

Review Essay: **On Disenrollment**

**David E. Wilkins & Shelly Hulse Wilkins. *Dismembered: Native Disenrollment and the Battle for Human Rights*. University of Washington Press, 2017. 208 pp. ISBN: 9780295741574.**

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*A snowy, icy workday in Anishinaabeki. The headquarters of the Lake Matchimanitou Band of Anishinaabek. Tribal council chambers. The seven tribal council members sit on an elevated platform behind a large table, with the tribal chief executive, Ogema AJIJAAC, sitting in the middle. Several dozen tribal citizens and employees sit in the audience at attention. AJIJAAC pounds a gavel.*

Ogema AJIJAAC: Aaniin. Let's call the meeting to order. We have an important action item to consider today. I know there will be much to say today. We have on the agenda a draft resolution proposing disenrollment of the Waabshkaande and Old Woman siblings' families. Is there a motion to approve the agenda?

Councilor MUKWA: So moved.

Councilor MESHIIKE: Seconded.

AJIJAAC: So the agenda is approved. The legal department drafted the resolution at the request of the enrollment office. Legal?

Tribal General Counsel OGITCHIIDAA: (dryly) The resolution is approved as to form.

AJIJAAC: Hah! Well, you wrote it. You should know.

*Nervous laughter in the audience. None of the other council members are amused. A few audience members hiss.*

AJIJAAC: Seriously. Can you explain the resolution please?

OGITCHIIDAA: Yes, of course. Ten years ago, the council enacted resolution number 2009-1074. That resolution altered as a matter of law the blood quantum of Agnes Old Woman, listed on the Dupont Roll of 1864 as a quote half-blood Indian. Then-councilor Mamengwa Old Woman advised the council at that time that Agnes was full-blood and asked the council to make the correction.

MUKWA: I don't know that we need to name names.

OGITCHIIDAA: I am merely explaining the facts, Councilor Mukwa.

AJIJAAC: Please continue.

OGITCHIIDAA: The council adopted the resolution. The impact of the blood quantum change to Agnes Old Woman extended to 129 individuals who were one-eighth Indian blood before the resolution and became one-quarter Indian blood after the resolution. All of them were descendants of Agnes' children, Waabshkaande, Old Woman Jr., and Ki-Chmookmon-Innini. As a result, all 129 petitioned for enrollment shortly thereafter. The enrollment office quickly enrolled 14 of the 129 on the basis that they lived here on or near the reservation, within the four county service area. They were all descendants of Waabshkaande and Old Woman, Jr. The enrollment office declined to immediately enroll the remaining 115, and passed the decision on to the tribal council for final determination. The basis was that the Ki-Chmookmon-Innini family had moved to Ohio

in the late 19th century and did not live here anymore. The council at that time declined to act on their petitions. The 115 were not enrolled. A year later, the 115 filed a class action lawsuit in tribal court. *Ki-Chmookmon-Innini v. Tribe*. The plaintiffs argued that the refusal to enroll them violated the equal protection clause of the Indian Civil Rights Act. The argument was that the 115 were similarly situated to the 14 people who were enrolled. The argument was a sound one under the law. At the request of council, the legal department tried to have the case dismissed on sovereign immunity grounds (Wilkins and Wilkins, 103). The tribal court, as you all know, declined to dismiss the action. After a hearing, Judge Waabigwan ordered the enrollment department to enroll the plaintiffs. Judge Waabigwan extensively quoted *Dismembered* by David and Shelly Wilkins in their opinion. *Dismembered* contains a lengthy description of several federal and tribal court cases on disenrollment matters (Wilkins and Wilkins, 102-141). Upon the order of the council, the enrollment director refused to comply. Judge Waabigwan held the enrollment director in contempt and threatened to jail them. The council in 2011 then removed Judge Waabigwan. The council amended the judicial code to strip the tribal court of jurisdiction to hear enrollment matters.

AJIJAAK: I recall the 115 sued us in federal court?

OGITCHIIDAA: Yes. They sued the United States as well. The court held that under *Santa Clara Pueblo v. Martinez* that it had no jurisdiction to hear tribal enrollment matters. The case was dismissed. (Wilkins and Wilkins, 63, 303).

AJIJAAK: OK. Continue, please.

OGITCHIIDAA: A few months ago, the tribe received a letter from the Department of the Interior questioning the tribe's enrollment decisions. It is a true that the federal government has no power to overturn tribal enrollment decisions. But the letter also raised concerns about the council's removal of Judge Wabaunsee. The government is threatening to pull some of our 638 contract funding, saying the tribe is using federal funds to violate the Indian Civil Rights Act. They did something like this before, in the cases of the Nooksack 306 and the Cherokee Freedmen.

Councilor WAABIZHESHI: That's the gummint for you. Always interfering with internal tribal relations. Tribal citizenship matters involve the internal powers of Indian tribes. The federal colonizers have no business in our business. Someone should tell the Wilkins' that.

OGITCHIIDAA: Perhaps. But there is more to the letter. The government is also asking whether we use federal money to provide services to persons who are not actually eligible for tribal membership. That would be, I think, a reference to the 14 persons enrolled in 2009. Actually, the government is demanding we prove the 14 are eligible for membership.

AJIJAAK: Can we?

OGITCHIIDAA: On the facts. Maybe. Maybe not. We'd have to hire an expensive expert witness to prove the Dupont Roll was incorrect. The historical evidence is not conclusive at all. Typically, the government agent just asked an ogema who was in their families and the blood quantum of each family member. The ogema could say anything they wanted. Our best argument is the one raised by Councilor Waabizheshi, that the government has no authority to overturn our decision. But the government could still cut our funding under Public Law 638. We could sue the government over that, but the cost of the litigation will be massive.

AJIJAAK: What about Congress? Could the Indian Civil Rights Act be amended to allow federal courts to review disenrollment decisions?

OGITCHIIDAA: Yes, in theory. Congress has plenary power in Indian affairs. They could adopt the American Indian Legacy Act, too, the law proposed by Laura Wass (Wilkins and Wilkins, 159).

AJIJAAK: I wondered about that idea, too. How would that work? What if a tribe, oh I dunno, say, this tribe, raised traditional and cultural defenses?

OGITCHIIDAA: I see where you're going. So if a disenrollee used the legacy act to access federal court, one question is how a federal judge would apply Indigenous customary and traditional law? Perhaps, for example, a defense rooted in the Seven Grandfather teachings?

AJIJAAK: Exactly.

OGITCHIIDAA: I suspect the judge's analysis would be the epitome of absurdity.

AJIJAAK: Is there any risk to our decision today being reversed by the federal government in any way?

OGITCHIIDAA: Well, only if a federal judge decides to intervene. That decision would most certainly be reversed on appeal. In other words, almost no chance at all.

AJIJAAK: And so that brings us to the resolution. We disenroll the 14.

MUKWA: Hear hear.

WAABIZHESHI: Let's vote.

AJIJAAK: Call the question?

Councilor WAAWAASHKESHI: A moment please. If we have an equal protection problem with keeping the 14 in, why don't we solve the equal protection problem by admitting 115 instead? I read *Dismembered*, too, and I support a rule that once a person becomes a tribal citizen, they become a family member. We should never disenroll anyone.

*There is a long pause in the room.*

Councilor BINESHI: I support that solution. I do believe this is far more than a mere legal problem.

Councilor MAANG: I really do hate to bring this up, but how will that affect the bottom line? If our tribal membership balloons by 115 people, that's another 115 people who will share in the tribal gaming per capita distribution.

*There is a murmur and a commotion in the audience. Several council members pound the table with their hands.*

AJIJAAK: I suggest we move immediately to executive session.

MUKWA: So moved.

WAABIZHESHI: I second.

*The council chambers are cleared. The council exits the room and enters a smaller chamber, along with the general counsel. Nearly an hour later, Ogema AJIJAAK reconvenes the public meeting.*

AJIJAAK: Boozhoo. Aaniin. I call this meeting to order again. Apologies for the delay. But we seem to be at an impasse. As you know, under the tribal constitution, the ogema is authorized to vote on matters only in the event of a tie between the six other council members. And, as many of you know, I am a traditional and ceremonial person, first degree Midewewin. I am a learner, it is true. But I am knowledgeable enough to know that the tribal constitution is an American legal construct (Wilkins and Wilkins, 43-59). This simple majority requirement is not how we governed ourselves historically. And it is not how we should be deciding this matter today. I refuse to vote to break a tie, especially in a matter involving disenrollment, and what some call dismemberment. I have asked the council to return to the council chambers to convene a talking circle. Everyone present here is entitled to sit in the circle. And everyone in the circle is entitled to speak without interruption. They may speak about anything they see fit and for as long as they wish. The only rule, if it could be called a rule, is that we must all behave in the spirit of mino-bimaadiziwin, and with respect to Anishinaabeki and the Seven Grandfather teachings. I turn to my left, to our youngest council member. Councilor MUKWA?

MUKWA: I represent the protectors, the Bear Clan. We watch for danger. I see danger here for our tribal community. We have made a mistake. We allowed in persons who are far too distantly related to our own people. We elevated some people and excluded others without justification. By doing so, we exposed ourselves to this Indian Civil Rights Act lawsuit. It is a time to speak with Debwewin, truth, one of the gifts of the Seven Grandfathers. Miigwetch.

WAABIZHESHI: I speak today as a member of the Marten Clan, the warriors and hunters. I speak today with an eye toward Aakode'ewin, or bravery, one of the gifts of the Seven Grandfathers. The things I say now are not easy to say. We are not a wealthy tribe. The federal government shutdown hurt us badly. We don't have much money. Our casino per caps brought us from abject poverty to lower middle class. But a few bad months at the casino might be enough to force us to shut down the health clinic, or the Head Start school, or the police department. It is irresponsible for us to artificially grow our tribe to benefit the few, at the expense of the tribal citizens who meet the citizenship criteria. My clan is charged with ensuring the community has food and supplies. I have no choice, really, but to make this argument.

BINESHI: I speak for the Bird Clan. Like the Marten Clan, my concern is for the internal affairs of this tribe. We are a tribe of limited resources. Our people are not wealthy. The per caps are a huge help for the membership, especially those members who do not work for the tribal government or the enterprises. People depend on that money. But these enrollment decisions are divisive. Families are torn apart. Feelings are hurt. Sides are drawn. There is anger and jealousy. Eventually, we will have threats and then violence. I acknowledge those harms. I speak with Minaadendamowin, respect, one of the gifts of the Seven Grandfathers. I do not know the proper answer. But I have tried to see both sides.

MESHIIKE: I speak for the Turtle Clan. Yes, I am named for the mud turtle. Lots of jokes about that growing up. But our clan are healers. There is medicine in the mud, in nature. I look around the room and I see a lot of injury, and anger. There are decisions that must be made today, decisions rooted in the terrible history of this tribe. Of all tribes. In the mud, in the dirt, in the rocks, you see the impact of time. It was the United States that first insisted we draw up a roll in the 19th century. It was the United States that demand we create classifications of our own family members based on Indian blood. It was the

United States that invited us to dissolved our traditional governments and replace them with American style governments. This circle today is a good first step toward healing the injuries inflicted upon us by the Colonizers. This circle today is a good first step toward healing the injuries we, in turn, inflict on ourselves. I speak today with Zaagi'idiwin, love, one of the gifts of the Seven Grandfathers. I have love for all my relatives here today. Whatever choice we make must be made with love.

MAANG: I represent the diplomats, the Eagle Clan. Migizi can see far. Migizi is charged with communicating with outsiders. And, yes, our clan has been accused of perhaps talking too much, and talking out of turn. I, too, studied *Dismembered* carefully. The disenrollment of tribal citizens from their communities for political purposes, or because of greed, or because of personal politics, is catching the attention of outsiders. Federal judges, the Department of the Interior, human rights watchdogs like David and Shelly Wilkins. They are all watching and judging. Saginaw Chippewa Indian Tribe disenrolled Indian people that had walked on decades ago in order to legally disenroll living members. (Wilkins and Wilkins, 127-28). Everyone believes they did it because of gaming revenue per caps. The Cherokee Nation tried to disenroll the descendants of the Freedmen. And they failed (Wilkins and Wilkins, 130-131). But everyone believes they did it because of racism. Whether they did it for moral reasons or legal reasons or reasons of sovereignty doesn't really matter to observers. It looks wrong. It looks wrong because it most likely is wrong. We must ask ourselves in the spirit of Gwayakwaadiziwin, honesty, one of the gifts of the seven grandfathers. And we must answer in the spirit of honesty. Are we disenrolling the 14 in order to preserve our share of the per caps? To get reelected? Or are we disenrolling the 14 for the right reasons? Frankly, I'm not sure there are right reasons anymore.

WAAWAASHKESHI: Well, I'm last, so I guess that makes me the oldest. I am Deer Clan. We are spiritual advisors to the tribe. Like the Turtle Clan, we are healers and we are teachers, but we are also gatherers. I've been around a long time. I was here when we sent our ogema to Washington, D.C. in the 1950s to fight termination. I was here when we filed the lawsuit to preserve our treaty rights to hunt and fish in the 1960s. I was here in the 1970s when we opened up the first Indian casino in Anishinaabeki. We were always fighting. There never seemed to be time for a rest. What modest material goods we have now, we fought for. Now we fight each other. I spoke up earlier about admitting the 115 rather than disenrolling the 14 because I believe strongly that all views should be heard. Maybe it's a good idea. Maybe not. But we at least should discuss it. I speak today with Nibwaakaawin, wisdom. Or at least I try to. Sometimes when I try to think about Nibwaakaawin, I think about how my ancestors would think about Nibwaakaawin. And then I wonder if the decisions I help this tribe make would make my ancestors proud. Would they make my descendants proud? The Americans often talk about being on the right side of history. That's where I want to be. Our ancestors made great sacrifices to negotiate treaties and survive an apocalypse. This disenrollment decision seems petty compared to those sacrifices. That's all I have to say.

AJIJAAK: I'm Crane Clan. I'm also the youngest here. I speak from deepest humility, Dabaadendiziwin. I learned a great deal today from these teachings and from my peers on the council. I believe the decision is made. The council is adjourned. Baaniimaa'apii.

*Matthew L.M. Fletcher, Michigan State University*