Democracy, Inc.

Kay WalkingStick on Indian Law

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

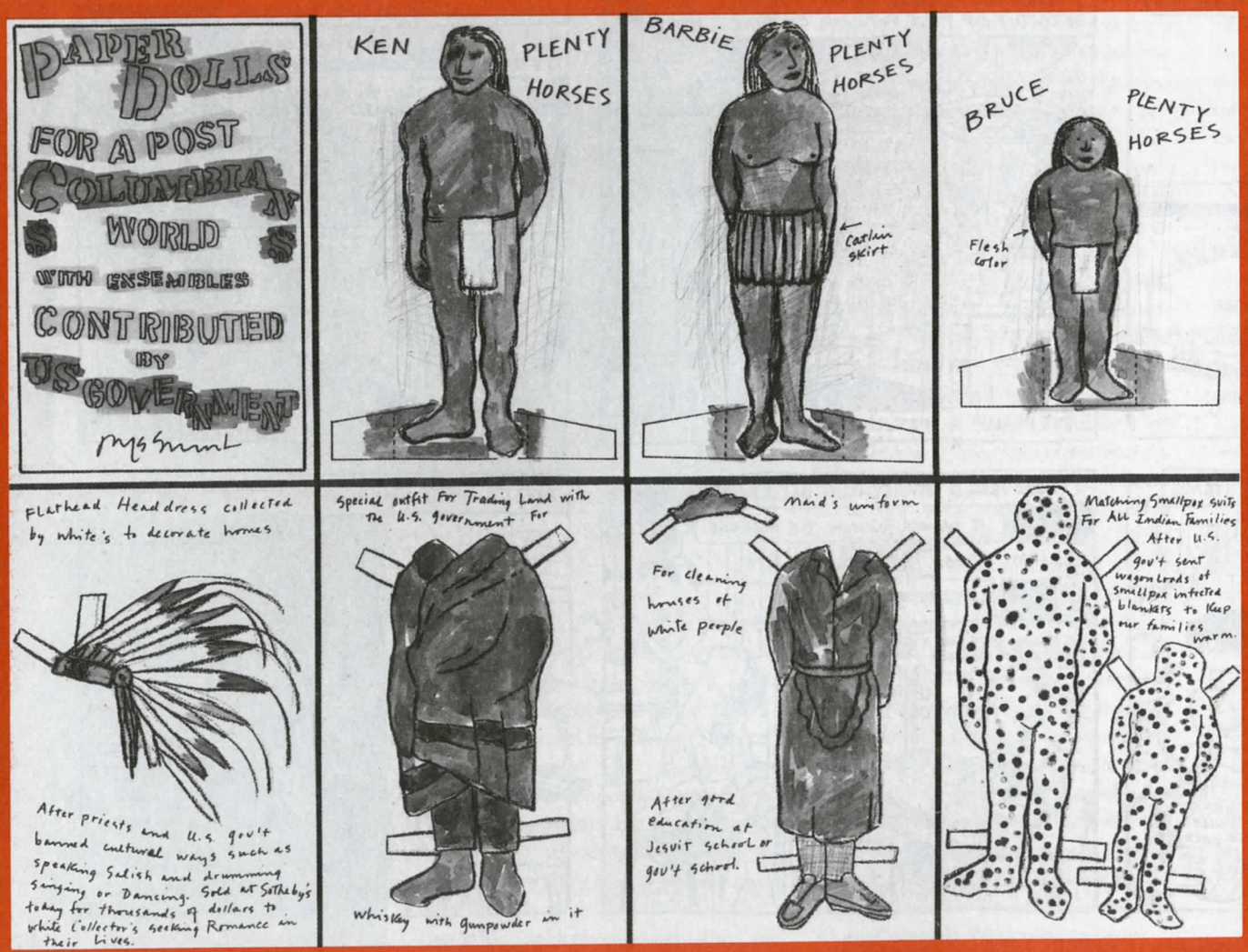
Many Cherokees, however, didn't sign. Some lived outside Indian Territory and felt they had nothing to gain by making the trip to Tahlequah. Others mistrusted white people—the Trail of Tears was only sixty years in the past. These people were often traditionalists who wanted to retain the old ways. Their tribal lands and their way of life were being taken from them. Furthermore, numbering and registering was a humiliating process, and its purpose was to control people.

Even so, the only way one can prove one is a Cherokee today is to produce the registration number of an ancestor and through such documentation be accepted as a tribal member. The children and grandchildren of those who did not register cannot prove they are Indian.

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

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

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



Jaune Quick-to-See Smith, *Paper Dolls for a Post-Columbian World with Ensembles Contributed By U.S. Government* (detail), 1991, watercolor and pencil on photocopy, one of 13 panels, 17 × 11" each.

Kurz and Allison, *William Penn's Treaty with the Indians*, ca. 1880, color print, 20½ × 27⅞".

George Catlin, *Wi-jun-jon, The Pigeon's Egg Head, Going to and Returning from Washington*, 1832, 29 × 24". Collection of the Smithsonian Institution, Washington D.C.

Salish and you were born in Saint Louis, you cannot be a member of *either* tribe, even though you are a full-blood Native American.

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

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

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

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

Kay WalkingStick is an artist and a professor of fine arts at the State University of New York, Stony Brook. She is a member of the Cherokee Nation of Oklahoma.