



Virginia's Indian nations

Policy issues and solutions for future generations

Jeff J. Corntassel and Reeva G. Tilley

Native Americans Pernel Richardson and Daughter, Alycia Yanti, at a Chickahominy pow wow.

Native peoples greeting English colonists in Virginia in 1607 were among the first victims of imported diseases and genocidal policies that decimated the Indian populations even as they helped arriving Europeans survive on indigenous homelands. Today, some 2,700 descendants of the original Powhatan and Monacan peoples celebrate their cultural survival despite Virginia's enactment of successive colonial policies designed to separate them from their homelands, cultural practices, and identities.

The eight state-recognized Indian nations of Virginia¹ continue to face obstacles at state and local levels in ongoing efforts to strengthen their communities and practice their cultural traditions. This article outlines several key issues cur-

rently facing Indian nations in the Commonwealth of Virginia and proposes legislative solutions to these problems for the benefit of future generations.

We begin, however, by providing a brief history of Indians in Virginia so that future policymaking can be guided by an understanding of previous policy shortcomings.

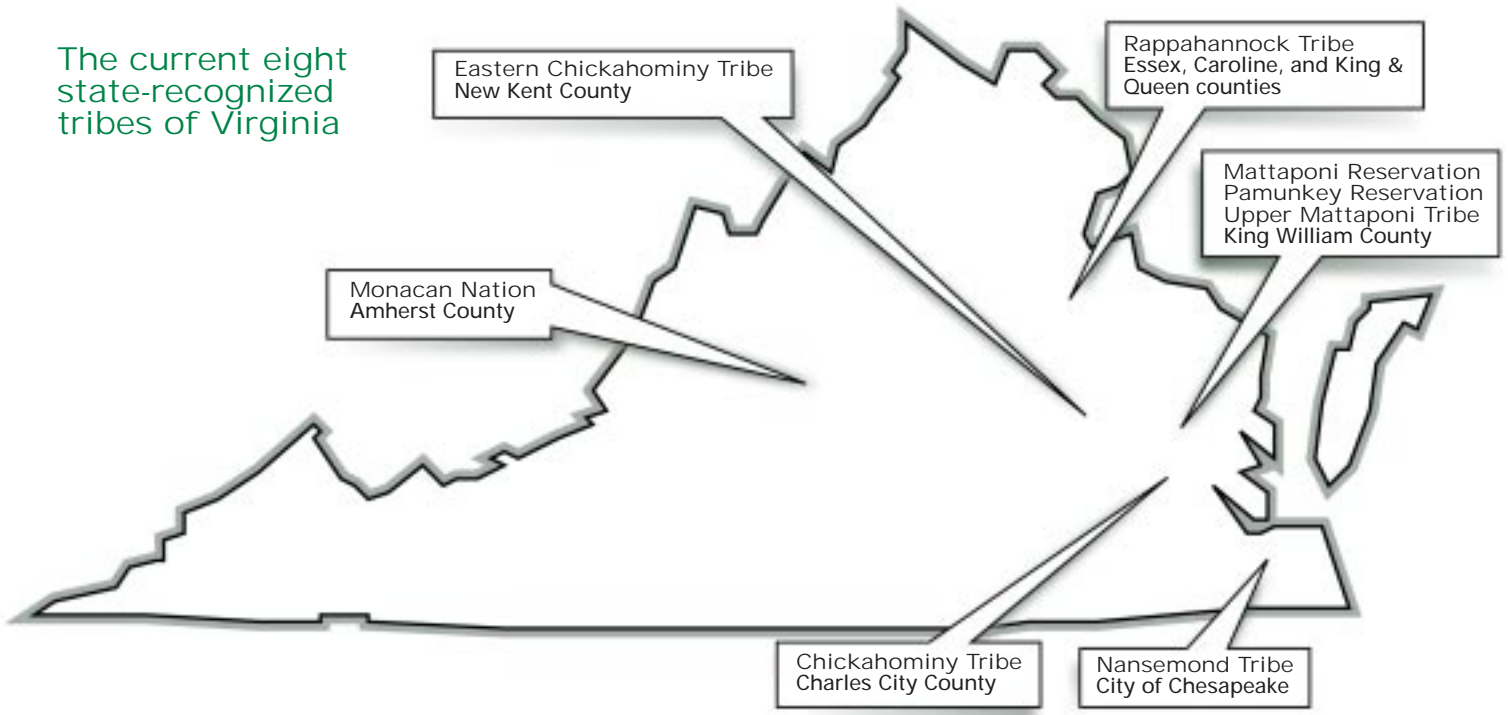
History of Indian policy in Virginia

Beginning with first contact between Indian peoples and European settlers in the 1600s, successive colonial policies in Virginia forced Indians into slavery, stole and destroyed their food supplies, practiced germ warfare by exposing Indian communities to blankets infected by smallpox, refused to provide schools for

v. Virginia in 1967. This state-sponsored and bureaucratic form of ethnic cleansing was designed to protect the “purity” of the white race by any means possible, including the forced sterilizations of over 8,300 Virginia citizens deemed “feebleminded.”

Walter Plecker, director of the Virginia Bureau of Vital Statistics from 1916 to 1946 and an internationally known eugenicist, made it his personal mission to eliminate American Indians as a distinct people. As Virginia's registrar, Plecker had the power to manipulate identities by reclassifying anyone's race on birth, death, and marriage certificates. Until his death in 1946, Plecker threatened midwives who dared to identify newborn babies as “American Indian” and reclassified all Indians that he could identify—based on common native surnames and 1705 “mulatto” designations—as “Negroes.”

The current eight state-recognized tribes of Virginia



JEFF J. CORNTASSEL, a member of the Cherokee Nation, is an assistant professor of political science and associate director of the Race and Social Policy Research Center at Virginia Tech. He is the author of the book *Forced Federalism: Contemporary Challenges to American Indian Sovereignty*, which will be published by the University of Oklahoma Press in fall 2002.

REEVA G. TILLEY is a member of the Rappahannock Nation and chairs the Virginia Council on Indians.

Indian children beyond the sixth grade, and applied Jim Crow laws to all non-white residents of Virginia.

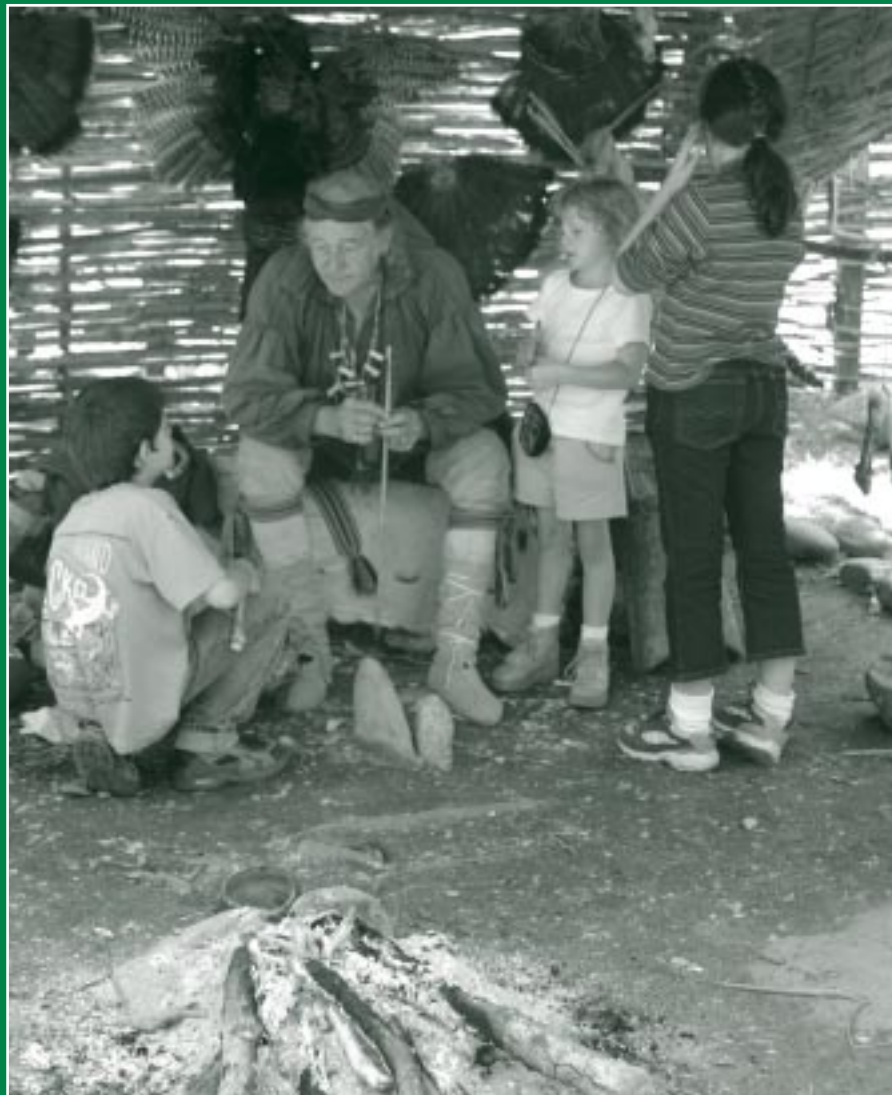
Unfortunately, the historical mistreatment of Virginia Indians continued well into the 20th century. The eugenics movement, which was touted by Virginia policymakers as the “science” of breeding better people, was institutionalized into Virginia state law beginning with the Racial Integrity Law of 1924 and ending with the U.S. Supreme Court case *Loving*

The effects of Virginia's eugenics campaign were devastating to Virginia Indians, who could no longer marry freely or identify themselves on official records as Indian. Consequently, hundreds of Indians left Virginia during Plecker's term in office.

Despite the historical attempts to “kill the Indian, save the man,” Virginia Indians have persevered. The Monacan, Rappahannock, Eastern Chickahominy, Mattaponi, Upper Mattaponi, Pamunkey,



The Monacan Indian Village at Natural Bridge illustrates Indian life as it was in Virginia nearly three centuries ago.



Nansemond, and Chickahominy people are still here. These nations continue to honor the terms of the 1646 and 1677 treaties with Virginia by offering an annual tribute to the governor. This act is not merely symbolic but fulfills the terms of an international convention under the dictates of *pacta sunt servanda* (duty to observe treaties in good faith). Provisions of these treaties continue to be important in that they firmly establish government-to-government relations between Indian nations and the Commonwealth of Virginia, clearly demarcate the homelands of Virginia Indian nations, and offer Indians protection from encroachments on their land and injustices committed against them by non-Indians.

A contemporary Virginia Indian policy agenda

In 1983 the Commonwealth of Virginia began to formally recognize Indian nations within its borders.² Currently, six³ of the eight state-recognized Indian nations of Virginia are seeking federal recognition through a Congressional bill entitled “The Thomasina E. Jordan Federal Recognition Act of 2001” (H.R. 2345). Federal recognition would enable these nations to strengthen their communities with increased federal protections for religious freedom (1978 American Indian Religious Freedom Act), child welfare (1978 Indian Child Welfare Act), and return of ancestral remains (1990 Native American Graves and Repatriation Act) and make them eligible for federal assistance in the areas of education and health care (1975 Self-Determination and Educational Assistance Act, 1988 Self-Governance Project) and housing programs through HUD. Some 562 federally recognized Indian nations across the country have utilized these federal services to strengthen their communities, resulting in greater cultural, political, and economic self-sufficiency.

Evidence from prior research overwhelmingly supports the contention that federal recognition strengthens Indian communities. For example, one 1976 federal study showed that citizens of unrecognized tribes were poorer, less educated, and in worse health than other Indians.⁴ Empirical research conducted for 12 years at the University of Arizona’s Udall Center and the Harvard American Indian Economic Development Project indicates

that enhancing Indian autonomy is the “only policy that works for economic development.”⁵ Indian nations, when given an opportunity to exercise their sovereignty, focus on what is best for their particular region, homeland, and cultural community.

Despite passing HJR 754 in 1999,⁶ which exhorts Congress to grant federal recognition to the eight state-recognized Indian nations in Virginia, policymakers in the commonwealth have done little else to strengthen Indian communities since that time. Former Governor James Gilmore was a staunch opponent of federal recognition, and now it is up to the Warner administration to set a positive new dialogue with Virginia Indians.

While waiting for Congressional approval of federal recognition, constructive, new policies can be implemented to strengthen Indian communities in the commonwealth and to enhance government-to-government relations. Eminent legal scholar Frank Pommersheim points out the need for sovereignty accords to help resolve historical animosities that often exist between Indian nations and states; previous Virginia policies limiting educational opportunities for Indians as well as eugenics policies directed, in part, at Virginia Indians attest to a historic pattern of enmity.

Similar accords successfully negotiated in Washington and South Dakota basically apply a philosophy of “mutual respect” to future tribal/state policymaking decisions.⁷ By taking an important, symbolic step of recognizing Indian sovereignty, the commonwealth would affirm the rights of Indian nations to self-governance and offer a collaborative commitment to continued community-building efforts. A recent bill proposed by the North Carolina legislature illustrates how the principle of sovereignty provides a basis for future interactions between states and tribes. The bill acknowledged that “the authority of state-recognized Indian tribes have sovereign authority to organize and function as a governmental body with powers or to exercise self-governance” (HB 362).

Bills, such as HB 362, provide a solid foundation for negotiating sovereignty accords and serve to build confidence in the future of government-to-government relations. According to Pommersheim, such accords put Indian nations and states

on the same “emotional and political footing” while tending to avoid costlier avenues of litigation as a primary means of resolving tribal/state conflicts.⁸

Related to the issue of Indian sovereignty is protection of indigenous ancestral homelands. For many Indian peoples, homelands are sacred places to be revered and served rather than owned.⁹ As the vice-president of the World Council of Indigenous Peoples once stated, “Next to shooting indigenous peoples, the surest way to kill us is to separate us from our part of the Earth. Once separated, we will either perish in body or our minds and spirits will be altered so that we end up mimicking foreign ways.”¹⁰



John H. Langston regulates shad fry in a Pamunkey Fish Hatchery. Both the Pamunkey and the Mattaponi run fish hatcheries.

Almost 400 years after first contact with English colonists, descendants of Powhatan still reside on their original homelands along the Mattaponi and Pamunkey Rivers. The Pamunkey and Mattaponi Nations are the only two Indian nations in Virginia that still have reservation land, holding 1,100- and 130-acre tracts, respectively. Both communities view the well-being of the rivers and their communities as being interrelated—they rely on the rivers for ceremonial life and traditional practices, such as pottery making, as well as food, such as bass, rockfish, and shad. Pamunkey and Mattaponi peoples run shad hatcheries, which renew the shad population each year and also revitalize and unite their communities. As

Mattaponi Assistant Chief Carl Custalow states, “The river is what feeds us; it is what keeps us living. We have to take care of it.”¹¹

In 1995 the Waterworks Department of Newport News and King William County officials proposed building a 96-foot-high dam on Cohoke Mill Creek, which is situated between the Mattaponi and Pamunkey Rivers, to create the Cohoke Reservoir. Officials wanted to pump as much as 75-million gallons of fresh water per day from the Mattaponi River into the reservoir in order to serve new population growth in the region. However, the Cohoke Reservoir would have destroyed hundreds of acres of wet-

land areas and would have increased the salinity of the Mattaponi River, thus threatening the future of the shad fish in the area as well as 50 other species unique to the region.¹² Additionally, the proposed reservoir would have flooded 90 sacred sites in violation of the 1646 and 1677 treaty provisions.

In 1999 United States Army Corps of Engineers Colonel Alan Carroll made a preliminary decision to deny the City of Newport News a permit to construct the Cohoke Reservoir. Colonel Carroll cited the destruction of “437 acres of wetlands” and a “disproportionately high and adverse effect to an American Indian minority population” as reasons for denying the permit. Despite Colonel Carroll’s decision, Newport News officials and several prominent Virginia members of Congress continue to lobby for the construction of the reservoir.

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Further highlighting the importance of land to Indian cultures, burial mounds are located throughout Virginia and are considered sacred sites by indigenous peoples. Beginning with Thomas Jefferson, who excavated the Monacan Monasukapanough burial mound, these sacred sites have been disturbed and raided for remains and/or historical artifacts. Consequently, remains of Powhatan and Monacan descendants are housed in museums throughout Virginia, such as the Valentine Museum in Richmond, and possibly in federal collections outside the commonwealth, such as the Smithsonian, rather than residing in their original homelands.

With an estimated 200,000 Indian remains in museums and federal collections nationwide, the Native American Graves and Repatriation Act (NAGPRA) was signed into law in 1990 to help repatriate these Indian ancestors and the objects that were buried with them back to their original communities.¹³ However, NAGPRA focuses on cultural items found on federal or tribal land and emphasizes claims made by federally recognized tribes. What protections do state-recognized tribes, such as the eight Indian nations of Virginia, have under NAGPRA to obtain ancestral remains from federal collections, such as the Smithsonian? The answer is murky at best. At a federal panel meeting in 1999, the Monacan Nation request for repatriation of ancestral remains was endorsed but was not binding under state and federal law. Nonetheless, the remains were returned to the Monacan Nation for reburial on their homelands. While there are strict Virginia burial regulations regarding American Indian gravesites under the purview of the Department of Historic Resources,¹⁴ more extensive coordination is needed among art and history museums (at both federal and state levels), archaeologists, law enforcement officials, Indian nations, and state policymakers. In addition to deferring to the sovereignty of Indian nations when it comes to repatriating their ancestors, legislators should consider establishing a standing panel of archaeologists and museum directors to serve, in collaboration with the Virginia Council on Indians, in an advisory function for all future repatriation efforts.

Future policy solutions

Current policymakers should affirm

the important status of former treaties, such as the 1677 Treaty of New Plantation, which establishes intergovernmental relations between Virginia Indian nations and the commonwealth. Virginia's policymakers can promote improved government-to-government relations by negotiating sovereignty accords similar to those developed in nearby states. Additionally, state policymakers can pass legislation stating unequivocally that they will not support any economic development projects, such as the Cohoke Reservoir project, that have detrimental effects on Indian communities and their surrounding environment/homelands. Finally, Governor Warner can stake out a position that differs from his predecessor in terms of promoting the original spirit of government-to-government relations best exemplified by the 1787 Northwest Ordinance: "The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed."

Given that a Virginia governor has not attended the annual Virginia Council on Indians Conference in Richmond since the Allen Administration (1994-1998), the time is right for Governor Warner to demonstrate his commitment to Virginia Indians by making it a priority to attend next year's conference as an active participant, along with other state policymakers, and to solidify government-to-government relations with the first nations of Virginia.

When it comes to recognition of cultural and community integrity, it is vital that the Indian nations of Virginia have full protection under the law as state-recognized entities. In addition to seeking federal recognition for Virginia's Indian nations, the commonwealth should enact legislation to establish an advisory panel of archaeologists and museum directors to better coordinate future repatriation efforts with the Virginia Council on Indians.

Education is a final issue to be considered for future policymaking solutions. As mentioned earlier, Indians were denied education beyond the sixth grade well into the 1960s. The lingering effects of this harmful policy need to be rectified by providing additional educational opportunities for American Indians attending public

schools in the Commonwealth of Virginia. The legislature and governor should lead the effort to develop programs that enhance educational opportunities for those long-neglected—namely American Indians—and establish a "Multicultural Education Task Force" for educational reform. The General Assembly should enact legislation to affirm the commonwealth's commitment to equal opportunities in education for all of its citizens. A similar bill was recently passed in Montana¹⁵ to "[r]ecognize the distinct and unique cultural heritage of American Indians and affirm the state's commitment to establish educational goals that will preserve the cultural integrity of American Indians."

In order for Virginia land-grant universities to better fulfill their obligations to the public and to help reconcile previous Virginia policies prohibiting Indians from attending college, we propose that tuition waivers be granted to Virginia Indians attending state colleges and universities, which is a policy already in place for North Carolina state schools. Additionally, the curriculum at these public schools should represent Virginia's first nations in a way that is deemed accurate and respectful by indigenous peoples.¹⁶ State and local governments should incorporate measures to educate future policymakers and citizens about treaties, Indian history, sacred sites, and contemporary Indian governments.

Despite those who assailed Indian sovereignty at the turn of the century, the Indians of Virginia have overcome far more daunting obstacles in their long, tenuous history with the commonwealth. Virginia Indians will continue to pursue reaffirmation of their government-to-government status to further strengthen their communities. Six Indian nations in Virginia will continue to seek the vital health, educational, spiritual, and cultural protections that would result from federal recognition.

It is time for state policymakers in Virginia to establish better community-building policies and foster improved government-to-government relations with those Indian nations who were the "first to welcome . . . last to be recognized." **VVA**



Wayne Adkins, second assistant chief of the Chickahominy tribe, at the Rappahannock pow wow.

Endnotes

¹ Chickahominy Nation, Eastern Chickahominy Nation, Mattaponi Nation, Monacan Nation, Nansemond Nation, Pamunkey Nation, Rappahannock Nation, and Upper Mattaponi Nation.

² While most of the eight state-recognized Indian nations had been recognized by 1983 (Chickahominy, E. Chickahominy, Mattaponi, Upper Mattaponi, Pamunkey, Rappahannock), the Nansemond Nation was not formally recognized until 1985 and the Monacan Nation did not receive recognition until 1989.

³ Those currently seeking federal recognition under HR 2345 are the Chickahominy Nation, Eastern Chickahominy Nation, Monacan Nation, Nansemond Nation, Rappahannock Nation, and Upper Mattaponi Nation.

⁴ Beinart, Peter, "Lost Tribes: Native Americans and Government Anthropologists Feud over Indian Identity," *Lingua Franca*, May/June 1999, p. 34.

⁵ Cornell, Stephen and Joseph P. Kalt, "Sovereignty and Nation-Building: The Development Challenge in Indian Country Today," *American Indian Culture and Research Journal* 22(3):187-214, 1998.

⁶ HJR 754 "memorializes Congress to grant congressional historic federal recognition to the eight tribes that have been recognized officially by the state. . . ."

⁷ Pommersheim clarifies that sovereignty accords would ". . . involve no waiver or abridgement of any rights by either side. . . ." See Pommersheim, Frank, "Tribal-State Relations: Hope for the Future?" *South Dakota Law Review*, vol 36, pp. 268-270, 1991.

⁸ Pommersheim, "Tribal-State Relations," p. 269.

⁹ For more on this topic, see Vine Deloria, Jr., *God Is Red: A Native View of Religion*, (Oklahoma: University of Oklahoma Press), 1994, and Gerald Alfred and Franke Wilmer, "Indigenous Peoples, States, and Conflict," in David Carment and Patrick James, eds., *Wars in the Midst of Peace*, (Pittsburgh: University of Pittsburgh Press), 1997.

¹⁰ In Burger, Julian, *Report from the Frontier: The State of the World's Indigenous Peoples*, 1987, p. 14.

¹¹ Record, Ivan, "Rivers Run through Them: North America's First Indian Reservations," *Native Peoples*, 11(2):60-63, 1998.

¹² Record, "Rivers Run through Them," p. 63.

¹³ GPRA (25 U.S.C. 3001-3013, Supp. IV, 1992) explicitly covers four classes of indigenous cultural items, including "human remains," "funerary objects," "sacred objects," and "objects of cultural patrimony."

¹⁴ These regulations are detailed in the *Virginia Register of Regulations* (Vol. 7, Issue 21, July 15, 1991).

¹⁵ HB 528 was enacted in 1999.

¹⁶ For example, Virginia Tech has recently established an American Indian studies program (Humanities – Center for Interdisciplinary Studies) that utilizes an Indian advisory board comprised of elders and tribal leaders who are consulted regularly on important issues relating to curriculum development and research opportunities. It is hoped that other state colleges and universities in the commonwealth will also develop American Indian studies programs in a spirit of partnership with Virginia Indians.