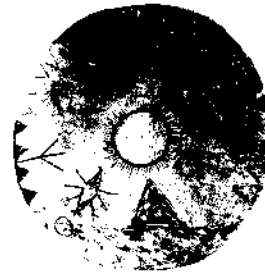


*Theodore B. Hetzel*



Dipping sheep on the Navajo Reservation is a community affair. The dipping trough was built by the community and the families of the district help each other in treating their sheep. The dipping keeps the sheep disease-free.



#### 4 YEARS OF ATTRITION

The century following the Marshall opinions were years of diminution for the Indian people in the United States. The land base dissolved, the population declined, and in some areas, as in the buffalo plains, the very means of livelihood disappeared and the people were threatened with final extinction.

The "liberal system of justice" advocated by Henry Knox had been formalized by law and judicial opinion, but it remained to be proven in practice. The fate of the Indian people, as they tried to carry on life in their camps and villages, would be determined by how well the system withstood the pressures of a growing nation.

The first major assault was directed at the tribes still living east of the Mississippi River. The growing national population needed room for expansion. In the southeast especially, agriculture was beginning a spectacular growth, the impetus for which was not limited to subsistence needs of the nation. Improved mechanical devices for handling and processing raw cotton resulted in the production of mounting surpluses. In the

twelve-year period 1791-1803, cotton exports from the United States jumped from 200,000 to 40 million pounds annually, and that was only the start.

Georgia, at the heart of the cotton-growing country, supplied the drive to bring about the removal of the Indians from the eastern area.<sup>1</sup> The lands first settled by Georgia colonists were, for the most part, the poorer lands of the coastal plains which, before the application of commercial fertilizer, were regarded as of limited value for agriculture. The Creek and Cherokee settlements were farther inland, where the soils were deeper and richer. These Indian lands were coveted, not only because of their great potential value, but because they figured in a settlement with the national government. Georgia's colonial charter, like the charters issued to other colonies, made vague references to a western boundary. During or immediately following the Revolutionary War all the coastal states, with the exception of Georgia, ceded to the national government their ill-defined claims to western lands, and in return were forgiven their share of national defense costs. Only Georgia held back, demanding reimbursement for certain sums of money she claimed it had cost her to acquire title or to defend herself against Indian attacks. The condition was eventually accepted in 1802 by the national government, but in the resulting agreement Georgia further insisted that the government extinguish "at their own expense, for the use of Georgia, as soon as the same can be peaceably done on reasonable terms, the Indian title" to any lands still in Indian possession.

Jefferson, who was President when the agreement was concluded, viewed the Indian-white relationship in very much the same light as had Knox and Washington. He expressed this view in a letter to the agent to the Creek nation in 1803: "I

1. For events in Georgia, see U. B. Phillips, "Georgia and State Rights," *Annual Report of the American Historical Association*, Washington, D.C., 1901, vol. 2.

consider the business of hunting has already become insufficient to furnish clothing and subsistence to the Indians. The promotion of agriculture, therefore, and household manufacture, are essential in their preservation, and I am disposed to aid and encourage it. This will enable them to live on much smaller portions of land. . . . While they are learning to do better on less land, our increasing numbers will be calling for more land, and thus a coincidence of interests" will occur.<sup>2</sup>

Looking to the future, he concluded, "Surely it will be better for them to be identified with us, and preserve the occupation of their lands, than to be exposed to the many casualties that may endanger them while a separate people."

This was an argument for accommodation and gradual change and eventual assimilation of the Indian people. It was the very course which the Cherokee tribesmen had set for themselves at about that time.

Georgia's representatives in Congress and her officials at home were not satisfied with a policy of gradualism. A memorial to Congress declared, "The State of Georgia claims a right to the jurisdiction and soil of the territory within her limits." It complained that the national government was not performing on its promise to extinguish Indian title "as soon as the same can be peaceably obtained."

By 1822, after twenty years, the Georgians thought it was time to drop the idea of peaceable means and resort to force, if necessary. The Cherokees, as it happened, had decided not to relinquish any more land. They had ceded land on a number of occasions, beginning in 1737, and had come to the conclusion that they needed what was left for themselves and their children.

Neither Monroe nor John Quincy Adams was willing to force the issue, but this hesitancy vanished when Andrew Jack-

2. P. L. Ford, ed., *The Writings of Thomas Jefferson*, New York, 1892-99, vol. 3, p. 214.

son assumed the office of President in 1829. A few years earlier he had written to the Secretary of War, "It appears to me that it is high time to do away with the farce of treating with Indian tribes."<sup>3</sup>

When Mississippi followed Georgia's lead in 1829 and enacted legislation subjecting the Choctaw Indians to the laws of the state, Jackson, in his first annual message to Congress, took the position that he was powerless to act against the states, and recommended to the Congress "the propriety of setting apart an ample district west of the Mississippi River . . . to be guaranteed to the Indian tribes as long as they shall occupy it," and where they would be "secured in the enjoyment of government of their own choice."

He sent agents to the Choctaws, Creeks, Chickasaws, and Cherokees—all eastern tribes—instructing them, "Say to them as friends and brothers to listen to their father, and their friend. Where they now are, they and my white children are too near to each other to live in harmony and peace. . . . Beyond the great River Mississippi . . . their father has provided a country large enough for them all, and he advises them to move to it. There their white brothers will not trouble them, and they will have no claim to the land, and they can live upon it, they and all their children, as long as grass grows and waters run."

The Choctaw leaders, when they received the message, sent back word that "We have no expectation that, if we should remove to the west of the Mississippi, any treaties would be made with us, that would secure greater benefits to us and our children than those which are already made. The red people are of the opinion that, in a few years the Americans will also wish to possess the land west of the Mississippi."

In confidential instructions to his agents, Jackson advised

3. The details here are from Annie H. Abel, "The History of Events Resulting in Indian Consolidation West of the Mississippi," *Annual Report of the American Historical Association*, Washington, D.C., 1906.

them not to hold general councils with the Indians and assured them that the Indians had "demonstrated their utter aversion to this mode" of negotiation; rather, the agents should use the secret public funds he had provided to purchase gifts for the "chiefs and influential men" and not to neglect "the children of the chiefs."

Following up his recommendation to Congress, Jackson caused to be introduced in both houses of Congress bills providing for the removal of the eastern tribes. While the language of the bills gave only discretionary power to the President and did not authorize forceful removal, it was understood that force would be used if necessary. The Indians had been told, in fact, that the United States would not protect them if they stayed in their present homes.

Strong protests were heard, in and out of Congress. Senator Frelinghuysen of New Jersey ended a two-day speech with the challenging question, "Is it one of the prerogatives of the white man, that he may disregard the dictates of moral principles, where an Indian shall be concerned?"

Congressman Storrs of New York spoke of the fallacy of pretending to remove the Indians for their own good from a community where they had pleasant homes, churches, and schools to a wilderness where hostile tribes would be their only neighbors.

The answer to both men, and to others who argued for the Indians on grounds of morality and reason, was given by President Jackson a year later, following the court ruling that Georgia could not impose its laws on the Cherokees. By refusing to honor the ruling, the President indicated that he would use his high authority only to compel Indian submission.

Opposition failed and the Indian Removal Act was adopted by the Congress and approved by the President on May 30, 1830.

In the succeeding ten years the Atlantic and Gulf states were

cleared of the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles. Some went resignedly, others at bayonet point. Only the Seminoles resisted as a group, and in their Florida swamps fought a war that lasted from 1835 to 1842 and cost the United States some 1500 soldiers and an estimated \$20 million.

The Ohio River and Great Lakes tribes were also rounded up and removed, with the Sauk and Fox Indians making a last desperate stand in Illinois against overwhelming numbers. All were moved—Ottawas, Pottawatomies, Wyandots, Shawnees, Kickapoos, Winnebagos, Delawares, Peorias, Miamis, and finally the Sauk and Fox—all were sent out of their homes to strange lands beyond the Mississippi. Only the Iroquois tribes, except for fragments of the Oneidas and Senecas, remained behind. Years later Cherokee stragglers returned to North Carolina. Seminole survivors were found still living in their swamp-land hideouts. And Choctaws returned to Mississippi. Today these are vigorous groups again, living now in cramped quarters in a land occupied by strangers.

Count de Tocqueville, as mentioned earlier, happened to be on the bank of the Mississippi River at Memphis when a party of Choctaw Indians was crossing over in mid-winter of 1831. He spoke of the solemn silence that hung upon the freezing air as the Indians moved into the waiting boats. "No cry, no sob, was heard amongst the assembled crowd; all were silent."

"They were isolated in their own country," he commented, "and their race only constituted a little colony of troublesome strangers in the midst of a numerous and dominant people."<sup>4</sup>

The Choctaw spokesman was correct in his prediction that the Indians would not find security in the lands west of the Mississippi. Hardly had some of the tribes settled down in Kansas, Iowa, and Nebraska when they were told they could

4. Alexis de Tocqueville, *Democracy in America*, Henry Reeves trans., New York, 1898, vol. 1, p. 448.

not stay. The discovery of gold, first in California, then in Colorado and the northwest, meant the opening of transcontinental wagon roads and later railways. To secure the safety of travelers the Indians were thrust north and south of the lines of travel. New treaties were negotiated, new guarantees of "perpetual" title and assurances of protection given.

The tribes from the southeast—designated as the Five Civilized Tribes because of the progress they had made in adopting the white man's culture, establishing schools, courts, tax systems, and formal governments—they too found that perpetuity had a short life. Several of the tribes, or factions within the tribes, formed alliances with the South during the Civil War, and at the war's end, in retaliation, the victorious North compelled them to surrender the western half of the territory which President Jackson had guaranteed would be theirs "as long as grass grows." The surrendered lands were parceled out to tribes brought in from the north, and the remainder was opened for homesteading by white men.

Not surprisingly, a tone of cynicism entered the discussions of Indian affairs in this period. When a general appropriation bill containing funds to fulfill treaty provisions with several tribes in the Great Plains was before the House of Representatives during President Grant's first term, one member of the House expressed doubt that such tribes existed, except "in the minds of some Indian traders and speculators."

A quarrel had been in the making between the two houses of Congress, brought on by the challenge of the lower house, which insisted that its members be consulted prior to the confirmation of Indian treaties. The federal Constitution empowered the President to make treaties, "by and with the advice and consent of the Senate." Members of the lower house argued that the Senate had grown careless in the use of its discretion. At the moment (1869), eleven separate treaties, requiring an appropriation of \$4.5 million, were under discussion.

The treaties had been ratified by the Senate and approved by the President, and the House, which must originate appropriation measures, was considering the funding bill. The members balked.<sup>5</sup>

One member condemned the reasoning that recognized Indians as owners of the soil. "They never owned a foot of land. They were roving savages. They never owned and could not own land. They could not understand the title to land."

Another thought that Indian treaties were a sham and wanted to insert the expression "so-called" before every reference to treaty in the appropriation bill. He declared, "Every dollar appropriated for Indians, tends to prevent the Indians from becoming civilized, teaches them to live in idleness."

Still the Indians were not without defenders. One senator remarked, "When we were weak and the Indians were strong, we were glad to make treaties with them and live up to those treaties. Now we have grown powerful and they have grown weak, and it does not become this nation to turn around and trample the rights of the weak."

Still another senator rebuked those who had attacked the absent Indians: "I know what the misfortune of the Indians is. Their misfortune is not that they are a dwindling race, not that they are a weak race. Their misfortune is that they hold great bodies of rich lands, which have aroused the cupidity of powerful corporations and powerful individuals."

The House members had their way. They wanted to put an end to the practice of negotiating formal treaties with the Indian tribes. The Senate, after two years of debate, in which no representatives for the Indians and no Indian spokesmen defended the historic practice, yielded, with this rationalization offered by the chairman of the Senate Committee on Indian Affairs: "I have been of the impression for years that there

5. The debates are reported in *Congressional Globe*, 41st Congress, 1st session, 1869, and 3rd session, 1871.

was no necessity for negotiating and ratifying treaties with Indians; that all our intercourse with them could be regulated by law, by statutory provisions, just as well as by treaty; that on the whole it was much safer to submit all these propositions to both branches of Congress than to submit them only to the Senate."

Ordinarily, substantive law is not incorporated into an appropriation measure, but the Appropriation Act for 1871 contained a rider, declaring, "Hereafter, no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent tribe or power with whom the United States may contract by treaty."

The action was not a denial of the Marshall thesis that Indian tribes are "domestic dependent nations" with self-governing powers. The United States continued to respect treaties previously incorporated into the law of the land, and it entered into formal "agreements" with respect to land and other matters. In later years, indeed, the courts would award monetary judgments to Indian tribes for actions taken in violation of treaty stipulations.

Nevertheless, since 1871 it has been United States policy to legislate in Indian matters, not to negotiate, often not even to consult, no matter what effect the legislation might have on the civil and property rights of the Indians. The policy enactment was the recognition of a reality—that Indian friendship and support were no longer needed by the nation come to power.

With this breach in the historic relationship accomplished, the next point at which pressure was applied was the system under which Indians held their lands. The treaties had set up a barrier protecting the Indians in their traditional notions about land and frustrating the normal acquisitive activities of white men. The courts, in repeated cases, had held firm to aboriginal possessory rights and to the terms of treaties recognizing those rights. Thus one opinion reads, "So long as a tribe exists and

remains in possession of its lands, its title and possession are sovereign and exclusive . . . Although the Indian title continues only during their possession, yet that possession has been always held sacred, and can never be disturbed but by their consent. They do not hold under the States, nor under the United States; their title is original, sovereign, and exclusive."<sup>6</sup>

Land was not merchantable, in the European sense, among any of the North American tribes. Individual right of occupancy and use was recognized and protected, and under given conditions trespass might be punished. Boundary lines were respected, as between tribes, and between clans or other groupings within the tribe.

That Indians recognized their non-merchantable possessory rights as against outsiders was recorded as early as 1686 by an Iroquois leader, who declared, "It is only by forbearance that I have permitted the English the lands which were part of my domain and for which they have paid me a price and for which they will pay again each time they approach me."<sup>7</sup>

Such concepts were the cultural results of experiences which differed from the experiences of Europeans, concepts that were designed to serve a different kind of social purpose. They explain why it was that, in effort after effort, the early Indians tried to drive the settlers off land which previously they had "sold"; why tribes sometimes turned upon certain of their own headmen and destroyed them for giving away what belonged to the group and could not be individualized. Tribal leaders were also aware of the strategy often used against them by government officials of negotiating with each tribe separately and neutralizing their efforts to combine their forces. This explains what lay behind the appeal of the Indian confederation

6. The subject is treated exhaustively in Felix S. Cohen, "Original Indian Title," *Minnesota Law Review*, vol. 32, no. 1, Dec. 1947, pp. 28-59.

7. Quoted in *Native Rights in Canada*, Indian-Eskimo Association of Canada, Toronto, 1970, p. 54.

meeting at the mouth of the Detroit River in December 1786, an appeal addressed to commissioners representing the United States:

Brothers: we are still anxious of putting our plan of accommodation [for reconciliation and friendship] into execution. . . . The first steps towards which should be, in our opinion, that all treaties carried on with the United States, on our parts, should be with the general voice of the whole confederacy, and carried on in the most open manner, without any restraint on either side; and especially as land matters are often the subject of our counsel with you, a matter of great importance and of great concern to us, in this case we hold it indispensably necessary that any cession of our lands should be made in the most public manner, and by the united voice of the confederacy; holding all partial treaties as void and of no effect.<sup>8</sup>

The Indian system of common ownership had never been understood or accepted by the white men who settled in the New World. Europe and the white man's civilization had grown to greatness on a system of private property in land, and it must therefore be a proper system for any people.

So long as the Indian tribes could hold the policy-makers at arm's length, as they managed to do through the treaty process, they could determine for themselves what internal controls they chose to exercise over land or other community interests. With that barrier breached in 1871, only the judicial process remained as a defense against encroachment. A countervailing legislative process was needed and would soon be proposed.

The idea of individualizing Indian land holdings was suggested at various times from the earliest days of settlement and was even tried experimentally. The Massachusetts General Court in 1633 authorized the settling of Indians on plots, "according to the custom of the English." John Winthrop spoke in support of the policy. Thomas McKenny, the first Commis-

8. *American State Papers*, Class II, "Indian Affairs," vol. 1, pp. 8-9.

sioner of Indian Affairs (1824), in asking Congress for funds in support of Indian schools, proposed that as Indian youths "are qualified to enter upon a course of civilized life, sections of land be given them."

Westward settlement gathered enormous momentum after the Civil War, encouraged by the Homestead Act of 1862, which permitted the individual settler to obtain title to a quarter section of public land upon payment of a nominal fee after five years of residence. Discharged soldiers and families from older settled areas swarmed into the western prairies to claim their share of the free land. Close behind them pressed a tide of recent immigrants, anxious to put down roots. Out of a total national population of 31,444,000 in 1860, foreign-born residents numbered more than four million, and a large part of these had arrived during the 1840s and 1850s.

The discovery of gold, first on the Pacific Coast, then in the Rocky Mountains, had an explosive effect in a population already on the move. In this same epoch, plans for the construction of transcontinental railroads were pushed both inside and outside of Congress. The promoters sought, and obtained, grants of public land along their projected rights-of-way as a means of financing road construction.

All of these pressures, in their separate and combined effect, resulted in demands to reduce Indian land holdings, to move Indian populations out of the path of westward migration. The device by which this would be accomplished was an act of Congress adopted in 1887, called the General Allotment Act, or the Dawes Act.

Not that the legislation was proposed and justified as a legal means of driving Indians from their homes. It was not the gold miners or the railway promoters who appeared in the halls of Congress or wrote articles for the press in support of the measure. The advocacy, often emotionally charged, came from responsible public officials, from civic and religious bodies, and

from organizations chartered to promote and protect Indian interests.

Carl Schurz, the intellectual political refugee of the collapsed German revolution of 1848 who had become Secretary of the Interior in President Grant's cabinet, set the moral tone of the campaign with his statement in 1877 that "the enjoyment and pride of the individual ownership of property is one of the most civilizing agencies."<sup>9</sup> The Commissioner of Indian Affairs in 1878 reported that the principle of allotment was "endorsed by all true friends of the Indians, as is evidenced by the numerous petitions to this effect presented to Congress from citizens of the various states."

An agent to one of the Sioux tribes expressed the opinion that "as long as Indians live in villages they will retain many of their old and injurious habits. Frequent feasts, heathen ceremonies and dances, constant visiting—these will continue as long as people live together in close neighborhoods and villages. I trust that before another year is ended they will generally be located upon individual land or farms. From that date will begin their real and permanent progress."

The idea had its strong opponents as well. Senator Teller of Colorado characterized the bill when first introduced in the Senate in 1880 as "a bill to despoil the Indians of their lands and to make them vagabonds on the face of the earth."

Later he admonished his colleagues, "If I stand alone in the Senate, I want to put upon the record my prophecy in this matter, that when thirty or forty years will have passed and these Indians shall have parted with their title, they will curse the hand that was raised professedly in their defense to secure this kind of legislation, and if the people who are clamoring for it understood Indian character, and Indian laws, and Indian

9. D. S. Otis, "History of the Allotment Policy," in *Hearings Before the Committee on Indian Affairs*, House of Representatives, 73rd Congress, 2nd session, 1934.

morals, and Indian religion, they would not be here clamoring for this at all."

On the House side, when a similar bill was under consideration, a minority report of the Committee on Indian Affairs protested, "However much we may differ with the humanitarians who are riding this hobby, we are certain that they will agree with us in the proposition that it does not make a farmer out of an Indian to give him a quarter section of land. . . . The real aim of this bill is to get at the Indian lands and open them up to settlement. . . . If this were done in the name of greed, it would be bad enough; but to do it in the name of humanity, and under the cloak of an ardent desire to promote the Indian's welfare by making him like ourselves, whether he will or not, is infinitely worse."

Adoption of the measure was delayed by its critics, but after eight years of intermittent debate it passed into law on February 8, 1887.

Its promises were great, as it seemed to offer what many friends of the Indian people had long been seeking—a formula which would induce Indians to turn away from their own past and accept a place in the white man's society. To make such a transition, it was reasoned, Indians needed to become competitive, they needed to acquire a passion for self-improvement. Senator Dawes, the principal proponent of the measure, was blunt about it. Indians, he said, needed to become selfish.

The essential features of the legislation were (1) the President was authorized to divide tribal lands and assign or allot 160 acres to each family head, 80 acres to single persons over eighteen and orphans under eighteen, and 40 acres to each other single person under eighteen. (2) Each Indian would make his own selection, but if he failed or refused, a government agent would make the selection. (3) Title to the land was placed in trust for twenty-five years, or longer, at the President's discretion. (4) Citizenship was conferred upon all al-

otees and upon other Indians who abandoned their tribes and adopted "the habits of civilized life." (5) Surplus tribal lands remaining after allotment might be sold to the United States.

The effect of the law in operation was almost exactly what its opponents anticipated—it became an efficient mechanism for separating the Indians from their lands and pauperizing them.

In 1887, approximately 140 million acres were owned in joint tenure by the Indians of the United States. The Allotment Act, as amended in succeeding years, set up procedures which resulted in the transfer of some 90 million acres from Indian to white owners in the next forty-five years.

Most efficient in reducing Indian land holdings was the provision permitting the government to purchase so-called surplus tribal lands. Sales could also be made by individual Indians after the initial trust period expired, or as later provided, the Secretary of the Interior could issue a "certificate of competency" indicating that the individual was qualified to manage his own affairs. The Indians' creditors or anxious land buyers could be counted on to assist an Indian in submitting an application and supporting the request with proper affidavits testifying to the applicant's competency.

The lands that went first were the most valuable: agricultural lands, rich grasslands on the high plains, virgin forests in the Great Lakes region. What remained was desert or semi-desert.

The Sisseton Indians of South Dakota, a branch of the Sioux nation, learned first hand how effective the law could be in reducing Indian acreage. The tribe had been moved several times, but finally it came to rest on a modest empire of 918,000 acres. The land was a deep black loam, scattered through with lakes and pleasant groves.

The tribe was among the first to have its lands allotted, and as it worked out, the 2000 members of the tribe were able to retain 300,000 acres, which left approximately 600,000 acres in the surplus category. This was promptly made available for



homesteading by white men. The agent stationed among the Sissetons in 1892 composed a pleasant report on the situation: "The Sissetons and Wahpetons no longer hold their land in common. . . . This reservation was thrown open to settlement under the Homestead Law, and today the houses of white settlers dot the prairie in every direction, while a number of towns have sprung into existence, and the red and the white men will hereafter harvest their crops and herd their stock side by side, and when, as the wheels of progress roll on and churches and school houses take the place of the old time dance houses—which last are already unpopular among these honest people—it will be forgotten they were ever classed as savages."

By 1909 two-thirds of the land retained in separate allotments had passed out of Indian ownership. The trust had been removed and the land was sold. Only 35,000 acres remained to the original allotment holders and 80,000 acres had been distributed to heirs, in diminishing parcels.

The Sisseton Indians did not disappear as the land was sold. They used up the proceeds, then were homeless. Moreover, they increased in numbers. The 2000 tribal members who received allotments in the 1890's had increased to 3000 by 1944. Of this larger population, only 500 had moved away, and now 2500 were trying to subsist on a vanishing land base. No part of the surplus lands had been held in reserve for the descendants of the original allotment holders.

A congressional committee investigating Indian conditions stopped at Sisseton in 1944 and reported, "One of the most disgraceful situations in America. . . . People living under impossible conditions, worse than the places in which we keep livestock."<sup>10</sup>

10. D'Arcy McNickle, "Rescuing Sisseton," in *The American Indian*, Journal of the Association on American Indian Affairs, vol. 3, no. 2, 1946.

If the Allotment Act had been proposed as a device for separating the Indians from their land, its successful operation should have satisfied the most hopeful expectations, but the emphasis had been on the educational value of individualized ownership and the corollary value that would accrue from the dissolving of tribal bonds.

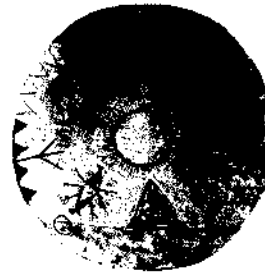
The Indians did not become farmers, not of the kind envisioned by the lawmakers. Many Indians had been farmers from a time that antedated the countries of modern Europe. But they farmed to eat, not to exploit a market. In this, they remained unchanged.

Tribal existence became more difficult, as at Sisseton, but it persisted. The reason for this was perhaps best expressed at a gathering of Indians held in Indian Territory (now Oklahoma) in the very year that the Allotment Act was adopted. Fifty-seven representatives from nineteen different tribes discussed the new law, which they opposed by unanimous voice. They explained their opposition: "Like other people the Indian needs at least a germ of political identity, some governmental organization of his own, however crude, to which his pride in manhood may cling and claim allegiance. . . . This peculiarity in the Indian character is elsewhere called 'patriotism,' the wise and patient fashioning of which will successfully solve the question of civilization. Exclude him from this, and he has little else to live for."<sup>11</sup>

What is remarkable about this statement, apart from the anguish of which it speaks, is its clear recognition of the function of "ethnic boundaries" long before the concept entered the literature of social science. It is a plea to the lawmakers of the day to accept cultural diversity as an element of democratic society. The plea, of course, came prematurely, in an era when public policy was generated by a belief in the infallibility of power.

11. Quoted in *Report of the Commissioner of Indian Affairs*, 1887, p. 117.

In Canada, it could be said that there was less official hypocrisy. The Indians, once placed on their reserves, were not subjected to schemes for a further reduction of their holdings. But in fact the original reductions brought about by the treaties were so severe that any subsequent reduction could only have left the Indians homeless. In either case, the native peoples of the United States and Canada were impoverished by their trustees in these years of attrition.



## 5 A TIME OF REASSESSMENT

The Indian condition deteriorated greatly as the nation prospered. The United States Court of Claims, in reviewing an Indian case at the end of the last century, indicated frank puzzlement. The court found the legal situation anomalous, a situation "unknown to the common law or the civil law or to any system of municipal law. [The Indians] were neither citizens nor aliens; they were neither persons nor slaves; they were wards of the nation, and yet, . . . were little else than prisoners of war while war did not exist."

An investigation of Indian administration conducted by an independent private organization in 1915 reported that "the Indian Superintendent is a tzar within the territorial jurisdiction prescribed for him. He is *ex officio* both guardian and trustee. In both of these capacities he acts while deciding what is needed for the Indians and while dispensing funds."<sup>1</sup>

Over the years Congress had enacted a great body of law, much of it sterile, but some enactments aimed at correcting

1. Bureau of Municipal Research.

specific abuses at the time of their passage became devices for restricting the Indian's freedom of decision and action. The 1790 law which prohibited the purchase of Indian land except through a duly executed public treaty derived basically from the British Proclamation of 1763; in later years it developed into an instrument giving government officials exclusive control over the management, use, and disposition of Indian property of whatever nature.

The restriction of Indian freedom was strikingly demonstrated in 1934, when twelve statutes, dating from the very beginnings of national government, were repealed. These included prohibitions against sending seditious messages to Indians or inciting Indians to revolt, later used to suppress opposition to government policies. Government officials might remove from an Indian community persons deemed "detrimental to the peace and welfare of the Indians." The President might employ the military to enforce the decisions of an official hostile to Indian interests. Religious freedom had been denied; dances and ceremonies banned as pagan and immoral. School children were punished for speaking a native language.

Until the third decade of the present century Indian policy was rooted in the assumption that the Indians would disappear. Authorities responsible for policy continued to refer to a diminishing population long after the growth had turned upward. Given this premise, it seemed not to be a serious consequence that Indian land was shrinking or that the revenues credited to the tribes from land sales and treaty payments were dissipated in administrative costs and small doles, while nothing was invested in the development of tribal and individual resources.

Then, in 1933, at the outset of the Roosevelt Administration, Congress undertook a radical revision of Indian policy. The reversal did not occur spontaneously. Evidence that Indian affairs had been badly managed became notorious in the 1920s as a re-

sult of information made public by official inquiries and private action.

One of the turning points was an incident that might have gone unnoticed, had it not been for the efforts of concerned individuals. The incident involved an attempt to divest the Pueblo Indians of New Mexico of lands which they held under grants originating with the Spanish crown. The situation had been a long time in the making. It began inconspicuously in a Supreme Court decision in 1877, which held that Pueblo Indians were citizens, not wards of the national government like other tribes, because they had been made citizens of Mexico by a ruling of that government when it assumed sovereignty of New Spain. The Treaty of Guadalupe Hidalgo at the close of the war between Mexico and the United States provided that Mexican nationals would become citizens of the United States unless they exercised their option to remove themselves from territory ceded to the United States. The effect of the Court's ruling was to remove trust protection from Pueblo Indian lands, rendering them taxable and alienable. The law prohibiting unlawful entry on Indian lands did not apply. Some 3000 families, representing an estimated 12,000 individuals, moved onto Pueblo land. In some instances a buyer in good faith purchased a presumed title from a Pueblo official or individual, while others filed for homestead entry, in the belief they had settled on the public domain.

In 1913 the Court reversed itself and held that the Pueblo lands were properly defined as Indian country; the Pueblos were domestic, dependent nations under the protection of the United States, and they could not dispose of their assets without the approval of the government. All transfers or entries involving Pueblo lands were outlawed.<sup>2</sup>

2. William A. Brophy, "Spanish and Mexican Influences . . .," paper prepared for 1st Inter-American Conference on Indian Life, Patzcuaro, Mexico, 1940.

The non-Indian claimants applied to Congress for relief, and in 1922 legislation was introduced which would throw upon the Indians the burden of proving ownership. Failure to establish proof would vest title in the claimant. It was a difficult and costly burden for the Indians to assume.

The iniquitous legislative proposal drew the fire of private citizens and citizen groups, who entered the controversy to help the Indians organize a common defense. Most active in the group was John Collier, who within a few years would become Commissioner of Indian Affairs and a leader in a national movement to reform the government's policy.

In November 1922, encouraged by the citizens groups, all the pueblos sent delegates to Santo Domingo, one of the larger of the nineteen New Mexico pueblos. It was the first time they had acted together since 1680, when they drove the Spanish out of their country. In the name of the newly formed All Pueblo Indian Council, an appeal was issued to the American people and a delegation visited a number of American cities to explain the issue and appeal for financial support. The tactic not only brought about the defeat of the Bursum bill, as the legislation was called, but led to the creation by Congress of the Pueblo Lands Board and an equitable procedure for determining ownership of the disputed lands.

The action served an even wider purpose by bringing the plight of the Indians to the attention of the public. The citizen group, once engaged, found abundant opportunity to use the skills of its members in investigating and publicizing the obscurities of the Indian situation. Such had been the pernicious effects of the policies in force in the previous fifty years that Indians were living in the direst poverty; the death rate was about twice that of the general population; they were heavily afflicted with tuberculosis and trachoma; such schooling as was provided was sub-standard; and few Indians remained in school long enough to profit. In the words of the Court quoted

above, their status was neither that of a citizen nor that of an alien. They were prisoners of war when no state of war existed.

Indians were actually citizens by that time. Congress in 1924 had conferred citizenship on all Indians born within the territorial limits of the United States as an acknowledgment of the country's gratitude for Indian participation in World War I. They had not been subject to military draft, yet thousands had enlisted voluntarily. Citizenship was not sought by the Indians as a group; indeed, many leaders objected to the measure when they learned about it, fearing that it might somehow impair their tribal relationship. Their experiences in dealing with the government had been such that citizenship was not a possession of great promise. Relatively few individuals made use of the franchise in the first years after the passage of the citizenship act.

Meantime, the efforts of private groups continued until, in 1926, the government authorized an economic and social study of Indian conditions. The Secretary of the Interior, Hubert Work, requested the Institute for Government Research, a privately endowed foundation, to conduct the investigation. Lewis Meriam and a group of associates were appointed.

The result was a report of findings which, for the first time, provided a detailed and objective analysis of what had happened to the Indian people under the government's trusteeship. A program of remedial action was proposed, which required the repudiation of the attitudes as well as the practices then prevailing. The allotment policy, in particular, was cited to exemplify how the government had failed the Indians in its role as trustee and mentor.

"Not accompanied by adequate instructions in the use of property," the report found, with respect to the allotment policy, "it has largely failed in the accomplishment of what was expected of it. It has resulted in much loss of land and an enormous increase in the details of administration without a com-

pensating advance in the economic ability of the Indian. . . . It almost seemed as if the government assumed that some magic in individual ownership would in itself prove an educational civilizing factor, but unfortunately this policy has for the most part operated in the opposite direction."<sup>3</sup>

Perhaps the most valuable contribution of the Meriam investigation was the formulation of a basic concept of the task of administration which would advance the economic position of the Indians and foster social adjustment. The problems of poverty, disease, inadequate shelter, low educational achievement, and general discouragement all derived from the failure to provide assistance in these related areas. Solutions could not be pursued separately, but must all be part of a concerted effort. Hence the report recommended that "The fundamental requirement is that the task of the Indian Service be recognized as primarily educational in the broadest sense of the word, and that it be made an efficient educational agency, devoting its main energies to the social and economic advancement of the Indians, so that they may be absorbed into the prevailing civilization or be fitted *to live in the presence of that civilization* at least in accordance with a minimum standard of health and decency" (italics supplied).

Until then, it had not been recognized that there could be an alternative to assimilation. Even the tolerant Henry Knox, in urging "a liberal system of justice," assumed that the Indians would be quietly transformed as their hunting grounds disappeared, and he was not dismayed by the prospect; it seemed to be an appropriate solution. The idea that the Indian people might "be fitted to live" within the dominant society without being obliterated by it was, indeed, unprecedented as a statement of possible national policy. At the time, and indeed for a number of years afterwards, the idea was not pursued. It re-

3. Lewis Meriam, et al., *The Problem of Indian Administration*, Washington, D.C.: Brookings Institution, 1928.

mained for the Indian people themselves, a full generation later, to plead the case for self-determination.

The Meriam formula was also notable as a repudiation of the philosophy of administration which had prevailed since 1871, when the government adopted the thesis that it could legislate Indians into white Americans. It was a recognition that freedom of choice is an essential ingredient of a democratic society, a freedom that cannot be exercised unless true alternatives are available.

The Roosevelt administration, coming into office in 1933, accepted the radical concept that the Indian race was not headed for early extinction. The population trend had already begun its upswing, and a growing body of ethnological studies offered evidence that cultural survival was indeed extensive. The reforms adopted by the administration were designed to repair some of the damage which had been done, to add to the resource base, and to involve and utilize surviving native institutions and leadership. The new purpose was many times stated—a 1938 summary will suffice here:

Our task is to help Indians meet the myriads of complex, interrelated, mutually dependent situations which develop among them, according to the very best light we can get on those happenings.

We, therefore, define our Indian policy somewhat as follows: so productively to use the monies appropriated by the Congress for Indians as to enable them, on good, adequate lands of their own, to earn decent livelihoods and lead self-respecting, organized lives in harmony with their own aims and ideals, as an integral part of American life. Under such a policy, the ideal end result will be the ultimate disappearance of any need for government aid or supervision. This will not happen tomorrow; perhaps not in our lifetime; but with the revitalization of Indian life due to the action and attitudes of this government during the last few years, that aim is a probability.<sup>4</sup>

4. *Report of the Commissioner of Indian Affairs*, 1938, p. 210.

The program, which Commissioner John Collier directed, issued as a conscious purpose from the idea of the educational process. It was given statutory support by the enactment of the Indian Reorganization Act of June 1934. The Act was permissive, and tribes had the option of accepting or rejecting it by majority vote. Such a choice had never before been offered, and some tribes evidently cast an adverse vote in the belief that acceptance of the law would entail further submission to the government.

As to those tribes which adopted the Act, it prohibited any further division of tribal lands into individual allotments and the Secretary of the Interior might return to tribal ownership lands which had been withdrawn for homestead entry but had not been taken up. It authorized an annual appropriation for land purchase and a revolving credit fund for economic development.

At the heart of the Act were the sections authorizing tribes to operate under governments of their own choice, either formalized by written documents or following customary usage, and to establish business corporations for the management of their resources. This made explicit in statutory law for the first time the principle, which the courts had followed since Justice Marshall's rulings in the 1830s, recognizing the residual right of Indian tribes to govern themselves.

In this respect the 1934 act was an integral segment of the humanistic tradition started by Spain, advanced by England, and incorporated into the early laws and court decisions of the American republic.

The upward swing which retrieved the Indian population from peril in the first decade of the century was followed in the 1930s by a saving augmentation of physical resources and human spirit. The opportunities offered in the Indian Reorganization Act brought into use the capacity for social action which had never died in the Indian people, though it had been

obscured. The start was slow in many instances, since the written constitutions introduced ideas and procedures which had not been part of customary practice. The idea of majority rule, taken for granted in Anglo-Saxon governing bodies, was at first a divisive rather than a unifying principle in Indian groups, where action is customarily delayed until all the people are in agreement, or at least until the dissidents agree to stand aside. Also, in the beginning, so accustomed were the tribes to wait on the decision of a federal official, they were reluctant to act on their own in exercising the powers contained in their portfolios.

The tribes that made the most effective use of their political powers became, in effect, operating municipalities—managing property, raising revenue for public purposes, administering law and order, contracting for the services of attorneys and other professional advisers, and promoting the general welfare of the people.

Other gains were made. The record of tribal operations in borrowing from the revolving credit fund was particularly gratifying. The lack of investment capital, and more seriously the lack of experience in handling money, had been one of the great deterrents to Indian advancement. Credit money made it possible for the tribes to increase significantly the acreage they farmed and grazed—lands which, for lack of capital, they had formerly leased to white operators.<sup>5</sup>

These were all positive gains. Their tribal governments were training schools, and after a few years local leaders began to travel beyond the borders of their own tribes to join others in forming inter-tribal organizations on a state-wide or regional basis. In native America, the tribes had kept to themselves within their recognized territories. Sometimes alliances were made for a specific, temporary purpose and then dissolved. More rarely, two or more tribes might remain in close associ-

5. *Report of the Commissioner of Indian Affairs*, 1948, pp. 371-72.

ation for a period of years. These were the exceptions. When in 1944 representatives of forty-odd tribes came together to form an all-Indian body, the National Congress of American Indians, nothing in their traditions supported such action. The fact that the organization continued in existence and grew in acceptance among Indians, as well as in effectiveness in representing Indians before the public, was a real measure of Indian adaptation when opportunity opened to them.

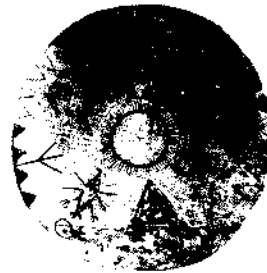
*Theodore B. Hetzel*



Taos Pueblo Indians celebrating the return of their traditional lands, including their sacred Blue Lake, by formal act of Congress, August 1971. North house in the background.



Drummers and singers, with dancers in the background, at the University of Chicago Indian Conference, 1961. (Photographed by F. Peter Weil, *The Newberry Library*.)



## 6 RETURN TO NEGATION

A basic debate over Indian policy developed in the years immediately after World War II. The debate was at first a minor play within a general dialogue concerned with government spending and the growth of "big government." It began as a demand that trusteeship over Indian property be curtailed and that some functions of the Bureau of Indian Affairs be transferred to other agencies, but it soon broadened into a full attack on the Indian reform program. In and out of Congress there was an increasing tendency to view trusteeship as a failure. It had not provided a method by which the United States might bring its responsibilities to an end. It had not even earned the United States a good name for its efforts.

A leader in this counter-movement was Senator Arthur V. Watkins of Utah, who as chairman of the Committee on Indian Affairs in the Senate exerted a powerful influence on congressional policy during the administration of President Eisenhower. It was his view that Indians could not hope to have an identity separate from the mainstream of American life, and



that those who encouraged such hopes by helping Indians to develop their communities were doing a mischief. He regarded the Indian programs of the Roosevelt administration as misdirected social experiments that perpetuated the illusion of a future for Indians as Indians. He looked to Congress as the agency to deliver the Indians out of bondage and free their property from government surveillance. As he summarized the situation, "Unfortunately, the major and continuing congressional movement toward full freedom was delayed for a time by the Indian Reorganization Act of 1934, the Wheeler-Howard Act. Amid the deep social concern of the depression years, Congress deviated from its accustomed policy under the concept of promoting the general Indian welfare. In the post-depression years Congress—realizing this change of policy—sought to return to the historic principles of much earlier decades."<sup>1</sup>

While this statement leaves unidentified the "historic principles" to which he alluded, the course pursued by Senator Watkins made explicit his determination to restore the process of attrition set in motion during the closing years of the last century. Indian property was again to be made accessible for appropriation; tribal autonomy even in the limited areas remaining was to be further reduced and ultimately extinguished. The concern for Indian freedom which the Senator frequently expressed was in effect a concern to have the United States freed of any legal or moral responsibility for what might happen to Indian people as a consequence of congressional action.

Out of such attitudes held by the Senator from Utah and others in and out of Congress during President Eisenhower's administration was fashioned the policy of "termination," as it

1. Arthur V. Watkins, "Termination of Federal Supervision: The Removal of Restrictions over Indian Property and Persons," in *The Annals*, vol. 311, May 1957, pp. 47-55.

came to be called. Two measures adopted by Congress in the summer of 1953 prepared the way for almost a decade of turmoil that paralyzed community action, destroyed two major tribes, and both frightened and angered Indians throughout the nation.

The first was an act (Public Law 280) transferring jurisdiction over criminal and civil law to certain specified states and authorizing all other states in which Indian reservations were located to assume similar jurisdiction, without reference to the views of the Indians.

Prior to that enactment, state law did not apply within an Indian reservation, and except for certain major crimes, Indian tribes exercised police powers within reservation boundaries. State jurisdiction had been requested in good faith by tribes lacking the resources to maintain law-enforcement agencies among their own people, but the Congress, without seeking the views of tribes not parties to the request, replied with legislation of general application. The Indians protested, since they saw the action as a threat to one of the remaining areas in which they exercised local autonomy; and beyond that lay the possibility that the states would want to tax Indian lands, a power the states had sought for some time. The protest brought no relief.

The second measure produced even greater alarm. This was a policy statement (Concurrent Resolution 108 of the Eighty-third Congress) declaring it to be "the sense of Congress that, at the earliest possible time," Indians should be freed from federal supervision and control. Going still further, the Resolution directed the Secretary of the Interior to review existing laws and treaties and recommend what amendments or nullifications were needed to release the United States.

A suggestion that their treaties might be denounced brought consternation to the Indians, for the treaties, like the land base itself, had acquired a symbolic value with which the tribes

could associate their continuing existence. The treaties made them a distinctive people, the abrogation of which would cut them off from their own past. Even the threat of such action was enough to create anxiety throughout the Indian population.

In 1954 Congress moved to implement its policy declaration by authorizing the United States to terminate its responsibility for two major tribes—the Menominee of Wisconsin and the Klamath of Oregon—and several smaller groups. The Menominees and Klamaths possessed extremely valuable timber resources, the orderly exploitation of which provided a sound economic base for the tribal members.

The scale of the decision thrust upon the Klamath Indians is indicated by the statistics of the situation. Of a tribal membership numbering slightly more than 2000 persons, few had progressed in school beyond the eighth grade; a few had received some college training, but none could be classified as professionally trained; even skilled workmen were uncommon. The reservation contained just under one million acres of land, mostly forested. The value of the merchantable timber was appraised at \$120 million. A per capita division of this property, if liquidated, would yield an estimated \$50,000 share for each man, woman, and child.

By the terms of the congressional mandate, the tribal members, poorly educated and with little experience in money matters, were given three years in which to settle their affairs. Within that brief span they were required either to create a corporate entity to which their property would be transferred for management, or failing that, agree to liquidate and distribute the assets. Refusal on their part only meant that the Secretary of the Interior would make the decision for them. In either event, regardless of who made the decision, at the end of three years the trusteeship exercised by the United States would terminate. The Indians protested at every stage as the legislation progressed through Congress, without affecting the out-

come. The three-year period was extended when it became apparent that the required procedures would not be consummated in the allotted time, but the postponement did not diminish the consequences of terminating the trust responsibility.

The question of choice was finally submitted to a tribal plebiscite. Enticed by the prospect of quick wealth, and seeing no alternative, 77 per cent of the adult tribal members voted for liquidation. When it was realized that payment of their pro rata shares to some 1600 members would entail the immediate marketing of 3.5 billion board feet of timber, the Pacific northwest lumber industry protested anxiously. Among the protesters were business and civic leaders who previously had urged the government to release the Indians from trust protection and allow them to control their own affairs. But when these leaders realized that their own economic welfare might be jeopardized by the policy they had advocated, they urged the Congress to practice moderation. Congress then further amended its course by providing that the federal government might purchase the bulk of the tribal estate and, by converting it into a national forest, control the timber harvest. The Congress, understandably, since the Klamath tribe presented no political threat, was responsive to business interests, while insisting that the Indians accept its mandate.

It will be a matter of years, perhaps a generation, before an accurate assessment can be made of the impact upon the Klamath community of the "solution" imposed by law. The immediate result was described in stark terms by a committee of the United States Senate after visiting what remained of the reservation in 1969. The committee reported, "The termination of the Klamath reservation in Oregon has led to extreme social disorganization of that tribal group. Many of them can be found in state mental and penal institutions."<sup>2</sup>

2. Committee on Labor and Public Welfare, U.S. Senate, Report No. 91-501, 91st Congress, 1st session, 1969, p. 17.

At the national level, the Senate committee found that "the fear of termination has poisoned every aspect of Indian affairs, has undermined every meaningful attempt at organizational reform, and has been a major psychological barrier to Indian socio-economic development."

The experience of the Menominee tribe of Wisconsin, the second major tribe to be subjected to the congressional dismantling process, added to the uncertainty and fear encountered by the same Senate committee. The Menominee was one of three tribes at the beginning of the Eisenhower administration that was able to pay its own cost of administration. The tribally owned sawmill not only manufactured lumber but provided employment for tribal members in the woods and in the milling operation. The tribe contracted for its own health services at a local private hospital. It paid the cost of most of its own welfare needs which, because of the job opportunities at its lumber mill, were less than those of neighboring communities. It had maintained through a relatively long history of contact with traders, missionaries, and government functionaries a strong tradition of independence.

In 1951 the tribe won from the government a judgment of some \$8 million as compensation for mismanagement of the tribal forest. The money award was paid into the United States Treasury—a circumstance that was to have disastrous consequences for the Menominees. They could obtain their money only by a congressional appropriation, and when tribal officials appeared in Washington to present their request, they found Senator Watkins of Utah standing in the way.

The money would be paid to them, they were told, only if the tribe agreed to legislation which would terminate the trust relationship and free the United States of future responsibility.

The question was eventually submitted to a vote of the membership, in circumstances which almost predetermined the decision. Individual Menominees, in need of ready money, were

anxious to obtain their per capita share of the award. The tribe also had planned to make improvements in the sawmill, to expand community services and employment opportunities, and to modernize the local hospital facility. All of these reasons served to persuade the tribal members that unless they complied with Senator Watkins's ultimatum, their court-awarded funds would be denied them indefinitely. They voted for termination.

The resulting legislation, adopted in 1954, set impossible deadlines, as did the legislation for the Klamath tribe, and this resulted in hasty decisions, premature agreements, and mounting tensions.

One of the terms required the Menominees to decide whether the reservation area should be divided into several parts and annexed to adjoining counties or whether it should remain an integrated territory with status as a county in the state of Wisconsin. The latter choice, which the tribal members preferred, required authorizing legislation by the state. This was granted in 1961, but neither the tribe nor the state was able, within the time allowed, to study in depth the consequences of such a move.

It soon became evident that the new county lacked an adequate revenue base to meet the cost of public services. To keep solvent, the tribe, now operating as Menominee Enterprises, Inc., sold cottage sites to summering visitors who found the Menominee woods and lakes a refreshing change from sweltering in their city homes. In this fashion, land once held in common by the tribe passed out of Indian ownership and the Menominees found themselves providing menial labor for the "cottagers" who displaced them.

The tribal sawmill, now operated as a revenue-producing enterprise, installed automatic machinery that eliminated jobs and reduced the payroll. This in turn increased the number of unemployed and the welfare load, at a time when the new county was already in financial difficulty.

What was probably the severest shock to the Menominee people was the loss of control in the management of their community. Their government had consisted of a general council, what in another society would be termed a village or town council, composed of all adult citizens, with officers elected in open meeting. It was a public forum, in which the problems and concerns of the people were openly discussed.

This traditional institution was replaced by Menominee Enterprises, Inc., as noted above, control of which was placed in a nine-man board of directors, five of whom were to be outsiders. Membership on the board was determined by an intermediary seven-man "voting trust," not directly by tribal members, and the voting trust in fact managed the property and was the primary decision-maker. Control was further removed from the Menominee people by transferring to a private trust company the control and management of the shares owned by minors and incompetents. Since this group constituted approximately 20 per cent of the tribal population, the private bank by voting its entrusted shares as a block effectively controlled Menominee Enterprises. The adult members, having scattered to surrounding urban centers in search of employment, left an open field for outside manipulation.

A student of Menominee affairs, after reviewing these events in detail and noting how the people were driven into opposing camps as they faced precipitated issues, observed, "Experienced leaders, young intellectuals with new ideas, potential leaders with experiences outside the colonial situation that could be put to good use, and the Menominee people as a whole are prevented from getting together. The social damage done the Menominees by termination is fully as great or greater than the substantial, quantifiable material damage."<sup>3</sup>

Such were the consequences for two tribes of the "full free-

3. Nancy Oestreich Lurie, "Applied Anthropology," unpublished paper, June 1971.

dom" policy imposed upon them by the Senator from Utah. The ultimate destruction of Indian property holdings and social cohesion must certainly have resulted if the policy had been extended to all tribes, as was contemplated by the authors of the Concurrent Resolution.

The Secretary of the Interior during that period, in full accord with the congressional mandate, moved purposefully to abandon trusteeship even where Congress had not legislated. By lifting restrictions on individual Indian allotments—a procedure that had been severely restricted during the Collier administration—land was allowed to pass out of Indian ownership at a rate that threatened disaster.

Senator Murray of Montana became so disturbed by this departure from previous policy that he called upon the Secretary in May 1958 to halt the process until its effects upon the Indian economy could be studied. It was then discovered that land had been taken out of trust, and invariably sold, at an accelerating rate. More than 2.5 million acres were disposed of during the ten-year period 1948-57, but 1.8 million acres of this total had gone on the market during the years 1953-57. The lands sold were usually the most desirable tracts, controlling a water source or other key feature, the loss of which adversely affected the surrounding Indian community.<sup>4</sup>

A retired field officer of the Bureau of Indian Affairs, commenting on this development, observed, "Tribal officials in the Dakota country are deeply concerned about the loss of Indian land. They know that when an individual has sold his land and used up his money, he does not stop being an Indian. He simply becomes a landless Indian."<sup>5</sup>

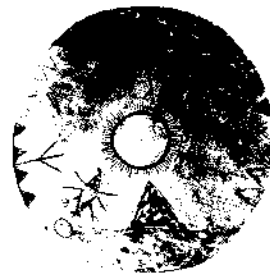
4. Committee on Indian and Insular Affairs, *Indian Land Transactions: An Analysis of the Problem and Effects of Our Vanishing Indian Land Base, 1948-57*, 85th Congress, 2nd session, 1958.

5. W. O. Roberts, "The Vanishing Homeland," in *Indian Affairs*, newsletter of the Association of American Indian Affairs, New York, Jan. 1957.

Fortunately, legislative detribalization proceeded no further. After two years of hearings and debates in Congress, the drive lost momentum. In that interval a considerable section of public opinion had rallied to the side of the Indians, and the Indians themselves recovered from their initial shock and spoke out. These Indian protests added to the growing disillusionment with the Eisenhower administration, which produced changes in the political composition of Congress following the elections of 1956, 1958, and 1960. When Senator Watkins lost his Senate seat in 1958, the Indian people all across the nation shared a sense of reprieve.

A bureaucracy is rarely responsive to a climate of opinion and yields to change only under compulsion. In this instance, the Bureau of Indian Affairs, having embarked upon a program of divesting itself of the responsibility of stewardship, persisted in furthering the alienation of Indian land and in denying credit loans for the development of Indian property. When a new Secretary of the Interior in 1958 declared, "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 . . . and second, that the tribe or group affected concurs in and supports the plan proposed"<sup>6</sup>—officials of the Bureau ignored the pronouncement of their senior officer. For a while longer the rule of negation prevailed.

6. Fred A. Seaton, in a radio broadcast of Sept. 1958.



## 7 THE TRIBAL WORLD

In their resistance to the policy of withdrawing or terminating federal responsibility, the Indian tribes were not expressing a desire to continue indefinitely in a state of dependency, although an obdurate Senator Watkins might make that charge. They would not acknowledge themselves to be dependent in any respect. The protection of their lands and of their right of community control, which outsiders took as evidence of backwardness, was seen by Indians as a contractual relationship not terminable by unilateral decision. And with respect to their trust-held lands and tribal governments, Indian leaders had for some years been urging the federal government to relax its restrictive controls and permit greater participation in planning and decision-making. This, of course, was the promise of the Indian Reorganization Act.

Resistance went deeper. It had to do with psychological readiness and the realities of the inner life which Indians share among themselves. By mid-century most Indians of the United States and Canada had had extended contact with the society

beyond their traditional boundaries, and this experience had been varied. Some adjusted to the dominant society in a positive and useful way. Others, by far the greater number, were satisfied with a mixed participant-observer relationship and limited their contacts to the traders, missionaries, teachers, government people, and casual visitors who came across their horizon. Even among the few who succeeded in making the transition to urban life, only rarely was the tie of relatedness completely and finally severed. They tended to commute between the traditional world and the impersonal urban world. This was one of the realities of Indian existence. It had nothing to do with government subsidies or government control over tribal resources. The termination of trusteeship would add to the difficulties of maintaining a community intact, as the Menominees discovered, but the reality would continue to influence response.

The lack of readiness in the Indian people is often charged to the failure of government to provide enough of the right kind of schooling. The criticism would have greater validity if, by itself, the "right" education could accomplish what the critics expected of it. As early as 1609 the Englishman Robert Gray, writing on the bright prospects of colonizing Virginia and civilizing the natives, declared, "It is not the nature of men, but the education of men, which makes them barbarous and uncivil, and therefore change the education of men, and you shall see that their nature will be greatly rectified and corrected."<sup>1</sup>

For the seventeenth-century European so recently brought to awareness of non-European societies, Gray's concept of the process of human development is understandable, perhaps defensible. But as a basis for policy and action, which it became, it was a pernicious denial of the moral right of indigenous societies to perpetuate themselves. To "rectify" and to "correct" in this formula was to "Europeanize." Members of a native

1. Quoted in Roy Harvey Pearce, *The Savages of America*, Baltimore: Johns Hopkins University Press, 1953, p. 10.

community might desire to improve their knowledge and skills, to extend their control over the environment—as Indians demonstrated by quickly adopting the horse, steel tools, and the gun—but the only choice allowed under the formula was to move out of the community entirely; they could not become better Indians, they could only become something else. When Indians resisted and continued to function in a society of their own kinsmen, they were answered with more coercive and more encompassing "educational" devices, until they were wholly encumbered by alien controls.

Governments, of course, agreed with their critics, and in response to criticism they did more of what they had been doing, without discovering why they had so little success with their educational policy. When the nature of the Indian was not rectified, the administration, the men, and the method came under attack. No one challenged the philosophy. By keeping intact the invisible boundary which permitted them to recognize who they were and how to respond to each other, the Indian people evaded the ultimate assimilation intended for them.

The failures of the so-called termination policy, as so grossly experienced by the Klamath and Menominee tribes, produced counter movements, both in the United States and in Canada, which revealed how vital and deep-running was the tribal view of self.

The year 1961 was a kind of watershed in Indian affairs. First of all, there was a new national administration, led by the youthful and spirited President Kennedy. In one of the early actions of the administration, the new Secretary of the Interior, Stewart Udall, appointed a task force which toured the Indian country extensively, listened to old complaints and bright new proposals, and by mid-summer issued a report which disparaged without clearly disavowing termination as an objective and urged a program of "maximum development" of reservation resources. A private study, sponsored by the Fund for the Re-

public, covered much the same ground and reached similar equivocal conclusions about the destructive efforts of the Eisenhower termination legislation. This report did, however, contain an ominous reminder: "Repeatedly in the past, congressional action in such matters has cost the United States large sums in the later settling of claims or in defending law suits. Error or oversight in a termination today may tomorrow call for the payment of unanticipated indemnities."<sup>2</sup>

An event in that same summer had possibly greater significance for the Indian people than the courses pursued by government. This was a conference convened by the University of Chicago and participated in by almost 500 Indians from all parts of the nation, including Alaska, and observers from Canada and Mexico. A Declaration of Indian Purpose was issued at the end of a week of discussion, and while the document was important as an expression of Indian thought, it was the process of arriving at the joint statement which contributed most to a changed outlook.

To understand better the importance of the Chicago conference, it must be realized that Indians do not constitute a monolithic society. The ethnic boundaries which maintain group identity and functions are essentially tribal in nature. Except for the short-lived efforts of the Pueblo Indians in 1680 and of Pontiac and Tecumseh in the eighteenth and early nineteenth century, inter-tribal alliances have not characterized Indian political experiences. The autonomous tribe, or band, or village, which seems best to describe the political constituency, is a projection of the autonomous individual. No Indian individual, even within his own family, speaks for another individual. No tribe presumes to speak for another tribe. To act otherwise is to act discourteously, if not indecently.

2. The quotation is from the *Summary Report* of the Commission, Albuquerque, New Mexico, 1961, p. 7.

The representatives of the seventy tribes at the Chicago conference had in common a sense of being under attack, and it was this shared experience which drew them together. Even in the presence of a common danger, however, collaboration was not spontaneously achieved. Indians from traditionalist communities were fearful of finding themselves associated with ideas or actions which might betray their interests. Reservation Indians were especially distrustful of their urbanized kinsmen, whom they suspected of scheming to liquidate tribal resources and claim their share. In the absence of traditional channels for inter-tribal communication, the conferees had as their only guiding experience their generations of negotiating with the white man, an experience that had taught extreme wariness and distrust. At several critical moments the conference stood ready to dissolve, but on each such occasion an acceptable base for continuing discussion was found. And so the conference remained in session until it put together the Declaration of Indian Purpose, which a special sub-committee of the United States Senate some years later described as "foreful and eloquent."

The conference was significant not only because the tribal participants found it possible to work their way through divisive counter moves, but out of their deliberations emerged issues and personalities which in the next few years would greatly affect the forces operating in Indian affairs. A noticeable element throughout the conference was the young adult group, mostly college students, who infused a spirit of militancy into the discussions and before the conference ended had taken the first steps toward the formation of a National Indian Youth Council. This group, after some initial awkwardness in sorting out leadership problems, soon became an effective rallying force for young dissidents. Members of the group joined the poverty march on Washington in 1963 and were soon using the term "Red Power" as an assertion of their commitment to

political action. In this they were voicing their impatience with their elders, who traditionally withdrew from open conflict and preferred silent opposition or passive obstructionism.

The Kennedy-Johnson administration engaged in a major effort to deal with the problems of poverty, marked by decaying rural areas and exploding urban ghettos. In creating an organizational structure to cope with critical economic and social derangements, Indian reservations were listed among the nation's most deeply depressed areas, and this in turn led to the establishment of agencies and programs that were without precedent in the administration of Indian affairs. Credit for introducing the fresh ideas and working methods cannot be ascribed to the Bureau of Indian Affairs, however, since that agency had first to overcome the ill will it had engendered by sponsoring termination policies. The impetus for change came rather from other branches of government, and specifically from administrative bodies newly created to deal nationally with poverty issues.

A major consequence for Indian communities was the adoption of the Economic Opportunity Act in 1965, which authorized funds for programs adapted to Indian needs. Among these, the Head Start program provided early education experiences within the home community for Indian children, many of whom come from non-English speaking homes and homes having limited contact with the dominant culture. These children ordinarily spend the first school years in social isolation and never quite catch up with their English-speaking peers. The Upward Bound program, designed to encourage students to complete their secondary schooling and continue into college, was a major factor in accelerating the recent trend toward professional training. VISTA, the domestic counterpart of the Peace Corps, brought youthful volunteers from all parts of the nation to Indian reservations as community workers. The involvement of outsiders in work projects largely defined by

tribal leaders helped to reduce the barrier of unfamiliarity which ordinarily insulates an Indian community from outside society. Of less importance, perhaps, were the physical accomplishments of the VISTA workers.

The outstanding innovation of the period was the establishment of Indian Community Action Programs, which brought to reservation communities technical services and financial assistance for which tribes had always been dependent upon the Bureau of Indian Affairs. The Office of Economic Opportunity which administered the new law had no paternalistic tradition to inhibit its procedures, and it invited tribal officials to prepare and submit plans for local projects. Once a plan was approved, OEO contracted with the tribal organization to operate the project, and it advanced the budgeted funds. This transferal of authority and responsibility for decision-making to the local community was an administrative feat which the Bureau of Indian Affairs, after more than one hundred years of stewardship, had never managed to carry out.

The contrast in method did not go unnoticed in Indian communities, where local leaders responded promptly to the opportunity for improving living conditions. By the end of the decade the leaders of Indian reservations in seventeen states, with technical assistance from outside advisers, had created sixty community action programs, each of which consisted of a variety of separate but related enterprises. The major universities of the western states responded to requests for technical help in training community workers and in designing operating procedures. The very tasks which over the years the Indian bureau failed to accomplish, explaining away its failure as a reflection of the incapacity or inexperience of Indian leadership, were found not to be insurmountable. Indian communities quietly took control of their own advancement.

The manner in which the Rough Rock community of the



Navajo reservation in Arizona assumed responsibility for the education of its children exemplified this development. The people of Rough Rock, very few of whom had been exposed to formal schooling and were non-English speaking, were asked to take over the management of a newly constructed school. The Bureau of Indian Affairs, which built the school, was at the point of recruiting teaching staff and administrative personnel when the Office of Economic Opportunity offered to assist the Navajo community in assuming the management role. An agreement was reached by which the two federal agencies would advance the normal operating funds and provide supplementary grants for developmental purposes.

The important factor in this agreement was not the transfer of the school facility but the shift in the educational philosophy which the transfer made possible. The notion that an educational system, devised to answer the social needs of a given culture, could "rectify and correct" the way of life of people of another culture, which had prevailed since the seventeenth century, could now be challenged.

The Rough Rock school was founded on these assumptions: (1) a school must involve the people of a community, not just the professional and custodial personnel recruited from the outside, and involvement must mean responsibility for success and failure; (2) a school must contribute to the development of a community, which meant that adults as well as children should find learning opportunities; (3) a school should be part of a process by which the way of life of a people is transmitted to the young—the school which is concerned only with importing the culture of an alien society robs the community of its natural increase; and 4. a school operating in a non-English speaking community should treat English as a second language to be mastered after the child acquires a basic competency in his mother tongue. These assumptions, as will be recognized, represented a

radical departure from the patterns of schooling provided by colonial, then national, governments.

It must be added that these conceptual generalizations reflect the experience and aspirations of this particular community of traditional, non-urbanized Navajo tribesmen; they are not abstractions derived from academic literature. A member of the all-Navajo seven member school board which operates the Rough Rock school expressed very clearly his understanding of what was being attempted. Speaking in answer to the criticism that the school was educating for the past, not the present, and by such backward-looking methods was doing an injury to the children, the unlettered board member declared, "We are not educating for today; we are educating for tomorrow. The way a person can live successfully in tomorrow's world is to have confidence in himself and have an inner strength which comes only from a positive picture of himself. This school is designed not to teach the children to walk on this road or that road but rather to give them the tools to make intelligent choices."<sup>3</sup>

The transfer of authority at Rough Rock was not an isolated affair, but must be seen as an event in a growing movement for self-determination. This movement took various programmatic forms, and in addition it was verbalized in demands for still other programs and for policy changes. In the educational theater, profiting from the Rough Rock example, independent school districts serving an Indian or a mixed Indian and white community were established for the Rocky Boy reservation in Montana, the Blackwater district on the Gila reservation in Arizona, the Tama Indian community in Iowa, and the Ramah

3. The Rough Rock experiment is discussed in a statement by Dr. Robert A. Roessel, Jr., in "Indian Education," *Hearings Before the Committee on Labor and Public Welfare*, United States Senate, 90th Congress, 1st and 2nd sessions, part I, 1969, pp. 12-25.

Navajo district in New Mexico. These pioneering efforts were important as demonstrations of Indian community resourcefulness and equally important in encouraging other communities to negotiate contractual relationships with agencies of government.

The national concern with civil rights in the 1960s expressed in riots, protest marches, court orders, and political debates caught up the Indian cause, not always with complete Indian collaboration. Some of the issues involved in the civil rights struggle were not Indian issues. Segregation, which the black man protested so bitterly, was not seen as a denial of social status by Indians. They had never aspired to a place in the white man's society, except as individuals might make that choice for themselves. What Indians as tribal members desired was the good faith performance by the national government of the contractual obligations and reciprocities incorporated in treaties. In addition to which, since their resources were under trust restrictions and not convertible into risk capital, tribal Indians demanded development funds to improve their communities as places to live.

These represented civil rights of a different order, and to the extent that they were understood as such they found support from citizen groups, from agencies of government other than the Indian Bureau, from within Congress itself, and finally from Presidents Johnson and Nixon. Public opinion generally, as voiced in major news media, repudiated the negativism of the Eisenhower legislative program and encouraged the Indian quest for a continuing identity within the major society. For the first time since the creation of the Bureau of Indian Affairs in 1824, it seemed possible at the opening of the seventh decade of the twentieth century that Indian communities would be permitted to adapt to the necessities of their environment without submitting to conditions that violated traditional values.

As an instance of the new attitude that came into existence among the agencies working with the Indian people is a report published by the Department of Labor in 1969. The report reflected the experiences of members of that department who had been engaged in a survey of the employment needs of the Indian population. With remarkable candor, the reporting team declared, "We grew to admire the Indians tremendously as a group, to marvel at their courage and dignity even in the midst of abject poverty, and to appreciate their lack of aggressive acquisitiveness. Even their reserve appeared to be the symbol of an inner strength as well as an insulation against the deteriorating influence of white society. . . . We realized what a tremendous loss to mankind would be the obliteration of this culture, call the obliteration process what one will—assimilation, acculturation, or termination. We became strong partisans of the belief that the Indians should be encouraged and helped to preserve their culture. . . . This position is consistent with a great body of enlightened opinion in this country, and with prevailing opinion among the Indians themselves."<sup>4</sup>

Two presidential messages, addressed to the Congress somewhat more than two years apart, were without precedent in United States history. Chief executives had made passing references to the Indian people in their annual messages, but none had addressed himself to the subject at such length as did Presidents Johnson and Nixon. The effect of these official communications was to bring the condition of the Indian people to national attention in a manner never before attempted. It moved the discussion of Indian needs and Indian aspirations out of the committee rooms of Congress and out of the private offices of civil servants into the arena of public concern. It had the fur-

4. *Toward Economic Development for Native American Communities*, Joint Economic Committee, Congress of the United States, vol. 1, part I, 91st Congress, 1st session, 1969, p. 125.

ther effect of openly repudiating the policy of negativism and giving support to a policy of democratic pluralism. Thus, President Johnson in his message of March 6, 1968, declared:

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 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 rights 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.”<sup>5</sup>

The Nixon message of July 8, 1970, offered a thoughtful and critical view of government policy—in itself an unusual function for an executive document to assume. The statement was explicit in its denunciation of the termination policy of the Eisenhower administration, in which Richard Nixon served as Vice President.

In presenting this opposing view, the message recapitulated the long history of government-Indian relations. It stated, “Termination implies that the federal government has taken on a trusteeship responsibility for Indian communities as an act of generosity toward a disadvantaged people and that it can therefore discontinue this responsibility on a unilateral basis whenever it sees fit. But the unique status of Indian tribes does not

rest on any premise such as this. The special relationship between the Indians and the federal government is the result instead of solemn obligations which have been entered into by the United States government. Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education, and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.”<sup>6</sup>

The message noted further that forced termination, as a practical policy, had been harmful in its effects; it “produced considerable disorientation among the affected Indians and has left them unable to relate to a myriad of federal, state, and local assistance efforts.”

In affirmation of national responsibility in this sector, the message declared, “This, then, must be the goal of any new national policy toward the Indian people; to strengthen the Indian’s sense of autonomy without threatening his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that the Indians can become independent of federal control without being cut off from federal concern and federal support.”

The principal instrument proposed by the President for enabling Indian tribes to become independent of federal control was a system of contractual relationships. He remarked, “In the past, we have often assumed that because the government is obliged to provide certain services for Indians, it therefore must

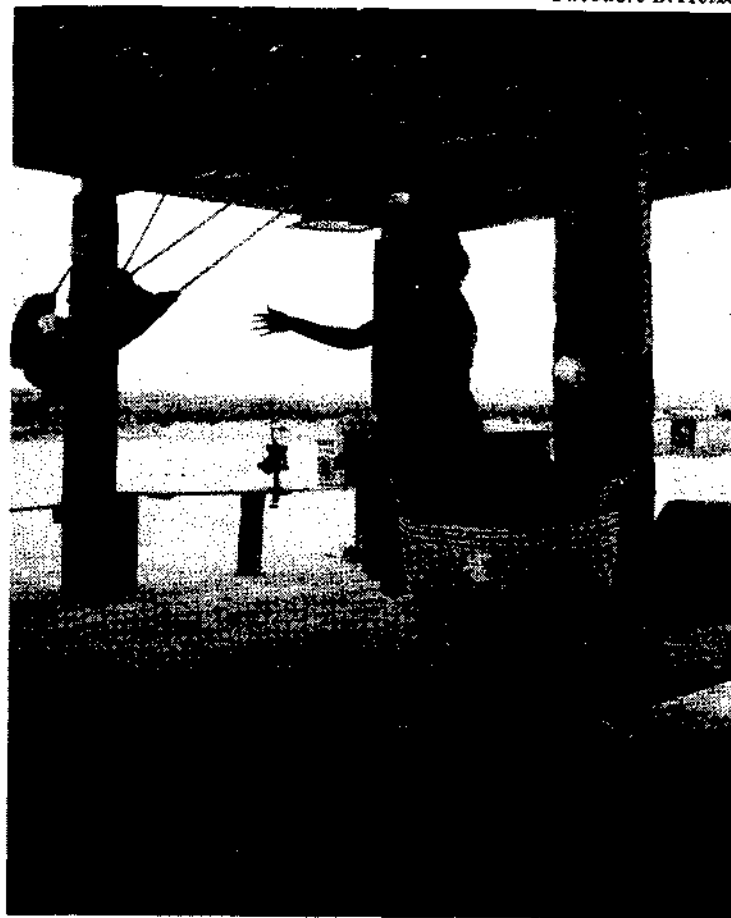
5. “Indian Record,” newsletter of the Bureau of Indian Affairs, Washington, D.C., 1968.

6. Message from the President of the United States, House of Representatives Document No. 91-363, 91st Congress, 2nd session, July 8, 1970.

administer those services . . . but there is no necessary reason for this assumption. Federal support programs for non-Indian communities—hospitals and schools are two ready examples—are ordinarily administered by local authorities. There is no reason why Indian communities should be deprived of the privilege of self-determination merely because they receive monetary support from the federal government. Nor should they lose federal money because they reject federal control.”

Such declarations and affirmations, if projected into law and administrative practices, carry the promise of restoring to the tribal world the capacity of adapting to change in an orderly manner. A society left to itself normally responds to a changing environment. To interfere with the process by imposing the values of an alien experience is to destroy human capacity—what we have come to know as genocide. To grow beyond the seventeenth century in this respect is the great challenge of our day.

*Theodore B. Hetzel*



Woman rocks baby in ramada or outdoor living space, shaded from the Arizona desert sun. The Papago family cooks, eats, and visits here.