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THE STATE OF THE INDIAN NATION — AN INTRODUCTION

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Shortly after the late President Kennedy asked me to serve in his cabinet, I made a statement to the effect that I might have a try at being my own Commissioner of Indian Affairs. At that time — although I had been a member of the House Interior and Insular Affairs Committee while representing Arizona's Second Congressional District — I was only superficially aware of the varied responsibilities of the Secretary of the Interior and the size and complexity of the Bureau of Indian Affairs. Within a week after assuming office, I realized that no cabinet member can give full attention to his post and, at the same time, direct the daily operations of *any* of the bureaus within a Department. This fact notwithstanding, I was able to devote more attention to Indian matters over the past eight years than to many of the other responsibilities of my office.

As I review the Indian stewardship of the federal government under Presidents Kennedy and Johnson, I have mixed feelings about the success of our efforts. It is unquestionably true that advances have been made in Indian education and health. Significantly, also, the staff of the venerable Bureau of Indian Affairs has come closer to a general acceptance of the fact that Indians are not only capable of making significant decisions without constant supervision by federal bureaucrats, but must be given the opportunity to do so. I do not assume credit for the latter development although I have encouraged it. Rather, it has been most influenced by changes in the mood of the country and of the Congress — changes induced by the war on poverty and by a more critical analysis of the problems of America's minority groups.

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I left office in January hopeful that the trend toward diminishing the high degree of federal paternalism in Indian affairs has been so well set in recent years that it will be difficult to reverse. Henceforth, the pace and direction of change in this regard will, I believe, largely depend upon the desires of the Indians. They have in recent years begun to acquire the constituency and the political muscle to influence their relationship with the federal government in directions and at speeds favorable to them.

While I am pleased to see Indians provided new opportunities to decide their own futures, I am disappointed that they have not come farther in the past eight years toward a situation of economic parity with other Americans. This is not to deny that some advances have been made. Taking advantage of their abundant forest resources, the Confederated Tribes of the Warm Springs Reservation in Oregon, the Navajos of the Four Corners Area and the White Mountain Apaches of Arizona have entered the business of harvesting and processing timber. This has meant a substantial boost in tribal income and employment. These same three tribes — also well blessed with fishing streams, camping sites and scenery — have undertaken carefully planned programs for attracting and accommodating visitors to their reservations. The Crows of Montana have likewise turned their attention to the tourists. They have joined forces with the National Park Service in developing the great potential of the Big Horn National Recreation Area. Yet, there are still large reservations abundantly blessed with resources where poverty holds sway in far too many households.

The Colorado River Reservation in Arizona boasts some of the best agricultural land in the country and excellent water rights. Still, most of the agricultural development has been undertaken by outsiders, with the Indians receiving only lease income and occasional employment.

The Colorado River Tribes have recently made significant starts in developing the tourism potential of their portion of the Colorado River, but much, much more can be done. The Makahs — owners of the tip of the Olympic Peninsula in Washington — have done little to develop beautiful Neah Bay, an ocean fishing site with fantastic potential. Their magnificent reservation adjoins Olympic National Park and has heavy timber stands. The Red Lake Reservation of Minnesota is another with beautiful scenery and a vast but largely untapped potential for outdoor recreation, especially fishing.

The Fort Hall Reservation in Idaho has agricultural resources to compare with those of Colorado River; these resources, too, are almost entirely in the hands of non-Indian lessees. Only in the past couple of years has the tribe shown any interest in undertaking a corporate farming venture of its own, and that interest has yet to be translated into

effective action. Fort Hall also has outdoor recreation potential, including fishing and skiing.

Beyond these areas — all well endowed with resources — there are, of course, numerous Indian communities where the local resource base is so skimpy as to support no favorable prognosis of a sound economic future for more than a handful of people.

It is much easier to understand and rationalize the presence of poverty at places like the Turtle Mountain Reservation in North Dakota with its large population and tiny land base and the Choctaw Reservation in Mississippi where educational levels are low and job opportunities scarce, than at Fort Hall or Colorado River or Red Lake. We must realistically face the fact that the Indians of reservations like Turtle Mountain will have to be helped with programs of income supplement and provided opportunities for training and outside job placement into the foreseeable future. If such efforts are not made, the situation at Turtle Mountain may be even worse in 1975 than it was in 1961.

Two obstacles to greater development of resources on the bigger, better endowed reservations are lack of capital and lack of modern private and public corporate tools with which to raise capital and more effectively manage commercial, industrial, and business enterprises. Overcoming these obstacles will require substantial changes in the laws now governing Indian affairs.

In 1967, the Department of the Interior sponsored legislation¹ to alter the legal framework in which resource development may take place. Importantly, the legislation provided authority for tribes to sell or mortgage their property and to form federally chartered corporations. Congress held hearings on the legislation but took no action. Hindsight reveals, I believe, that tactics rather than intentions were at fault in our failure to secure passage of the Indian Resources Development Act of 1967. First, we did not discuss the specifics of the bill soon enough or thoroughly enough with the Indian leadership.² Then, we presented a bill which was much too long and complicated for the Indians to grasp quickly. Finally, we directed the legislation equally toward *all* tribes. The latter item was especially critical in keeping our proposal from making headway in Congress. Many tribes simply could see no benefit to themselves in having authority to sell or mortgage their real property and, fearing the loss of lands through such procedures, vehemently opposed the legislation. In doing so, they overlooked or

¹ H.R. 10560 & S. 1816, 90th Cong., 1st Sess. (1967).

² Commissioner Bennett did hold a series of meetings with Indian tribes prior to the time a bill was submitted to Congress. Some of the ideas expressed at these meetings were included in the legislation as it was finally drafted. However, the bill also contained several proposals upon which the Indians had relatively little opportunity to express their views.

ignored the fact that the sale and mortgage provision was optional with each tribe and could become applicable only through a plebiscite of the tribal membership.

In addition to tactical problems, we were frustrated by matters of timing. The idea of an Indian Resources Development Act first reached the talking stage early in 1966. At about the same time, the Senate Interior Committee, in a report issued in connection with the confirmation of Commissioner Robert L. Bennett, raised the issue of terminating federal services to Indian tribes. Some Indian leaders quickly inferred the existence of a relationship between this issue and the Administration's bill and came to look upon the sale and mortgage provision, with its potential threat to reservation land, as an attempt to return to the "termination" policy of the early and mid-50's.

Our failure to obtain from the 90th Congress an Indian Resources Development Act is illustrative of the subtlety of the problem, for it demonstrates that the Indians themselves must be fully in accord before we can even begin to lay the necessary legal foundation for economic growth on the reservations. Fortunately, there is a ferment of change taking place throughout Indian country, and I predict that at least a few Indian tribes will press the 91st Congress for legislation containing features of the bill which failed in the 90th.

The winds of change blowing across the reservations are also having their effect on tribal governments and relationships between Indian tribes and the outside world. Title II of the Civil Rights Act of 1968³ points up this fact. The Act requires tribal authorities and courts to recognize and protect the civil rights of Indians within their jurisdictions. Tribal courts, some of which apply laws arising in part from tribal traditions, must henceforth adhere to certain practices which depart from the traditional or may be inconsistent with it.

The Act also requires the Department of the Interior to compile a model code for Indian courts.⁴ A series of conferences with the Indians has been completed in preparation for the drafting of that model code. The task of quieting Indian fears that such a change will threaten their traditional ways of life is considerable. That job remains to be done.

In the western one-third of the Nation, most of the lands on which the Indians were finally settled in the 19th century are arid desert areas along or astride the few dependable river sources of scarce water. For many years highly complex disputes over rights to water use have occupied courts and legislatures. The disputes with respect to Indian water rights remain largely unsettled. These controversies are com-

³ Act of April 11, 1968, Pub. L. No. 90-284, 82 Stat. 73, 77-78.

⁴ *Id.* at 78.

pounded by old boundary disputes resulting from the crude descriptions of reservations created in the last century. The uncertainties arising from these unsettled water and boundary problems further hinder Indian economic development.

The rapid changes of the past decade have brought us to another watershed in the relationship between the Nation and its Indian citizens. President Johnson recognized this fact last March when he sent to Congress the most significant message any President has ever delivered on Indian matters. In it, the Chief Executive declared that both the Indians and the Nation stand to benefit from permitting Indians to maintain a distinct identity within the broad category of American citizenship if they choose to do so. However, in this regard, the President emphasized the importance of giving Indians greater options than simply an "either-or" choice of remaining on the reservations in poverty, or abandoning the reservations and leaving Indian identity behind.

President Nixon, if we are to judge from his campaign statements, seems inclined to continue the kind of federal policy enunciated by President Johnson. Moving ahead in accordance with such a policy will require imaginative changes in the tangled legal framework which surrounds the life of the American Indian. Some of the challenges which lie ahead are discussed in the symposium which I am here honored to introduce. Being aware of those challenges will help us to place the Indian future in clearer perspective.

