formally supplanted the LRDA’s claims and became the official tribal government of the Lumbee people. Their task was to vote on a formal name and write a constitution, within one year, that would have the authority that the first one lacked. The process went fairly quickly; with a long century of debates over tribal names behind them, a wide variety of information on historic tribal origins, and a desire to be inclusive geographically, group members settled on the “Lumbee Tribe of North Carolina,” dropping the explicit reference to “Cheraw” and reinforcing the familiar “tribe” instead of “band” or “nation.” Further, the tribal council had used the first constitution as a model, and the new one was at least “75 percent that document” and “probably more, 80–85 percent,” said Arlinda Locklear.44

The preamble reads, “In accordance with the inherent power of self-governance of the Lumbee Tribe of North Carolina, the Tribe adopts this Constitution for the purposes of establishing a tribal government structure, preserving for all time the Lumbee way of life and community, promoting the educational, cultural, social, and economic well-being of Lumbee people, and
securing freedom and justice for Lumbee people.” Much like the preamble of the U.S. Constitution, it describes the historic and contemporary priorities and aspirations of the nation. Self-governance, freedom, and justice for Lumbee people had been under distinct threat during the previous 350 years of intense contact with European ways of life. Indeed, the constitution declared that the Lumbee people required a government that preserved their own way of life and community, and they required that government to help secure education—a key priority for the previous 120 years. After fighting to help fulfill the promise set forth in the U.S. Constitution’s preamble—securing the blessings of liberty for other Americans, if not always for themselves—the Lumbees finally had a chance to write their own constitutional principles.

The constitution also defined the other two most important aspects of Lumbee identity: kinship and place. The first article defined the tribe’s territory. Originally the constitution declared the territory as the state of North Carolina, an attempt to recognize the historic relationship the tribe had to the state and also the sizable number of Lumbees who lived in cities like Raleigh, Charlotte, and Greensboro. At the same time, it was not feasible for the tribal government to provide services, aside from enrollment and perhaps some cultural events, to those communities. The vast majority of the tribe’s members lived within Robeson, Scotland, Hoke, and Cumberland Counties. And defining the territory as the whole state posed problems for federal recognition efforts because it posited a potential territorial or jurisdictional conflict with the other tribes in North Carolina, a state that, by 2001, had six other tribes and the largest Indian population of any state east of the Mississippi. Further, the grants the Lumbees had received had always defined the territory as Robeson and adjoining counties, and the new definition might raise a red flag for federal agencies from whom the tribe would continue to seek funding.45

Less than two years later, another vote amended the description of the territory, narrowing the tribe’s jurisdiction to Robeson and three adjoining counties. This amendment also eliminated the four council districts outside Robeson and adjoining counties, along with those council members’ seats. Recognition advocates in Congress may have also believed that defining the territory more narrowly helped the inevitable federal appropriation seem more palatable to the legislation’s opponents, such as Charles Taylor, the congressman who represented the Eastern Band of Cherokee. Linda Hammonds, a council member from Saddletree who chaired the council’s constitution committee, said, “Lawmakers could have used [the old definition of tribal identity] as a means or reason for expressing concern about awarding us federal recognition.”46
Article 2 of the Lumbee Constitution legally defined citizenship in the tribe. A tribal member must demonstrate direct descent from a person listed as Indian on a variety of source documents that date from the turn of the twentieth century, a definition that was essentially unchanged from the LRDA’s enrollment policies. These documents include censuses, tax lists, the list of those who signed the petition for congressional recognition in 1888, an Indian school enrollment list, and church records. A 2002 ordinance specified the establishment of the Elders Review Committee. The constitution’s requirements for enrollment resemble those of the Cherokee Nation of Oklahoma and a number of other tribes who do not use blood quantum. Tribes who do use blood quantum have a variety of experiences with it—some see it as a tool to enhance loyalty and closeness in a world that easily takes members far away from their homes, but others have found their numbers dwindling. And as Elmer Savilla predicted, dwindling numbers make it difficult to maintain engagement with outside political entities. In 2010, the tribal council passed a law allowing the enrollment office to ask for DNA evidence from an applicant for enrollment but not requiring it.

While ancestry and kinship are important to Lumbee belonging and always have been, Article 2 of the constitution also explicitly states that members must “historically or presently maintain contact with the tribe.” To ensure this requirement is met, the tribal enrollment office requires members to recertify every seven years. Because one can apply or recertify only in person (except under certain circumstances, such as military service, incarceration, infirmity, or being over fifty-five), tribal members must demonstrate at least a minimal commitment to visiting the community. The enrollment office also consults the Elders Review Committee concerning a member’s social ties. Enrollment officers can interview applicants to determine their knowledge of the community’s institutions and leadership; sufficient contact can be evidenced by having attended an Indian school prior to desegregation or by membership in a church historically known as an Indian church. While blood quantum was avoided in the constitution itself, subsequent tribal laws have clarified that anyone listed as Indian on one of the source documents is considered a full-blood, as are their full siblings. Half siblings with a non-Indian parent are considered to have one-half Lumbee Indian blood. Presumably this language was included in a tribal ordinance to establish a procedure for defining blood quantum in the event of full federal acknowledgment, when the federal government would, for the purposes of providing some services, want evidence of an individual’s degree of Indian blood.47

Like all constitutions, this one was as much a product of its time as an expression of timeless principles. Evidence of the BIA’s federal recognition
policy, a relatively recent phenomenon, is present in the constitution. The constitution also vested the chairman with the power to hold a referendum on any taxes the tribe would levy and on any gambling activity the tribe would conduct. While taxation is a perennial issue in the debate over the powers of any government, gaming was a legal question unique to federally recognized tribes. After the Florida Seminoles won a lawsuit that allowed them to exercise gaming on their reservation land, Congress passed the Indian Gaming Regulatory Act in 1988, authorizing federally recognized tribes the power to earn revenue through gambling.48

Gaming, which began as a way to build economic infrastructure for impoverished communities, quickly became a lightning rod for tribes seeking federal recognition. Often, the non-Indian communities that surrounded them, and some Indians themselves, opposed gaming and lobbied against recognition whether gaming was practicable in their situation or not. The Eastern Band of Cherokee Indians, for example, had a new reason to oppose Lumbee recognition after they opened their own casino operation in 1997, following ten years of negotiation with state and federal officials. Some Cherokee tribal members had opposed gaming; one spiritual leader, Walker Calhoun, said gaming would be the Cherokees’ “damnation.” Yet this hard-won vehicle for prosperity has provided unprecedented economic benefit to the whole region, including an additional yearly income of $6,000 per tribal member (as of 2004). Naturally, the Eastern Band wanted to protect this economic engine against a rival casino in the eastern part of the state. Such concerns were premature, however, since the Lumbee community was hardly in agreement on whether gaming was beneficial, should federal recognition become a reality.49

The Lumbee Constitution specifically required the chairman to call a referendum if the tribal council passed an ordinance allowing gaming. “The connection between gaming and recognition is radioactive, politically,” Arlinda Locklear has said. “I wish that wasn’t the case, but that’s reality.”50 The framers felt the Lumbee people ought to directly decide if and when gaming would occur within their territory. The potential benefits and costs—socially, economically, and politically—were too great for a newly centralized government, struggling for coherence, to decide on its own.

In November 2001, the constitution of the Lumbee Tribe of North Carolina was ratified by a vote of 2,237 in favor to 412 against. Turnout was less than 10 percent of the tribe’s eligible voters. The constitution failed to pass in the communities of Rennert (in Robeson County), Raleigh, and Baltimore. Objections included the definition of the territory (which at that point was the entire state of North Carolina), and the manner for recall of tribal council
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members. “Several tribal members said the document had been shaped to suit the needs of the Tribal Council and not the overall tribe,” according to a newspaper report, but dissatisfaction with the provisions of the constitution was undoubtedly not the only reason for the low turnout. The first constitution had over four times that participation rate, probably because the vote was held during Lumbee Homecoming and not during the typical election season. Despite the increase in Lumbee voter registration going back several decades, many Lumbees have historically mistrusted the elections process. Further, the years of division between the LTCI and the LRDA had confused and disheartened many. The council had a difficult time getting its own message about progress out to its constituents; moreover, newspapers constantly reported division and infighting within the council. The fact that Lumbees had a say in their own government did not mean they trusted that the process would fairly represent them. As they had done many times before, they stayed home when it came time to vote.

Finally, the new form of government, as necessary as it was, did not match the kind of self-governance that Lumbee people had been used to—self-governance that flowed through grassroots institutions that met community needs. The middle class primarily benefited from the growth overseen by Milton Hunt; they had money to spend in a service-driven economy. Housing, food, health care, underemployment, low wages, and other basic needs remained critical for the majority of Lumbees—these were the needs the tribal government had to address. “We are not looking at the tribal government as a political entity, but a service-oriented body,” Hunt told the Fayetteville Observer. “We all need to realize that.”

This tension—between the tribal government as a political entity and as a service-oriented body—is present today and stems, in large part, from the federal government’s refusal to recognize the Lumbees. Recognition acknowledges a government-to-government relationship, one that is inherently political and requires governments to establish laws, adjudicate them, and negotiate with other governments. But while some of the tribe’s leadership had experience in municipal, county, and state governments, the lessons from that experience were not easily transferable to governing a people whom the United States refused to see as having any inherent power or sovereignty. And so Milton Hunt and others created a system of government designed to deliver services, similar to what the LRDA, LRLS, and Indian churches and schools had done. They knew how to acquire resources to deliver services to their people, but exercising legitimate political power had to be learned. Arlinda Locklear told me, “We are so used to a very diffused form of leadership that we still look to Indian
educators for certain issues, [and] Indian ministers still have a lot of political authority. So I think we’re going through a transition period. I think federal recognition will force that to change, because by virtue of being recognized, the outside world will expect to look to one person, or one set of leadership for all issues. So I think our form of self-government as it’s typically been expressed will change with federal recognition.” According to Arlinda, who has worked with the issue her entire legal career, “We will never be able to maximize our potential until we achieve that status because that’s just what the system requires. If you’re gonna game the system, you gotta have that status.”

The Federal Acknowledgment Process had not proved to address this problem, keeping the measurement of Indian identity in the hands of the federal government. The FAP did not affirm self-determination. And when tribes formed their own governments in light of those criteria, as they had to in order to gain access to the policies that governed self-determination, the federal government’s conflict of interest was exposed. When the existence of the United States is predicated on the legal and physical erasure of Indian people, the United States cannot reasonably make laws about them without a conflict of interest. From this conflict flow many of the problems with the federal recognition process.

Unable to fully challenge the nature of the OFA process itself, Lumbees have continued to pursue recognition through Congress in the twenty-first century. Chairman Jimmy Goins led their quest after 2004. Goins had been involved in several seminal events in the Lumbee community. He was a Vietnam veteran and a member of Prospect High School’s last all-Indian basketball team, a point of particular pride for the Prospect community. His family had been involved in political and cultural activities for years. Jimmy was Johnny Goins’s brother, tying him to one of the most traumatic moments the Lumbee people had experienced in over a generation. In a sense, his election as chairman represented a new day for self-determination out of the ashes of Julian Pierce’s murder. It suggested that Lumbee people never believed the narrative that Sheriff Hubert Stone’s office articulated about Johnny’s motive for the killing, and it offered hope that Julian’s death could mean something more than “just another murder,” as Stone had called it. Jimmy was determined to do everything possible for federal recognition.

Yet the congressional process remained as mired in “inappropriate notions of Indianness” as the FAP had been. Politicians who opposed recognition moved the goalpost again, once more citing Lumbees’ lack of Indian blood, Indian culture, and Indian language—the criteria that the FAP specifically avoided. Representative Christopher Shays of Connecticut has been among
the most vocal opponents of the Lumbee Recognition Act, arguing for sending the Lumbees back through the FAP, even though they are not eligible for it. In June 2007 he said, “[Sponsors of the Lumbee bill] don’t want them to go before the Bureau of Indian Affairs because this is a tribe that had no name. It had no reservation. It had no language.”

Like the assessments offered by Sheriff Stone about Lumbee violence, these charges have the ring of truth, but they are based on willful ignorance or conflicts of interest. Indeed, Lumbees never had a reservation and their indigenous languages were lost long ago; but these are not the elements of any tribe’s history that make its members Indians. Numerous federally recognized tribes do not live on reservations or speak their languages, including those within Shays’s own district. Thanks to the support of an active North Carolina congressman, Mike McIntyre, Shays’s criticisms were sidelined and a new Lumbee recognition bill passed the House in 2007 and again in 2009. However, it stalled in the Senate, where any senator can arbitrarily decide the fortunes of Indian people by anonymously placing a hold on a bill and preventing it from coming to the floor for a vote.

After the election of President Barack Obama, the tribe finally had a breakthrough in Congress. After years of testifying that the Lumbee Act ought to be repealed so the tribe could go through the FAP, the BIA finally dropped its objection to Congress recognizing the tribe. According to Arlinda Locklear, this change occurred following a 2008 meeting between chairman Jimmy Goins and then senator and presidential candidate Barack Obama, when Obama made a campaign stop in North Carolina. North Carolina was a critical state for an Obama victory, and the Lumbee recognition bill was trapped in a contest in the Senate between the bill’s sponsor, Republican senator Elizabeth Dole, and Democratic Senate majority leader Harry Reid, who refused to support any legislation that Dole wanted. The bill had specifically banned gaming within the tribe, a violation of the tribe’s provision for a constitutional referendum on gaming, but Congressman McIntyre insisted that such language was the only viable way to pass the bill. The tribal council unanimously agreed to prohibit gaming in 2007, without a referendum as the constitution required, and Dole and McIntyre brought the bill to the Senate and the House. According to Arlinda Locklear, Senator Reid did not want the bill to come to the floor for a vote, because that would mean conceding something to a Republican opponent. In a ten-minute meeting with Obama in 2008, Jimmy Goins asked him to use his leverage as a senator and a candidate to get Reid to release the bill for a vote. Obama said there was nothing he could do, but he promised to support the bill if he became president.
Arlinda said that after Obama was elected, “[We] got that in writing from his Indian policy committee,” and a new bill was introduced that included the same gaming language. “So when the bill was scheduled for hearing,” Locklear recalled, “I took that piece of paper and went to the Department of the Interior, to the Secretary’s office, and I said, ‘Your president has a position on this bill; I expect full-throated support when we have our hearing.’ It wasn’t easy because the same people at the BIA who have been there and fought us for twenty years are still there and they tried to stop it, but the political people got it done.” At the next hearing, the Department of the Interior testified that it had no objection to the Lumbees being recognized by Congress, reversing their stance. Locklear, McIntyre, Dole, Goins, and others felt that this bill finally contained the ingredients needed to become a law. At the same time, its terms violated the spirit of the Lumbee Constitution—tribal leaders could not make a decision for or against gaming without a referendum of tribal members, which had not occurred.

But the Senate floor was still an obstacle, and the tribe’s leadership felt that a lobbyist was the only thing missing to secure the bill’s fate in the Senate. The bill formally disassociated the tribe from gaming, and the tribal council endorsed that move, but journalists later uncovered that Goins and several other Lumbee leaders began secret negotiations with a resort developer, Lewin International of Nevada, the state represented by Senator Harry Reid. The contractual terms of that agreement included naming Lewin as the exclusive lobbyist on behalf of recognition in exchange for the right to develop and profit from all future economic enterprises the tribe conducted, including building and operating entertainment facilities in Lumbee territory. In the contract, casino facilities were specifically mentioned among those that Lewin would build. Goins knew that Lewin’s money as a lobbyist was necessary to move the bill forward, despite its prohibition on gaming. While a bill that outlawed gaming was again rolling slowly through the House and Senate in 2009, and while the Department of the Interior was dropping its objections to the bill, Goins, tribal administrator Leon Jacobs, and tribal council speaker Ricky Burnett secretly signed the agreement with Lewin.

The rest of the tribal council learned of the agreement between the tribal government and Lewin International in March 2010, when it became public knowledge. By the time the agreement reached the public, Goins’s two terms as chairman had ended. He was replaced by former school superintendent Purnell Swett, who did not know about the agreement but saw the wisdom in it and wanted to support it. Soon after, Arlinda Locklear was forced to resign as the tribe’s lobbyist.
A small group of tribal members formed the Lumbee Sovereignty Coalition (LSC), which advocated for the retraction of the agreement with Lewin and the full support of the bill currently before Congress. Holding informational meetings and disseminating news about the contract over social media, the LSC argued that the agreement was a violation of the tribal constitution, since no referendum on gaming had been held. The Lewin contract risked approval of the pending congressional bill that prohibited gaming and put Lumbee self-determination in the hands of outsiders who had little respect for their constitution. LSC members who lived in Robeson County held meetings, informed the public and the media, and solicited tribal members’ views on the agreement. The LSC took no formal position for or against gaming, but it argued that Goins’s, Jacobs’s, and others’ negotiations with Lewin lacked transparency and were not conducted with the interests of Lumbee self-governance at heart. The LSC wanted to create an avenue for Lumbee voters to speak, rather than to endorse or oppose gaming.

A “Tribal Family Meeting” held at UNC-Pembroke in May 2010 and attended by about 300 people—closed to the media and those who were not tribal members—did nothing to clarify the nature of the agreement or help unify tribal members behind it. Indeed, the LSC was dissatisfied with chairman Purnell Swett’s message at the meeting, which did not answer a fundamental question—how could a gaming development firm lobby for a bill that prohibited gaming, in exchange for the right to develop gaming? According to people who attended the meeting, Swett said partnering with a well-heeled firm was the only way the tribe would ever overcome the lobbying efforts of the Eastern Band of Cherokee Indians and other Indian groups that opposed Lumbee recognition, sources said. “It’s about politics and money,” Swett reportedly told the crowd. Leon Jacobs agreed: “Our thoughts in doing this were, if we could get someone who was close to [Senate majority leader Harry Reid] from Nevada, that would be a plus for us getting our bill passed. Lewin had those connections. This never had anything to do with gaming; it was all about recognition.”

Lewin International finally rescinded the contract, citing “misrepresentations” of the contract in the media that made it impossible to mount a successful lobbying campaign for recognition in Washington. “I have come to believe strongly in the justice of the tribe’s efforts to achieve federal recognition,” Larry Lewin wrote to tribal chairman Purnell Swett. “However . . . it is apparent that Lewin International’s continued association with the tribe will not facilitate this goal.” Lewin terminated the contract without penalty, but the firm also claimed it had been reluctant to sign in the first place because of the lack of transparency within tribal government.
The Lumbee Sovereignty Coalition offered petitions during Lumbee Homecoming in July 2010 to recall Purnell Swett and other tribal council members who had voted for the agreement. The LSC clarified that it did not advocate for or against recall of tribal government officials per se, but it offered the petitions and the information about the Lewin contract in the interests of transparency and greater participation in tribal government. Swett himself endorsed the petition campaign, and tribal council members began communicating more closely with members of the group. In the subsequent tribal election in November 2010, the Lewin International deal was a campaign issue for some open council seats. Council member Larmari Louise Mitchell from Fairmont said, “I was not a part of the negotiating in the back doors, and I’ve always felt we should be open to our tribal members about what’s going on. When it comes to contracts, we all, as council members, need to be aware of what tribal plans are.” Gerald Goolsby, a former council speaker who had participated in the Lewin discussions, ran against Mitchell to represent the same district and hoped that, according to a Fayetteville Observer reporter, “voters will reward council members who voted in favor of the consulting agreement and punish those who stirred dissent and controversy by opposing it.” Goolsby said, “I think the controversy surrounding federal recognition and negativity that surrounded the process during [Mitchell’s] term was not positive. There was a lot of negative comments by her and misleading comments as it relates to federal recognition and gaming.” Mitchell defeated Goolsby, but as one tribal member put it, there are “still a lot of strong feelings out there—both for and against.”

The Lumbee Sovereignty Coalition lost a sense of urgency after the contract collapsed. LSC founders, especially those who lived in Robeson County, suffered personal criticism from tribal council members who argued that they were just using the contract to promote themselves in the media, which, by this time, had placed a harsh spotlight on tribal government affairs. The group, working through social media, began to recruit tribal members across the country to write and call their congressional representatives to support the existing bill, but the damage had been done. After Lewin backed out and the tribe released Arlinda Locklear, the tribe went months without a lobbyist on Capitol Hill. In retrospect, Arlinda said, “That lost time absolutely damaged our bill. That period of inactivity, combined with the association with gaming, made the bill next to impossible to pass.”

Over sixty years after the Lumbee Act’s partial recognition and nearly forty years after the establishment of the Federal Acknowledgment Process, the federal
government has yet to fully acknowledge the Lumbees. Many feel that progress has been made, however. In 2015, the Office of Federal Acknowledgment updated the standards for evidence to meet the criteria. Between 1978 and 2013, more than 350 groups petitioned for federal recognition, and 74 cases have been resolved, either through the FAP, congressional action, or another means. Most significant, the criteria no longer insist that a petitioner prove descent from a tribe that has exercised political authority since 1789, at the founding of the United States. The regulations now require that the petitioner must demonstrate identification with a tribe that existed before 1900; because documentation is more complete for the nineteenth century than the eighteenth, this new time frame provides a more reliable source base for a tribe’s claim of historic continuity. The second important change concerns a tribe’s political influence over its members; rather than date this influence to 1789, petitioners must demonstrate political authority since 1934, when Congress passed the Indian Reorganization Act. Former OFA staff member George Roth argued that these changes substantially weakened the foundation of the regulations: historical tribal continuity. Roth helped revise the criteria once before to respond to the problems that the Lumbees and other tribes experienced in the 1980s. Although he believed that these new requirements would result in incorrect findings and more legal challenges to the Department of the Interior, he also understood that the criteria must change to account for the OFA’s more sophisticated understanding of Indian political authority, of tribal-U.S. relations, and of the kind of evidence available to meet the standard. The OFA also instituted an important change in the review procedure in 2015: petitioners can withdraw their application at a variety of stages in the process. Before, they would have to wait for a ruling from the OFA, and an OFA decision against a tribe’s claim made it impossible—in practice if not in theory—for that community to assert a government-to-government relationship with the United States. Now, if it appears that the ruling will be negative, a tribe can withdraw its petition, leaving the possibility open for Congress to recognize the tribe.

Just as the regulations had been revised to reflect the histories of groups like the Lumbees, a window opened to allow the tribe to engage the FAP in addition to Congress. In December 2016, the Department of the Interior reversed its long-standing opinion that the Lumbees were ineligible for the FAP. The solicitor, Hilary C. Tompkins, argued that, in contrast to its 1989 opinion, Congress did not intend to forever forbid or foreclose the Lumbees’ relationship with the federal government, but its ambiguous language meant only that the Lumbee Act itself did not provide any benefits or services to the tribe. The 2016 and 1989 opinions shared the view that the act’s language was ambiguous. But
in 2016, Tompkins argued that the 1989 opinion reached several inappropriate conclusions. First, it dismissed the rationale for the court’s decision in *Maynor v. Morton* without explanation; rather than see the Lumbee Act as forbidding the federal relationship, the court held that the act did not apply to the Original 22 and therefore did not bar Indians in Robeson County from recognition. But the 1989 opinion did not explain why it contradicted a federal court decision. Second, the 1989 opinion compared the Lumbee Act to the Ysleta del Sur Pueblo’s legislation because of the similar language in both—Arlinda Locklear had drawn the same conclusion at the time. But Tompkins concluded in 2016 that the context of Ysleta del Sur’s legislation was different and that the circumstances of the two tribes were not similar enough to warrant applying the same solution to both. Finally, Tompkins closely examined other legislation that did expressly forbid the federal relationship and found little in common between those laws and the Lumbee Act. She wrote, “I conclude that they may avail themselves of the acknowledgment process in 25 C.P.R. Part 83. If their application is successful, they may then be eligible for the programs, services, and benefits available to Indians because of their status as Indians.”

In 2016, after years of evasion and stalling, the federal government admitted that the Interior Department had “vacillated” in its opinion of the Lumbees’ legal status for the previous forty years. That statement might in fact be applied to the previous 128 years of Lumbee recognition efforts, since tribal leaders first sought educational assistance in 1888, in light of all of the changes, some arbitrary and some reasonable, that the Lumbees have survived since their ancestors’ first contact with Europeans. The problem with Lumbee federal recognition lies not with the Lumbees but with the United States. Federal Indian policy has been unable to account not only for the damage done to tribes but for how they have thrived, despite every effort to render them invisible.

Federal acknowledgment does not provide a tribe with legitimacy, but the conversation about Lumbee recognition has been trapped in that language, due to the ways in which Lumbee history has not conformed to the assumptions behind federal Indian policies. Those assumptions, since the founding of the United States, have revolved around the idea that Indians would disappear, racially, politically, or culturally. In different periods of the twentieth century, recognition policy reflected the obsessions of the time. Before the Great Depression, assimilation into the mainstream was the key focus of the federal government’s energies, not only with American Indians but with immigrants from all over the world. During the Great Depression, the BIA adopted racial views of Indianness that reflected the ways in which white supremacy infected the nation, not just the South. Following World War II, assimilation
again returned to become the operating principle of Indian policy, whereas after the civil rights movement, Americans began to fully embrace the federal government’s role in the self-determination of every individual. The 1978 Federal Acknowledgment Process arose from a spirit of multiculturalism, but it could not escape the principles of federal Indian law that had been constructed to isolate and marginalize Indian tribes. As such, multiculturalism for American Indians often enables a climate of appropriation, where non-Indians believe they can wear headdresses as fashion but that Indian sports mascots are racist.

Either way, actual American Indians—the people and nations who have lived and survived this history—are left out of the discussion. Federal recognition policy is not the source of this problem, but the way it has been refracted through older stereotypes about American Indians makes the policy symbolize a larger, unresolved pattern in American history. When the federal government moves the goalpost for federal recognition for the Lumbees—or “vacillates,” as the Department of the Interior said—one cannot depend on that government to arbitrate the legitimacy of any American Indian nation.

OCEAN CITY, MARYLAND, FALL 2010

The year 2010 opened with the death of an elder, Julian Ransom, but his home-going celebration was an uplifting reminder of how to overcome obstacles through collaboration, faith, prayer, and trust. The year showed us that as a tribe with a newly constituted government, our journey to nationhood, to fulfilling our constitutional principles, was not going to be any easier than it had been for the United States. It took the active efforts of citizens—those who had been dispossessed and those who believed such dispossession threatened everyone’s freedoms—to bring the nation’s leadership to focus on implementing the founding principles for everyone on an equal basis. In 2010, with the failure of federal recognition and the tribe’s leadership embroiled in controversy, we needed the wisdom of elders more than ever.

But we lost another one—Helen Maynor Schierbeck. She died in December 2010, following a sudden stroke. My last conversation with her was in a care facility near her daughter’s home in Maryland; Willie and I went to see her in the fall of 2010, fearing that our last glimpse of her would be at her funeral. Dr. Helen, in fact, could not talk because of the stroke, but I remember that she was so expressive—her murmuring and vocalizations, her eyes, her inextinguishable smile—that we felt we knew what she was saying. Willie brought his guitar and played “Proud to Be a Lumbee” for her, and I read to her a paragraph from my first book, which had been recently published. The passage I picked
was about how Lumbees could disagree and still be a legitimate, whole Indian people, a nation like any other. I read that for her because she was the first person who told me, years ago, that Indians did not need to be unified about everything and that expecting them to be unified just held them to a double standard, one that the United States itself could not meet. I listened closely when Helen said that, because I knew that she spoke from decades of experience working with dozens of Indian tribes. In 1961, she helped her father, Judge Lacy Maynor, organize the southeastern regional meetings of the American Indian Chicago Conference, a collection of organizations that ended the federal termination policy and brought about self-determination as a federal directive. Just three years before her stroke she had retired as program director of the Smithsonian’s National Museum of the American Indian in Washington, D.C., having also served on its founding board of directors. She was responsible for the representation of millions of Native peoples in the Western Hemisphere, and she was a listener and convener, someone who, like Preacher Julian, brought people together.

But she also knew how to dig in, talk back, and fight back. When Helen founded and directed the Office of Indian Education within the Department of Health, Education, and Welfare in the 1960s and 1970s, she took a measure of control of Indian education away from the Bureau of Indian Affairs and tried to put it into the hands of Indian people. In this capacity, and later as national director of the American Indian office of Head Start, she funded Indian-run educational institutions from pre-K programs to tribal colleges. Indians like Helen were interpreting self-determination in lots of different ways to suit their own needs and those of other communities.

At home in Robeson County, her efforts were more controversial. The land on which Strike at the Wind! was held—the North Carolina Indian Cultural Center—was owned by the state of North Carolina and leased to a nonprofit that ran it. Helen led an ambitious effort to rebuild the facilities and revitalize the center in the 1990s. When the center got its start, whites had their own country clubs and golf courses that barred Indians, and in typical Lumbee fashion, Lumbees responded by building their own. The Riverside Country Club agreed to sell its land to the state and become a cultural center if the golf course and amphitheater could operate as originally intended. But Helen’s plans for building a facility involved closing the golf course. Lumbees who had experienced the sting of exclusion at white-only facilities and could not participate in golf except at their own club opposed her plan; they thought she was trying to take away what they had built, and what she proposed to replace it with was not what they, themselves, needed. She, and many others, felt differently. But when
other public officials who might have held sway did not express their support, Helen had to back out of the plan, after years of work. But she never withdrew from her involvement in the community. This was the kind of internal political disagreement that she knew so well and that inspired my interpretation of Lumbee history. She persisted, and so have we—not despite our disagreements but because of the ideas they generate.

Dr. Helen articulated the principle behind that persistence when she testified about Lumbee recognition before the Senate Committee on Indian Affairs in 2003. She said the federal government failed to “respect our people’s unique community” by not recognizing the Lumbees. This statement stemmed not only from her upbringing as a Lumbee but also from her decades of work with other tribes. She continued, “There is a principled issue at stake here: the right to self-determination and the right to receive respect in the eyes of the federal government, regardless of race, color, or culture.” Federal recognition for the Lumbees is the obligation of a government that wants to fulfill its principles of equality for all.64

Sam Deloria, director of the American Indian Graduate Center and brother of Vine Deloria Jr., spoke at Dr. Helen’s memorial service in Pembroke, at Berea Baptist Church. He summed up her courageous contributions to American Indian affairs by saying that Lumbees knew how to be Indians without having a “federal relationship.” Neither Helen nor her ancestors before her would accept anything less than self-determination in our future.
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