

# Could a Trump Presidency Bring Back the Termination Era?

## Election Day stakes are high for Native Americans.

Michael Alvarez Shepard

The 2016 presidential election is almost here and the stakes could not be higher for Native American communities. This election represents not only a choice between starkly different approaches to policy, but distinct ideological perspectives on treaty rights, indigeneity and Native self-determination. Donald J. Trump represents a conceptualization of Native American legal, political and cultural rights that fell out of favor almost a generation ago, but certainly did not disappear. For the past 30 years, the GOP nominee has consistently demonstrated a worldview that could roll back 50 years of progress toward Native self-governance and usher in a new Indian Termination Era that rivals any before. As tribes take increasingly active roles in economic development and the protection of natural resources, their political status may become too inconvenient for a Trump administration. Fortunately, presidents do not possess unilateral powers to revoke tribal recognition. However, there is nothing to prevent a president and the government they lead from pursuing policies that defund, destabilize and hinder tribal governance.

At the time of writing, Trump is polling competitively, but still has a slim chance at winning the presidency. While Trump's incendiary comments about [women](#), people with [disabilities](#) and [Latinos](#) have garnered much of the attention, his rhetoric specific to [Native Americans](#) has unique implications. Trump has repeatedly questioned the legitimacy of Native American identity, supported [derogatory mascot representation](#) and has shown deep disrespect by calling Senator Elizabeth Warren "[Pocahontas](#)." Trump regularly excuses his behavior saying, "It's only just words," whether he's bragging of sexual assault or encouraging physical violence toward Secretary Clinton. It is doubtful that Trump's inflammatory statements belie his policy objectives, given the consistency of his remarks. These "words" not only have direct policy implications if acted upon, but also legitimize racist undercurrents in US society.

Between the mid-1940s and 1960s, over 100 Native American Nations representing more than 12,000 people lost federal tribal recognition ([Wilkins and Stark 2010](#)). Called the [Indian Termination Era](#), it represents one of the most damaging periods in the fraught history between the US and Native Americans. Unlike other detrimental social policies, like the [Indian boarding school movement](#), the Termination Era is marked by formal revocation of tribal political recognition. Federal recognition status is significant for Native people in the US, because a range of economic, legal and political rights depend on it. Those tribes which experienced termination lost capacity for self-governance and access to federal programs for health care, housing, education and more. During this era 2,500,000 acres of Native American territory was also sold, mostly to non-Natives. The Termination Era officially ended over 50 years ago and since that time, some tribes have successfully petitioned for their recognition to be restored. Trump already has a history of questioning the legitimacy of tribal organization, particularly

when his interests are in competition. Potentially even more problematic, are Trump's normative standards for indigeneity that perpetuate colonialism.

### **“They don't look like Indians to me”**

In 1993 Trump testified at a [House Native American Affairs Committee](#) hearing in relation to a lawsuit he brought against the federal government. Trump claimed that the Native owned Foxwoods Casino had an unfair advantage over his Atlantic City casinos and discriminated against him, while privileging “a very limited class of citizens” ([King 1993](#)). Trump lost the lawsuit, because Native Americans are recognized uniquely by the federal government and their treaty rights create long standing “special trust status” for recognized tribes. At the hearing Trump got into a heated discussion with, then California Congressman, George Miller. It was during that exchange that Trump said, “They don't look like Indians to me . . . They don't even look like Indians to Indians.” Trump's comments were specifically directed to the Mashantucket Pequots, the small Connecticut tribe which opened Foxwoods after passage of the Indian Gaming Regulatory Act of 1988. By questioning the validity of Native American identity, Trump puts tribal recognition in jeopardy. Trump's statements also highlight the delicate balance tribes navigate as they maintain the cultural and political factors which affirm tribal recognition.

While it may be reprehensible for a wealthy white man from a privileged family to question a person's indigeneity based on their appearance, this is only part of the problem. With his statement, Trump implies that Native Americans should look, act or speak in ways that fit his normative expectations. He appears to rely on stereotypical depictions of Native people that assume modern Native Americans look identical to their ancestors from hundreds of years ago. It is fundamentally problematic for people of a dominant culture to dictate how cultural minorities should look, dress, speak or act—particularly since the federal government actively supported cultural assimilation of Native people for decades. Native Americans are acutely aware of outside cultural expectations, because their colonizer has defined them through books, film, fashion and television for centuries ([Huhndorf 2001](#)). For this reason, Trump's standards for cultural alterity and identity are particularly concerning.

### **Rights and Cultural Identity**

What Trump is really arguing is that those Native people who opened the Foxwoods casino are not Native enough to qualify for their unique rights. Unfortunately for Native Americans, capacity to operate casinos and a range of other rights, are dependent on tribal status. Accordingly, Native people face unique pressures to maintain and demonstrate unique cultural identity. If Trump is asserting that assimilation is already so complete that the Mashantucket Pequots don't look Native to him anymore, then it opens wide the door for a return to Termination Era policies. The Indian Termination Era is predicated on the notion that Native people should be culturally and legally assimilated. For Native people, the prospect of tribal unrecognition is alarming for a range of reasons no other ethnic minority must consider. For example, if Trump were to tell me that I don't look Puerto Rican, I might take offence, but understand that the Caucasian half of my heritage is outwardly dominant. If Trump's administration was to find that I lack ethnic minority status, it does not substantially dictate my

ability to access health care, housing, education, employment or resources. However, for Native Americans the implications of losing federal recognition are highly consequential. Unlike any other cultural group in the US, recognized Native American identity confers access to the fiduciary obligations the federal government made when signing treaties.

Determining Native American identity is contentious. Every tribe has ability to regulate how tribal enrollment is determined, including use of blood quantum and census records. However, the US Congress retains unilateral authority to alter or abrogate treaties and tribal recognition status. Congress has revoked tribal recognition before and there is every indication that they could be compelled to do so again. According to Native Law Professor, Robert Odawi Porter, federal policy for Native Americans runs in a cycle, from antagonistic to supportive ([Porter 2007](#)). Since the 1970s the government has mainly encouraged tribal self-determination and the Obama administration has worked to support a productive government-to-government relationship with tribes. A Trump presidency could usher in a new cycle of relations with tribes where their identity and the rights it affords, are again in question.

### **Federal Powers and Policymaking**

The president alone does not likely have authority to un-recognize a tribe, but as during the Termination Era, a president can direct Congress to investigate tribal status. A president can also influence the funding and directives of agencies, such as the Bureau of Indian Affairs, Indian Health Services and the Army Corps of Engineers. Today, tribes are engaged in increasingly high profile opposition to development projects they see infringing upon their rights. One example is the Lummi Nation's opposition to the largest coal export facility on the west coast, the [Gateway Pacific Terminal](#). The Standing Rock Sioux tribe's ongoing opposition to the [Dakota Access Pipeline](#) is another. The next president will have no shortage of issues to deal with and decisions to make that directly impact Native people, their lands and priorities. A candidate that openly questions Native cultural and political self-determination is deeply concerning.

In that 1993 hearing [Congressmen Miller](#) rebuked Trump's assertion that Native people must look a certain way by stating, "Thank God that's not the test of whether people in this country have rights or not . . . whether or not they pass your look test." A government policy that maintains people must look a certain way to qualify for rights is a slippery slope to equating identity with citizenship. A Trump "look test" is a troubling notion, because identity is complex and colonization is ongoing. Trump states that his words are not akin to his actions, but the consistency and prevalence of his statements indicates differently. The 600+ treaties signed between the federal government and the original inhabitants of this country are also "only just words." We need a president that affirms that the US will respect and enforce treaties, not one that will advocate their invalidation. It is our responsibility to ensure that Mr. Trump's antiquated and dangerous views on identity, cultural performance and indigeneity do not become the test which people must meet.

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