The U.S.-Mexico Border and the Threat to Tohono O’odham Sovereignty

For millennia prior to contact and colonialism, the North American continent existed unfettered by boundaries and borders. Political control over territories was dictated not by lines that were imaginary aside from their presence on a map, but by meaningful relationships between various humans groups and the land. What boundaries did exist were not static but allowed for adaptation to changing social and environmental conditions. From the worldview of the Native Nations who had inhabited the continent for tens of thousands of years, the state and national borders that were later imposed were not only largely arbitrary, but created restrictions on free movement and forever changed relationships with the land.

The Tohono O’odham Nation is one example of a group profoundly affected by borders, with territory in what is now southern Arizona and northern Sonora. Their name means “desert people”, and prior to colonialism the Tohono O’odham exercised a migratory lifestyle stretching across both sides of the vast Sonora desert that is now bisected by an international boundary.¹ Their traditional land base was bordered by the San Miguel River to the east, the Colorado River and Gulf of California to the west, the Gila River to the North, and the San Ignacio Arroyo to the south. Current reservation lands represent a dramatic reduction, including only 25% of the original land base.

Reservation lands consist of a 2.5 million acre reservation west of Tucson and three

smaller reservations at San Xavier, Florence, and San Lucy in Southern Arizona. About 28,000 O’odham live on the U.S. side while roughly 2,000 more live in nine communities on the Mexico side. This division of population and lands was the result of the 1848 Treaty of Guadalupe Hidalgo and the 1854 Gadsden Purchase, which established the current U.S.-Mexico border.

Presently, about 500 migrants cross the O’odham reservation each day, and issues related to the border and border control generate serious, ongoing concerns for Tohono O’odham people. The presence of an international border that bisects their lands ultimately undermines Tohono O’odham sovereignty by fostering adverse social, economic, and environmental conditions that are outside O’odham control, forcing Tohono O’odham to heed a boundary that is incongruent with O’odham identity and worldview, and threatening the continuation of O’odham lifeways. In the words of former vice chairman of the Nation Henry Ramon, “It used to be that our people moved freely across the border. From time immemorial, we lived here in peace and took care of ourselves. We didn’t cross the border. The border crossed us.”

**History of the Border’s Creation**

Under the 1848 treaty of Guadalupe Hidalgo that ended the Mexican-American war and established an early Mexico-U.S. border, O’odham lands remained part of

---

Mexico. The 1854 Gadsden Purchase, however, transferred control of what is now southern Arizona and New Mexico from Mexico to the U.S.\textsuperscript{6} This bisected the aboriginal lands of the Tohono O’odham, with about 2/3 of their land added to the U.S. and 1/3 remaining in Mexico. For over a century Tohono O’odham people were relatively unaffected by this new international border due to isolation and loose control of the border.\textsuperscript{7} However, border security gradually tightened. The U.S. established the Bureau of Narcotics in 1918 and the border patrol in 1924, initiating immigration restrictions.\textsuperscript{8} In the mid-1980s the U.S. government built a fence along the 90 mile stretch of border that cuts through the Tohono O’odham reservation, and border security has intensified over the last decade in response to stricter immigration laws and national security concerns following September 11, 2001.\textsuperscript{9} The result has been a loss of freedom for Tohono O’odham to migrate in a way that is true to their traditionally nomadic lifestyle. Furthermore, border policy has fostered adverse social, environmental, and economic conditions within the Tohono O’odham Nation. Such losses of freedom associated with the border and control of said border ultimately threaten O’odham sovereignty by limiting the ability of the O’odham people to control the forces that directly affect them.

\textbf{How the Border Affects Life for O’odham People}

The adverse conditions fostered by the U.S. – Mexico border fall into three main


\textsuperscript{8} Tonra.

categories: social harm, environmental harm, and economic harm. Although it is by no means a comprehensive discussion, the following section will catalog some of the most severe border-related issues affecting the Tohono O’odham. The first example of social detriment caused by the border is the overall impediment of free movement. This is inherently problematic because it forces aboriginal people to heed a border that from their perspective is fundamentally illegitimate; Native Nations inhabited the continent long before the governments of U.S. and Mexico created the border. The U.S. government imposes and strictly enforces the international border while failing to acknowledge or respect Native conceptualizations of and relationships with the land. In this way the border represents an acute violation of aboriginal rights. Aside from this fundamental problem, the border creates a number of additional issues by not allowing Tohono O’odham people to exercise their traditional way of life, which involved significant nomadism for subsistence, social, and religious purposes.\(^{10}\)

Crossing the border legally is difficult. Authorized checkpoints are far from the reservation, and crossing any place on the reservation is currently illegal.\(^{11}\) This means that many Tohono O’odham must travel more than 100 miles in order to cross the border. Crossing also requires documentation, which many Tohono O’odham Nation members on both sides of the border, particularly elders, do not have. Many were born at home in a traditional manner and do not have records of their birth or citizenship. Those who do have documents must justify their plans to border patrol officials, many of whom are totally unaware of cultural and religious practices. Those who are allowed to cross are

---

\(^{10}\) McIntyre, Allan J. and the Arizona Historical Society.

\(^{11}\) Tonra.
only permitted a temporary visit. This makes it exceedingly difficult to retain contact with family and community members living on the opposite side, to participate in cultural and religious ceremonies on the opposite side, and to pass down knowledge and cultural practices to those on the opposite side.

Furthermore, inequality and segregation are great between Tohono O’odham people on different sides of the border. Earlier, closer contact with non-Natives and a lack of reservations led to greater erosion of O’odham culture on the Mexico side. Fewer Tohono O’odham on the Mexico side speak the O’odham language, and an additional barrier exists between English and Spanish speakers. According to Kenneth D. Madsen, a research analyst and assistant professor of Geography at the Ohio State University at Newark, Mexican O’odham are seen as possessing less “cultural identifiers” and this “increases the social distance [Tohono O’odham] feel with those across the border,” ultimately eroding a united Tohono O’odham identity. The border also creates serious logistical difficulties for O’odham members living on the Mexico side who must enter the U.S. in order to access services on the reservation. For example, the only Tohono O’odham health facility is on the U.S. side, which makes it difficult for tribal members on the Mexico side to access health care, and for those without documentation, it is nearly impossible.

In addition to problems associated with a lack of free movement, the border contributes to substandard social conditions in other ways. First, the past decade has seen

---

12 Ozer.
16 Tonra.
a sharp increase in incarceration of tribal members and crime on the reservation associated with the border. A 2000 economic report titled “The State of the Tohono O’odham Nation: A Review of Socioeconomic Conditions and Change” estimated that the average income for Tohono O’odham living on the reservation was less than $9,000.17 For some Tohono O’odham, engaging in the profitable human and drug smuggling that is already taking place on their isolated and economically destitute reservation serves as a desperately needed income source. However, this has resulted in increased rates of arrest and imprisonment in recent years. Increased rates of incarceration contribute to a number of other social problems, including disrupted families and absent parents, relationships with criminals and criminal organizations that create more crime on the reservation in the long-term, and generally weakened social cohesion.18 Additionally, there has been an increase in property crimes, particularly burglary, vandalism, and trespassing, associated with outsiders using the reservation to cross the border illegally. The impact of this is evidenced by a visible increase in residential security measures, such as fences, bars on windows, dogs for protection, and the tendency to lock doors and windows where it would otherwise be unnecessary and uncommon. Some O’odham, particularly women, reported fear of traveling alone on the reservation. One effect of this fear is an increasing reluctance to harvest traditional desert foods, which entails spending long periods of time in isolated areas. This ultimately leads to a decrease in availability and consumption of traditional foods, which have a high

nutritional value and symbolically important as a cultural practice.\textsuperscript{19}

The decreased harvesting of native plant foods is also closely linked to environmental degradation. An estimated 2,000 tons of trash associated with illegal border activity is dumped on the reservation each year. Most of the litter consists of water bottles either placed out by humanitarian aid groups or left behind by migrants who cannot afford to carry extra weight during their arduous trek across the desert. Trash build-up has contaminated many areas where desert foods were traditionally harvested. Wild spinach, for example, grows in watering holes that also attract migrants and as a result are contaminated by trash. The concern over litter has generated an additional conflict among members over whether to provide humanitarian aid and how to respond to aid groups who leave behind trash.\textsuperscript{20} In these ways, poor environmental health is linked to adverse implications for social and human health.

Social and environmental cost aside, the border also generates a massive financial burden for the Tohono O’odham Nation. According to the socioeconomic review conducted by economist Jonathon Taylor on behalf of the Tohono O’odham, the Nation spends more than three hundred million dollars each year dealing with border-related issues; the same report notes that poverty on the reservation is “difficult to overstate,” with average household income on the reservation at less than 30% of the national average.\textsuperscript{21}

The border puts a financial strain on Tohono O’odham individuals and agencies in several ways. First, it depletes Tohono O’odham police department resources. The department spends a huge amount of time and money dealing directly with illegal border

\textsuperscript{19} Madsen, “A Nation Across Nations.”
\textsuperscript{20} Madsen.
\textsuperscript{21} Taylor.
activity. The department is therefore left with less to expend on domestic enforcement. Also, the increased rate of incarceration discussed earlier is costly for individuals, who incur legal fees, lose time at work, develop a legal record that will limit their economic opportunities down the line, and whose families are left without an income source.  

While this is arguably the financial responsibility of the individuals who engage in illegal activities, we must also recognize the role of border policy that funnels illegal activity into areas like the Tohono O’odham reservation that are less visible and more remote, the historical circumstances that have created grave poverty in Indian Country, and the legitimacy of holding citizens of the sovereign Tohono O’odham Nation accountable under U.S. law. 

Finally, providing medical care to migrants who fall ill during the trek across the Sonora generates a massive cost for the Tohono O’odham Nation; between 1997 and 2003, the Nation incurred an estimated loss of $387,000 treating migrants for medical conditions. Other costs incurred include autopsies, vehicle removals, and waste removal. All of these costs are extremely problematic not only because of the intense strain placed on limited Tohono O’odham funds, but because they amount to lost resources that could otherwise to be devoted to community development and support, so border issues effectively overshadow other issues affecting Tohono O’odham people.

**Threat to Sovereignty**

These individual social, environmental, and economic concerns are of critical importance to Tohono O’odham. However, a fundamental issue underlies each: the threat

---

22 Madsen, “Local Impacts of the Balloon Effect of Border Law Enforcement.”
23 Ozer.
24 Taylor.
to Tohono O’odham national sovereignty. The significance of sovereignty cannot be overstated. Sovereignty is the basis of the nation-to-nation relationship between tribes and the federal government, and for American Indians sovereignty is the right from which all other rights stem. Preeminent Native scholar Vine Deloria Jr. and attorney Clifford M. Lytle in their discussion of Indian sovereignty define “nationhood” as “a process of decision making that is free and uninhibited within the community, a community in fact that is almost completely insulated from external factors as it considers its possible options.”

The massive federal presence on Tohono O’odham lands in the form of border patrol agents, vehicles, fencing, surveillance, and other types of border enforcement directly conflicts with Tohono O’odham nationhood. The Tohono O’odham Nation, which is recognized as a sovereign entity under the 1934 Indian Reorganization Act, is subject to a separate, foreign government’s system of control. This is a problem because it limits both the symbolic and lived experiences of political agency for citizens of the Tohono O’odham Nation and because it limits their everyday rights in so many of the practical ways already discussed.

In a 2007 article published in Geopolitics, Kenneth D. Madsen argues that the federal government’s policy of emphasizing highly visible, urban crossings has caused illegal border traffic to shift to rural areas that are less visible and politically powerful, such as the Tohono O’odham reservation. Madsen argues that this shift, the associated problems, and the subsequent need for heightened border enforcement in these rural areas was a foreseeable outcome of U.S. border policy and that by ignoring this outcome the federal government forced the Tohono O’odham into their present situation and thereby

26 Ozer.
undermined sovereignty.\textsuperscript{27} Furthermore, Tohono O’odham Nation members endure harassment from border patrol officials while engaging in normal, day-to-day activities on their reservations. Types of harassment reported by O’odham members include: “excessive speeding…. with no sirens, being tailgated for miles, [being] blinded from the side by observation lights flashed from a passing agents, high-speed chases, and frequent questioning about one’s actions.”\textsuperscript{28} Tohono O’odham are at an even greater risk for harassment when trying to cross the border. For example, border agents have seized articles such as common feathers and plants from Tohono O’odham attempting to carry these items across the border for religious purposes.\textsuperscript{29} The heavy-handed presence of U.S. officials on the Tohono O’odham reservation, the major limitations of Tohono O’odham rights as a direct result of the border, and the fact that Tohono O’odham people are seriously affected by U.S. federal policy while having little or no say in that policy are all factors that blatantly undermine Tohono O’odham national sovereignty.

\textbf{Legal and Human Rights Support for Tohono O’odham Border-Crossing Rights}

Several treaties and international human rights agreements support the claim that the U.S. government has a responsibility to ensure that Tohono O’odham are able to live in a way that allows them to be uninhibited by the international border and to exercise the kind of nationhood described by Vine Deloria Jr. and Clifford M. Lytle. First, the Treaty of Guadalupe Hidalgo and Gadsden Purchase are legally binding internationals treaties that speak to this responsibility. Article XI in the Treaty of Guadalupe Hidalgo acknowledged the rights of Mexican citizens whose lands were now owned by the U.S.

\textsuperscript{27} Madsen, “Local Impacts of the Balloon Effect of Border Law Enforcement.”
\textsuperscript{28} Madsen, “A Nation Across Nations,” 168.
\textsuperscript{29} Castella, 193.
“the enjoyment of all rights of citizens of the United States….and [to be]… protected in
the free enjoyment of their liberty and property, and secured in the free exercise of their
religion without restriction.” Furthermore, Article VIII stated that “property of every
kind, now belonging to Mexicans not established there, shall be inviolably respected.”
This provision certainly applied to American Indians because Mexican law designated
indigenous people as citizens at this time.

Although the Treaty of Guadalupe Hidalgo did not immediately affect Tohono
O’odham lands, these provisions are relevant because they were explicitly reaffirmed in
the Gadsden Purchase, which did bisect Tohono O’odham territory. Megan S. Austin
argues in a paper published in the Arizona Journal of International and Comparative Law
that “the treaties recognize that these indigenous peoples had a right to maintain their
land, culture and religion regardless of the land transfer and new political border.” It is
clear from the many examples discussed in the third section of this paper that Tohono
O’odham rights to control their land, practice religion, and meaningfully maintain culture
have been seriously violated as a direct result of the border. Lastly, by undermining the
rights of Tohono O’odham and other American Indian groups on lands formerly
controlled by Mexico supposedly guaranteed in these two treaties, the U.S. government is
violating one of the fundamental concepts of international law, pacta sunt servanda, the
understanding that agreements must be upheld by both sides.

In addition to these legally binding treaties, the terms of two prominent
international agreements on indigenous rights are being violated by the U.S. with regards

---

31 Austin, 98.
32 Austin, 100.
33 Castella, 203.
to border tribes such as the Tohono O’odham. First, International Labor Organization Conventions numbers 107 and 169 recognize the “aspirations of indigenous peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the states in which they live.”

Again, the third section of this paper details numerous ways in which U.S. border policy hurts economic development and impedes cultural survival by making it difficult to diffuse knowledge and share experiences across the border. Also, the symbolic and lived division of Tohono O’odham people and lands is certainly inconsistent with the stated need to maintain and develop identities.

The 2007 U.N. Declaration on the Rights of Indigenous Peoples also highlights numerous critical rights of the Tohono O’odham that are being violated as a direct result of U.S. federal border policy. It recognizes the “urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements, and other constructive arrangements with States.” It is clear that the rights ensured in the Treaty of Guadalupe Hidalgo and Gadsden Purchase are being neither respected nor promoted. The declaration also explicitly states the rights of indigenous groups to control “developments affecting them and their lands.” Tohono O’odham people have little or no say in federal border policy, which significantly impacts social, environmental, and economic development.

The numerous articles of the Declaration on the Rights of Indigenous Peoples that specifically address rights violated by U.S. federal border policy are as follows: Articles 11 and 12 state the rights of indigenous people to maintain, protect, develop, manifest, practice, and teach cultures and religions, and Article 13 affirms the right to pass on knowledge. These rights are limited by U.S. border policy that makes it difficult to cross

34 Castella, 202.
the border to attend ceremonies, cultural events, and to gather with family and community members for the purpose of transmitting knowledge and sharing cultural experience. The needless confiscation of religious articles by border patrol agents also undermines these freedoms.

Article 21 states the right to improvement of “economic and social conditions.” Again, the third section of this paper states numerous examples of how the border hinders economic and social development. Article 21 also explicitly states the right to access health care, which is not possible for Tohono O’odham living on the Mexico side who lack the documents necessary to cross onto the reservation and visit the health clinic.

Article 26 explains that States have an obligation to pay “due respect to the customs, traditions, and land tenure systems of the indigenous peoples concerned.” The traditionally nomadic lifestyle of Tohono O’odham people, which transcends the U.S.-Mexico border, can no longer be meaningfully practiced because it is illegal under U.S. law to do so.

Article 29 states the right of indigenous peoples to protect their lands from environmental harm. As described in the third and fourth sections of this paper, the long-time federal policy of emphasizing control of urban border crossings has driven more border traffic to rural areas, including the reservation. The result has been a huge influx of litter from migrants and smugglers, which contaminates land and waterways and makes it difficult to gather traditional wild foods. Therefore, federal policy causes acute, albeit indirect, harm to the natural environment of Tohono O’odham territory.

Lastly, Article 36 explicitly states that tribes “divided by international borders… have the right to maintain and develop contacts, relations and cooperation…with their
own members as well as other peoples across the borders.” Section two of this article demands that States “take effective measures to facilitate the exercise and ensure the implementation of this right.”35 It is important to note that the U.S., to date, has not signed the UN Declaration on the Rights of Indigenous Peoples. This signifies a conspicuous failure on the part of the U.S. government to acknowledge and adopt these international standards of indigenous rights. From the perspective of many American Indians and indigenous rights advocates, however, this is par for the course in a long history of human rights abuses by the U.S. government.

Conclusion

The political relationship between the U.S. and Mexico and the boundary that separates the two countries is firmly entrenched, and in many ways so is federal border policy. However, in the midst of growing calls for immigration reform and an apparently ineffective system that expends massive financial and human resources on border control while smuggling and undocumented immigration overall remain on the rise, the U.S. government is at a critical junction with regards to border policy. The adverse conditions affecting the Tohono O’odham Nation cannot be solved on an issue-by-issue basis because they are numerous and systematic, they interact with one another in a synergetic fashion, and they are rooted in deeper problems related to neoliberal economic policy, international and domestic inequality, and sovereignty violations. Furthermore, these issues are not unique to the Tohono O’odham but affect Native Nations throughout the borderlands. These factors suggests that a holistic solution would entail fundamental changes to economic and border policy to create safe, legal, and humane modes of

migration, address the socioeconomic inequality that drives migration, and meaningfully involve the various Native Nations in the creation and implementation of legislation. The costly, dangerous, and inhumane conditions that currently characterize the U.S.-Mexico border represent a compelling opportunity for the U.S. government to make a meaningful change. A discussion of what such a policy would entail is well beyond the scope of this paper. What is clear, however, is that the first steps would be to form an egalitarian partnership between the governments of the United States, Mexico, and the various Native Nations, to meaningfully seek out and include the voices and insights of all citizens of each nation, to restore treaty rights, and to approach border issues from a systematic, human rights-oriented perspective. These steps alone would represent a dramatic, positive shift in U.S. border policy and that would establish a starting point for addressing border-related injustices affecting the Tohono O’odham Nation and the borderlands of Indian Country.
Bibliography


