

# INDIAN ADJUSTMENT AND THE HISTORY OF INDIAN AFFAIRS

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My first serious look at Indian affairs came in the spring of 1945 when I was asked to read and comment on a manuscript that had been submitted by Elizabeth Colson to Radcliffe College as a dissertation in fulfillment of the doctor of philosophy degree. The manuscript was later published by the Manchester University Press in England under the title: *The Makah Indians: A Study of an Indian Tribe in Modern American Society*.

It came as a surprise to me to learn from Miss Colson's work that ten years after the passage of the Indian Reorganization Act,<sup>1</sup> Indians in the State of Washington, equal in most respects, except social position, to their non-Indian neighbors, were still under the jurisdiction of a resident federal superintendent who, among other things, controlled their tribal funds and held veto power over many areas of tribal council action. It had been my understanding that the Indian Reorganization Act was intended to promote local control of economic development and local self-government among Indians.

Seven years later, when I returned to Arizona to join the staff of the Department of Anthropology at the University of Arizona and to devote full time to a study of southwestern Indians, no single tribe in the United States had yet been granted control of its own affairs. The possibility of Indian self-determination had been discussed for a number of years, but always in the form of a termination plan. It was argued, and accepted by everyone except the Indians, that if Indian tribes were to be given the right of local government and self determination, they should also accept the "inseparable" responsibilities and cast themselves loose from special services, tax exemptions, federal financial assistance, and other benefits.

That this position (given a certain level of Indian development) sounded reasonable and fair to practically everyone at that time and that it still sounds reasonable to most non-Indians, is hypothesized as a shocking fact which, if taken as a condemnation of American attitudes,

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<sup>1</sup> 25 U.S.C. § 461 (1964).

may lead to an understanding of one important facet of the Indian dilemma.

It is my thesis that the Indian Reorganization Act and subsequent termination policies were no more evil or stupid, virtuous or wise, than any other actions in our history involving the control of Indians and Indian lands. Each generation of Americans has thought of itself as generous, humane and honest in its dealings with Indians when compared with an earlier generation. I am persuaded that this is as serious a delusion today as it was in 1950 when it was proposed that Indians be "terminated," or in 1934 when Indians were given self-government with indirect rule, or in the last decades of the nineteenth century when Indian agents, under the Bureau of Indian Affairs, took control of tribal institutions, or in the 1830's when Indian tribes were removed by force from their homes east of the Mississippi.

In keeping with the idea expressed above, and on the assumption that the regularities in changing and confusing events are often the best key to understanding, three *unrelenting constants* will be propounded and tested in the material that follows.

1. (a) Indian resources, Indian land and Indian labor are, and have been, vulnerable to exploitation. (b) The exploitation takes place in an atmosphere that makes it "irresistible" at the local level. Members of Congress, sensitive to local interests, have been, on the whole, anti-Indian. The judiciary and administrative branches of government, along with citizens far removed from the Indian scene, have always deplored, but never controlled, the exploitation.

2. (a) The social, political, and economic structure of the United States is, and always has been, one in which the white man is dominant and the Indian subordinate. (b) White dominance goes beyond expected norms in a sociocultural system and, in the case of the Indian, at least, has become something which very closely resembles a psychological compulsion.

3. (a) Federal Indian programs reflect an extreme form of white impatience and a ludicrous faith in "instant" solutions. (b) When the policy changed from one of "removal" to one of "assimilation" an indefinite task was not tied to methods that called for indefinite time schedules. Instead, solutions have always been associated with quick enthusiasms, readily changing methods, and "bold new thinking."

#### EAST OF THE MISSISSIPPI

The United States, east of the Mississippi, was at one time tribal land held by the (to get some of their names back in print) Pequot, Narragansett, Iroquois, Delaware, Cherokee, Wampanoag, Choctaw,

Chickasaw, Creek, Seminole, Kickapoo, Wyandotte, Ottawa, Pottawatomie, Winnebago, Sac and Fox, Shawnee, Peoria, Miami, Kaskaskias, Piankeshaw, and many others, large and small. The story of the loss of their lands is somewhat cynically summarized by Hagan as follows:

The traders first employed the Indians to gather furs and the tribal standard of living rose as they acquired firearms and metal tools. Then as the game diminished and the frontier line pressed upon the Indian holdings the second act opened. It closed with the tribesmen having been forced or seduced into selling their land. Occasionally, this act would include an Indian war with a standard script calling for an outburst of violence by the tormented natives, scalpings, burning, and the horrors of torture embellished by that early American form of literature, the captivity narrative. The third act would find the Indian resistance crushed and the inevitable treaty written ceding even more land to the whites. The principal problem remaining would be the ultimate disposition of the tribe. The Indians might settle the problem temporarily by migrating westward to compete with already established tribes for their hunting grounds and set the stage for repetition of the last two acts. Or, if the defeat in the war had been overwhelming, the few tribesmen remaining might be absorbed by neighboring bands or located on a reservation.<sup>2</sup>

The painful element, in retrospect, is that all of these actions took place within the context of a national policy that recognized the "sovereignty" of Indian tribes, and recognized exclusive Indian ownership of the land. The inevitable expansion of white settlers required that, whether by mutual agreement or by force and fraud, Indian land titles be extinguished.

Between 1778 and 1871, the year Congress put an end to treaty making with the Indians, federal interest focused upon the acquisition of eastern Indian land through treaties, and the establishment of Indian tribes on tracts of land west of the Mississippi where, it was hoped, they would be left unmolested by encroaching settlers. In the majority of cases, the treaties provided that the Indians "reserve" for their exclusive use and occupancy a portion of western territory, and that they relinquish title to eastern lands in return for some form of compensation, while other treaties provided for the removal of Indians to new land.<sup>3</sup>

The treaty approach was derived from established British policy in colonial days which was reaffirmed by the Continental Congress. The Northwest Ordinance of 1787 stated that: "Lands and property shall never be taken from [the Indians] without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed,

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<sup>2</sup> W. HAGAN, *AMERICAN INDIANS* 29-30 (1961).

<sup>3</sup> See generally Cohen, *Original Indian Title*, 32 MINN. L. REV. 28 (1947).

unless in just and lawful wars authorized by Congress."<sup>4</sup> The British policy of treaty making also led to the exclusive right of the federal government, as opposed to the various states, to govern Indian affairs.<sup>5</sup> However, the practical problem of federal protection of Indian lands from state appropriation was not solved until 1830 by the removal of eastern tribes to western reservations.<sup>6</sup>

The western territories, unlike the original 13 States, had no power to act in derogation of federal treaties. While the legal right of Indians to their land holdings was never again seriously questioned, violations of the right, both by settlers and by agencies of the federal government, have marked the history of Indian affairs until recent times. Although the federal courts recognized violations of that right, it was not until the Act of August 13, 1946, that compensation for aggrieved tribes was assured.<sup>7</sup> This Act created the Indians Claims Commission, before which Indian tribes might present claims against the United States without obtaining prior approval of Congress.

The political position of the tribes vis-a'-vis the states and the United States was crystallized in the 1832 case of *Worcester v. Georgia*, where Chief Justice Marshall stated:

The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed. . . . [T]he settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its rights to self-government, by associating with a stronger, and taking its protection. . . .

The Cherokee nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress.<sup>8</sup>

The judicial acceptance of *Worcester* has been reasonably uniform, but legislative and executive acceptance has been variegated. President Jackson is quoted as saying: "The Chief Justice has made his ruling, now let him enforce it."<sup>9</sup> The quotation, however apocryphal, is true to the spirit of the times.<sup>10</sup>

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<sup>4</sup> D. McNICKLE, *THEY CAME HERE FIRST* 195 (1949).

<sup>5</sup> U.S. CONST. art. I, § 8.

<sup>6</sup> Act of May 28, 1830, ch. 148, 4 Stat. 411.

<sup>7</sup> 25 U.S.C. § 70 (1964), as amended 25 U.S.C.A. § 70(b),(e),(g),(v),(v-1) (Supp. 1968).

<sup>8</sup> 31 U.S. (6 Pet.) 515, 559-61 (1832).

<sup>9</sup> McNICKLE, *supra* note 4, at 245.

<sup>10</sup> See generally Reiblich, *Indian Rights Under the Civil Rights Act of 1968*, p. 617 *infra*.

## WEST OF THE MISSISSIPPI

Since the removal of Indians to newly designated Indian territories and reservations west of the Mississippi only postponed the problem of white encroachment on Indian lands, and since another wholesale removal of Indians was out of the question, an attempt was made to isolate the Indians through relocation of tribes away from the more fertile valleys and routes of travel. New Indian wars, particularly with the plains tribes, also made it necessary to devise a more workable system of controlling hostile Indian groups. The result was the appointment of Indian agents and the use of United States troops, in an attempt to protect Indian land against white encroachment and to confine the different tribes within their reservations. Since most western Indians were dependent upon hunting and gathering for a large share of their subsistence, and since their confinement, and the destruction of buffalo and other game by white hunters, made this mode of life impossible, a system of providing rations was created, and an attempt was made to turn the Indians into stockmen and farmers.

The reservation system, in its early form, was neither an acceptable mode of life for the Indians nor did it prevent the unlawful acquisition of Indian land by white settlers. Besides the fact that the Indians could not make the rapid adjustment expected of them, a basic conflict resulted from the Indian memory of the day when he belonged to a sovereign, independent tribe, as contrasted with the white attitude toward Indians as little more than a nuisance in a land that now belonged to the United States. On the one hand the Indians insisted that they had property and political rights that could only be protected through some system of geographical isolation. On the other hand was the white settler's insistence that the Indians had no right to land that they could not fully exploit, and the general insistence that it was improper for Indian tribes to continue as the only independent and geographically isolated ethnic groups in the United States. Post Civil War Americans have never understood the legal position of Indian tribes as "domestic dependent nations."<sup>11</sup>

By 1880 it became imperative that the conflict be alleviated, and the answer came, as it was to come so often from then on, from application of the economic and social philosophy of the time, rather than from a study and understanding of the Indians and the cross-cultural problems involved in the acculturation process. It was believed that the possession of lands in common, together with the continuation of tribal political, religious, and social independence, constituted the principal reasons for the inability and unwillingness of the Indians to learn the American

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<sup>11</sup> The special legal and political status of Indians has been confirmed and re-confirmed in federal courts through the years. See J. ANGLE, *FEDERAL, STATE AND TRIBAL JURISDICTION ON INDIAN RESERVATIONS IN ARIZONA* 7-8 (1959).

way of life. As Carl Schurz, Secretary of the Interior in 1877 expressed it, "the enjoyment and pride of individual ownership of property [is] one of the most effective civilizing agencies."<sup>12</sup> American nature being thus mistaken for human nature, the argument for the transfer of tribal land title to title in severalty for individual Indians gained general acceptance. Even more acceptable was the companion clause that the "surplus" land thus created be made available for white settlement. The solution was written into the General Allotment Act of Feb. 8, 1887 (Dawes Act).<sup>13</sup> As usual, white settlers and Indians stood firm at the extremes — for and against the Act. Friends of the Indians deplored and protested but finally agreed, feeling that Secretary Schurz was probably right, that the Indians would now receive the help they needed and that, so far as the loss of land was concerned, the Allotment Act was probably the best solution that could be expected at that time. Only the settlers who were moving west seeking new land were correct in their prediction of the consequences of the Act. The Indian land loss, in the end, was an estimated 86,000,000 of a total of 138,000,000 acres held by Indian tribes in 1887.<sup>14</sup>

The Allotment Act provided for the assignment of land, not only to Indian families or to Indian family heads, but to individuals in severalty — men, women and children.<sup>15</sup> Amounts received were not to exceed 80 acres of agricultural land, nor 160 acres of grazing land.<sup>16</sup> If the land had been or was to be brought within any irrigation project, then the allotment was not to exceed 40 acres.<sup>17</sup> As stated above, land remaining after each individual Indian had received his allotment was to be thrown open to white settlement and the purchase price of the land deposited in the United States Treasury to the credit of the Indian tribe. In order not to make the transition from the culture of the Indian to that of the white too abrupt, it was provided that for 25 years the Government would hold the individual Indian land in trust. After 25 years the Indian would be given a fee patent, the land would become subject to taxation, and the Indian could do as he pleased with his land.<sup>18</sup> This trust period has been renewed a number of times on most reservations and was renewed for an indefinite period in 1934 when Congress finally reversed the provisions of the Allotment Act and put an end to further allotment of Indian lands.<sup>19</sup> In the meantime, individual Indians could, and did, apply for the release of the trust arrangement in order to secure the necessary title for the sale of their land.<sup>20</sup>

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<sup>12</sup> McNICKLE, *supra* note 4, at 263.

<sup>13</sup> 25 U.S.C. § 331 (1964).

<sup>14</sup> HAGAN, *supra* note 2, at 147.

<sup>15</sup> 25 U.S.C. § 331 (1964).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 25 U.S.C. § 331 (1964).

<sup>19</sup> 25 U.S.C. § 461 (1964).

<sup>20</sup> See 25 C.F.R. § 121.1 (1968).

So much for Indian land. The companion problem involved the "civilization" and assimilation of the Indian population within the expected space of 25 years. This task, in fact, was not tied entirely to the Allotment Act, but had already commenced in some areas as early as the close of the Civil War. There was no question at that time about what must be done. The old way of life had to be altered to allow for the creation of a new kind of Indian. The methods employed were not, therefore, unexpected. Indian agents, with the assistance of traders, army personnel, missionaries, and other whites, undertook the systematic destruction and dissolution of the Indian way of life. Specifically this included native religious beliefs and ceremonies; patterns of community economics; systems of interpersonal relations and obligations between and among Indian men, women, adults, children, priests, medicine men, and other leaders; and other beliefs, practices and freedoms so that almost no area of Indian life was exempt from this interference. Indian agents even reported saving Indian girls from unwise marriages. The chief mechanism of control was the "Court of Indian Offenses." This court, particularly in the early days, was used to enforce the anti-tribal rulings of the Indian agent. On the positive side, schools and Christian missions were established, provision was made for supplying Indians with farm tools and other equipment, and some instruction in modern farm and stock raising methods was made available through the employment of farmers or ranchers. After 1910 a medical division was established, and starvation was prevented through the issuance of rations.<sup>21</sup>

Instead of reaching for the American version of life to replace their old institutions, the Indians responded with angry hostility, skillful sabotage or listless chagrin.<sup>22</sup> Some turned to the Ghost Dance cult which promised supernatural aid in extermination of the whites and in the return of buffalo herds and the restoration of tribal life. When this hope died in the massacre at Wounded Knee, South Dakota, in 1890, there was nothing to do but submit. Some did so with grace, finding some consolation in the puritanical atmosphere of the Native American Church where the peyote cactus plant is used to induce a psychedelic experience. The general response, however, was one of hopelessness, resignation and apathy. The total product was social degradation and almost universal poverty.

Finally, in the 1920's, the American people became aware of what was happening. The Indian problem, which the average citizen thought had been settled with land allotments, schools, Christian missions, and

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<sup>21</sup> See Wolf, *Needed: A System of Income Maintenance for Indians*, p. 607 *infra*.

<sup>22</sup> G. GRAHAM, C. RHOADS, J. NICHOLS, G. DARLINGTON, REPORT OF THE COMMITTEE ON INDIAN AFFAIRS TO THE COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT 23 (1948).

treaty settlements, was discovered to be more critical than ever. But now the problem was totally different. Indians had seen the worst side of the American character and, in their view, the white man and his society was to be distrusted and resisted. White citizens, on their side, did not conceal their contempt for the now disorderly and bedraggled reservation Indians whom they had, in effect, made that way by creating a power over Indian persons and Indian economics through the creation of the roles of "ward" and "welfare citizen."

The problem, defined in these terms, has not been solved. And the strange fact, given a bureaucratic America preoccupied with fact finding, is that there are no adequate records on the people being administered. The Bureau of Indian Affairs does not know how many Indians are under its jurisdiction, where they are, what they are doing, or what kinds of progress they have made, in terms of the necessities of social and psychological adjustment, for any given time period. In the meantime, and particularly during the past 15 years, considerable progress has been made on Indian reservations in those areas where America excels—resources development, industrial development, road construction, communication services, employment services, and the construction and administration of schools, hospitals, clinics, repair and maintenance plants, agency headquarters, tribal offices, jails and juvenile detention centers.

#### THE INDIAN REORGANIZATION ACT

The Merriam Report, published in 1928, brought about a new era in Indian-white relations.<sup>23</sup> This report resulted from a study of Indian affairs authorized by Hubert Work, Secretary of the Interior in the Coolidge administration. It was conducted by the Institute for Government Research (later the Brookings Institute). In a quiet and effective way, Merriam and his associates described the conditions of poverty, illiteracy, and poor health among Indians and made embarrassingly obvious the depths of maladministration of Indian affairs and the niggardly appropriations that had been authorized for Indians by Congress during the preceding 50 years.

On the basis of this report and the ideas developed in a series of conferences with Indian leaders and non-Indian experts on Indian law and history, John Collier, Commissioner of Indian Affairs during the Franklin D. Roosevelt administration, recommended to Congress a number of reforms which later were incorporated into the Indian Reorganization (Wheeler-Howard) Act of June 18, 1934,<sup>24</sup> and the Johnson-O'Malley Act of April 16, 1934.<sup>25</sup>

<sup>23</sup> BROOKINGS INST. FOR GOVERNMENT RESEARCH, *THE PROBLEM OF INDIAN ADMINISTRATION* (1928).

<sup>24</sup> 25 U.S.C. § 461 (1964).

<sup>25</sup> 25 U.S.C. § 451 (1964).



The provisions of these Acts remain the basic guidelines for the conduct of Indian affairs. Among other things, the Indian Reorganization Act provided that further allotment of Indian land was to stop and provision was made for the restoration to Indian ownership of reservation land previously declared "surplus."<sup>26</sup> Also, the appropriation of funds was authorized for the purchase of additional land for Indian use.<sup>27</sup> Tribal organizations and tribal activities outlawed, or discouraged, under previous regulations, were re-established and, in effect, cultural, social and religious liberty were returned to the Indians. Business corporations were authorized,<sup>28</sup> and provision was made for a revolving loan fund for the development of individual and tribal business enterprises, and for Indian scholarships.<sup>29</sup> Authority was granted the executive branch to frame regulations for the conservation of Indian soil and timber resources, and for a special preference system which would expand Indian employment within the BIA.<sup>30</sup> Finally, an interesting clause: the Act would not apply to any tribe voting against its application.<sup>31</sup>

The Johnson-O'Malley Act made possible the extension to Indians of state, local and private educational, health and welfare services under contract with the federal government. The majority of Indian children are now being educated in public schools under the provisions of this Act.

Collier's plans called for an attack on the Indian problem from three directions: (1) The development of Indian resources and of Indian business enterprises, such as salmon canning factories in the Alaska area. (2) The enlargement and improvement of all services to Indians: education, health, employment, welfare, etc. (3) The revival of tribal self-government by encouraging Indian tribes to adopt tribal constitutions, by-laws and corporate charters. With reference to this last element, not even Collier could visualize Indian tribes operating without *some* white direction. He summarized his position as follows:

The new Indian policy must be built around the group-dynamic potentials of Indian life. This meant an ending of the epoch of forced atomization, cultural prescription, and administrative absolutism . . . . In place of an Indian Bureau monopoly of Indian Affairs, there must be sought a cumulative involvement of all agencies of helpfulness, Federal, state, local

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<sup>26</sup> 25 U.S.C. §§ 461-63 (1964).

<sup>27</sup> 25 U.S.C. § 465 (1964).

<sup>28</sup> 25 U.S.C. § 477 (1964).

<sup>29</sup> 25 U.S.C. § 470 (1964).

<sup>30</sup> 25 U.S.C. §§ 466, 472 (1964).

<sup>31</sup> 25 U.S.C. § 478 (1964). John Collier had two loves — soil conservation and Indians; when he pushed soil conservation too fast on the Navajo reservation the Navajos, the largest and most "Indian" of all tribes, rejected his reorganization plans. The story of this great man in his moment of self-inflicted tragedy some day will produce an epic chapter in the history of Indian-white relations.

and unofficial; but the method must not be that of simply dismembering the Indian Service [BIA], but rather of transforming it into a technical servicing agency and a coordinating, evaluating, and, within limitations, regulatory agency.<sup>32</sup>

The BIA thus retained — and still retains — its regulatory functions. Indian land transactions are subject to the approval of the Secretary of the Interior.<sup>33</sup> Tribal budgets must be approved by the Secretary of the Interior. Federal law, and not tribal law, applies to certain major crimes on Indian reservations.<sup>34</sup> Other federal controls include a veto power over such tribal actions as the assessment of dues, fees, and taxes against non-members, the removal of non-members from the Indian community, the control of private land sales by members, the enactment of criminal and civil codes, and the appointment of guardians for minors and mental incompetents.<sup>35</sup>

Opposition to the Collier plans did not come from whites who were afraid that Indians could not be trusted with indirect rule, but from Indians and friends of Indians who took up the cry long voiced by the Yavapai medical doctor, Carlos Montezuma: "Turn my people loose." They saw John Collier as just one more in a series of dominant officials, determined to control the lives of Indians:

Commissioner Collier . . . [who] has been the outstanding leader for reform of the Indian Bureau, openly dismisses any plan for its abolishment as 'impracticable' and as 'leaving the Indian helpless.' Further, he is opposed to full citizenship for the American Indian as granted by Congress in 1924, has termed it as 'worthless,' and has repeatedly held its practicability as 'useless' and as 'harmful' to the American Indian.<sup>36</sup>

In an appendix to the same appeal to Congress, Joseph W. Latimer of Brooklyn, N.Y. said:

This Collier bill supports all those who think the Indian is only a helpless derelict in our civilization, and that he must be set off by himself to lead a community life as an Indian — an alien to all other Americans . . . . [This is] another set of Bureau 'rules and regulations,' as, with all its 'flourishes' of independence of Indian control of these separated Indian com-

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<sup>32</sup> Collier, *The Genesis and Philosophy of the Indian Reorganization Act*, in *INDIAN AFFAIRS AND THE INDIAN REORGANIZATION ACT — THE TWENTY YEAR RECORD 5* (W. Kelly ed. 1954) [hereinafter cited as *INDIAN AFFAIRS*].

<sup>33</sup> 25 U.S.C. § 464 (1964).

<sup>34</sup> 18 U.S.C. § 1153 (1964). See Comment, *Indictments Under the "Major Crimes Act" — An Exercise in Unfairness and Unconstitutionality*, p. 691 *infra*.

<sup>35</sup> Such provisions were written into tribal constitutions and bylaws authorized by 25 U.S.C. § 476 (1964). The restrictions here quoted are taken from the *CONSTITUTION AND BYLAWS OF THE GILA RIVER INDIAN COMMUNITY, ARIZONA*, approved by the Secretary of the Interior on March 17, 1960.

<sup>36</sup> *Hearings on H.R. 7902 Before the House Comm. on Indian Affairs*, 73d Cong., 2d Sess., pt. 8, at 389 (1934).

munities, you will find safe provisions holding the Bureau hand constantly with power to control . . . .<sup>37</sup>

Once the bill was passed, the BIA devoted its primary efforts toward the writing of tribal constitutions and to a sustained campaign to assure the acceptance of the Indian Reorganization Act in tribal elections. Much was done in haste, since Collier had set a deadline of June 18, 1935 (12 months) for tribal acceptance or rejection of his plan. In the end, 181 tribes accepted IRA, 77 rejected the Act, and 14 came under it because of failure to vote. Alaskan groups were brought under the Act without a vote.<sup>38</sup> Notwithstanding the election provision,<sup>39</sup> however, all tribes, including the Navajo, were eventually administered under IRA regulations, since the Bureau felt it was too cumbersome to operate under an IRA manual for some tribes and a non-IRA manual for others.

#### TERMINATION

Collier's resources development and Indian rehabilitation plans, as it turned out, could not be launched on the scale expected because of the limitation of funds which resulted from the depression and the shortage of funds and manpower during World War II. However disappointing this was, the situation was considered temporary, and it was fully expected that the long range plans envisaged by the Collier administration and the rehabilitation programs that had been in preparation, both locally and nationally, during the preceding dozen years, would be launched with full momentum once the war was over. Instead, the post-war interest in Indians took an unexpected turn toward the termination and transfer of federal responsibilities.

An early indication of the new attitude is contained in a talk delivered by John Provinse, Assistant Commissioner of Indian Affairs, at the National Conference of Social Work in San Francisco, California on April 15, 1947:

I have rather purposely avoided too dogmatic or organized a scheme for the removal of Federal services for, as many of you must realize, the problem is a many-sided one and hence does not permit of any simple or single solution. The progress of the various Indian tribes and the changing policies of the Federal government over a long period of history make it almost impossible, or at least irresponsible, to pronounce any simple formula. Essentially what I have tried to tell you this afternoon is the following:

First, that the Indian Office has recently proposed to Con-

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<sup>37</sup> *Id.* at 390.

<sup>38</sup> 25 U.S.C. § 473(a) (1964); see Haas, *The Indian Reorganization Act in Historical Perspective*, in *INDIAN AFFAIRS*, *supra* note 32, at 10.

<sup>39</sup> 25 U.S.C. § 478 (1964).

gress for its consideration a scheme which if enacted into law, would authorize and permit the incorporation of Indian tribes to take over their own affairs on a time scale somewhat as follows:

(1) Almost immediately for some 10 groups, approximately upwards to 50,000 people.

(2) Within 5-10 years for some 20 additional groups, approximating some 75,000 people.

(3) Within 10-25 years the assumption of responsibility by the remaining tribes or groups, dependent upon the progress made in establishing an economic base for these groups.

Secondly, that in addition to the corporate tribal plan proposed above, legislation will also be proposed that will enable individual Indians who so desire, to renounce their tribal or Federal status, provided that in case of the removal of trust restrictions of property held for them by the United States, they relinquish any claim against the United States Government for further services.

Thirdly, that in certain areas of service now provided for Indians by the Federal government, continued efforts will be made by the Indian Office to secure the assumption of responsibility for these services by other agencies, either by the State, as in the field of education, or by the qualified Federal agency, as in the case of welfare. This type of effort can of course proceed simultaneously with the effort to secure tribal corporate enterprises which will take responsibility for handling the tribe's own business.

Fourthly, that in the field of Indian resources, the Federal government will maintain its trusteeship responsibilities until such time as it can be assured that release of the lands will not result in the wholesale dispossession of Indians from their lands that occurred in the decades from 1890 to 1920.<sup>40</sup>

These statements, and similar ones made by William Zimmerman, Jr., the acting Commissioner,<sup>41</sup> indicated that the mood of understanding and friendship for Indians that had marked the early years of the Roosevelt-Ickes-Collier era, had once again shifted to a climate of impatience and intolerance. Provinse and Zimmerman had been friends and associates of Collier and, if left alone, they would not have suggested this unilateral approach to federal withdrawal or tied it to an essentially impossible timetable. Their plan was an effort at appeasement of Congressional termination pressure, and it did not work.

William Brophy, for whom Zimmerman had been acting, was replaced by John R. Nichols and then, in 1950, by Dillon S. Myer. It

<sup>40</sup> Provinse, *The Withdrawal of Federal Supervision of the American Indian*, in Indian Affairs Source Book 91-92, April 15, 1947 (unpublished manuscript in State Museum Library, Tucson, Arizona).

<sup>41</sup> *Hearings on S. Res. 41 Before the Senate Comm. on Civil Service*, 80th Cong., 1st Sess., pt. 3, at 547 (1947).

was under their administrations that Congress was made to realize (partly as the result of a wave of national publicity centered on the plight of the Navajo Indians) the need for the vastly increased Indian appropriations that have been provided by all subsequent Congresses. But it was also during Myers' administration that a "termination" policy gained both executive and congressional support. This support continued during Glenn L. Emmons' term, who was appointed Commissioner of Indian Affairs by President Dwight Eisenhower.

For about eight years — the last two years of the Truman administration and the first six years of the Eisenhower administration — there was almost total disagreement between Indians and federal officials on the issues of termination and transfer of federal responsibilities. Nevertheless, Congress accepted a termination policy by passing two key measures in August of 1953. The first was House Concurrent Resolution No. 108 which declared it to be the policy of Congress

as rapidly as possible to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship . . . .<sup>42</sup>

The second measure, passed by Congress on August 15, 1953, was Public Law 280.<sup>43</sup> This Act brought Indian lands in California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin (except the Menominee Reservation) under the criminal and civil jurisdiction of those five states.

Within the next few years twelve Indian groups, with a total population of about 10,000, were the subject of termination legislation:

[this legislation effected the] release of federal supervision over the property and individual members of the Alabama and Coushatta Tribes of Texas, the Klamath of Oregon (Klamath and Modoc Tribes and the Yakooskin Band of Snakes), the Tribes of Western Oregon (Grand Ronde, Siletz), the Menominee Tribe of Wisconsin, and certain tribes in Utah, (Shivwits, Kanosh, Koosharem and Indian Peaks Bands of Paiutes: the mixed-blood Uintah and Ouray [Utes]).<sup>44</sup>

At another time, and in a different mood, actions similar to these might have been constructive. Instead, the period from about 1947 through 1958 was marked by a near paralysis of developmental planning in the BIA, and Indian leaders, who ordinarily might have been seeking ways to end their status as "wards," found themselves in a wasteful

<sup>42</sup> H.R. Con. Res. 108, 83d Cong., 1st Sess. (1953).

<sup>43</sup> 18 U.S.C. § 1162 (1964).

<sup>44</sup> Watkins, *Termination of Federal Supervision: The Removal of Restrictions Over Indian Property and Person*, 311 ANNALS 50-51 (1957).

fight to protect what they considered to be their "rights." Today, the unilateral actions of the 83d and 84th Congresses find little support for the principal reason that they have become associated, rightly or wrongly, with America's old weaknesses: exploitation, dominance, and impatience.

In the fall of 1958, Frederick A. Seaton of Nebraska, the newly appointed Secretary of the Interior, declared an end to the federal termination policy. The event was headlined in Commissioner Emmons' annual report of the BIA for 1959:

One of the most important developments of the year in Federal administration of Indian affairs was Secretary of the Interior Seaton's radio address of September 18, 1958, from Flagstaff, Ariz., clarifying the Department's position on the centrally important question of terminating Federal trust responsibilities for Indian tribal groups.

Referring to the resolution on this subject adopted by Congress in 1953 . . . Secretary Seaton called attention to the varying interpretations given to this document over the preceding 5 years and specifically mentioned the impression created by some interpreters that 'it is the intention of Congress and the Department of the Interior to abandon Indian groups regardless of their ability to fend for themselves.'

In his talk, Secretary Seaton strongly repudiated any such interpretation. 'To me,' he said, 'it would be incredible, even criminal, to send any Indian tribe out into the mainstream of American life until and unless the educational level of that tribe was one which was equal to the responsibilities which it was shouldering.'

At another point, he summarized his position succinctly in the following words: 'no Indian tribe or group should end its relationship with the Federal Government unless such tribe or group has clearly demonstrated — first, that it understands the plan under which such a program would go forward, and second, that the tribe or group affected concurs in and supports the plan proposed.'<sup>45</sup>

An essentially meaningless period of strife, which was once termed proper and necessary but which is now referred to as criminal, thus came to an end in a proper political fashion.

An astute and sardonic Papago once remarked that anthropologists should stop their studies of Indian culture and spend their time attempting to explain to the Indians the peculiarities of American behavior. The difficulty of any such attempt is illustrated by the display of generosity toward Indians by the Congress in 1950 in the midst of a determined drive to terminate federal responsibility for Indians — a move that had its origin in a congressional plan to save money. The generosity took the form of the Act of April 19, 1950<sup>46</sup> (Navajo-Hopi Long

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<sup>45</sup> 1959 SEC. OF THE INTERIOR ANN. REP. 231.

<sup>46</sup> Ch. 92, 64 Stat. 44.

Range Rehabilitation Act), which put an end to the chronic and stifling poverty under which the Bureau of Indian Affairs had been operating. The Act authorized total expenditures in the amount of \$88,570,000 over a ten year period for the construction of roads, schools, hospitals, irrigation systems, water and communication systems and other similar enterprises for the benefit of the two tribes mentioned. As a result of this program, Commissioner Emmons was able to build a classroom, or find a school desk, for practically all Navajo and Hopi school age children. The magnitude of the operation can be judged from the fact that Navajo school enrollment doubled from about 14,000 to about 28,000.<sup>47</sup> Since the selection of two tribes for special attention could hardly be justified, Congress, with the flood gates thus open, has since met similar basic needs in all Indian areas across the country.

In 1955, health services for Indians were transferred from the Department of the Interior to the Department of Health, Education and Welfare.<sup>48</sup> This transfer was accompanied by an increase in appropriations for Indian health from about 21 million dollars in 1953 to about 38 million in 1956.<sup>49</sup> New programs, instituted by the BIA in the 1950's, included special employment services for Indians, adult education, adult vocational training, assistance to Indian families moving off the reservation (relocation), an industrial development program and an expanded program of scholarship loans and grants for Indians seeking college training.

#### THE "NEW TRAIL" FOR INDIANS

When Stewart Udall of Arizona became Secretary of the Interior in the Kennedy administration in 1961, he not only adopted the earlier policy position of Secretary Seaton, but he also reached for even more telling ways of healing the rift that had been created in Indian-white relations during the early years of the Eisenhower administration. His first move was to secure the help of Indian leaders and the non-Indians who had earlier been associated with John Collier and the IRA policies to participate in a series of meetings and studies that would form the basis for new programs and policies. The result was the publication in the summer of 1961 of the *Task Force Report on Indian Affairs*.<sup>50</sup> The recommendations in this report were summarized by Philleo Nash, the newly appointed Commissioner of Indian Affairs in his annual report for 1961:

<sup>47</sup> Indian Service statistics are usually estimates with an unknown plus or minus percentage. Perhaps, in this case, the percentage is approximately 10.

<sup>48</sup> 42 U.S.C. § 2001 (1964).

<sup>49</sup> Zimmerman, Jr., *The Role of the Bureau of Indian Affairs Since 1933*, 311 ANNALS 37 (1957).

<sup>50</sup> W. Keeler, P. Nash, W. Zimmerman, Jr., and J. Officer, Report to the Secretary of the Interior by the Task Force on Indian Affairs, July 10, 1961 (Bureau of Ethnic Research, University of Arizona, Tucson).

A 'New Trail' for Indians leading to equal citizenship rights and benefits, maximum self-sufficiency and full participation in American life became the keynote for administration of the program of the Bureau of Indian Affairs of the Department of the Interior shortly after the close of the 1961 fiscal year.

Probably the most important single recommendation was for a shift in program emphasis away from termination of Federal trust relationships toward greater development of the human and natural resources on Indian reservations.

This was coupled, however, with a recommendation that eligibility for special Federal service be withdrawn from 'Indians with substantial incomes and superior educational experience, who are as competent as most non-Indians to look after their own affairs.' Emphasis was also given to the beneficial nature of Federal programs — such as those under the Social Security Act and the Area Redevelopment Act — which treat Indians and non-Indians alike.

In addition, the report recommended (1) more vigorous efforts to attract industries to reservation areas, (2) an expanded program of vocational training and placement, (3) creation of a special Reservation Development Loan Fund and enlargement of the present Revolving Loan Fund, (4) establishment of a statutory Advisory Board on Indian Affairs, (5) negotiation with States and counties, and resort to the courts where necessary, to make certain that off-reservation Indians are accorded the same rights and privileges as other citizens of their areas, (6) collaboration with States and tribes to bring tribal law and order codes into conformity with those of the States and counties where reservations are located, (7) acceleration in the adjudication of cases pending before the Indian Claims Commission and (8) more active and widespread efforts to inform the public about the status of the Indian people and the nature of their problems.<sup>51</sup>

This is not a statement of "bold new thinking," but rather of compromise and uncertainty. Emphasis was not on the central problems of Indian adjustment, but on an endorsement of institutional and economic programs already in operation: social security, area redevelopment, industrial development, vocational training, loan funds, and tribal law and order codes. Other recommendations had to do with matters over which the Bureau of Indian Affairs has no control: the rights and privileges of off-reservation Indians and the adjudication of cases before the Indian Claims Commission.

Disappointment in the report turned into disappointment in performance. Attempts to solve problems of Indian poverty centered around the creation of employment opportunities when it was quite clear that the more serious problems were Indian apathy, idleness and maladjustment. In public statements, officials of the BIA reported that 40 to 50

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<sup>51</sup> 1961 SEC. OF THE INTERIOR ANN. REP. 277-78.



percent of reservation Indians were unemployed.<sup>52</sup> The actual state of affairs was, however, quite different. The United States Census for 1960 reported unemployment among Indian males at only slightly over 9 percent but showed that 17 percent of male Indians, under 65, were idle and not looking for work or disabled. In other words, disinterest and inability, rather than lack of opportunity, were the central problems.<sup>53</sup> Even in the areas where the BIA was concentrating its attention — educational and training programs — Indian trainees could not meet outdated standards, let alone the constantly rising national norms of employment proficiency. And programs for economic and industrial development were not providing new jobs in a number that could keep up with the Indian birth rate, let alone diminish the backlog of true unemployment — Indians actually looking for work.<sup>54</sup> Adult Indians were being locked tighter and tighter into a dependence upon welfare and federal jobs created to serve Indians. Symptoms of social breakdown — drinking, fighting, illegitimacy, squalor, and juvenile delinquency — were on the increase.<sup>55</sup> This was the state of affairs when two events occurred which brought a change in outlook.

The first was the advent of Indian participation in the various programs of the "war on poverty," sponsored by the Office of Economic Opportunity, and the second, perhaps to some extent not coincidental, was Interior Secretary Udall's loss of patience with his BIA. The proposals of the Indian Division of the OEO, and the subsequent Udall plan for getting the BIA back on its feet, represent different approaches to the many different kinds of problems that exist in Indian communities.

The original intention of the Indian division of the OEO was to pursue a policy that would permit local planning and execution of those programs that the Indians on each reservation thought would improve their situation. The authors of the plan (among them Robert Roessel who was at that time head of the Indian education office of the College of Education at Arizona State University) firmly believed that the BIA, and other agencies dealing with Indians, had encountered difficulties because they stifled, rather than encouraged, the efforts of Indians to think and act for themselves.

This plan could have worked — and someday soon in some other context it will work — but the program was introduced in typical "madhouse" haste, explanations were much too short, directives grew

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<sup>52</sup> P. NASH, *THE WAR AGAINST POVERTY — THE AMERICAN INDIANS* 2 (1964).

<sup>53</sup> U.S. BUREAU OF CENSUS, *U.S. CENSUS OF POPULATION: 1960 SUBJECT REPORTS. NONWHITE POPULATION BY RACE. FINAL REPORT P.C. (2) — 1C at 104* (1963).

<sup>54</sup> W. Kelly, W. Willard and N. Rund, *An Evaluation of OEO Community Action Programs on the Papago Reservation in Arizona*, August 1, 1966 (unpublished manuscript in State Museum Library, Tucson, Arizona).

<sup>55</sup> It should be emphasized that there are no reliable and valid statistics to support or refute these kinds of statements. Secondary evidence supports the statement, but there is no direct knowledge of the magnitudes involved.

more and more explicit to meet the rigidities of a Washington bureaucracy, and finally, few of the plans that were approved could be said to have originated with reservation Indians. In spite of this, there is still an aura, at least among Indian leaders, of enthusiasm for OEO programs because they are under Indian control with a minimum of outside interference.

The new Udall approach, announced in April of 1966, almost simultaneously with the appointment of Robert L. Bennett as Commissioner of Indian Affairs, has developed under Bennett during the past three years to involve (1) new programs for rehabilitation, education and industrial development, (2) expansion of established programs, (3) an insistence upon the substitution of Indian control for federal control of many established programs and (4) a new role for the BIA as coordinator of the many new national programs (intended for all deprived areas, including Indian reservations) in the fields of employment assistance, vocational training, education, health, housing, sanitation, community development, and others.<sup>56</sup>

The impact of the Udall-Bennett effort is exemplified by President Johnson's message to Congress on Indian affairs on March 6, 1968. This message is unquestionably a landmark, reaching far beyond the operations of the BIA to include all departments of government and all federal programs which affect the welfare of Indians and Indian communities. Among other things, an increase of 10 percent in expenditures for Indians was recommended, bringing the total federal budgets for this purpose to about \$500 million. If the recommendation is followed, it will represent an increase of about 500 percent in ten years, and is about twenty times the total expenditures for the benefit of Indians at the close of World War II. If money can do what is needed, success is almost around the corner. But President Johnson made another, and vastly more important point. In conclusion he said:

The program I propose seeks to promote Indian development by improving health and education, encouraging long-term economic growth, and strengthening community institutions.

Underlying this program is the assumption that the Federal government can best be a responsible partner in Indian progress by treating the Indian himself as a full citizen, responsible for the pace and direction of his development.

But there can be no question that the government and the people of the United States have a responsibility to the Indians.

In our efforts to meet that responsibility, we must pledge to

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<sup>56</sup> See Bennett, *Problems and Prospects in Developing Indian Communities*, p. 649 *infra*, for the current Commissioner of Indian Affairs' view on the role of the BIA.

respect fully the dignity and the uniqueness of the Indian citizen.

That means partnership — not paternalism.

We must affirm the right of the first Americans to remain Indians while exercising their rights as Americans.

We must affirm their right to freedom of choice and self-determination.

We must seek new ways to provide Federal assistance to Indians — with new emphasis on Indian self-help and with respect for Indian culture.

And we must assure the Indian people that it is our desire and intention that the special relationship between the Indian and his government grow and flourish.

For, the first among us must not be last.<sup>57</sup>

But, like the Udall-Bennett effort, there is no reason to expect that President Johnson's message will alter the historic pattern of exploitation and discrimination by the dominant society. It is significant, however, that President Johnson spoke in terms of "partnership," a first for any Chief Executive.<sup>58</sup>

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<sup>57</sup> BUREAU OF INDIAN AFFAIRS, INDIAN RECORD, SPECIAL ISSUE — PRESIDENT JOHNSON PRESENTS INDIAN MESSAGE TO CONGRESS — THE FORGOTTEN AMERICAN 14 (1968).

<sup>58</sup> One would hope President Nixon takes the same approach to Indian affairs as that enunciated by President Johnson. While it is too early to tell, there would seem to be hope. "President Nixon, if we are to judge from his campaign statements, seems inclined to continue the kind of Federal policy enunciated by President Johnson." Udall, *The State of the Indian Nation — an Introduction*, p. 557 *supra*. See Bennett, *Problems and Prospects in Developing Indian Communities*, p. 649 *infra*.

