NEEDED: A SYSTEM OF INCOME MAINTENANCE FOR INDIANS

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American Indians have the dubious distinction of benefiting from a myriad of state and federal welfare programs.[1] How has the Indian fared under these various programs? Not very well — not an unexpected result either, given the inefficiency of most welfare systems and the Indians' lack of political power to demand the necessary changes.[2]

The thesis of this article is that the Indians' problems under current welfare programs demonstrate the need for a system of income maintenance (*e.g.* negative income tax) to supplant the existing structure.[3] Statutes under which state and federal programs are administered are complex and often confusing. Under the present system states have attempted to exclude Indians from their welfare roles through discriminatory practices of doubtful constitutional validity. Moreover, states have arbitrarily imposed a ceiling on welfare payments, a practice which is also constitutionally suspect. Specific problems can be handled

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[1] In addition to the federal and state efforts, various tribes have independent welfare programs. This article will deal only with federal and state programs, however, because of their primary importance.

[2] "Welfare" is used here in its somewhat new sense of being or pertaining to the governmental system of cash payments to individuals to alleviate poverty, usually through state welfare programs. Welfare law is a subdivision of the developing field of poverty law. The advent in late 1968 of the *CCH Poverty Law Reporter*, developed through a contract with the Office of Economic Opportunity, represents the unofficial baptism of this new field.

[3] That Congress has the power to completely usurp state welfare programs vis-à-vis the Indians is undoubted. Congress traditionally has had absolute control over Indian affairs. Worcester v. Georgia, 314 U.S. (6 Pet.) 515 (1832). However, since Congress has the power to spend for the general welfare, Helvering v. Davis, 301 U.S. 619 (1937), an argument could be made that Congress would be denying other citizens equal protection of the law in guaranteeing only Indians a minimum income, particularly since the special treatment would be partially based on race. *See* Loving v. Virginia, 388 U.S. 1 (1967). But since the Indian need for cash assistance is greater than that of the general United States population, *see* Taylor, *Indian Manpower Resoures: The Experiences of Five Southwestern Reservations*, p. 579 *supra*, since congressional treatment of Indians has been historically different than that of the general non-Indian population (this different treatment resulting in the problems Indians face today), *see* Kelly, *Indian Adjustment and the History of Indian Affairs*, p. 559 *supra*, and since a guaranteed annual income is, at least in theory, basically similar to existing cash assistance programs, it is likely that the different treatment would be upheld as constitutional. *But see* Comment, *Indictment Under the "Major Crimes Act" — An Exercise in Unfairness and Unconstitutionality*, p. 691 *infra*. Moreover, reservation Indians today are given special welfare treatment under Bureau of Indian Affairs' programs, which have not been challenged to date. Further, use of the system on Indian reservations would provide a model for determining the advisability of applying the program nationwide.

judicially, but the generally negative attitude of state governments in administering welfare systems is extremely difficult to overcome.[4] Thus, the federal government should assume primary responsibility for Indian welfare, and in so doing should change its own inefficient and frequently inequitable system. In short, welfare programs for Indians have proven unsatisfactory[5] and will work only when existing systems are changed. It is the purpose of this article to survey the administrative problems of current programs and to suggest a more efficient and equitable system.

THE NEED FOR WELFARE

When Indian reservations were established they were designed to isolate, both geographically and culturally, the Indian tribes from the remainder of the population. As a result, Indians today are farther removed from sources of employment than any other group. To make matters worse, the intrusion of the white man's economy has rendered the traditional Indian means of support, such as hunting and subsistence agriculture, obsolete. Widespread unemployment has been the inevitable result, and it would appear that the intense poverty of most Indian reservations can be alleviated in the short run only by governmental assistance. As a result, welfare has become one of the most important sources of income for America's Indians.

Arizona's Papagos are a good example. More than half the Indians living on the Papago Reservation were dependent upon welfare payments during the fiscal year ending June 30, 1968,[6] and it seems certain that many others were eligible for welfare but did not apply. Although some Papagos receive social security payments (old age and survivor's benefits), many do not because of the relative scarcity of wage-earning jobs which are subject to the social security program. Many farm labor-

[4] *See* Graham, *Public Assistance: The Right to Receive: The Obligation to Repay*, 43 N.Y.U.L. REV. 451 (1968) [hereinafter cited as *Public Assistance*]; Graham, *Civil Liberties Problems in Welfare Administration*, 43 N.Y.U.L. REV. 836 (1968).

[5] See Taylor, *Indian Manpower Resources: The Experiences of Five Southwestern Reservations*, p. 592-96 *supra*, for statistics on Indian yearly incomes, including income from welfare sources.

[6] A census taken in September 1968, by the Division of Indian Health, Public Health Service, which was published as *Demographic and Socio-Cultural Characteristics: Papago Indian Reservation, 1967*, established the Indian population of the Papago Reservations at 5,372, and statistics showed that there were 938 individuals on state categorical assistance and 1,818 individuals on BIA general assistance (including tribal work experience grants) during fiscal 1968.

Note that the Papago Reservation has three subdivisions: the main reservation at Sells and smaller portions at San Xavier and Gila Bend. The state welfare program is administered through the agencies of the three counties in which the reservation is located — Pima, Maricopa, and Pinal. In addition to cash payments, county welfare departments distributed surplus agricultural commodities to many of the welfare recipients. For example, 285 Papago families (1,385 individuals) received commodities in October, 1968, from the Pima County Welfare Department. (Arizona does not have a "food stamp" program.)

ers are not subject to the plan, and coverage of the self-employed farmer or rancher requires the filing of an additional schedule to support form 1040, as well as a lump sum payment of the accrued self-employment tax. Consequently, many Indians are not eligible for social security payments because they have never contributed to the program.[7]

STATE ASSISTANCE PROGRAMS

Indians are theoretically in the same position as other Americans with respect to state welfare programs, and therefore are eligible for state financial assistance.[8] The Bureau of Indian Affairs estimates that between 60,000 and 70,000 Indians living on reservations (including those in Oklahoma and Alaska where there are no reservations) receive state welfare assistance.[9]

State Welfare Generally

The present system of state welfare programs was introduced nationwide in 1935 as a part of the Social Security Act.[10] The Act, by making federal funds available to the states on a percentage basis, encouraged them to adopt the federal plan and abandon their own hodge podge of welfare programs. Categories of needy persons were established under the Act, giving rise to the current term "categorical assistance." These categories now include Aid to Families with Dependent Children (AFDC), Old Age Assistance (OAA), Aid to the Permanently and Totally Disabled (APTD), and Aid to the Blind (AB). The Act made great strides toward the concept of a right to welfare — "statutory entitlement" — a right which gives to those coming under the coverage of the Act protection from arbitrary refusal of welfare assistance.[11]

Under the present system there is a certain amount of federal control over state use of federal "matching funds."[12] The Department

[7] Although a representative from the Social Security office comes to Sells once every three months, Papagos generally must go to Tucson (60 miles from Sells) for help with income tax or social security. The Navajo Tribe has a population of about 120,000, yet until a few years ago, only one Social Security representative serviced the entire reservation. After considerable pressure, a Social Security office was established at each of the five BIA "Agency" offices on the reservation. These Social Security offices have helped the Indians in filling out income tax and social security self-employment tax forms.

[8] U.S. DEP'T OF THE INTERIOR, FEDERAL INDIAN LAW 523 (1958).

[9] Interview with Charles B. Rovin, Chief of the Branch of Social Services of the Bureau of Indian Affairs, July 1968.

[10] 42 U.S.C. §§ 301-1394 (1964), *as amended*, (Supp. I, 1965).

[11] See *Public Assistance*, *supra* note 4.

[12] *See generally* S. STEINER, SOCIAL INSECURITY: THE POLITICS OF WELFARE (1966). Chapter IV deals with the problem of "State versus Federal Power" (pp. 80-107). The complicated formula for determining the federal share of AFDC is found in 42 U.S.C. § 603 (1964), *as amended*, (Supp. I, 1965). It is based on a varying percentage of the total AFDC expenditures by each state. For fiscal year 1969, Arizona appropriated $14,834,702 for its Department of Public Welfare, Laws 1968, ch. 206, § 1, subd. 44, and, according to the Welfare Rights Organization of Arizona, it is estimated that the federal matching funds will total $27,400,000 for the same year.

of Health, Education and Welfare administers the Social Security Act and issues a *Handbook of Public Assistance Administration* which interprets the Act and details how the states are to comply with it. The states, however, are not subject to federal administrative control over their so-called "residual" welfare programs (variously known as general assistance, general relief or emergency relief) because no federal money is involved. HEW's ultimate and seldom-used weapon in forcing the states to comply with federal law is to withhold the federal matching funds. It is a severe remedy, however, and may be employed only after a conformity hearing. As of 1965, only six conformity hearings had been held.[13] HEW has tended to be a weak policeman.

State eligibility rules have been one of the major sources of disputes under welfare programs. The basic eligibility rule under most programs is that a recipient be "unemployable."[14] Just what specific meaning "unemployable" has is difficult to ascertain. To illustrate, *Arizona Revised Statutes Annotated* section 46-233 (Supp. 1969) provides:

> A. No person shall be entitled to general assistance who does not meet and maintain the following requirements: . . .
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> 4. Is not employable according to the findings of the state [welfare] department.

Under this provision, to be "unemployable" an individual must be mentally or physically incapacitated.[15] Under categorical assistance provisions an employable individual usually is required to accept available employment unless excused by the county department.[16]

The eligibility requirement that a person be "unemployable" is certainly consistent with the "worthy poor" approach taken by Elizabethan England, and is not inconsistent with the Social Security Act, which only prohibits states from denying aid to United States citizens.[17] Under current Supreme Court doctrine, however, one cannot be sure the eligibility requirement of being "unemployable" would pass muster as a rational basis for denying aid,[18] even if the employable individual *refuses to work.*

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[13] W. BELL, AID TO DEPENDENT CHILDREN 223 n.33 (1965).

[14] *Public Assistance, supra* note 4, at 454-62, 470.

[15] Telephone conservation with Mr. Ever L. Hanson, Pima County Welfare Director, March 27, 1969.

[16] *E.g.*, ARIZ. REV. STAT. ANN. §§ 44-252, -272, -292 (Supp. 1969).

[17] *Id.* 42 U.S.C. § 302(a)(11)(E)(3) (1964).

[18] *See* King v. Smith, 392 U.S. 309 (1968), where the Court struck down a state eligibility requirement for categorical assistance as being in conflict with the Social Security Act. The Court declined to consider equal protection arguments and stated:

> There is no question that States have considerable latitude in allocating . . . resources, since each State is free to set its own standards and to determine the level of benefits by the amount of funds it devotes to the

One obvious reason for limiting welfare assistance to "unemployables" is an economic one; it is simply much cheaper to do so. Recently, however, lower federal courts have, in another context, cast doubt on the validity of giving different welfare treatment to citizens in the same economic class for state economic reasons.[19] Probably a more fundamental reason for limiting assistance to "unemployables" is based on the supposed beneficial social effects which are realized by attaching such a requirement; *i.e.*, if welfare is withheld from those able to work, they will be motivated to do so. While this argument seems meritorious on the surface, it has yet to be supported by empirical research in the welfare context. It would seem that the requirement stems from an intuitive reaction by a ruling body imbued with the Puritan ethic of "rugged individualism," certainly a tenuous basis upon which to deny an American citizen subsistence payments.

One eligibility rule apparently aimed at controlling the sex lives of mothers of needy children was recently struck down by the Supreme Court in *King v. Smith*.[20] At issue was the validity of Alabama's "substitute father" or "man-in-the-house" rule, whereby otherwise eligible children were denied payments if the mother cohabited with an employable man, regardless of whether he had any legal obligation to support the children. While the Court found the regulation inconsistent with the Social Security Act, and did not reach the equal protection argument, it did say that since the development of welfare under the Social Security Act shows that federal welfare policy now rests on a more "sophisticated" level than the "worthy person" concept of earlier days, the state's interest in discouraging immorality is no longer a legitimate basis for AFDC disqualification.[21] Further, the Court implicitly recognized the need for alleviating hardship resulting to innocent dependents because of administrative regulations ostensibly aimed at achieving some social good.[22]

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program. *Id.* at 88 S. Ct. 2134.
Whether this means states can rationally choose the "worthy" poor as recipients or whether the state only has power to draw the need line and pay all citizens falling below it is open to question. *See* Williams v. Dandridge, CCH Pov. L. REP. ¶ 9233 (D. Md. Dec. 13, 1968); Dews v. Henry, Civil No. 6417 (D. Ariz., March 13, 1969); *Public Assistance, supra* note 4, at 470-75.

[19] Williams v. Dandridge, CCH Pov. L. REP. ¶ 9233 (D. Md. Dec. 13, 1968); Dews v. Henry, Civil No. 6417 (D. Ariz., March 13, 1969).

[20] 392 U.S. 309 (1968).

[21] King v. Smith, 88 S. Ct. 2128, 2141 (1968).
> The regulation is therefore invalid because it defines 'parent' in a manner that is inconsistent with § 406(a) of the Social Security Act. 42 U.S.C. § 606(a). In denying AFDC assistance to appellees on the basis of this invalid regulation, Alabama has breached its federally imposed obligation to furnish 'aid to families with dependent children . . . with reasonable promptness to all eligible individuals. . . .' 42 U.S.C. § 602(a) (9). Our conclusion makes unnecessary consideration of appellees' equal protection claim, upon which we intimate no views.

[22] "Typically, where a recipient refuses to accept employment, the state agency will simply discontinue welfare benefits for the entire family." *Public Assistance, supra* note 4, at 470.

The States' Duty to Provide Categorical Assistance for Indians

Notwithstanding the Indians' position as citizens of the United States when the Social Security Act was passed,[23] and the language of the Act prohibiting the states from denying relief to any United States citizen,[24] states initially were (and still are) reluctant to extend categorical assistance to reservation Indians.

Beginning with an unpublished memorandum opinion by the Solicitor of the Department of the Interior in 1936,[25] there have been several rulings to the effect that reservation Indians are eligible for state categorical assistance. Despite these rulings, states continue to discriminate against Indians, discrimination which has been met judicially. In *State ex rel. Williams v. Kemp*,[26] the Supreme Court of Montana held that the citizenship provision of the Social Security Act prohibited Montana from requiring reimbursement from counties containing reservations for assistance provided the Indians by the state.

If and when the issue of state discrimination is faced by federal courts, there should be little doubt as to the outcome. The conclusion that the Social Security Act vests rights in those qualifying as recipients is inescapable. While the rights may not be absolute, assistance can be denied only for some rational reason.[27] The Supreme Court has held that race alone cannot be made the basis of state discrimination,[28] and it seems clear that states which deny categorical assistance to reservation Indians do so only on the basis of race.

Although Arizona passed categorical assistance laws in 1937,[29] it was not until after the Second World War that the BIA and the Federal Security Agency (the predecessor of the Department of Health, Education, and Welfare) began pressuring Arizona to provide assistance for reservation Indians. Early efforts met with no success, and by 1948 Arizona was receiving federal matching funds only on a month to month basis because of FSA opposition to the exclusion of Indians from the state program.

In 1949, Senators Andersen of New Mexico and Hayden of Arizona

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[23] *See* Act of June 2, 1924, 43 Stat. 453, *as amended* 8 U.S.C. § 1401 (Supp. II 1966) (the Social Security Act was not passed until 1935).

[24] 42 U.S.C. § 302(a)(11)(E)(3) (1964).

[25] Unpublished memorandum opinion, April 22, 1936. The conclusion that Indians were eligible for categorical assistance was based on the Social Security Act's requirement that a state's plan be operational in all political subdivisions of the state, 42 U.S.C. § 302(a)(1) (1964), and on the fact that Indians are included in the state population figures which were used as a basis for matching funds. *See generally* U.S. DEP'T OF THE INTERIOR, FEDERAL INDIAN LAW 286, 539 (1958).

[26] 106 Mont. 444, 78 P.2d 585 (1938).

[27] *Public Assistance, supra* note 4, at 467-75.

[28] Loving v. Virginia, 388 U.S. 1 (1967); Brown v. Board of Educ., 347 U.S. 483 (1954).

[29] Laws 1937, chs. 69-72, §§ 293-353.

initiated a proposal to permit states to deny categorical assistance to Indians who had received BIA relief during the four years prior to their application for state assistance. The bill did not pass, and the controversy was temporarily settled by two measures—the "Santa Fe Agreement" of 1949, and a separate special federal funding arrangement for the Navajo and Hopi Reservations, the Navajo-Hopi Rehabilitation Act of 1950.[30] The latter act contained a rider which required the Secretary of the Treasury to reimburse the states involved for 80 percent of their contribution to the categorical assistance budget for Navajos and Hopis. This additional contribution, along with normal federal matching funds, resulted in the federal government contributing some 92 percent of the total funds.

The Santa Fe Agreement resulted from a meeting on April 28-29, 1949, in Santa Fe, New Mexico, which had been prompted by FSA hearings on Arizona's and New Mexico's denial of categorical assistance to Indians. Representatives of the FSA, the BIA, the welfare departments of the two states, and the states' attorney general offices, attended. The agreement that emerged provided that the states would pay no more than "10% of the total cost incurred by the federal and state governments in aid to needy Indians eligible for assistance as set forth under Titles I, IV, and X of the Social Security Act."[31]

The agreement met its demise in 1954 when litigation over a new category of assistance reached its conclusion. In 1950, Congress added Aid to the Permanently and Totally Disabled (APTD) to the categories of available public assistance,[32] and Arizona followed in 1952, but specifically excluded reservation Indians.[33] The FSA disapproved Ari-

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[30] Ch. 92, 64 Stat. 44, *as amended* 25 U.S.C. § 639 (1964).

[31] Arizona State Department of Public Welfare, "Summary of Minutes of the Santa Fe Meeting," (May 3, 1949). This ceiling originated in a letter from Arthur J. Altmeyer, Commissioner of Social Security, to Murray A. Hintz, Director, New Mexico Department of Public Welfare, April 15, 1949 which was written after discussions with Arizona officials. Such an arrangement was approved by the Solicitor of the Department of Interior, Mastin G. White, in an unpublished memorandum, M-35095, April 20, 1949. The memorandum concluded that the Johnson-O'Malley Act of 1934, ch. 147, 48 Stat. 596, *as amended* 25 U.S.C. §§ 452-56 (1964), would permit the Secretary to contract with the states to pay them a fixed share of the states' cost for categorical assistance. The Solicitor had to struggle to reconcile such payments with the Solicitor's 1936 memorandum, *supra*, note 25, which took the position that states could not exclude Indians from categorical assistance.

In 1939, Congress received its first request to relieve the states of the cost of providing welfare for Indians, REPORT OF THE SOCIAL SECURITY BOARD, H.R. Doc. No. 110, 76th Cong., 1st Sess. 21 (1939); *Hearings Relative to the Social Security Act Amendments of 1939 Before the House Comm. on Ways and Means*, 76th Cong., 1st Sess. 2385 (1939). After the efforts of 1949 (see text), bills were introduced in 1962 and 1963 to require the federal government to pay 80% of the states' share of categorical assistance programs. H.R. 9621, 87th Cong., 2d Sess. (1962); H.R. 6279, 88th Cong., 1st Sess. (1963). Finally in 1969, a similar bill was introduced, H.R. 6776, 91st Cong., 1st Sess. (1969).

[32] Ch. 809, 64 Stat. 555 (1950), *as amended* 42 U.S.C. § 1351-55 (1964), *as amended*, (Supp. I, 1965).

[33] ARIZ. REV. STAT. ANN. § 46-232 (1956) provides that:

zona's plan since the restriction imposed a residence requirement which was invalid under the Social Security Act. Arizona brought suit against the Administrator of the FSA to compel payment to the state of the federal matching funds allegedly owed it under the Social Security Act. The district court ruled in favor of the Administrator and Arizona appealed. The Court of Appeals for the District of Columbia Circuit, in *Arizona v. Hobby*,[34] affirmed, holding that since the United States had not consented to be sued, the action could not be maintained. Thus, Arizona was forced to provide categorical assistance to Indians or be denied federal matching funds to which it otherwise would be entitled.[35] Apparently because of *Hobby*, and because of the large number of indigent Indians,[36] Arizona has yet to adopt the 1967 federal emergency assistance program.[37]

Computation of the State Welfare Grant: An Indian Family in Arizona

The best way to illustrate the intricacies of the process of making a welfare cash grant is by employing a hypothetical case. Mrs. Fulano, a Papago woman who lives in Sells, Arizona on the Papago Reservation, applies for welfare. She and her five children live in a small two room adobe house which is owned by her parents. Mrs. Fulano's husband was last seen in Tucson six months ago and has not contributed to the family's support during his absence. Her father, Mr. Garcia, is 66 years old, and receives a $60 social security payment each month. Mr. Garcia and his wife live in a separate one room house in the same compound of houses. In an outdoor ramada, the Garcias share cooking facilities and meals with their daughter and her children. (This sort of living arrangement is common with the Papagos.) In addition to the houses, Mr. Garcia owns a 1956 pick-up truck, eight head of cattle and two horses.

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no assistance shall be payable under the plan to persons of Indian blood while living on a federal Indian reservation, who, as wards of the federal government, under customs, laws and treaties between the Arizona Indian tribes and the United States, are entitled to have education, welfare and public assistance needs met by the federal government.

The Navajo-Hopi Rehabilitation Act of 1950, ch. 92, 64 Stat. 44, *as amended* 25 U.S.C. § 639 (1964), preceded the federal legislation and omitted APTD from the extra federal contribution for those reservations.

[34] 221 F.2d 498 (D.C. Cir. 1954).

[35] However, APTD continued to be excepted until 1962, since until that time Arizona carried the category without federal matching funds. In 1962 the law was changed and Indians were brought under the act. ARIZ. REV. STAT. ANN. § 46-232 (Supp. 1969).

[36] *See* Taylor, *Indian Manpower Resources: The Experiences of Five Southwestern Reservations*, p. 592-96 *supra*.

[37] The 1967 amendments to the Social Security Act provided for 50 percent federal matching funds for emergency relief to families with dependent children, 42 U.S.C. §§ 603(a)(5), 606(e) (Supp. III, 1968). With federal funding, the program is no longer entirely "residual" and the exclusion of Indians can be attacked on the same basis as was the exclusion of Indians under APTD.

Mrs. Fulano's AFDC grant is computed as follows: the case worker first refers to the Uniform Assistance Plan for Recipients,[38] the basic guide for the amount of money to be given. It lists "Differing Living Arrangements" and the number in the family to be included in the assistance grant. Mrs. Fulano's family falls within group A-3: "Dwelling —2 or more rooms — responsible for only upkeep and miscellaneous costs, or lives with . . . marginal relatives . . . ."[39] From the column entitled "Number in Family to be Included in Assistance Grant" it is determined that the Fulano's budgetary need is $234 per month, there being six in the family. There is, however, a statutory maximum AFDC grant in Arizona of $80 per month for a family with one dependent child, with an added $27 for each additional child, up to an absolute ceiling of $220 per family per month.[40] Thus Mrs. Fulano will receive $80 for the first child and $27 for each of the other four, for a total of $188 per month. She will not receive the first monthly payment until after the investigation, which is required by statute, has been completed,[41] and she must cooperate with law enforcement officials in their efforts to force her husband to provide for the children.[42] In fact, in Arizona the wife can be denied welfare if she fails to sign a criminal complaint against her husband.[43]

Mr. and Mrs. Garcia also are eligible for Old Age Assistance (OAA), and the case worker may point this out to their daughter. They fall within the same category (A-3) because they are considered to have a second room in their "living arrangement," even though they share it with their daughter. Since Mr. Garcia is receiving social security he should have no difficulty proving that he is over 65, and thus eligible for assistance under the OAA plan. With two people in the Garcia family, the "need" figure under the OAA plan is $128 per month. From this figure, $55 of their $60 monthly social security payment is subtracted, the remaining $5 being exempt by statute for OAA recipients only.[44] Thus $128 less $55 leaves $73 per month as the "unmet" need, which is the sum the Garcias will receive, since their combined

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[38] On file University of Arizona College of Law Library. This was partially revised in May, 1968. See ARIZONA STATE DEP'T OF WELFARE, FAMILY SERVICES MANUAL (1968) [hereinafter cited as F.S.M.].

[39] Since most Arizona Indians live in one room houses, they are placed in category A-4 under the Uniform Assistance Plan. Payments under this category are the lowest of the standard living arrangements.

[40] ARIZ. REV. STAT. ANN. § 46-294 (Supp. 1969).

[41] ARIZ. REV. STAT. ANN. § 46-203 (1956).

[42] Notice to law enforcement officials is required by federal statute, 42 U.S.C. § 602(a)(10) (1964). *See generally* CCH Pov. L. REP. ¶ 1310 (1968).

[43] F.S.M., *supra* note 38, at § 3-403.6c. If a civil decree provides for support, the wife need not file criminal charges for failure to provide. An unmarried woman may have to file a paternity action. However, if the father resides on the reservation, the state court lacks jurisdiction to prosecute, and any complaint will have to be filed in the tribal court.

[44] ARIZ. REV. STAT. ANN. § 46-207 F (Supp. 1969).

OAA grant maximum is $155 per month, easily over the "unmet" need figure of $73.[45]

Fortunately for the Garcias, their personal property does not exceed $1200 in value; otherwise they would have to sell something and spend the money on themselves before they would be eligible for assistance.[46] The value of their cattle is set at $80 per head with one head exempt, and the horses are valued at $32, but both are exempt.[47] The thirteen-year old truck is assigned a $200 value.[48]

To complicate matters, state social workers have a difficult time keeping their *Family Services Manuals* current because of frequent changes and a generally haphazard system of indexing and distribution. Further, challenging state welfare action is often difficult since legal aid attorneys have a hard time securing copies of the manual. The Secretary of State of Arizona has the responsibility for printing all such regulations,[49] but printing funds are purportedly unavailable and therefore only a few attorneys have managed to secure a copy.[50]

It is apparent from the above that the operation of Arizona's welfare program is both complex and arbitrary. Unfortunately, Arizona's system is typical of other states, and it can be expected that the inequities of state programs will be subject to increasing judicial scrutiny. In *Williams v. Dandridge*,[51] a three judge panel sitting in the United States District Court for the District of Maryland, held that application of maximum grants to large families was a denial of equal protection and that a state plea of inadequate funds was not a rational basis for the discrimination.[52] Similarly, a three judge panel sitting in the United States District Court for the District of Arizona struck down Arizona maximum grants on equal protection grounds.[53]

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[45] ARIZ. REV. STAT. ANN. § 46-207 A(2) (Supp. 1969).

[46] ARIZ. REV. STAT. ANN. § 46-252(7)(e) (Supp. 1969).

[47] ARIZ. REV. STAT. ANN. § 46-252 7(d) (Supp. 1969). *See also* F.S.M., *supra* note 38, at § 3-1107.9E, added October, 1968. In the fall of 1968, welfare officials visited the larger Arizona reservations and determined average livestock values. The figures for the different reservations vary. Cattle on the Navajo Reservation are presumed to be worth $85, sheep $5, horses $28, and goats $1. *Id.* § 3-1107.9(A).

[48] F.S.M., *supra* note 38, at § 3-1107-7a.

[49] ARIZ. REV. STAT. ANN. § 41-1006 (1956).

[50] Routine checking of clients' state welfare grants at Tuba City on the Navajo Reservation has revealed a large percentage of errors. Without the manual, however, such checking is difficult.

[51] CCH POV. L. REP. ¶ 9233 (D. Md. Dec. 13, 1968). While the court here did strike down the maximum grant, it also held the eleventh amendment a bar to the court's ordering Maryland to appropriate additional funds to meet additional expense.

[52] This same argument could be used to attack the requirement that before one is eligible for relief under state welfare law, he must be unemployable. If the argument were accepted the states' remaining basis would pertain to the purported beneficial social effects, *i.e.*, if welfare is withheld from one who refuses to work, he will be motivated to work. See notes 14-22 and related text *supra*.

[53] Dews v. Henry, Civil No. 6417 (D. Ariz., March 13, 1969). The court followed the *Williams* eleventh amendment holding. Arizona welfare officials are seeking a revision in state law that would abolish maximum grants and allow all recipients a percentage of need based on amounts of money appropriated for the year. Such a revision would appear to avoid the equal protection problems faced in both *Williams* and *Dews*.

BUREAU OF INDIAN AFFAIRS WELFARE

History

The first federal assistance to Indians came in the form of food rations. Since many of the tribes were herded onto reservations which were inadequate for hunting or farming, the food ration was necessary to prevent malnutrition and starvation, and more important to the Government, to prevent armed uprisings.[54] As late as 1928, dark descriptions of the ration system appeared:

> Old, crippled, almost helpless Indians are required to come to the agency office in all sorts of weather to get their supplies. On several reservations the survey staff saw poorly clad, old people, with feet soaked by long walks through snow and slush, huddled in the agency office waiting for the arrival of the superintendent or other officer who could give them an order for rations to keep them from actual starvation.[55]

Indians were required to work for their rations;[56] and they could not share the supplies they received with those not entitled to them.[57] In fact, they were required to sign an agreement not to sell or give away the supplies without the superintendent's written consent.[58] This system was disposed of in 1952.[59]

Cash assistance did not begin until 1944 although the authority to make payments was contained in the Snyder Act of 1921.[60] This Act authorized the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, to expend money "for the benefit, care and assistance of the Indians throughout the United States" for their "general support and civilization, including education," and for "relief of distress and conservation of health." The legislative history of the Act shows that it was intended merely as an authorization for general appropriations. A member of Congress has objected to certain appropriations for the BIA on the ground that there was no authorizing statute upon which to base them.[61] The Snyder Act was the result.

The Snyder Act is a familiar and somewhat distressing occurrence in the history of Indian affairs. As in other instances, Congress enacted

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[54] A cluster of ancient statutes, not yet repealed, show the military nature of the ration distribution scheme. See 4 Stat. 738 (1834), 25 U.S.C. § 141 (1964) (authorizing food for Indians visiting army posts); 18 Stat. 449 (1875), 25 U.S.C. § 128 (1964) (forbidding any Indian Service payments to bands of Indians at war with the United States); and 18 Stat. 424 (1875), 25 U.S.C. § 129 (1964). (authorizing withholding of funds to Indians holding non-Indian captives).

[55] BROOKINGS INST. FOR GOVERNMENT RESEARCH, THE PROBLEM OF INDIAN ADMINISTRATION 487 (1928) (Popularly known as the Merriam Report).

[56] 25 U.S.C. § 137 (1964).

[57] 25 C.F.R. § 251 (1952).

[58] *Id.*

[59] 17 Fed. Reg. 5719 (1952), *repealing*, 25 C.F.R. § 251 (1952).

[60] Ch. 115, 42 Stat. 208, *as amended* 25 U.S.C. § 13 (1964).

[61] 61 CONG. REC. 4660-69 (1921).

a very general measure and left the rest up to the Secretary of the Interior and the BIA. The result is that the structure of the welfare system is the BIA's own creation. The regulatory scheme is contained in the departmental manual which remains inaccessible except to a few social workers and persistent attorneys.[62]

Though assistance levels from reservation to reservation have grown somewhat unevenly, total appropriations for the BIA general assistance program have steadily increased through the years.[63] A 1953 report indicated that the average monthly number of recipients throughout the country during that year was 6,665.[64] By 1960, the average was 11,800 individuals at a cost of $3,300,000, and by 1967 it was 19,700 at a cost of $6,600,000.[65]

Operation of BIA Welfare

The BIA welfare system is a "general assistance" program. This term usually indicates a type of financial assistance that does not fit into any existing category. In the context of the BIA welfare regulations, however, it has come to mean assistance to Indians where no other "public assistance" or welfare is available,[66] either because of deficiencies in existing state programs, anti-Indian bias, or the absence of state programs.[67]

In Arizona, for example, categorical assistance is refused those "employables" refusing to work for whom work is available.[68] On the other hand, BIA regulations only "expect" applicants and recipients "to seek and accept available employment which they are able to perform."[69] Further, "unemployable" Indians in Arizona have been systematically excluded from both general assistance and emergency relief under the theory that the BIA general assistance program is an "available resource"

[62] U.S. DEP'T OF INTERIOR, BUREAU OF INDIAN AFFAIRS, INDIAN AFFAIRS MANUAL § 3.0 (1965) [hereinafter cited as I.A.M.]. The current regulations covering BIA welfare were written in 1952 and were substantially revised December 30, 1965. They do not appear in the *Code of Federal Regulations*, only in the I.A.M.

[63] The BIA, however, has been quite willing to let some of the tribes finance their own programs:

> It was necessary to provide assistance from Federal funds at only 25 agencies, with tribal funds used for this program at 15 additional agencies and with needs at the remaining agencies, if any, met through local county sources. 1953 SECRETARY OF THE INTERIOR ANNUAL REPORT 39.

[64] *Id.*

[65] Rovin interview, *supra* note 9. Statistics on file at the Bureau of Indian Affairs, Washington, D.C.

[66] "Individuals receiving public assistance in their own right, or whose needs are included in a public assistance payment are not eligible for Bureau general assistance." I.A.M., *supra* note 62, at § 3.1.4B.

[67] Though the BIA regulations are silent about the effect of tribal welfare programs, such as the Public Works Program of the Navajo Tribe, set out in NAVAJO TRIBAL CODE §§ 2-1243a-w (Supp. 1967), BIA general assistance has been refused where tribal programs "theoretically" take care of the able bodied individual's needs.

[68] ARIZ. REV. STAT. ANN. §§ 46-252(5), -272(6), -292(3) (Supp. 1969).

[69] I.A.M., *supra* note 62, at § 3.1.4D.

in the same category as a pension or other income, thereby relieving the state of any duty to provide assistance.[70] This exclusion raises an equal protection problem, although it can be argued that the state has a rational basis for excluding Indians from general and emergency relief programs since BIA general relief is available.[71] At any rate, until deficiencies are removed from state programs, BIA general relief will play an important role for Arizona's Indians.

BIA welfare workers are required to use the state's budgetary plan in their determination of amounts to be awarded to BIA general assistance recipients. Although the BIA regulations provide that the state budget or plan "will be the basis for exploration and assessment of his need,"[72] in practice, the state budget is followed to the letter, and actual need is neither explored nor assessed except for occasional "special needs" that may be provided for on an ad hoc basis.

Given the wide fluctuation in the average monthly grants made by the various states, the BIA appears to be more interested in administrative, fiscal, and political convenience than in the well-being of the Indian when it employs state budgets as a standard. Administratively, it is much easier to follow a state budget than to devise one tailored to fit the needs of Indians on a specific reservation. Also, it is cheaper to follow the generally low payments provided for in states such as Arizona, and politically it is safer to pay no more than the states pay. In light of these factors it is not surprising that the BIA has followed "state-need" standards, but the fact remains that the BIA is arbitrary in the same way that the state standards are arbitrary.[73] Indeed, the BIA regulations implicitly recognize the arbitrariness of state maximum grants: "State standards and procedures for maximum grants and percentage limitation are not to be applied."[74] Notwithstanding this clear prohibition, the Phoenix Area Office of the BIA has an unwritten policy which requires that the state maximums be utilized as a ceiling in computing

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[70] See F.S.M., *supra* note 38, at §§ 3-800 to -804, for the emergency relief regulations. ARIZ. REV. STAT. ANN. § 233(B) (Supp. 1969) briefly refers to emergency relief in the context of ADC assistance. *But see* notes 21-27 and accompanying text *supra* for a discussion of grounds upon which the practice might be attacked.

[71] *But see* Acosta v. San Diego County, 126 Cal. App. 2d 455, 227 P.2d 92 (1954), where the California Court of Appeals held that since Indians living on reservations in California are citizens of the state, the state is required by the privileges and immunities clause of the fourteenth amendment to the United State Constitution to include Indians under a county relief program.

[72] The State Public Assistance standard governing basic consumption and special need items with their corresponding money amounts which is currently in effect in the State where an Indian general assistance applicant lives will be the basis for exploration and assessment of his need. If the State's assistance standard provides for differences in the several categories of public assistance, the standard for the category which most closely resembles the applicant's individual or family situation should be applied. I.A.M., *supra* note 62, at § 3.1.7A.

[73] *See generally* CCH POV. L. REP. ¶ 1400 (1968) with regard to budget standards.

[74] I.A.M., *supra* note 62, at § 3.1.8.

BIA payments. Recently, however, after an administrative appeal by a general assistance recipient, the Papago Agency at Sells did away with the maximum grant limitations for Papago general assistance recipients,[75] but the other reservations which come under the auspices of the Phoenix Area Office still follow the state maximum limitations. Since agencies are bound by their regulations,[76] and since state maximum grants have been held unconstitutional as a denial of equal protection for those individuals not receiving their unmet need,[77] the policy of the Phoenix Area Office is of questionable validity.

Indians who do not live on reservations are ineligible for BIA general assistance.[78] This limitation is presently being challenged for the first time in *Ruiz v. Hickel.*[79] The case is based on the Snyder Act[80] and on equal protection arguments similar to those propounded in state durational residency cases.[81] That is, it is contended that the classification of Indians according to residency on an Indian reservation is unreasonably discriminatory and unrelated to the purposes of the Act. Since the BIA generally disclaims *any* responsibility for Indians not living on reservations, *Ruiz* has import far beyond welfare matters.

A further problem with BIA welfare is the lack of hearings prior to termination. Unfortunately, the BIA regulations do not even mention hearings before or after termination of benefits,[82] although they do provide for an appeal from a termination decision.[83] The regulations indicate that the following steps are to be taken in an appeal from any adverse action by a social worker: first, there is to be a "review" of the case with the social worker, then an appeal to the reservation superintendent, and finally an appeal in writing to the area office of the BIA. Because of an understandable submissiveness to authority on the part of Indian

[75] *In re* Fred Narcho (Jan. 23, 1969). The appeal was decided at the agency level.

[76] Cappadora v. Celebrezze, 356 F.2d 1, 6 (2d Cir. 1966):

> And once appropriate rules have been established, the discretion conferred in day to day administration cannot have been assumed to extend to unreasonable deviation from such rules on an *ad hoc* basis at the whim of the administration.

[77] Williams v. Dandridge, CCH Pov. L. REP. ¶ 9233 (D. Md. Dec. 13, 1968) (three judge panel); Dews v. Henry, Civil. No. 6417 (D. Ariz., Mar. 13, 1969). *See* notes 48-50 and related text *supra.*

[78] "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma." I.A.M., *supra* note 62, at § 3.1.4A.

[79] Civil No. 2408 (D. Ariz., filed Feb. 19, 1968).

[80] *See* note 60 *supra.* The Act speaks in terms of aid to Indians "throughout" the United States.

[81] Harrell v. Tobriner, 279 F. Supp. 22 (D.D.C. 1967), *prob. juris, noted,* 88 S. Ct. 2278 (1968); Smith v. Reynolds, 277 F. Supp. 65 (E.D. Pa. 1967), *prob. juris. noted,* 88 S. Ct. 1054 (1968); Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967), *prob. juris. noted,* 389 U.S. 1032 (1968).

[82] I.A.M., *supra* note 62 at § 3.1.10 does provide for review of eligibility and service needs. The Papago Legal Services recently filed Homer v. Hickel, Civil No. 69-83 (D. Ariz., filed May 2, 1969) challenging the failure to provide hearings prior to termination of 90 TWEP recipients.

[83] I.A.M., *supra* note 62, at § 3.1.9.

recipients, the appeal regulations are virtually meaningless unless there is an attorney to represent the recipient. Consequently, only a handful of such appeals have ever been filed, and local BIA officials are bewildered when the first one arises at a reservation. The BIA should follow the example of HEW and make the services of attorneys available without charge.[84] Also, adequate notice of the right to a hearing and an explanation of the procedures should be given to the individual Indian. Because of the great potential for delay, payments should be continued pending the outcome of the appeal.[85]

Uniformity is needed in BIA office practices. At some offices payments are made monthly and at others, twice a month or weekly. Some offices give notice of termination of the grant in advance and others do not. Some offices refer to the tables from which the state budgets are derived, and if, for example, a village has no electricity, the amount specified for electricity in the table will be subtracted from the budget and the grant. One other problem: the BIA general assistance regulations state that general assistance *may* be provided during the interval between application for state public assistance (including categorical assistance) and the actual receipt of money from the state.[86] Most BIA offices are reluctant to pay more during the interim than the state will eventually pay, since they feel the recipient will be perplexed if his check from the state is for a lower amount. As has been seen, adherence to state maximum grant payments is improper.

Tribal Work Experience Programs

In December, 1966, the BIA, in conjunction with the San Carlos Apache tribe in Arizona, began the first Tribal Work Experience Program (TWEP); these programs are now in effect on eleven reservations. Under TWEP able-bodied men who are eligible for BIA general assistance are assigned to various work projects on the reservation, usually at or near their home village. The projects range from village improvement, such as housing construction and repair, to on-the-job training with the BIA and the Public Health Service. The men are paid the same amount that they would receive under a general assistance grant, plus an additional amount ($30 per month at Papago) to cover work-related expenses. The money, which comes entirely from BIA general assistance appropriations, is paid over to the tribe which then makes out the weekly paychecks.

[84] See the proposed appeal regulations for state categorical assistance plans in 33 Fed. Reg. 17853 (1968). *See also* CCH Pov. L. Rep. ¶ 9136 (1968).

[85] *Id.*

[86] I.A.M., *supra* note 62, at § 3.1.4B. At the Navajo Reservation in fiscal year 1968, out of a total of 3,311 cases, 514 or 15 percent were cases awaiting approval by, and checks from, the state. Navajo Area Office, 1968 Social Services Statistical Report.

TWEP is very popular with the Indians, and it seems to provide at least one answer to the growing problem of chronic unemployment. For many it is the first steady job (it is usually regarded as a job rather than as welfare) they have had close to home. The director of the BIA welfare office at the Papago Reservation estimates that 85 percent of the applicants for TWEP in 1967 had been subsisting on the wages or welfare grants of relatives and would not have asked for any help if they had not discovered TWEP. In one year, the Papago general assistance caseload doubled as a result of the TWEP program.

The work experience programs are still considered by the BIA as being experimental. If sufficient funds were available, however, the BIA would undoubtedly commence such programs on other reservations and perhaps would remove size limitations on existing programs. Since TWEP falls within the scope of the general assistance regulations, and since the program has not as yet been treated in any of the regulations, some improvising has been necessary. For example, general assistance applicants and recipients are required to seek and accept "available employment."[87] Because the BIA apparently considers TWEP to be available employment, an Indian who is able to work must work for TWEP where it is available, rather than receive simple general assistance. (Whether a man fired from his TWEP job can get general assistance is unresolved.) If farm work is available, it must be accepted in lieu of TWEP. Thus TWEP is available employment for one purpose yet not for another. When off-reservation farm labor is available seasonally, it is also considered available employment within the regulations "if Indians living on the reservation have been accustomed to going off for such employment."[88]

The extent of management and control exercised by the tribe under TWEP varies considerably from reservation to reservation, and supervisory personnel are often difficult to find. If TWEP is to become an exclusively tribal program and is to continue to use BIA funds, the funds should be made available to all the tribes.

EVALUATION OF THE WELFARE PROGRAMS FOR INDIANS

The BIA welfare program is generally more efficient than are the state programs. However, a comparison of the average BIA general assistance grant with those made by the states shows that the average BIA payment is less than the average state payment. The BIA average

[87] I.A.M., *supra* note 62, at § 3.1.4D. At the Papago Reservation general assistance recipients who were able to work were terminated from the rolls every Spring when agricultural jobs opened up, even though the nearest jobs were as far as 140 miles away. In 1968, a more enlightened interpretation of the regulations prevailed, and generally only single men not needed by relatives at home were terminated.

[88] *Id.*

monthly payment per recipient is $30.50,[89] whereas the average for the states is $44.65.[90]

BIA eligibility rules are simpler and more considerate than those on the state level. At least one BIA office on the Navajo Reservation presumes eligibility, and the home investigation comes after, rather than before, the first welfare check. Many BIA offices send out checks every week or every two weeks, rather than monthly as is done under the Arizona welfare system. A family living on a subsistence income runs a greater risk of running out of food and money when checks come only once a month.

The BIA staff is generally better qualified professionally than state personnel, and the average caseload of its workers is lighter. A lighter caseload means more diligent social work. Heavy caseloads and poor supervision of untrained, under-paid caseworkers is the rule in state welfare departments, meaning a greater likelihood of mistakes which often leads to serious hardships for the recipient. In welfare administration, the mistakes can have shocking results since a recipient is sometimes deprived of his meager subsistence payments for months. One client of Papago Legal Services, for example, was denied payments for *seven months* (which payments were subsequently recovered) when an inexperienced, poorly supervised Papago caseworker attempted to switch the client from APTD to OAA, and instead succeeded only in stopping the APTD grant.

The inadequate number of state welfare workers is an acute problem at the vast Navajo Reservation. If a caseworker wants to see a recipient, he will write him a letter, in care of the nearest trading post, requesting a meeting at the trading post on a certain date. Frequently the letter will not reach its destination by that date or transportation will not be available to the recipient, and as a result, he may have his grant terminated for failure to cooperate with the social worker. Also, at the Navajo Reservation and elsewhere, applications for assistance must be made at the welfare offices or the trading posts because the caseworker simply does not have the time to take applications at the applicants' homes,[91] and the Indians' chronic transportation problems mean that not all who need welfare will be able to apply for it.

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[89] This figure is for fiscal year 1968. *See* Rovin interview, *supra* note 9. Statistics on file at the Bureau of Indian Affairs, Washington, D.C.

[90] This figure was reported June, 1968; U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, WELFARE IN REVIEW 51 (Sept.-Oct. 1968). The $44.65 is for general assistance, and excludes ten states for which data was not available. Arizona's general assistance average was $18.60. Here are some comparable figures for AFDC: Arizona, $50.50 — the national average, $67.70; for aid to the blind, Arizona, $70.20 — the national average, $91.05; for APTD, Arizona, $65.70 — the national average, $81.10.

[91] Another problem frequently encountered by Navajo legal services attorneys is the valuation of livestock grazing rights. A Navajo may hold grazing permits under 25 C.F.R. § 152 (1968), and even though the permits may be very difficult to sell,

The brighter side of state welfare assistance to Indians is represented by the Navajo Demonstration Project. Funded by HEW and administered by the Arizona State Department of Public Welfare, this program demonstrates how the status of Indian welfare recipients can be improved through intensive social work by Indian caseworkers. The project has set up an adult education program, vocational training, crafts classes and classes for the blind. The Navajo caseworkers have helped with problem children, have worked on problems involving reservation traders (the traders often let the recipients have the check only long enough to endorse it with a thumb print, and then apply it to the recipient's indebtedness), and have referred recipients to other social agencies such as legal aid. The project should be studied carefully to determine whether it can be applied elsewhere. Unfortunately, however, neither the BIA nor Arizona has any personnel engaged in research. The BIA, of course, can barely meet the welfare commitments it now has; thus it is not surprising that there are no funds available. But given the unique and perplexing problems of Indian welfare, the BIA's failure to instigate even modest research projects is lamentable.

Except at the field level, there has been little, if any, attempt to coordinate state and BIA welfare programs. The question of whether the state or federal governments are responsible for Indian welfare payments has been only partially resolved, and then only in a haphazard, piecemeal manner. This probably accounts for much of the cool relationship existing between state and BIA personnel. The problem of responsibility also accounts, at least partially, for Arizona's reluctance to adopt "Medicaid" (medical care for indigents) under Title 19 of the Social Security Act.[92] Arizona knows that it will not be able to exclude Indians, and fears that many Indians will seek medical care through "Medicaid" rather than through the Public Health Service Division of Indian Health.

BIA officials have also shown a remarkable fear of pressing the states too hard over Indian welfare matters. The BIA general assistance regulations allow BIA social workers to assist an Indian in seeking welfare from the state and require a documented report be sent to the area office if there has been discrimination "in violation of the Social Security Act."[93] There is no indication that the BIA actively seeks such reports or does anything with them if they are submitted.

In some instances, state and BIA welfare agencies operate to the *detriment* of the Indians. In both California and Minnesota BIA social workers have reported Indian Claims Commission or other lump sum

he may be forced to sell regardless of whether he uses them, in order to qualify for state categorical assistance.

[92] 42 U.S.C. § 1396 (Supp. III, 1968).

[93] I.A.M., *supra* note 62, at § 3.1.4B.

cash awards to state welfare workers, with the predictable result that Indians receiving awards are refused state welfare until they exhaust the funds. The effect is to completely nullify the awards and to prevent the Indian from improving his situation. Fortunately there seems to be a trend to "program" the awards so that the money is available for housing improvements or the like without terminating state welfare payments. Such an arrangement depends on the attitudes of the state welfare personnel, on state laws and regulations, and perhaps on the local BIA superintendent.

The BIA has even experienced difficulties in finding sufficient funds to finance the general assistance program. It is a long and hazardous bureaucratic journey from the determination by the local Indian agency of its general assistance and operating budget a year or more in advance, to the actual receipt of the money. An extreme example is the Papago Agency, which asked for a total budget of $692,391 for fiscal year 1969, and finally received $150,000, only $80,000 of which was designated for general assistance. (The Agency spent $455,329 on general assistance in fiscal 1968.) The BIA Phoenix Area Office at one point projected an $863,000 deficit for the 1969 fiscal year for the various agency offices within its jurisdiction. Although that office has been short of welfare funds every year since 1959, somehow the money is always found, either by "borrowing" from other BIA programs or by supplemental appropriations.

A good share of the blame should be directed toward the Bureau of the Budget and the federal government's current attitude of fiscal restraint. Also, it appears that some Congressmen prefer that the federal government provide no more for the Indians than the states provide for non-Indians. The Department of Interior is also responsible. BIA officials admit that the Department is not as understanding of the problems of Indians as it might be because of Interior's basic land orientation. This is one argument supporting a transfer of the BIA to HEW.

CONCLUSION

It is evident that the present system of welfare for the Indians is inefficient and often inequitable. Indians in great need of funds simply are not receiving them. Of course the ultimate solution to the problem of poverty does not lie in welfare. What is needed is an increased effort in the area of education, both vocational and otherwise and a concomitant increase in employment opportunities on or near the reservations. But the fact remains that a substantial number of Indian families make less than $550 per year.[94] For them the importance of cash payments cannot be overemphasized.

[94] Taylor, *Indian Manpower Resources: The Experiences of Five Southwestern Reservations*, p. 594-95 *supra*.

The only way to ensure that needy individuals will receive payments is through a system of income maintenance. The operation of this system would be simple.[95] For example, the individual adult tax exemption could be raised from $600 to $1,000, leaving the $600 dependent exemption deduction intact. Any individual or family making less than the combined allowable exemption would then be paid the difference through an already existing agency, the Internal Revenue Service. Thus the base figure for a family of four would be $3200, close to the poverty line as determined by the Department of Labor.[96] This figure would in turn be increased 5 percent each year, to meet rising living costs.

The cost of course would not be small, but since already existing inefficient agencies would be eliminated, it would not be as high as one would think. Employable individuals would be paid, whether work was available or not, or even if they refused available work. This will, of course, present the major political problem in successfully presenting the system, but this provision is necessary to insure all Indians of at least a subsistence level of existence. Further, Indians are basically responsible and need not be coerced into economic activity.[97] Evidence of this observation can be seen in the enthusiastic response of tribal Indians to the Tribal Work Experience Programs.[98]

It should be emphasized again that any income maintenance scheme is no panacea for Indian poverty problems. Some tribes have split among tribal members large sums of money, only to lose it to "enterprising" capitalists.[99] Along with income maintenance, efforts must be made to educate and to give the Indian the opportunity to help himself;[100] education should include a course on financial responsibility for all recipients. But income maintenance will go a long way in eliminating the tragic consequences of poverty among tribal Indians.

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[95] See Tobman, Pechman, & Mieszkowski, *Is a Negative Income Tax Practical?*, 77 YALE L.J. 1 (1967), for an analysis of "some of the sticky technical problems that must be solved if any such plan is to be implemented." *Id.* at 3-4.

[96] *See* PRESIDENT'S NATIONAL ADVISORY COMMISSION ON RURAL POVERTY, RURAL POVERTY IN THE UNITED STATES ch. 29, at 545-52 (1968). *See also* U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. NO. 1570-2, REVISED EQUIVALENCE SCALE FOR ESTIMATING EQUIVALENT INCOMES OR BUDGET COSTS BY FAMILY TYPE (1968).

[97] *See generally* Pearl, *New Careers as a Solution to Poverty*, in POVERTY — FOUR APPROACHES, FOUR SOLUTIONS 1 (Transcript of the proceedings of the first annual conference on Social Issues at the University of Oregon, Jan. 27-28, 1966).

[98] See p. 611-12 *supra*.

[99] Comment, *The Indian Stronghold and the Spread of Urban America*, p. 711 n.29 *infra*.

[100] *See generally* Fannin, *Indian Education — a Test Case for Democracy*, p. 661 *infra*.