A REVIEW OF U.S./INDIAN POLICY: A UNIQUE CHAPTER IN U.S. HISTORY

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INTRODUCTION

American Indian policy is a complex subject that does not easily lend itself to a brief analysis yet is a manageable task if the focus is placed upon major policy decisions. This focus needs to be tempered by two set of considerations: the Harmony Ethos versus the Protestant Ethic and physical versus cultural genocide. The Harmony Ethos reflects the generic world view (epistemological methodology) of North American (U.S./Canadian) Indian and Native Alaskan traditionalism. Here, the traditional world view sees harmony between Father Sky, Mother Earth and all life and inert matter. Man is seen as but one element on earth and not necessarily the most significant one. Intragroup cooperation, a self-image rooted in a larger collectivity (clan, extended family...), and intergroup conflict (intertribal wars and raids) comprised the basis of aboriginal (pre-Columbian) traditionalism (French 1982; Gearing 1962; Mooney 1972; Reid 1970). This contrasts with the secular version of the Protestant Ethic, that which drives the Western enculturation, and its focus on individual culpability, competition and sense of superiority over nature. The concept of Manifest Destiny became the rallying call and justification for exploitation of both natural resources and the American Indians who resided on these lands.

The concept of physical genocide refers to attempts at Indian annihilation. This policy was best reflected by the Indian wars era. Cultural genocide, on the other hand, addresses the more subtle policy of destroying Indian traditionalism (Harmony Ethos) and replacing it with the dictates of the Protestant Ethic (Weber 1958). Basically, cultural genocide involved attempts at converting American Indians, often using harsh methods such as punishment for speaking one's native tongue, from their traditional ways to that of the Protestant Ethic. Most efforts surrounding these policies began with, and continue to involve, conversion to Christianity. This conversion process is referred to as "Christianization" which has come to be synonymous with cultural genocide. A popular justification of the harsh resocialization methods employed in boarding schools was the tenet: "You need to kill the Indians to save the child." Its implication was that you need to destroy the child's traditional culture in order to convert him/her to Christianity and subsequently accommodate him/her into the larger U.S. society.

Obviously, a marked difference between physical and cultural genocide policies is that the former was bent on removing the Indian problem, either through concentration camps or destruction, while the latter was often based on ethnocentric compassion. During the Indian wars era (which occurred sporadically from the colonial period to the 1890s) American Indians were often viewed as less than human, much like the black slaves were until emancipation. At Fort Robinson in Nebraska, official logs depict male Indians as "bucks" and females as "does" hence depersonalizing them and making it easier to target them for destruction much like the buffalo which also cluttered the northern Plains providing obstacles to white settlement. Physical genocide was the policy norm from our birth as a nation until 1849 when U.S./Indian policy changed from military (War Department now Department of Defense) to civilian control (Department of the Interior). Military interventions continued even after President U.S. Grant's Peace Policy (1870). Military or armed reactions occurred whenever the "Indian problem" reached confrontational levels such as Wounded Knee II in 1973 and the international Akwesasne Mohawk conflict involving both the Royal Canadian Mounted Police and New York State Troopers in 1990 (French 1994). The nature of cultural genocide, in contrast, oscillated from policies aimed at the total destruction of traditional ways to that of federal paternalism where the federal government controlled major aspects of tribal life, a process which continued up until the 1980s. A third, and recent, policy is that of tribal autonomy and self-determination. Many tribal leaders are cautious of this policy fearing that it is merely another disguised attempt at cultural genocide and tribal exploitation (French 1994).

Advocates for the destruction of American Indians and their culture have existed since first European contact, but so have advocates for Indian enculturation. During the colonial era, a time of both black and Indian

slavery and restricted enfranchisement even for white adult males, scholars of the Enlightenment school, including such notables as Benjamin Franklin, advocated formal (Western style) education for colonial and Canadian Indians. Albeit a faint voice among those advocating a policy of physical removal or total annihilation of American Indians, these enlightened scholars embarked on a gentle form of cultural genocide. Indeed, both Harvard College in Massachusetts and William and Mary College in Virginia had special Indian colleges on their campuses. And it was a Yale graduate, the Reverend Dr. Eleazer Wheelock, who established the first separate Indian college for colonial and Canadian Indians — first the free school for Indians at Lebanon, Connecticut (1754-1767) and later Dartmouth College in 1770 in Hanover, New Hampshire (Adams 1946; French 1987). Since the colonial era U.S./Indian policy has followed five basic trends: Removal; Reorganization; Termination/Relocation; and Self-Determination/ New Federalism. A review of these policies paints a picture, in broad strokes, of the uniqueness of this chapter in U.S. history.

REMOVAL

Removal policies first pertained to the forceful displacement of the Five Civilized Tribes to west of the Mississippi River into Indian Territory, what is now the state of Oklahoma. The Removal policy was later extended to include Indians of the southwest as well as the plains tribes. The relationship between Removal to specifically designed *reservations* and the missionary efforts to *civilize* these displaced Indians is illustrated by the trauma faced by the three largest Indian tribes, the Cherokee, Navajo, and Sioux.

Removal's strongest proponent was President Jackson. He made this clear in his First Annual Message to Congress:

> As a means of effecting this end (Removal) I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limit of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. There the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth destined to perpetuate the race and to attest the humanity and justice of this Government. (Jackson 1829)

On May 28, 1830, the U.S. Congress passed the Indian Removal Act authorizing President Jackson to exchange lands in the west for those held by Indian tribes in any state or territory (U.S. Congress 1830). This led to the *Trail of Tears*, the forceful removal of the Five Civilized Tribes of which the Cherokee were the largest group. In 1838, some 16,000 Cherokees were led at gun point and in the dead of winter on a 1,000 mile trek from their eastern homeland to Indian Territory (Oklahoma). A quarter of the Cherokees perished during the Trail of Tears (Bauer 1970; Collier 1973; Fleischman 1971; French 1978; Gulick 1960; Hudson 1970; Malone 1956; Rights 1947; Sheehan 1974; Strickland 1982; White 1970; Woodward 1963).

The Cherokee Nation recovered and rebuilt in Indian Territory. In 1841, a Superintendent of Education was appointed, and by 1843, the western Cherokee had 18 public schools. In 1851, the Cherokee added two high schools (seminaries, one of which is now Northeastern Oklahoma State University). These schools were run exclusively by the Cherokee without federal subsistence or aid. On the eve of the Civil War, the western Cherokee had a population of 21,000 including a thousand whites and four thousand black slaves, which they owned, living with them. They had over 500,000 heads of livestock and more than 100,000 acres of arable land (French 1987; Perdue 1980).

The Civil War and Reconstruction halted this progress and brought considerable hardship to the Cherokee and the other *Civilized Tribes*: the Choctaw, Chickasaw, Creek and Seminole. During Reconstruction, the Five Civilized Tribes were forced to cede their western territory for the post-Civil War removal of plains tribes. These tribes included the Kaw, Osage, Pawnee, Tonkawa, Ponca, Oto-Missouri, Iowa, Sac and Fox, Kickapoo, Pottawatomie, Shawnee, Cheyenne, Arapaho, Wichita, Caddo, Commanche, and Kiowa Apache. An outcome of the removal process was the *Standing Bear v. Cook* case. Standing Bear, a Ponca chief removed along with his people to Indian

territory (Oklahoma) from his traditional land in northeast Nebraska, illegally left the reservation with a small group and relocated near their old tribal lands, now allocated to the Santee Sioux who were removed from their traditional lands in Minnesota. Captured, Standing Bear filed suit in Federal District Court in Omaha winning federal recognition for American Indians as "human beings" (Dundy 1879). A footnote to Standing Bear's efforts is the restoration of portions of the original Ponca reservation in northeastern Nebraska in 1990 by President George Bush (French 1994).

This new removal policy also affected the tribes of the southwest. In 1864, the Navajo were forced onto a reservation in New Mexico Territory, what is now parts of Arizona and New Mexico (U.S. Congress 1864). In 1862, General James H. Carleton became military commander in New Mexico and was determined to remove the Navajo so that whites could settle their land without fear of reprisal. They were forcefully removed to a barren area in eastern New Mexico known as the Bosque Redondo. Colonel Christopher "Kit" Carson was in charge of the Navajo removal. During the removal his troops killed those who resisted as well as the sick who could not keep up on the forced march to Fort Sumner. Navajo hogans and pastures were burned and livestock and game destroyed in order to discourage those who attempted to resist removal. By December 1864, 8,354 Navajos survived the Long Walk and were confined in a concentration camp near Fort Sumner at the Bosque Redondo. Following four years of starvation, disease and death, the federal government in 1868 admitted the failure of the Carleton plan and signed a new treaty with the Navajo giving back a small portion (3.5 million acres) of their original homeland (Brugge 1993).

The 1868 treaty spelled out the accommodation conditions for the Navajos new lives. Among its legal stipulations was the authority of the U.S. Government to subject non-Indian law breakers on the reservation to U.S., and not Indian, laws. Indian law breakers, on the reservation, whose violations involved non-Indians were also subjected to U.S. laws and U.S. sanctions (Johnson 1868). This legal philosophy was articulated by Indian Commissioner Price:

> Savage and civilized life cannot live and prosper on the same ground. One of the two must die. If the Indians are to be civilized and become a happy and prosperous people, they must learn our language and adopt our modes of life. We are fifty million of people, and they are only one-fourth of one million. The few must yield to the many.... (Price 1882)

The plains Indians removal control was specified by the 1868 Fort Laramie Treaty. It was nearly identical to that of the Navajo's treaty of 1868. The main exception was the allocation of 80 acres per family on the reservation instead of the Navajo's 160 acres. The education stipulation was identical. Thus, we see a single pattern emerging in 1868 relevant to removal and corresponding reservation control regardless of the cultural uniqueness of the tribes involved (Mayer 1980). Closure was intended on March 3, 1871, when the U.S. Congress outlawed further treaties with American Indians (U.S. Congress 1871). The problem with the Plains tribes treaty was that the U.S. government either could not or would not enforce it once whites illegally found gold in the sacred Black Hills and Bad Lands of what is now western South Dakota and North Dakota. Again, starvation was the norm around the forts where the tribes were concentrated under the control of the civilian agency and U.S. Army. These conditions led to both the Battle of the Little Big Horn in 1876 and Wounded Knee in 1890.

Law and order issues were also in a rapid state of flux on the Indian reservations. The most notable change was an incident involving the Brule Sioux chief, Crow Dog. This case led to the *Major Crimes Act* which later became the vehicle for the Federal Bureau of Investigations, *Crime Index* and the *Uniform Crime Report.* Simply stated, Crow Dog killed Spotted Tail, a rival chief who was seen as an agent of the administration of the Red Cloud Sioux Reservation. Crow Dog was subsequently sentenced to death by the First Judicial District Court of Dakota. He petitioned the U.S. Supreme Court on the basis that the crime occurred in Indian Country and involved only Indians, hence tribal law took precedent over U.S. statutes. The high court ruled in Crow Dog's favor (Crow Dog 1883).

This decision did not please the government and the U.S. Congress retaliated with passage of the Major Crimes Act in 1885. Here, seven major crimes (murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny) were brought under

federal jurisdiction. This action was seen as a major encroachment on tribal autonomy as promised in the removal treaties (French 1994). This policy, which exists to the present, is perhaps the best illustration of federal paternalism mentioned earlier.

ALLOTMENT

Allotment was the general application of deeded homesteads to all Indians at the expense of their collectively-held reservations. This time, however, instead of pertaining to the Navajo or Sioux, it was imposed upon the tribes forcefully removed to Indian Territory (Oklahoma). As usual, a new policy was offered in which earlier policies were negated, again at the expense of the American Indians. This is most evident in the realm of law and order.

Indian Territory became a haven for outlaws following the Civil War. It became known as *Robbers Roost* and *the land of the six-shooter.* What few realize is that from the 1830s until May 1, 1889, a unique form of justice prevailed in Indian Territory, one where the U.S. District Judge performed both the trial and appellate court functions. These were *federal courts of no appeal.* Shirley (1968) noted that under Judge Isaac Parker: "The death penalty was prescribed more often and for more flagrant violations of law than anywhere on the American continent."

In 1886, Indian Commissioner Atkins sowed the seeds of allotment in his annual report:

> Congress and the Executive of the United States are the supreme guardians of these mere wards, and can administer their affairs as any other guardian can. ...Congress can sell their surplus lands and distribute the proceeds equally among the owners for the purposes of civilization and the education of their children, and the protection of the infirm, and the establishment of the poor upon homesteads with stock and implements of husbandry. (Atkins 1886)

Again, the concern was really for the non-Indians who illegally intruded upon Indian lands. They could not vote on tribal issues. Moreover, they came under Judge Parker's jurisdiction and not the tribal courts. The outlaws and other squatters were soon joined by the *boomers*, non-Indian farmers who wanted to homestead Indian lands. In 1893, the U.S. Congress established a commission, headed by Senator Henry L. Dawes, to negotiate the allotment of lands belonging to the Five Civilized Tribes and the dissolution of their tribal governments. This action resulted in the Dawes Act. Initially the Five Civilized Tribes were exempt (Dawes 1887).

But by the 1880s, the U.S. Congress was moving toward ending tribal government and dividing Indian lands despite what previous treaties stated. The fact that all tribes were to be affected clearly indicated that the real purpose was again to open up promised Indian lands to white settlers. In 1889, President Benjamin Harrison supported Congress' effort to open up Indian Territory (Oklahoma) to white settlers. The vehicle for breaking previous treaties was the Curtis Act of June 28, 1898. This act abolished tribal laws and tribal courts, mandating that all persons in Indian Territory, regardless of race, come under U.S. authority. The Curtis Act authorized the earlier Dawes Act to proceed with the allotment of tribal lands thus dissolving all tribes within Indian Territory. This process was completed in 1907 at which time Indian Territory became the state of Oklahoma. Unfortunately Indians did not have the same weight of law on their side under federal and state jurisdictions and many Indian allotments were stolen from them due to a conspiracy of unsavory "boomers" and discriminatory courts (Fall 1959; Shirley 1968).

Ironically, Charles Curtis, the architect of tribal destruction in Indian Territory, was of mixed Indian heritage (white, Kaw and Osage) and he went on to serve four years as Herbert Hoover's Vice President. Like many mixed blood Indians who could pass within the larger dominant society he was a strong advocate of cultural genocide and full-assimilation of all American Indians. He felt that it was his destiny to force change upon who he believed were the less enlightened traditional Indians, even those members of the so-called Civilized Tribes. History attests to the misery caused by his self-righteousness and the audacity when he spoke for American Indians who strongly opposed both the Dawes and Curtis acts (Dawes 1891; French 1987; Prucha 1975; Unrau 1993).

In 1901, the U.S. Congress granted citizenship to Indians in Indian Territory (Oklahoma). In 1919, Indian citizenship status was extended to veterans of World War I, providing they initiated this action. Finally, on June 2, 1924, nearly sixty years after all African Americans were granted citizenship, all Indians born

within the United States were granted citizenship (U.S. Congress 1924).

REORGANIZATION

Reorganization (Wheeler-Howard Act of 1934) was the master plan for the current reservation system. This 180-degree reaction to Allotment resulted from years of abuse of Indian affairs mainly by those charged with protecting American Indians either as individuals under allotment or under tribal groups. The treatment of the Pueblo Indians illustrate this phenomenon. The nineteen Pueblo Tribes in New Mexico Territory were exempt from Allotment until 1912, when New Mexico became a state thus bringing the Pueblo tribes under federal control.

Albert Bacon Fall, President Harding's Secretary of the Interior, and the first U.S. Senator from New Mexico, was instrumental in a scheme designed to divide the Pueblo tribes, so that non-Indians (his rancher friends) could claim much of this territory. The vehicle for this deed was an attack on traditional Indian religion. Fall did this through his Commissioner of Indian Affairs, Charles H. Burke. The plan was similar to others promoting the theme of cultural genocide: condemn the Indians because of their adherence to traditional customs thus deeming them *uncivilized*. The first step was to outlaw, as an *Indian offense,* traditional dances and religious ceremonies. The next step was to enact a bill designed to take land from the Pueblo Indians. This was done by the Bursum Bill (Bursum 1922; Sando 1976).

The corruption associated with the Bursum Bill led to a study by the Brookings Institute. This study on Indian affairs led to a major report: *The Problem of Indian Administration* (Meriam 1928). Consequently, the study has come to be known as *The Meriam Report*. The two year Brookings Institute study resulted in a dismal portrayal of the shocking social and economic conditions among American Indians living under federal protection. The Meriam Report recommended individualized support for American Indians, another aspect of the cultural genocide theme whereby tribes and clans would be discouraged in favor of the individual in conjunction with the tenets of the Protestant Ethic. Again, education and job training were strongly recommended (Meriam 1928).

The Meriam Report set the stage for the appointment of the first seemingly progressive Indian Commissioner, John Collier. Appointed by President Roosevelt in 1933, Commissioner Collier lost no time in initiating New Deal relief programs for American Indians. Another outgrowth of the Meriam Report was the 1934 Johnson-O'Malley Act (J-O'M). This act allowed for federal monies to be allocated to states and territories for the provision of educational, medical, and social welfare services to Indians living off protected Indian lands (Wheeler 1934).

J-O'M provided Congressional support for Collier's progressive Indian education plan. By eliminating the Board of Indian Commissioners, a conservative group which supported Allotment and the boarding school concepts, and shifting the emphasis to near-reservation day schools, Collier set the stage for a unique form of mainstreaming. J-O'M established direct relationships between public schools and the Bureau of Indian Affairs, a relationship that continues to the present (French 1987; Johnson 1934).

The Johnson-O'Malley Act was augmented by the Wheeler-Howard Indian Reorganization Act (IRA). Indeed, these two acts were passed within two months of each other. While the IRA provided for annual funding for special Indian education, its most significant element was the prohibition of Allotment. The IRA also provided funds and governmental assistance for the purpose of expanding Indian trust lands as well as provisions relevant to tribal organization and incorporation. Again, tribes were encouraged to reorganize and to exercise their sovereignty, albeit limited, through the vehicle of tribal governments based on tribal constitutions (Wheeler 1934). Two years later this act was extended to Indians living in Oklahoma (U.S. Congress 1936).

Again, the 19 Pueblo Tribes of New Mexico were an exception. The 19 Pueblo Tribes were organized into a loose structure for centuries, however, a modern constitution recognizing this structure was adopted in 1965. Consequently, each Pueblo tribe continues to retain its own leadership and council, with an elected Governor. Together, the Governors elect a President for the all-Pueblo structure. This system is still in effect (Sando 1976). Another Pueblo group, the Hopi, were selected for Reorganization with the latent purpose of destroying their traditionalism. Toward this end, Commissioner Collier elicited the help of the Pulitzer Prize winning anthropologist, Oliver LaFarge. The idea was to both restrict the practice of traditional customs and the

reduction of their tribal lands. This policy resulted in the Hopi Reservation being reduced from the 2,499,588 acres decreed by President Chester A. Arthur to the present 631,194 acre Reservation. Thus, the Hopi, in violation of the IRA, were given a constitution they neither wrote nor adopted. This has resulted in a longstanding conflict between the Hopi and the Navajo tribes, a conflict which still remains unresolved (James 1983).

TERMINATION/RELOCATION

The duality in United States policy toward American Indians resurfaced once more during the Eisenhower administration. This time with the blatant destructive mandate of the dual policies of Termination and Relocation. Termination started with House Concurrent Resolution 108. On August 1, 1953, the U.S. Congress attempted to terminate federal supervision over American Indians, thereby subjecting them to the same laws as other citizens without protection as a special class. The sudden change in policy was strongly opposed by American Indians.

All Indian tribes in California, Florida, New York, and Texas along with the Flathead Tribe of Montana, the Lkamath Tribe of Oregon, the Potowatamie Tribe of Kansas and Nebraska, the Chippewa Tribe of Turtle Mountain Reservation in North Dakota, and the Menominee Tribe of Wisconsin were slated to be subjected to Termination. The failure of this experiment came mainly at the expense of the Menominee Tribe of Wisconsin (U.S. Congress 1953, 1954, 1973).

Public Law 280 augmented Termination by extending state jurisdiction over offenses committed by Indians in Indian Country (reservations). Again, a number of states were targeted for the initial stage of this experiment: California, Minnesota, Nebraska, Oregon, and Wisconsin. Relocation was yet another attempt at cultural genocide. The plan was to entice young adult Indians off the reservation into magnet urban areas. This process would serve to separate subsequent generations from their traditional language, culture and customs. Essentially, *Indianism* and the *Indian problem* would die with the elders who remained on the reservations (U.S. Congress 1953, 1954). Initiated in 1954, thousands of Indians were relocated. The American Indian Historical Society assessed Relocation as such:

> Finally, the federal government, jockeying precariously between policies of assimilation and the growing recognition that the tribes simply would not disappear together with their unique cultures, originated what has become known as the *Relocation Program*. ...The litany of that period provides the crassest example of government ignorance of the Indian situation. The *Indian problem* did not go away. It worsened. (Costo, Henry 1977)

Relocation survived, creating large urban populations of *marginal Indians*, individuals who are Indians in appearance but not in culture or language. Indeed, they hold membership in neither the larger dominant society nor their particular traditional culture. Moreover, in 1996, the federal government estimates that urban Indians, those the product of Relocation, will suffer most given the anticipated restriction of Indian Health Service (IHS) monies.

Termination, however, began and ended with the failed Menominee experiment. Termination was yet another attempt to force an element of the Protestant Ethic, here Capitalism, upon the existing communal tribal system. Within this model tribal enterprises would compete with those within the larger dominant society also being required to pay federal, state and local taxes. Each tribal member was assigned the status of "share holder" and would share profits and losses equally. Under this system, the Menominee fell deeper into poverty. The state and unsavory outsiders exploited the tribe in the name of capitalism. Authorized in 1954, the law did not take effect until 1961. A dire failure, Termination ended with the Menominee Restoration Act of 1973 when the tribe was restored again to federal status (Fixico 1992; U.S. Congress 1954, 1973).

SELF-DETERMINATION/ NEW FEDERALISM

The unrest of the Vietnam era spilled over into Indian Country with the emergence of the American Indian Movement (AIM). Like the Weatherman faction of the Students for a Democratic Society (SDS), AIM became the radical arm of concerned Indians during these turbulent years. AIM attempted to counteract the destructive policies of the past, demanding, instead, more autonomy and the right to cultural survival. This resulted in the Trail of Broken Treaties, a trek by concerned American Indians in November, 1972, with the purpose of hand-delivering their *twenty points* to

the White House. This, in effect, was the American Indian Movement's Indian Declaration of Independence from what they termed — white colonialism.

As would be expected given the government's past reaction to Indian concerns, this action resulted in a severe political backlash directed toward all American Indians and not merely toward the so-called AIM radicals. The punitive action this time took on the guise of Indian Self-Determination. In 1975, Congress passed Public Law 93-638, better known as Indian Self-Determination. On the surface, this program seemed designed to upgrade American Indian programs by placing them into the larger competitive United States pool whereby local, state, and regional agencies vie for federal subsidies through funding grants. Savvy tribal leaders feared from the start that this was just another attempt to eliminate federal support for some Indian programs thereby forcing them into greater poverty and marginality. They argued that white-run programs, which had the strongest political clout, would usually win over Indian program requests especially if the Indian requests are culturally-based and do not subscribe to the dominant culture's Protestant Ethic. The issue is mainly one of an ethnocentric interpretation of merit, given that merit is based on the values of the non-Indian reviewers.

Self-Determination was preceded by the American Indian Policy Review Commission, another Congressional attempt to ascertain the historic and legal status of American Indians within the United States. The Review Commission was initiated by U.S. Senator James Abourezk (South Dakota) in January, 1975 (Abourezk 1975). In their Final Report, the Review Commission made 206 recommendations, most being favorable to the Indian perspective such as Indian sovereignty and expanded federal trust responsibility. This process, however, was largely moot given that both the Indian Self-Determination Act of 1975 and the Indian Crimes Act of 1976 were passed prior to the Review Commission's Final Report.

The Indian Crime Act of 1976 expanded federal jurisdiction over tribes from the original 1885 Major Crimes Act. Now Indian defendants could be prosecuted in federal courts for an additional seven crimes for a total of fourteen offenses. It should be noted that this law was passed largely in reaction to the 1973 Wounded Knee uprising which resulted in the death of two FBI (Federal Bureau of Investigation) agents. The new law states that:

> Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, rape, carnal knowledge of any female not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.... (U.S. Congress 1976)

Instead of increasing self rule, the tribal authority continued to erode. In 1978, the U.S. Supreme Court held, in *Oliphant v. Suguamish Indian Tribe*, that tribes held no criminal jurisdiction over non-Indians in Indian Country (Oliphant 1978). This view was reinforced and expanded to include nonmember Indians by the U.S. Supreme Court in 1990 with *Duro v. Reina*:

> Nonmember Indians sought writ of habeas corpus and writ of prohibition challenging trial court's assertion of criminal jurisdiction over crime committed on reservations. ...The Supreme Court, Justice Kennedy, held that Indian tribes may not assert criminal jurisdiction over a nonmember Indian. (Duro 1990)

New Federalism (1989) emerged in the report of the Special Committee on Investigations of the Senate Select Committee on Indian Affairs. This new plan called for a reduction of federal programs but with continued federal oversight:

> The empowerment of tribal self-governance through formal, voluntary agreements must rest on mutual acceptance of four indispensable conditions:
>
> 1. The federal government must relinquish its current paternalistic controls over tribal affairs; in turn, the tribes must assume the full responsibilities of self-government;
> 2. Federal assets and annual appropriations must be transferred in toto to the tribes;
> 3. Formal agreements must be negotiated by tribal governments with written constitutions

that have been democratically approved by each tribe; and

4. Tribal governmental officials must be held fully accountable and subject to fundamental federal laws against corruption. (New Federalism 1989)

Tribal leaders call the New Federalism yet another blueprint for disaster like Allotment, Reorganization, Termination/Relocation, and Self-Determination. They see it as another effort by the U.S. government to renege on its treaties to American Indians. A current controversy surrounding the policy of New Federalism is Indian gaming. With a long history in Indian tradition, gaming has always been a popular pastime. However, on-reservation gaming gained prominence in the early 1980s as a direct result of cutbacks made under the Reagan administration's interpretation of Self-Determination. The Reagan administration offered the tribes gaming as a means to fill this federal fiscal shortfall. (The federal government has certain treaty obligations without guaranteed dollar amounts assigned to those obligations.) In 1982, the U.S. Supreme Court upheld Indian gaming using the Florida Seminole tribe as its test case. By 1984, tribal gaming was seen as a viable economic enterprise. At the 1984 National Congress of American Indians (NCAI) annual convention, many tribal leaders eagerly anticipated the report of the Indians' National Bingo Task Force. In October, 1988, a year prior to the New Federalism policy, Congress passed Public Law 100-497, the Indian Gaming Regulatory Act (IGRA). Essentially the IGRA distinguishes between three types of Indian gaming. Class I is designated for traditional Indian games or social activities played for nominal prizes; Class II designates games such as bingo, pull-tabs, and similar games, while Class III designates all other forms of gaming including slot machines, casino games, and sports and racing gambling. Class I gaming is regulated by the tribe while Class II gaming is regulated by the tribe with oversight by the IGRA Commission. Class III gaming, on the other hand, is regulated by both the IGRA Commission and a tribal-state compact. Class II and III gaming is not allowed on reservations located in states which do not allow any form of gambling (Utah and Hawaii).

Tribal gaming has become a viable resource among American Indians much like the lottery has become for state revenues. Yet fifteen years from its federal initiation, Indian gaming success appears to have many detractors including federal policy makers—those same bodies which claim to support Self-Determination. Again the dominant society appears to have a serious problem about American Indians when they succeed while, at the same time, retain their traditional tribal autonomy. As in the past, federal Indian policy waxes and wanes as it most likely will in the future. Nevertheless, most tribal leaders realize that federal oversight is necessary given the often blatant hostility which looms just below the surface within state and local jurisdictions and the public sector. The answer seems to lie in a balance between objective, unbiased, federal oversight and sufficient cultural latitude for the tribes.

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