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# A Fateful Time

*The Background and Legislative History  
of the Indian Reorganization Act*

2000



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## Preface

*The making and then the administration, of the Indian Reorganization Act, was central in the unfolding of a philosophy of democratic grass-roots action because [it] replaced the Bureau's authority with Indian autonomy*  
—John Collier, Commissioner of Indian Affairs, 1933–1945

*The reforms of the Indian New Deal failed to endure because, in the last analysis, they were imposed upon the Indians, who did not see these elaborate proposals as answers to their own wants and needs*  
—Graham D. Taylor, *The New Deal and American Indian Tribalism*

The quotations above typify polar and conflicting judgments on the significance and impact of the 1934 Indian Reorganization Act, or IRA.<sup>1</sup> This statute, often referred to as the Wheeler-Howard Act after its chief alleged congressional authors, belongs among the small group of national laws that has profoundly affected the lives of Native Americans.<sup>2</sup> The IRA was the most important general statute after the General Allotment Act of 1887 and probably the most important single statute affecting Indians during the two-thirds of a century since its passage. As one indicator of its importance, over half the Indian governments in the United States today are organized under its provisions or those of separate statutes (affecting Oklahoma and Alaska) that parallel the IRA in major ways.

Clearly, Native Americans and those who wish to understand their unique place in American life need to understand this statute. It is particularly important to be informed about the IRA's impact on the restricted ability of Native Americans to govern themselves.

Yet scholarly opinion on how the IRA has affected Indian governance is deeply divided. John Collier and Graham Taylor cannot both be right on this question, although the truth may well lie somewhere between their conclusions. The genesis of this book was the discovery that a study of the impact of the IRA on the Nevada Agency (which had authority over most Indians living in Nevada in the 1930s) could not be undertaken without an undisputed summary of the intent of the IRA, which did not exist.

Scholarly opinion until the mid-1970s usually ascribed to the IRA a generally positive role in Native American life, particularly with respect to self-

## Chapter One

# Indian Self-Government and the National Government During the 1920s

The Indian Reorganization Act grew out of the interaction of Native American societies with the United States government, particularly in the decade and a half before 1934. National government policy toward Native Americans had been far from consistent from the ratification of the Constitution to that date. In fact, the national government's efforts in this area were notable for numerous dramatic reversals of both programs and goals.

At first Native American societies were dealt with as sovereign nations, treaties were made with them, and the national government's activities were restricted chiefly to military, diplomatic, and trade relationships with various Indian societies. This policy resulted in a large de facto reduction of Native American landholdings but left large areas under Indian control. But in an abrupt change of direction during the 1830s, the national government removed many Native Americans beyond the Mississippi River to a new Indian Territory where they could govern themselves and have their land ownership rights protected while white Americans occupied their remaining lands east of the great river.

In the 1850s another reversal resulted in practice in a policy of creating reservations in the western United States. In 1871 Congress abruptly forbade further treaty-making, although existing treaties were not abrogated and in practice much of the previous pattern persisted in the form of agreements made with various societies. However, one aspect of the new policy was a subtle but important shift toward treating Indians on reservations as to some degree under the authority of the national government, although the courts ruled that Indians were not under the jurisdiction of the United States and therefore did not become citizens by birth after adoption of the Fourteenth Amendment to the federal Constitution. In practice, national government control over Indians expanded.

In still another about-face, at the end of the nineteenth century and the beginning of the twentieth the promise to maintain the Indian Territory as an inviolate preserve was violated. Oklahoma was officially opened to non-

Indian settlement, the Indian governments that had functioned for decades in various Indian communities within the territory were destroyed, and Indian lands were once more greatly reduced

From the 1880s on, the national government, at both administrative and congressional levels, was dominated by advocates of the ideology of forced assimilation and by the allotment policy (to be discussed more fully in the next chapter) This well-established pattern provided the background for the events of the 1920s, which prepared the way for the Indian Reorganization Act

Several elements of the system that had been in place since the 1880s, particularly those strongly affecting Native American self-government, are noted in the next chapter First, however, it is necessary to record that Indian law, as created and interpreted by judges, had not changed as much or as erratically as policy created by administrators and legislators In fact, in a fundamental sense there was an underlying consistency in judge-made Indian law, a circumstance that created conflict between Indian law and the policies pursued at various times by Congress

### The Conflict between Law and Administration

The Constitution of the United States is practically silent on the role of Indians in the American polity It authorizes the Congress to regulate foreign and interstate commerce plus commerce "with the Indian Tribes," and it states that "Indians not taxed" will not be counted when congressional seats are allocated among states Both of these provisions arise from the recognition that very few Native Americans were citizens or subjects of the United States in any sense when the Constitution was ratified The most important aspect of early national/Native American interactions for many decades—the treaty-making process—does not specifically mention Indian nations as parties to such agreements

The national judiciary, especially the Supreme Court, created the structure of law relating to Native Americans after the Constitution was adopted This legal structure, unique in this country—no other groups have the legal standing of Indians—is also unique among other nation-states, although in recent decades there have been attempts in some other countries to move toward the US pattern This legal structure was in place and being followed by the courts during the 1920s and early 1930s, although the brilliant codification by Felix Cohen in the *Handbook of Federal Indian Law* did not systematize the structure and reveal its underlying symmetry until the 1940s<sup>1</sup>

The basic elements of this legal system were formulated initially and primarily by Chief Justice John Marshall in the first third of the nineteenth cen-

tury After examining how European nations and then the early United States had defined Native Americans legally, Marshall concluded, in *Worcester v Georgia*, that

the Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights The very term "nation," so generally applied to them, means "a people distinct from others" The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, admits their rank among those powers who are capable of making treaties The words "treaty" and "nation," are words of our own language We have applied them to Indians, as we have applied them to the other nations of the earth, they are applied to all in the same sense<sup>2</sup>

Marshall was giving legal meaning to the practice of concluding treaties with Indian nations, hundreds of these documents were negotiated (although some were not ratified) before Congress stopped the practice in 1871 But even when treaty-making ceased, the existing treaties were stated to be still in effect and binding, they are still appealed to in legal proceedings, although the Supreme Court has held that Congress can unilaterally revoke a treaty, by implication as well as explicitly<sup>3</sup>

Several aspects of the structure of Indian law created by the courts and judicial interpretation of the treaties can be summarized as they still existed in 1920 These were

- 1 Native American governments no longer possessed the right to control their foreign policies, for this purpose the national government had assumed sole authority However, some Indian nations today still insist that they retain some rights of sovereign nations in this area
- 2 From their perspective, the European nation-states that came to North America had acquired ownership in some sense of the lands belonging to Native American societies simply by "discovering" them Chief Justice John Marshall again wrote the first and most fundamental court decision on this question, *Johnson v McIntosh*<sup>4</sup> In this opinion, Marshall held that the first non-natives on the scene had gained an ownership right over Native lands simply by being the first Europeans to assert such a right But the right was not absolute, in practice, it amounted to an exclusive authority as against other European nation-states to acquire the lands of Native societies by various legal means In other words, Indians had to be dispossessed of their lands by conquest, purchase, or agreement (in the form of treaties) in spite of this discovery right Indians retained occupancy rights to their lands until legally divested of them by one of these means

Marshall ruled that the US government had inherited the authority to acquire Indian occupancy rights when it came into existence. Because of the supremacy clause of the Constitution, only the national government—not states or individuals—could acquire full ownership of Indian lands. In practice, Native Americans were deprived eventually of almost all of their property through many means, only some of which were legal.

Legally, most Indian property rights questions were not settled until the 1980s, when in almost all cases the Indian Claims Commission created by Congress in 1946 completed its work. However, it did so by taking it for granted that all Native American lands except those remaining in reservations had by that time been lost, the only issue it would consider was whether compensation to the survivors should be paid and, if so, how much. In a few instances Native Americans were still claiming in the 1990s that their property rights had never been extinguished.<sup>5</sup>

- 3 The United States Supreme Court in the first decade of this century declared that Indians living on reservations possessed water rights dating from the creation of the reservation, whether or not these were explicitly stated in treaties or other formal documents. In the 1905 *Winters* case, which dealt with fishing rights, the court stated the underlying logic behind this decision: Indians possessed aboriginal rights and continued to retain them unless they had agreed to relinquish them or Congress had abolished them. In 1908, in *Winters v. United States*, this logic was extended to water rights.<sup>6</sup> Thus, even in periods when Congress ignored Indian rights, the courts sometimes extended them.
- 4 In practice after the late 1860s, many (although certainly not all) Indians lived on reservations. From an Indian point of view these were remnants of their former holdings still under their control, from the standpoint of the courts the reservations were areas held in trust for Indians by the national government. Again because of the supremacy clause, states had no jurisdiction over reservations except where explicitly granted it by Congress.
- 5 The federal government had a legal obligation, derived from provisions of treaties, to protect the rights of Indians on reservations against state and local governments and individuals. As Marshall put it, the relation between the national government and Native American societies resembles that of a guardian to a ward. Down to the present, there has never been any legal doubt that the national government owes some kind of protection to Indians. At times actual governmental behavior has fallen far short of upholding this obligation and at other times actions have been taken in

direct contradiction to this responsibility, but the courts have consistently maintained that the national government has a trust responsibility toward Indians.

- 6 In the early years of this century, in *Lone Wolf v. Hitchcock*, the Supreme Court ruled that Congress has plenary power over Indians, it can revoke treaties and even Indian sovereignty if it chooses to do so, and can extend national authority over Indian nations at will. However, before 1920 there had been no general abolition of Indian sovereignty. Piecemeal statutes, such as the Major Crimes Act (passed in 1885 to overcome a court decision resting on the fact that the national government had never acquired criminal jurisdiction over individual Indians), had eroded Indian sovereignty to a significant extent. One of the most egregious of these statutes, the destruction of the Indian Territory without Indian consent, had provided the occasion for the ruling in the *Lone Wolf* case. In some instances the sovereign rights of particular societies had been abolished or drastically reduced. Moreover, the Supreme Court had sustained the allotment policy, which had resulted in practice in the loss of huge amounts of Indian land. These exceptions did not, however, eliminate much remaining Indian sovereignty.

The plenary power doctrine has proved in recent decades a potent means of diminishing Indian sovereignty. While "it is settled today that Congress is subject to constitutional strictures in its dealings with Indians," the Supreme Court has never in fact declared unconstitutional any statute dealing with Indians, even when these have abolished Native governments without their consent, taken their property, denied them Indian status, or violated their rights in other ways.<sup>7</sup> But most of these results of the pernicious plenary power doctrine lay in the future when the second decade of the twentieth century opened.

- 7 One of the most important remaining aspects of Indian sovereignty was the right of Native American societies to govern themselves. This right had existed before Europeans arrived in the New World and had never been withdrawn except in limited ways. As Felix Cohen wrote in "Powers of Indian Tribes" and later in the *Handbook*, "Perhaps the most basic principle of all Indian law, supported by a host of decisions hereinafter analyzed, is the principle that *those powers lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished*. Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation" (italics in original).<sup>8</sup>

In other words, during the 1920s the courts recognized that Indian societies had substantial rights, not derived from the Constitution, that had never been taken away from them. These rights were not as extensive as they once had been, but they were still real as far as the courts were concerned. One aspect of this legal theory was the recognition that Indian societies had the right to govern themselves, by political structures of their own choosing.

Overall, as John Collier noted during the 1920s, Indian policy was a type of colonial rule, the underlying reality was that Europeans and then the Americans who were culturally their descendants had made the most important decisions for Native American societies for some time. But there have been a number of different patterns of colonial rule during the last few centuries, when European control extended to most of the world before it started to recede during World War II. In the American model, the legal doctrines outlined here constituted (and remain) a major element of the colonial pattern, which by no means abolished Indian sovereignty.

A number of statutes still in force during the 1920s grew out of and often explicitly stated these legal realities. Appropriation laws often contained specific items to carry out specific treaty-based obligations. Moreover, several statutes authorized the making of agreements with Indian societies—a replacement for treaties in many instances. For example, Section 424 of Title 25 of *The Code of Laws of the United States* as it stood in 1925 authorized the secretary of the Interior to negotiate “agreements with any Indians for the session to the United States of portions of their respective reservations of surplus lands.”<sup>10</sup>

Numerous statutes required the consent of Indian societies, sometimes explicitly of their governments, before certain actions could be taken. For example, the president was authorized to consolidate two or more Indian agencies “with the consent of the tribes to be affected thereby, expressed in the usual manner.” One of these consent statutes, which played an important role during the 1920s in establishing the Navajo Tribal Council, had been enacted in 1891. Section 327 of Title 25 stated that “where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the council speaking for such Indians” under “terms and conditions” proposed by the Indian agent and subject to the approval of the secretary of the Interior.

There were also numerous statutes referring to governing authorities of specific tribes or nations. The word *council* was used in two other statutes, in addition to the one cited above, eight statutes referred to the “chief” or “chiefs” or “headmen” of tribes, and one referred to the “heads of tribes or bands.” Another of these statutes gave superintendents of Indian affairs the authority to punish a trespasser on allotted lands, if the person was a “chief or headman of

a band or tribe,” by suspending the trespasser from office for three months. Still another statute allowed the secretary of the Interior to let Indian governing authorities control agency employees. This law stated that “where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe.”<sup>11</sup> The term *tribal authorities* is used in another section and *tribal organization* in a third.

One of the most important laws acknowledged the criminal authority of Indian governments (even though, as noted above, national law applied to a small number of specified crimes). Section 218 of Title 25 stated that the general criminal law of the United States did not extend “to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe.”

These statutes were often ignored, but occasionally they decided important questions. One of the few Supreme Court decisions during the 1920s dealing with the authority of Native American governments declared invalid an agreement between a non-Indian and the governor of the Indian village of Santa Rosa in Arizona. The inhabitants of this village were part of the Tohono O’odham nation, then known to the federal government as the Papago tribe. The agreement was declared invalid because it did not have the consent of the council of the village, as required by law. The decision relied partly on the obligation of the national government to protect Indian rights; it stated that “the rights of Indians, unlettered and under national wardship, are here involved.” But the decision also turned on the fact that the contract that gave rise to the case violated two national laws then in force. One of these provided explicitly that any agreement by “their tribal authorities” affecting the lands of Indians had to contain an explicit written statement of “the ‘scope of authority’” of the government involved and “the reason for exercising that authority.” Because the agreement did not meet this statutory requirement, it was invalid.<sup>12</sup>

Another example of the importance of statutory as well as judge-made law during this period is that an effort by the BIA to change Indian customs of marriage and divorce was aborted by a legal opinion citing both kinds of law to support the conclusion that “so long as Indians continue in tribal relations their domestic affairs are controlled by their peculiar customs.” Specifically, this opinion held that the validity of “Indian custom” marriages was recognized by several statutes and court opinions.<sup>13</sup> Partly in response to this opinion, an effort was made in 1926 (described below) to get Congress to outlaw marriages in conformity with tribal law, but this effort failed.

Another illustration of the importance of the legal structure was that the

granting by Congress in 1924 of citizenship to all Indians not already citizens had little impact on the authority of Indian governments. The courts held that, because the Congress had not stated explicitly that declaring Indians to be citizens was intended to eliminate tribal authority, it had not had this effect. Likewise, the courts held that the Dawes Act (the general statute providing for allotment of Indian lands) had not automatically changed the legal status of Indians. This result was reached because the statute had not stated explicitly that this status was changed, although perhaps Congress assumed that it was. Both of these issues are discussed more fully in the next chapter.

### Administrators and Indian Self-Government

Felix Cohen noted in his *Handbook* the unfortunate fact that there has often been a difference between the way courts and administrators have viewed the legal status of Native Americans. He wrote that "the Indian's right of self-government is a right which has been consistently practiced by the courts, frequently recognized and intermittently ignored by treaty-makers and legislators, and very widely disregarded by administrative officials."<sup>14</sup> The gap between these two perceptions of Indian law in fact was a central problem for Indians for several decades before the Indian Reorganization Act.

The actual treatment of Native American governments by officials of the national government agency with primary responsibility for dealing with them is quite complex, however. On the one hand, the leadership of the BIA undoubtedly believed that the proper goal of their work was the eventual abolition of Indian self-government. Buttressing this view was the concomitant belief that in many Native American societies such governments had disappeared.

On the other hand, the BIA in fact recognized many Indian governments and even had an *unwritten* policy for doing so, which gave the Bureau practically unlimited authority to decide when, whether, and under what conditions to extend such recognition. Moreover, the agency created several such governments, or attempted to do so, when such action would serve its objectives. In short, the BIA actually dealt with existing governments in many instances, in spite of the belief that such governments did not exist.<sup>15</sup>

#### THE IDEOLOGY OF FORCED ASSIMILATION

The commissioners of Indian Affairs from John D. C. Atkins (who was in office when the Dawes Act was passed) to 1929 had been united in their belief that their task was to bring about the assimilation of American Indians into general *American culture*. This was even true of the first commissioner who was an

Indian—Ely S. Parker. The hostility to Indian self-government was merely one aspect of this underlying policy orientation, which was a well-worked-out system of ideas. Forced assimilation is the most appropriate name for this pattern of ideas, because its essence was that Indians were to be compelled to become assimilated rather than offered choices.<sup>16</sup>

One of the strongest advocates of forced assimilation, who clearly stated the implication of this ideology for Indian self-government, was Theodore Roosevelt. With his usual forthrightness and vigor, Roosevelt stated in 1889 that "nowadays we undoubtedly ought to break up the great Indian reservations, disregard the tribal governments, allot the land in severalty (with, however, only a limited power of alienation), and treat the Indians as we do other citizens, with certain exceptions—for their sakes as well as ours."<sup>17</sup>

By the time he had become president, Roosevelt was sure that it was time to complete the assimilation of the Indians, chiefly because of the impact of the allotment policy on their societies. He said in his first annual message to Congress that "in my judgment the time has arrived when we should definitely make up our minds to recognize the Indian as an individual and not as a member of a tribe. The General Allotment Act is a mighty pulverizing engine to break up the tribal mass. We should now break up the tribal funds, doing for them what allotment does for the tribal lands, that is, they should be divided into individual holdings. The marriage laws of the Indians should be made the same as those of the whites."<sup>18</sup>

These statements clearly express the determination to use national authority to accomplish assimilation. At the same time, partly because the federal courts continued to recognize Indian sovereignty, partly because federal administrative control was assumed to be a necessary tool to force assimilation, and partly because the self-preservation needs of the BIA undoubtedly helped shape policy, national administrators continued to acknowledge the trust responsibilities of the national government toward Native American societies. In fact, no major steps to speed up the process of assimilation were taken during the 1920s.

Frederick F. Hoxie, in *A Jural Promise: The Campaign to Assimilate the Indians, 1880–1920*, has argued that between passage of the Dawes Act in 1887 and 1920 a significant shift took place in the societal and governmental views of Native Americans. According to Hoxie, by 1920 government officials had given up on actually achieving the goals of the forced assimilation policy and had begun to view Indians as a "minority group" doomed by its racial backwardness to a permanent position of inferiority in American society.<sup>19</sup>

While this thesis is discussed more fully in chapter 2, during the 1920s the highest governmental officials dealing with Indians displayed no indication that they had given up on the ultimate goal of assimilating Indians into the

wider society. It is also the case that they had not switched to a policy of termination, which called for ending immediately the unique Indian legal status

#### THE BURKE ADMINISTRATION

Charles H. Burke served as commissioner of Indian Affairs from May 7, 1921, until March 9, 1929, during the Harding and Coolidge administrations under Secretaries of the Interior Albert B. Fall, Hubert Work, and, briefly, Roy D. West. Burke was a former six-term representative from South Dakota, a state with a large Indian population, and had served on the Indian Affairs Committee of the House before his appointment. One of the major modifications of the allotment policy, the Burke Act of 1906, was named after him.<sup>20</sup>

Burke's assistant commissioner was Edgar B. Meritt, a career civil servant who had started his federal service in the Government Printing Office before the turn of the century. About 1905 he had transferred to the Bureau of Indian Affairs and there served in various positions, including the Bureau's "chief law officer," until he was appointed to the second-most important post in the Bureau in 1913, during the Wilson administration. In 1933, although he had not been in high office in the Bureau for four years, Meritt was a strong candidate for Indian commissioner because he was backed by the majority leader of the Senate, Joseph Robinson of Arkansas, Meritt's home state.<sup>21</sup>

Meritt agreed with Burke in viewing assimilation as the goal of the Bureau's efforts, and these views were supported by the secretaries of the Interior for whom Burke and Meritt worked. However, both also agreed that the national government should perform its wardship responsibility toward Indians as long as substantial numbers of them were not assimilated.

The annual reports of the BIA during the 1920s contain numerous statements of the forced assimilation theory, such as the assertion in the 1921 commissioner's report that the "general course" of governmental policy was based on the allotment to individual Indians of "freeholds in severalty, with the aim of inducing by this transfer of tribal to individual holdings a departure from old communal traits and customs to self-dependent conditions and to a democratic conception of the civilization with which the Indian must be assimilated if he is to survive."<sup>22</sup>

In 1923 Commissioner Burke contributed a foreword to a book on Indian policy reflecting the viewpoint of Protestant missionaries working with Indians. The author of the book, Rev. G. E. Lindquist, had written that the nation had gone through three periods of Indian policy: "Extermination, Concentration, Assimilation." Under the last, gratifying progress has been made along material, mental and spiritual lines, and it is unbelievable that there will be any return to the older policies. "Burke described the "present policy" of assimilation

Practically all our work for the civilization of the Indian has become educational: teaching the language he must of necessity adopt, the academic knowledge essential to ordinary business transactions, the common arts and crafts of the home and field, how to provide a settled dwelling and elevate its domestic quality, how to get well when he is sick and how to stay well, how to make the best use of his land and the water accessible to it, how to raise the right kind of live-stock, how to work for a living, save money and start a bank account, how to want something he can call his own, a material possession with the happiness and comforts of family life and a pride in the prosperity of his children, teaching him to see the future as a new era and one inevitably different from his past, in which individual ambition, unaided by the show and trappings of ancient custom, must contend with the complexities and competition of a modern world.

In an interview with a writer in the same year, Burke put it more succinctly: "I believe in making the Indian take his chance, just the same as white folks do."<sup>23</sup> This view, of course, took it for granted that Indians were still "savages" lacking even the most fundamental knowledge necessary for "civilized" life, they could not even take care of their own health or housing and knew no "arts and crafts" of value.

In a magazine article published in 1924, Secretary Work wrote,

The instrument of guardianship prolonged into adult life of white or red man, dwarfs the initiative of imagination and breeds helplessness, while doles develop mendicancy.

Thoughtful people know that without thrift there can be no substantial character development in man of any race, and also that communism paralyzes industry.

How then to encourage individual industry, thrift and responsibility, the three graces of self-respect, is our fundamental problem.<sup>24</sup>

Although several case histories of the actual treatment of Native American governments by the BIA during the 1920s are mentioned here, it should be kept in mind in this and following chapters that only a small portion of events that determined the actual interaction of BIA officials with Indian governments at the reservation level can be documented from records in the National Archives Building, because most of what transpired occurred at the reservation level. The number of employees of the Bureau actually working in Washington during this period was around two hundred, while the rest of the approximately six thousand employees of this agency were field-workers. Moreover, almost all the Indians lived west of the Mississippi, far from the national office.

These facts are of special significance because the Bureau was organized on an agency basis. I had assumed initially that it would be easy to find Bureau and Interior Department files outlining the general policies followed in this and other areas, but quickly learned that there were no such files. In order to investigate Bureau actions toward Indian governments one must consult the individual agency records that made it to Washington and were preserved. Obviously no complete study of all of these files was attempted for this work.

Some actions of the national government, during the Burke years, that bore directly on Indian self-government conform with what would be anticipated on the basis of the forced assimilation ideology. The organization of governments desired by the Indians themselves was discouraged. Two examples from documents in the National Archives illustrate this.

In 1921 the White House sent to Secretary of the Interior Albert B. Fall a letter and petition from the Rappahannock Indian Association. The petition asked for government recognition of tribal and intertribal councils and for the creation of an elected national intertribal council, representing all tribes, to present Indian views to Congress.<sup>25</sup> The reply of Secretary Fall stated his disapproval of the idea of recognizing and fostering "tribal and inter-tribal organization." He said that "it has long been the policy of the Indian Bureau to eliminate tribal government and much of the old tribal customs and social conditions, and to fit the Indians as rapidly as possible by education and industrial direction for self-support simply as American citizens."

The secretary stated that individual Indians had no difficulty in making their views known to the Bureau of Indian Affairs and to Congress and that "Indians may convene in council on their reservations." They also, he said, "frequently visit Washington to take up matters personally with the Indian Bureau."

The reference to temporary councils in this letter is illustrated by voluminous documents in the National Archives recording many councils of Sioux Indians during the 1920s to deal with claims that the Black Hills and other parts of their homeland had been taken from them illegally. The attempt to secure return of the Black Hills still continues, although the Sioux have been awarded money damages for treaty violations. During the 1920s, there were many councils at various locations within aboriginal Sioux country in the successful attempt to get Congress to pass a special jurisdictional act permitting a suit against the government on this issue and to work with attorneys on the outlines of such a suit. In 1863 Congress had denied Indians the right to sue the United States through the new Court of Claims. Not until 1920 did Indian nations begin to sue the federal government by securing specific congressional statutes allowing such suits. One of these was a 1920 law authorizing suit by

Sioux Indians against the United States, which they eventually lost in the Court of Claims in 1942.<sup>26</sup>

At one stage of this process there was an attempt to organize a government for the entire Sioux Nation, which had been divided by the creation of various reservations within their country during the nineteenth century. The BIA refused this request, on the ground that the U.S. government did not believe in letting Indians organize. In this instance, also, there were reports from various superintendents of Sioux reservations clearly displaying hostility at the local level as well against organization of new Indian governments. These replies were firmly rooted in the forced assimilation theory.

In 1921, a group of Sioux Indians proposed creation of a "Great Council of the Dakota Nation." They submitted a draft constitution and bylaws to Commissioner Burke through South Dakota Representative William Williamson, a member of the Indian Affairs Committee. The constitution proposed that delegates be elected by "adult male members" of the Pine Ridge, Rosebud, Lower Brule, Santee, Crow Creek, Cheyenne River, and Standing Rock Reservations, which together were referred to as "the Great Sioux nation." Perhaps because Representative Williamson had said that "it strikes me that the idea is a good one and that the Indians should be encouraged in effecting this organization," Commissioner Burke solicited the opinions of the various superintendents of these reservations before replying to the letter.<sup>27</sup>

All seven superintendents opposed the suggestion and most stated hostility to the idea that Indians should be represented by their own organizations. A major theme of the replies was that the Indians involved already spent too much time in local councils and would be much better off if they would spend more time working on their individual farms. For example, the superintendent of the Lower Brule Reservation wrote Commissioner Burke that "there is not a head of a family among the Sioux who does not have some of the best land in the state he lives in and other means such as treaty benefits and heirship money to put him on the high road to a financial success and the very fact that he leaves this to attend such meetings as is proposed is just why he has nothing for himself and family."

Another superintendent thought that the new organization would be difficult to control, suggesting that the device of a temporary council, "organized and meeting at the call of the Commissioner, should be all that is necessary to handle the Black Hills matter or anything else which is of particular interest to the Sioux Nation." Another suggested that the council would probably be dominated by "demagogues" rather than the "better class of Indians and those who have truly progressed toward where we want them to go [and who] never attend councils."

Partly on the basis of these replies, Burke wrote Representative Williamson on September 18, 1921, that he doubted "if there is any sound or practical reason for encouraging the proposed Great Council of the Dakota Nation." In giving his reasons for reaching this conclusion, he repeated the arguments he had heard from the superintendents, beginning with the assertion that Indians "have their tribal councils under authority of this Office for all ordinary and local transactions." He also claimed that the temporary councils had worked well to let the Sioux pursue their claims. Moreover, he clearly expressed the general hostility toward Indian government that was part of the forced assimilation ideology, stating that "it is not desirable or consistent with the general welfare to promote [the Indian's] tribal characteristics and organization. What he needs most is individualization and a dissolution of tribal relations, in order to become assimilable and self-supporting in American life."

Possibly Burke had other, unstated reasons for acting as he did, indeed, the incident as related here does not reflect its context in the complex pattern of relations between the Sioux and the federal government. Whatever Burke's reasons, his response to Williamson illustrates a fundamental view toward Indian governments that was prevalent in the 1920s.

Another sample of the hostile attitude of the Burke administration toward Indian self-governance occurred in 1926, when the administration made a strong effort to get the Congress to pass laws outlawing Indian custom marriages, legalizing the Courts of Indian Offenses that had been established without statutory authority on some reservations, and greatly extending the reach of national and state civil and criminal laws over reservations. For several months—from February 13 to May 20, 1926—the House Committee on Indian Affairs held hearings on H R 7826, which had been introduced by Chairman Scott Leavitt of Montana at the request of Secretary of the Interior Hubert Work.<sup>28</sup>

The administration, responding to complaints from missionaries of alleged immoral practices on various reservations, had first tried by administrative action to outlaw marriages conducted solely according to Native American customs, but had been told by its legal staff that this could not be done without a change in the law. H R 7826 flatly declared that "Indian custom marriage and divorce are hereby abolished from and after one year from the date of approval of this Act and thereafter Indians shall comply with the marriage and divorce laws of the State within which they reside." Marriages of reservation Indians that had taken place before passage were to be still valid.<sup>29</sup>

But the bill went far beyond this issue. For one thing, it legalized the Courts of Indian Offenses. These institutions lacked specific statutory authority, although the commissioner of Indian Affairs had issued regulations governing their organization in 1883 and Congress had appropriated money for them

since 1888. Courts of Indian Offenses did not exist on every reservation, but where they did they were appointed by and responsible to agents or superintendents, although the judges (and the police who also usually were appointed at the same time) were usually Indians. These "courts" administered rules promulgated by the agents or superintendents and were instruments of administration more than true courts. The bill to legalize them provided that "the reservation courts of Indian offenses shall have jurisdiction, under rules and regulations prescribed by the Secretary of the Interior, over offenses committed by Indians on Indian reservations, for which no punishment is provided by Federal law, *Provided*, That any one sentence of said courts shall not exceed six months' imprisonment or labor or a fine of \$100 or both."<sup>30</sup>

The third major provision of H R 7826 was a sweeping extension of national law over Indians. As the law then stood, only the offenses specified in the *Major Crimes Act* applied to Indians on reservations. This bill proposed that "hereafter the civil and criminal laws of the United States shall apply to Indians and the United States district and circuit courts shall have jurisdiction of crimes and misdemeanors or other violations of Federal statutes committed within Indian reservations by or against Indians." Precisely what laws would have been extended to Indians without their consent is not clear—national criminal law was quite restricted at that time—but obviously the measure would have substantially increased the scope of both civil and criminal law applying to Indians, thus superseding traditional Native American law.

The 1926 "law and order" bill did not become law, it was opposed by various Indian and non-Indian opponents as unconstitutional as well as imprudent. Nevertheless, it demonstrated the existence of a significant body of opinion that held that the authority of most Indian governments was nearly or entirely gone. Even John Collier, the leader of the Indian reform movement at that time and later commissioner of Indian Affairs, subscribed to this view (see chap. 6).

#### RECOGNITION OR ORGANIZATION OF INDIAN GOVERNMENTS

In spite of the general hostility to the idea that Indians should be dealt with in a corporate capacity, in fact the Bureau of Indian Affairs in this period still did business in many cases with Indian governments. Commissioner Burke, as noted above, even asserted that many of these governments existed "under authority" of the Indian Office. Clearly, the BIA did officially recognize some Indian governments during this period, although no overall policy stating the bases for such recognition and the procedures for bringing it about has been discovered. In other instances the BIA itself organized or attempted to organize Indian governing structures.

Some understanding of the reasons for the actual policy pursued by the

Bureau at the national level can be achieved by looking at aspects of the general situation facing it during the 1920s and several instances in which the national leadership of the Bureau brought about Indian organization or attempted to do so

First, many traditional Native American governments, perhaps most, still existed. These governments were authoritative to their members and in practice their existence could not be ignored completely by Bureau officials. No comprehensive listing of Indian governments during the 1920s for the entire nation is available, but the existence of many governments of this sort is obvious (see chap. 2).

Another element in the situation is that the general hostility to Indian governments on the part of the BIA did not always extend to "business councils," a relatively new form of Indian government. In fact, the Bureau not infrequently encouraged organizations of this type. Undoubtedly the Bureau usually thought of business councils as something akin to chambers of commerce, for primarily business purposes, rather than as general-purpose governments, and this must have been a reason for favoring them. The actual role played in governance by these business councils no doubt varied from place to place and time to time. In some cases they probably competed with traditional governing structures for the authority to govern, in other cases they may have concerned themselves with questions not normally handled by Indian governments, and in other cases they probably provided at least the rudiments of governance in situations in which traditional structures had in fact broken down.

In some instances, the BIA clearly encouraged the creation of structures with the characteristics of general-purpose governments. If its objectives could be achieved more readily by encouraging or initiating such organizations, the Bureau often did so. Examination of several examples of such action by the Bureau can aid understanding of the role of the national government in relation to Indian self-government during the 1920s.

The present government of the Navajo Nation, the largest Native American society on the largest reservation in the United States, was created by the BIA during the 1920s. Before the mid-1920s, Navajo political organization was highly decentralized, as was Navajo society. After 1868 the Navajos lived primarily by herding—chiefly sheep and goats—supplemented by a little hunting, such limited agriculture as was possible in their arid environment, and sale of woolen rugs or blankets or silver jewelry. They were spread in small family-based groups over a very large territory, comprising reservation and non-reservation lands, nothing like villages or towns existed for many decades.<sup>31</sup>

There was no decision-making structure at the level of the Navajo Nation as a whole. Anthropologist Mary Shepardson has stated that the Navajo Nation

was not "a corporate group, it was never centralized nor organized as a unit, but rather represented a community of language and culture shared by a people who occupied a common territory. Common speech and customs, widespread linkages through marriage induced by clan exogamy, and shared religious practices formed the basis for cohesion. Anthropologists at present agree that the Navajo tribe was traditionally not a political unit."<sup>32</sup>

Complex decision-making structures existed, but at the local level. "The locus of authority was in the various functional groups, the biological family, the extended family, the outfit, the local group, the raiding party, the hunting party, and the ceremonial gathering. The highest authority lay in the agreement achieved within the group after matters had been 'talked over.'" Leaders within this decentralized structure were persons with specialized knowledge or skills and/or persons whose advice was given great weight because of the respect in which they were held.<sup>33</sup>

This pattern had been the traditional one among the Dine, their name for themselves, it had existed for the hundreds of years during which the nation had inhabited its Southwestern homeland. After the defeat of the Navajos by the United States and their return from exile in Fort Sumner in 1868 the pattern remained essentially the same, although during the period of active conflict with the United States temporary decision-making structures apparently developed.

Often, local agents of the Bureau introduced a significant change. "The early Navajo Agents needed some form of political organization for communication with the wide-ranging tribe, and so instituted the appointment of a headman or chief."<sup>34</sup> This was still a decentralized system, however, no attempt was made to appoint an overall chief for all Navajos.

Moreover, the Bureau's own structure for dealing with the Navajos was also decentralized. Between 1901 and 1908, for example, the large Navajo Reservation was divided in several stages into six agencies (including the Hopi Agency), and this system remained until the centralization introduced by the Collier administration in the 1930s.<sup>35</sup>

The relation of the appointed headman system to the actual local governing structure is difficult to characterize, because of lack of information and because undoubtedly there was substantial variation from time to time and location to location. Clearly the system had been initiated by the national government to serve its purposes, yet it is also clear that the headman in practice "represented his people to the Agent, and in turn the Agent to his people, on matters of yearly rations, law enforcement, and Indian Office programs." The degree of control exercised by each party no doubt depended in part on the personal characteristics of the headmen and the government officials. However, it also depended on the extent to which headmen were parts of the local

decision-making structure. As Shepardson put it, "In some cases the appointment of a headman only confirmed de facto leadership, in some cases Government recognition destroyed the prestige of an informal local leader. Recalcitrant headmen were either ignored or replaced."<sup>36</sup>

During the 1920s the Bureau changed this structure in two ways, both of which were elements in the later Navajo Nation government that evolved from these beginnings. First, the Bureau created a decision-making structure for the entire nation. Second, it modified the headman system to introduce the principle that local leaders were elected and to establish new local political units.

Chee Dodge, the first chairman of the Navajo Tribal Council and an important leader among his people for decades, wrote in a 1928 letter that he had sometime earlier suggested the creation of the tribal council (although when he wrote the letter he had come to the conclusion that the council should be abolished). Perhaps this is correct, but records in the National Archives make it clear that the Bureau took the initiative to organize the council to meet a problem it had encountered, not to respond to Navajo desires.<sup>37</sup>

According to Herbert J. Hagerman, the organizer of the council, the reason the Bureau saw for taking this step was "the necessity of organizing the Tribe in order to legally lease their oil lands."<sup>38</sup> In 1921, oil companies requested permission to prospect on the Navajo reservations. Oil was found, and there was then pressure to lease the land and remove the oil. Under the 1891 statute (mentioned above), as interpreted by the attorneys for the Bureau, the consent of the Indians was required before the land could be leased.

Initially the superintendent of the San Juan Agency called local councils to approve oil leasing. From May 7, 1921, until the organization of the tribe in 1922-1923, several such local councils were held.<sup>39</sup>

The councils called by the San Juan superintendent were somewhat hostile to the requests for approval of oil leases, and Commissioner Burke may have felt that a wider council would be more receptive to such leases. He said that he wanted a wider council because he thought the revenues from the leases should go to all the tribe, not just part of it. Perhaps Burke was aware of Chee Dodge's suggestion for the creation of a wider council. Although a complete account of his thinking is not available, Burke in 1922 appointed a "business council" consisting of Chee Dodge and two other Navajos to act on behalf of the entire nation when dealing with oil leases.<sup>40</sup>

A few months later, in January 1923, Commissioner Burke issued regulations that (after revision) provided for the creation of an elective Navajo Tribal Council. At the same time, he named Hagerman, a former territorial governor of New Mexico, to be a special commissioner to the Navajos. For the rest of the 1920s, Hagerman called and opened council meetings and generally attempted to guide the new body in the directions desired by the BIA.<sup>41</sup>

Delegates and alternates to the council were elected by the Navajos within each agency, although the chairman was elected by the council itself. A secretary was also elected and was required by the regulations to be a member of the tribe who was not a member of the council. This body functioned as the first overall government of the Navajos and has evolved into the present tribal council. During the Indian New Deal, the BIA attempted to persuade the Navajos to adopt a written constitution to provide a basis for the tribal council, but they have refused to take this step. The 1920s secretarial regulations are no longer the basis for Navajo government, but the practices that began with these regulations, modified over several decades, are still followed in the Navajo Nation. They have acquired constitutional status in the same sense in which the government of Great Britain has such status, no written document is required for a constitution to exist.<sup>42</sup>

During the 1920s, the Navajo Tribal Council had very limited functions. It met only on call of Commissioner Hagerman (who secured the permission of the commissioner of Indian Affairs), it met infrequently, and it met briefly. Usually it was convened for only one or two days a year, from 1923 through 1929 it was in session for a total of ten days.<sup>43</sup> Since a great deal of the time of the council was taken up in translating between Navajo and English, there could not have been much time to consider the many problems of the nation or to devise significant solutions for them. Moreover, during the early years Commissioner Hagerman set the agenda and took up most of the time of the Tribal Council with presentations of government policy, he also sometimes brought other government officials to make presentations.

Obviously, under these conditions the council could not have been very effective on behalf of Navajos, but even with these limitations, it is clear from the minutes of the council that the delegates did bring up various matters and present complaints from their constituents. It would be unrealistic, however, to describe the Navajo Tribal Council at this time as a fully developed government.

Another step in creating the current pattern of political organization among the Navajos was also taken on the initiative of the BIA during the 1920s, although at the agency rather than the tribal level. The first meeting of what came to be known as a chapter was convened by Superintendent John G. Hunter of the Leupp Agency in 1927. His reason for calling this meeting, as he recalled in 1961, was that "I became aware that we [Bureau of Indian Affairs personnel] were not reaching Navajos and I thought that if I could organize them into community meetings, we could tell them of our programs and we could find out what they wanted." In 1928, after he was transferred to the Southern Navajo Agency, Hunter organized chapters there as well. The number of chapters increased rapidly until there were around eighty in 1937,

although there was a decline after that date until World War II. At first there was no link between the chapters and the tribal council, but by 1936 the chapters had become the basis for electing council members, and this practice has continued to the present.<sup>44</sup>

During the 1920s, then, the BIA took the first steps that have evolved into the present governing structure of the Navajo Nation, even though the top administrators in the national government charged with carrying out Indian policy believed that they should not be dealing with governments but with Indian individuals. It appears that there were several reasons for Bureau action in the Navajo case, the most important of which was the legal requirement that some kind of Navajo council had to approve leases before oil found on the reservation could be tapped by non-Indian companies. But the decisions to establish a Navajo-wide organization and chapter councils appear to have been influenced by the Bureau's perceived need to have more effective channels of reaching individual Indians with the messages this agency wished to present to them and, to a much smaller extent, to have a more efficient means of hearing from Navajos about their needs.

Another Burke administration action to create an Indian government arose out of a desire to override an existing governing institution. The Flathead Reservation in Montana is one of the reservations where members of several societies were brought together by earlier national government policy. In this circumstance, a traditional government of the entire reservation would have been very difficult to create. There were several chiefs of the various tribes living on the reservation who later, in the constitution adopted during the 1930s were given formal roles in the governance of the reservation.

Whether any multi-group government at the reservation level had existed earlier is not known, but in 1916 a general council of Flathead Reservation members elected a tribal council. In 1929 Caville Dupuis, the president of the council at that time, told a US Senate committee that the council consisted of thirty-three delegates elected from districts and three traditional chiefs, whose authority was unclear. Delegates and the officers of the council were elected at general councils held irregularly, for indefinite terms of office. In 1929, Dupuis said that he had been president for about six years. Another resident of the reservation, Marie Lemery, confirmed this account. The Flathead superintendent, Charles E. Coe, agreed at the same hearing that "this tribal council has been in existence since 1916."<sup>45</sup>

In the 1920s a dispute arose at Flathead over proposals to build a dam on the reservation to produce electricity. In late 1926 and early 1927, the Rocky Mountain Power Company, a subsidiary of the Montana Power Company, worked with Commissioner Burke and Assistant Commissioner Meritt to

apply for a permit to develop a hydroelectric facility on the reservation. Burke and Meritt did not consult with the Indians of the reservation, either through the tribal council or by any other means, before supporting issuance of the permit for the facility.<sup>46</sup>

The Flathead Tribal Council vigorously opposed the permit and the building of a dam that would flood reservation lands. It hired as its attorney Albert A. Grorud, who subsequently became the chief staff person for the Senate Committee on Indian Affairs. John Collier, as head of the American Indian Defense Association, took up the cause of the Flathead Council. When a rival proposal to develop the dam was made by Walter H. Wheeler of Milwaukee, the tribal council and a general council called by it backed the Wheeler proposal and accused the BIA of attempting to steal the property of the Flathead Indians and ignore their right to govern themselves. Collier's organization supported these allegations, it specifically attacked the Bureau for approving plans for hydroelectric development without ascertaining Indian opinion and for refusing to reconsider its action after the tribal government of the reservation, backed by another general council, had clearly registered its disapproval of the Bureau's action.<sup>47</sup>

In response, Superintendent Coe sought means to provide evidence that Flathead Indians approved of the Montana Power Company proposal. In late 1927 he encouraged a group of Flathead Indians to circulate a petition in favor of this proposal. In reporting this action to the Indian Office, he attacked the Tribal Council, saying that "the so-called tribal council is not an elected council but a self constituted and self perpetuated [sic] one. It has not really represented the wishes of a majority of the Indians for a long time."<sup>48</sup>

Coe then indicated that the committee circulating petitions planned to form a "regularly elected 'Tribal Council' as soon as they have finished with petitions." He said that the plan was to draw up a set of by-laws calling for an annually elected council, and added, "A Tribal Council so formed could be recognized as a representative and legally constituted body. The influence of Mr. Grorud would be removed and there would be no further 'Resolutions' of the Tribal Council for him to use in his activities in Washington."<sup>49</sup>

On May 25, 1929, Commissioner Burke instructed Coe to proceed with organizing a tribal council. A Bureau circular earlier that year had asked for information on business committees on reservations, and Coe's reply had indicated that there was no such organization on the Flathead Reservation. Burke wrote to Coe, "Referring to your answer to Circular 2565, it is observed that there has been no regular election of council members for some time, that there appears to be no constitution and by-laws approved by this Department governing their election, term of office, duties, etc., and that the Indians of the reservation have not been properly represented by districts or other regular method."<sup>50</sup>

Burke then instructed Coe to "assist the Indians of your reservation in drafting a suitable constitution and by-laws to govern the election and operation of such a representative business committee and submit same here for consideration and approval before submitting same to the general council of Indians"<sup>51</sup>

The commissioner enclosed copies of constitutions and by-laws of the Blackfeet and Crow Tribes and the Pine Ridge Reservation to assist Coe and gave him explicit instructions on features to include in the constitution. Coe went ahead with plans to organize the new tribal council, obviously with the hope that it would approve the Montana Power Company plans<sup>52</sup>

This series of events on the Flathead Reservation illuminates the attitude of the BIA toward tribal governments. First, the efforts to form a new tribal council clearly came about because the existing tribal council opposed Bureau policy. The charge made by Senator Burton K. Wheeler of Montana at a Senate committee hearing that "if Burke had his way he would have squelched every tribal council in the United States" was too sweeping in general, but in this instance the characterization was not inaccurate<sup>53</sup>

Second, as in the Navajo case, the crucial element behind the Bureau's efforts to organize a tribal government to replace an existing structure involved the exploitation of reservation resources. Partly because there were no legal restraints in this instance, the Bureau acted without any attempt to secure the consent of the Indians of the reservation and refused to accept the existing tribal council as legitimate

Third, there was a difference of opinion about whether the existing tribal council had received "recognition" from the Indian Office. In the 1920s the BIA followed an unwritten policy of granting recognition to Indian governments of which it approved, but in the absence of clear and stated criteria for doing so it no doubt acted at times in an arbitrary manner that overrode Indian desires. More important, in the absence of explicit criteria for taking such action, it could not always be ascertained whether the Bureau had actually extended recognition. Note that in the instructions to Superintendent Coe, Burke had written that "there appears to be no constitution and by-laws approved by this Department." A resolution adopted on February 24, 1930, by the Flathead Tribal Council (the group whose status was in question) asserted that "it is of record and accepted by the Commissioner of Indian Affairs that the Flathead Tribal Council is the authorized body of the tribe"<sup>54</sup> Also, as noted earlier, Coe had once confirmed the existence of the council without expressing any doubts about its authority. In the absence of precise, documented procedures for extending recognition, confusion on this important question was inevitable and gave Bureau employees opportunities to ignore Indian governments that did not agree with Bureau policy

A similar case, although not involving resources, also illustrates that the BIA during the 1920s sometimes tried to organize Indian governments in order to counter the impact of existing governments opposing its policies

Several conflicts involving the New Mexico Pueblos erupted in the 1920s. John Collier began his work for the Indians because of one of these. The eighteen Eastern Pueblos in this state, mostly located along the Rio Grande, had for centuries cultivated irrigated fields while living in compact villages. Their ceremonial/religious life was rich and complex, and they had evolved a pattern of governance with unique features (see below). Under Spanish, Mexican, and American rule they had retained their cultural distinctiveness to a high degree

In part because of their settled agricultural life and in part because of their unique institutions, the US Supreme Court did not declare until 1913, in the *Sandoval* case, that the members of the Pueblos were legally Indians. An important effect of this decision was that henceforth the Pueblo lands, which had been held in fee simple, were extended the protection of trust status. By the early 1920s many non-Indians had acquired title to lands within various Pueblos, and there were numerous unresolved claims to ownership of lands and related water rights within a number of Pueblos. The *Sandoval* decision had required the national government to take legal action to evict non-Indian claimants in these disputes. Pueblo attorney Richard H. Hanna did file ejectment suits in 1919 but thereafter the issue was moved to Congress, where it became entangled with the issue of extending national criminal jurisdiction over the Pueblos<sup>55</sup>

Members of the New Mexico delegation made various proposals to award the disputed lands to non-Indians or to settle the issue through a judicial or quasi-judicial proceeding. By July 1922, a legislative proposal called the Bursum bill, after New Mexico senator Holm O. Bursum, had been approved by Interior Secretary Fall, Commissioner Burke, and the attorney for the non-Indian claimants. Fall was a former New Mexico senator who was strongly committed to opening up national lands in New Mexico to various types of non-Indian development. The Bursum bill advocated an approach that would have had the effect of awarding most of the disputed lands to the non-Indian claimants<sup>56</sup>

Various Pueblos had opposed earlier efforts along this line, and now they had supporters in their effort to defeat the bill. Stella M. Atwood, who had secured the creation of an Indian Welfare Committee by the General Federation of Women's Clubs, began vigorous protests against the Bursum bill. John Collier undertook his first work for Indians as "research agent" for the federation<sup>57</sup>

The struggle over the Bursum bill led also to the establishment of the All-Pueblo Council. Inter-Pueblo cooperation goes all the way back to the Pueblo

Revolt of 1680, and there had been irregular ad hoc meetings of representatives of all or most Pueblos for some time before the 1920s. Pablo Abeita of Isleta Pueblo referred at the 1929 meeting of the All-Pueblo Council to a number of such meetings, including one thirty-five years earlier to resolve a dispute between San Felipe and Santo Domingo.<sup>58</sup>

The meeting of the All-Pueblo Council at Santo Domingo in November 1922 led to vigorous efforts in opposition to the Bursum bill, partly because Collier was there and offered his help. It also began a continuous and evolving existence of this coordinating group extending to the present.

Members from several Pueblos traveled to Chicago, New York, and Washington to speak against the Bursum bill, and Collier led a coalition of Indian and non-Indian reformers to defeat it, in the first major muckraking effort of the 1920s Indian reform movement. The effort was effective, although the Pueblos eventually had to compromise on the issue. The Senate took the unusual step of recalling the Bursum bill after initially passing it, eventually, in June 1924, a bill acceptable to the Pueblos was signed into law. A Pueblo Lands Board was established to decide the validity of the disputed claims and award damages if necessary. While the board did not complete its work until the 1930s, and in order to provide the expected benefits to the Pueblos it was necessary to pass a new act in 1933, eventually there was a substantial restoration of land and water rights to various Pueblos and they were awarded money damages for rights not restored.<sup>59</sup> Also, efforts during the 1920s to extend national legal jurisdiction over the Pueblos were defeated.

The All-Pueblo Council continued to be active because several new issues of crucial importance to the Pueblos arose during the 1920s. One set arose out of extensive efforts by Commissioner Burke to outlaw aspects of Pueblo dances that some missionaries, supported by the Indian Rights Association, alleged were obscene and immoral. The Pueblos regarded these and similar actions as assaults on their ancient way of life.

The commissioner threatened various enforcement actions if the Indians did not give up these practices, and he or superintendents in New Mexico actually took actions confirming the worst fears of the Pueblos. For example, in 1924 officials of Taos Pueblo were arrested, with the approval of Commissioner Burke, for withdrawing boys from the Bureau schools for religious instruction, and in 1925 Bureau officials caused the arrest of Taos officers after they had punished members of the peyote church within the Pueblo for what they perceived as violations of Pueblo law.<sup>60</sup>

Another set of issues grew out of attempts of the BIA to override the judicial authority of Pueblo governments. Various Bureau officials perceived a decline in authority of the councils that governed the Pueblos and, therefore, a vacuum in enforcement of criminal law within these societies. Their solution to

this perceived problem was to attempt, in several ways, to make state and/or national laws operative within the Pueblos.

In all of these instances, the All-Pueblo Council fought the Bureau, in cooperation with Collier and the American Indian Defense Association, which he founded. One of the Bureau's responses to this opposition was to seek to organize a Pueblo group friendly to Bureau policies.

For a time in 1924 the Bureau approved participation by its employees in a Council of Progressive Christian Indians. At the founding meeting of this group a small number of delegates, claiming to represent two thousand of the approximately ten thousand Pueblo Indians, adopted resolutions challenging traditional Pueblo governing practices. Nina Otero Warren, a Bureau inspector who had attended this meeting, urged Commissioner Burke to support the group, alleging that "these people are at this time the only loyal Pueblos we have, opposed to the large Collier group." The council was short-lived, Mrs. Warren was relieved of her duties in December 1924, and by the fall of 1925 "the cause of the progressive Pueblos was dead."<sup>61</sup>

However, in 1926 the Bureau took the initiative to organize what became the United States Pueblo Council. This, like the All-Pueblo Council, was a meeting of representatives from each Pueblo, but the government called the meetings of the U.S. Pueblo Council and tried to control them.

The suggestion for organizing this council came from Margaret McKittrick of the New Mexico Association on Indian Affairs. McKittrick and other members of this group had supported Collier and the All-Pueblo Council at the beginning of the battle over the Bursum bill. But in early 1923 there was a sharp controversy within the ranks of the opponents of the bill, resulting in a permanent schism between Collier and a group around McKittrick. The conflict arose when Francis Wilson, the attorney for the Pueblos, supported the Lenroot bill, an early attempt at compromise of the issue. Collier and the All-Pueblo Council rejected Wilson's action, and when Collier insisted on cancelling Wilson's contract over the incident, several members of the New Mexico Association became his opponents.<sup>62</sup>

In July 1926 McKittrick made a suggestion to Commissioner Burke that "the Government should organize an all Pueblo Council modelled on the council which Hagerman has so successfully worked out for the Navajos." She said that such a council could be a useful way for the government to explain its policies to the Pueblo Indians and also that "such a Council would entirely do away with all of Collier's influence in all of the Pueblos." In August McKittrick wrote Hagerman on behalf of the New Mexico Association, making suggestions for the composition of such a council and proposing that it take up the question of what she saw as the law-and-order vacuum among the Pueblos. She wrote that "there is no one on the ground who has authority to maintain

law and order. The government of the villages which has hitherto rested on the moral power of the council and old men is fast breaking up."<sup>61</sup>

Hagerman responded to this request by writing various New Mexico Bureau officials for their views about the desirability of taking such a step. Several of these officials supported the idea, one of them remarking, "I believe that the All Pueblo Council, that might have an official status might be of advantage, and if official you, or some other representative of the government could be with them to direct, in a measure, their deliberations and action, and much superior to their unofficial juntas they now hold where they meet and talk without any guidance, or possibly that of the wrong kind."

Walter C. Cochrane, special attorney appointed by the government for the Pueblos, thought the idea of a government-sponsored council "splendid," partly because he also perceived a growing governmental vacuum in the Pueblos, which meant that for most crimes "no competent court has jurisdiction." He thought that "the breakdown of tribal authority is having serious consequences, and something must be done to bolster up or replace the power the governor once wielded so effectively."

On September 6, 1926, Hagerman wrote a letter to Commissioner Burke, saying that he had concluded that the government should organize such a council, which "would go far toward clarifying various matters as to the status, duties, obligations and privileges of these people." He also wrote that "while it is undoubtedly true that at such meetings the representatives of the Indians themselves would not offer much in the way of constructive suggestions as to legislation or governmental policies in connection with the administration of their affairs, it is I believe quite certain that the government's representatives and others would be able to derive from these meetings a good deal of information which would be helpful in the formation of legislation and policies." Hagerman suggested that the "unofficial" All-Pueblo Council had discussed a limited range of issues and that its meetings had resulted in confusion. He said that he believed "such confusion will increase unless official action of some kind is taken." Hagerman made suggestions for the composition of such a council and the topics it might consider.

On October 15, 1926, Burke wrote Hagerman that he was "requested to organize the Council and supervise its sessions, especially to see that its meetings are conducted properly, and that the subjects for discussion are restricted to certain topics, so that the Indians may not be confused by too many subjects."

Burke enclosed a set of rules for the composition of the council. Each Pueblo was to be represented by two delegates—the governor and a Pueblo member elected by the voters of the Pueblo. Where "factional differences" resulted in a situation where there were two governors, both were to be elected to the council. The governor was to cast the vote for the Pueblo but the other dele-

gate was to be allowed to participate in discussions. Hagerman was asked to call the council meetings, to preside over them, to appoint any committees that might develop, and to direct and supervise "the discussions and workings of the Council."

Before the scheduled first meeting of the new council, the All-Pueblo Council met, on October 6, at Santo Domingo. Collier commented that he had heard the government was planning an organization to "take the place of" the All-Pueblo Council, and said that "if this plan should succeed, then your All Pueblo Council would be denounced as unauthorized and outlaw." Collier suggested that the members of the All-Pueblo Council write down the rules that had previously governed it. The *presidente* of the council appointed a committee headed by Pablo Abeita of Isleta, and this committee produced a simple set of eight rules that was accepted by all Pueblo delegations present at the meeting. These rules, the first constitution of the group, provided that each Pueblo could be represented by as many delegates as it wished but could have only one vote. The council officers were to be elected by majority vote and would serve until the next election, and roll call votes were to be recorded on "all actions on any proposal," with reasons for voting against a proposal recorded if the Pueblo(s) wished this to be done.<sup>64</sup>

The first government-sponsored all-Pueblo meeting was held November 15-17, 1926, in Santa Fe. It was decided to call the group the United States Pueblo Council, to avoid confusion with the All-Pueblo Council. Hagerman presided and conducted the meetings, although on the last day a president of the council was elected. Most of the meeting was devoted to presentations by Hagerman and other Bureau officials. He asked the Indians their opinion on several issues, including the important question of whether changes were needed in the authority of Pueblo councils over law and order. On this question, Hagerman presented a resolution stating that governors should be given the "powers of a justice of the peace and police magistrate." When several delegates stated that they could not speak for their Pueblos before the councils had discussed the question, Hagerman agreed to submit the proposal in writing to all Pueblos and to postpone a decision on it.<sup>65</sup>

Hagerman told the U.S. Pueblo Council that this was an "official" meeting and that the government would pay more attention to their needs if they were expressed in an "official" way. However, when he was asked by a delegate from Taos whether the government wanted them to abandon the council they had been using since 1922, Hagerman said that this was not the intention of the government and that the All-Pueblo Council had "been beneficial, and helped you, and helped us."

Several government officials reported enthusiastically after this first meeting that it had been a success, but clearly the Pueblo leaders saw no need for it.

and had no intention of abandoning their own council for the new group. At a meeting of the All-Pueblo Council in December 1926 and again in 1929, the Pueblos asked that the US Pueblo Council be disbanded. The Burke administration was unwilling to do this, and a number of meetings of the US Pueblo Council were held over a period of several years. Clearly, however, the establishment of the new group did not have the effect of weakening or supplanting the previous group, which the Pueblos themselves had organized. The All-Pueblo Council went on to expand its activities, and it also continued to cooperate with Collier, who was clearly in tune with their wishes.

At the December 1926 meeting of the All-Pueblo Council, in response to the request for an endorsement of the law-and-order proposals of the BIA, a resolution was approved by all Pueblos represented, with two abstentions. This resolution advised each Pueblo to reply to Hagerman "that we don't want the law which you asked us about and our reasons are explained by our endorsement of Bill H. R. 9315"—the alternative to the administration bill that was then being considered by Congress (see below). Representatives of a number of Pueblos approved a longer statement objecting to the government's law-and-order proposals on the ground that governors and councils already had, and exercised, the authority to settle disputes and punish offenses against Pueblo laws.

The Navajo Tribal Council organized by Hagerman lasted and gained the support of Navajos, no doubt in part because at the time of its formation there was no other governing structure at the level of the nation. The US Pueblo Council did not last and did not gain Pueblo support because it was an attempt to supplant or overshadow an existing structure that had been brought into being by the Pueblos themselves.

One final case study of the attitudes of the BIA toward tribal governments during the 1920s illustrates another set of circumstances that sometimes led the Bureau to recognize Indian governments. Where there were two groups, both claiming to be the legitimate government of a society, the Bureau sometimes intervened, on an ad hoc basis, to try to settle the controversy.

While he was attending the meeting of the US Pueblo Council in 1927, Assistant Commissioner Meritt visited Santa Clara Pueblo with the superintendent of the Northern Pueblo Agency and the district superintendent. While there, Meritt attempted to solve a long-standing factional conflict within the Pueblo.

Santa Clara was one of a group of Pueblos in northern New Mexico in which Tewa was spoken. Like other eastern Pueblos, it had traditionally had a complex governmental structure featuring ultimate control by religious leaders. All of the members of Santa Clara Pueblo belonged to either the Summer or Winter Moiety. Traditionally, a set of secular officials (a governor, two lieu-

tenant governors, and a sheriff) had been elected annually in the Pueblo. Prior to 1894 the secular officials had been selected in fact by the *caciques*, the religious leaders of each moiety, who alternated in nominating a single slate of candidates for office. There were two other sets of officials—war captains and officials of the Catholic Church—chosen in the same way, but it is not clear whether these officials were involved in the factional dispute. A council of *principales* consisted of all three categories of elected officials as well as former governors. In addition to their roles in alternately selecting the secular leaders of the Pueblo, the *caciques* also directed, again on an alternating seasonal basis, the ceremonial dances and other religious activities and other responsibilities within the Pueblo.<sup>66</sup>

During the 1890s a severe factional conflict erupted at Santa Clara. A so-called progressive faction developed within the Winter Moiety, while a conservative faction comprised the Summer Moiety and part of the Winter Moiety. According to Nancy S. Arnon and W. W. Hill, "Each side made similar claims: each professed to observe traditional ways, each accused the other of nonconformity, each, when in seasonal control of government, forced all members of the opposite moiety to participate in ceremonials."<sup>67</sup> Yet it seems that the chief basis of the schism was that the progressives advocated views that were clearly at variance with beliefs and practices that had been the basis of Pueblo life for many centuries. Edward P. Dozier, an anthropologist who was also a member of Santa Clara Pueblo, described the viewpoints of the progressives:

They advocated a separation of religion from secular activities, but in particular they objected to the right of pueblo officials to designate the date on which everyone should plant and harvest. Work on irrigation canals, they maintained, should be compulsory only for families owning lands irrigated by such a canal, and participation in ceremonial should be voluntary rather than imposed by the pueblo. They insisted on the right to wear Western type clothes and to cut their hair in the "Spanish" or "American" fashion. They protested the right of the leaders to limit or restrict their absences from the pueblo. They objected to the right of the pueblo officials to demand their services in repairing kivas and other essentially religious projects if they no longer believed in the native religion. They protested the rule of the pueblo that all able-bodied men, women, and children should have to work on community projects.<sup>68</sup>

In earlier times, this issue might have been settled by the voluntary or forced departure of the dissident members of the Pueblo, but by the 1890s there was no land where a new village could be established. In 1894 the governor who had been chosen by the Summer Moiety (the conservative faction) refused to

turn over the ceremonial canes, which had been given the Pueblo by Spanish and Mexican officials and President Lincoln, and thus relinquish his office to the person nominated by the *cacique* of the Winter Moiety.<sup>69</sup>

Thereafter until 1935, when a constitution drawn up under the Indian Reorganization Act was adopted, the traditional alternations of officials did not take place, and there was conflict within the Pueblo over the legitimacy of the secular officers. The Bureau of Indian Affairs recognized the officials chosen by the Summer Moiety but knew that the factional dispute continued. The result was "the breakdown of community co-operation. From 1894 to 1935 only the Summer Moiety appointed the important secular officers, and the members of that moiety alone attempted to carry out, albeit in somewhat irregular and ineffective fashion, the co-operative ceremonies which play such an important part in pueblo life."<sup>70</sup>

Meritt, aware of this fundamental division, attempted to solve the problem by personal fiat on his visit to Santa Clara in October 1927. Saying that he had been asked by Interior Secretary Work and Commissioner Burke to represent them, he listened to members speaking for both factions, including both individuals claiming at the time to be the rightful governor. At the end of this meeting he issued a document embodying his "decisions" on the conflict. Basically, he attempted to impose majority rule instead of the traditional alternation between candidates chosen by the *caciques*. Specifically, Meritt "ruled" that

each clan known as the summer or winter clan shall select its own candidate in its own way. I will not attempt to decide as to how you shall select your candidate, but will leave that to the summer and winter clan with the distinct understanding that there shall be only one candidate representing each clan. My decision is that there shall be an election each year the latter part of December on such date as the two clans shall agree upon. On this election date the candidate receiving the highest number of votes shall be declared to be the governor of the pueblo for the ensuing year. The man receiving the next highest number of votes shall be declared to be the lieutenant-governor for the ensuing year. There must be authority vested in one official in a government of this kind as to who shall be the other officers for the ensuing year. My advice is that the governor should confer with the lieutenant-governor and get his advice as to who should fill the other offices. But the final authority will be with the governor who has received the majority of the votes cast of all the adult males of the pueblo.<sup>71</sup>

Although he denied that the national government had any "intention of interfering with your form of Pueblo government," Meritt admonished the resi-

dents of Santa Clara to "bear in mind the importance of the rule of majority in our democratic form of government and abide by that decision." Accepting such a rule, of course, would have meant a major departure from their traditional governing patterns. He also made a "ruling" on the question of whether everyone should be required to participate in ceremonial activities. He supported the progressive position on this issue, concluding that "we will not require any member of the pueblo who does not care to participate in any custom, ceremonial or dance to participate therein unless they so desire, and no governor or any other official of the pueblo shall have authority to compel them to do so. In other words, it should rest upon the individual action. That is the principle of freedom of action which we all so cherish under our American form of government."

Apparently Meritt thought he had secured the consent of all present at the meeting to his "decisions"; the document embodying them was typed and signed by Bureau officials and by both current claimants to the title of governor, and an impressive seal and two ribbons adorn it. But this action solved nothing. A year later Meritt visited Santa Clara again, discovered that the factional dispute was still dividing the Pueblo, and told the residents, "Now what I want you to do is to agree to abide by the decision of last year, and after you live up to this agreement for a period of one year, if you find that there are things in this agreement that are not satisfactory to you we can have another meeting a year from now and we will try to adjust the differences."<sup>72</sup>

However, no one present at the meeting at which he made this request stated unequivocally that they would try to observe the "decision" of the previous year. One of them, who had been designated as governor by one of the moieties the previous year, said that he had tried to carry out the election prescribed in the document but had not received the necessary cooperation. Not surprisingly, progressive leaders were more supportive of Meritt's proposals than conservative leaders.

In frustration, Meritt tried various arguments to get the residents of Santa Clara to accept his attempted resolution of their conflict. He argued that it was the "patriotic duty" of members of the Pueblo to adhere to the agreement and that Santa Clara would be faced with "revolution" if the problem were not resolved. He combined these arguments with promises and threats, telling the Santa Clarans, "If you have one governor in this pueblo recognized by all the Indians he can speak for your pueblo and we will be in a position to do a great deal more for you." He said that the Bureau controlled about five thousand dollars of their money from timber sales, "but we can not do anything with this money until you get together and have one governor." Meritt added that the Bureau wanted to collect admission fees to the Puye ruins within the Pueblo's boundaries and that "if you had a governor that was rec-

ognized by all of the Indians of the pueblo he could be of assistance to us in working out this problem "

Finally, Meritt tried to convince the members of Santa Clara Pueblo that the laws of the United States overrode their traditional laws, telling them that "the laws of Congress are supreme in the United States, and if there is any conflict between the laws of Congress and any secret law that you might have, then necessarily under the decision of the Supreme Court of the United States the laws of Congress must prevail " He illustrated his ignorance of the institutions of the Pueblo by asking at one point, "Could I meet both members of the cacique if they are here?"

Meritt's "decision" ignored the religious structure underlying the governmental structure of the Pueblo, and for this reason it did not work In 1935 Santa Clara adopted a written constitution that institutionalized competitive elections—and evidently substantially moderated (although not completely eliminated) the factional conflict—but Meritt's attempted solution to the problem failed<sup>73</sup>

This incident illustrates another reason the BIA tried to "recognize" some Indian governments during the 1920s U S government officials, no matter what their ideological conviction in regard to dealing with individual Indians, in fact had to acknowledge in many cases that functioning Native American governments existed In practice, these officials were frustrated by their lack of a clear-cut notion of the nature of the government with which they were attempting to deal If they undertook to make decisions without consulting the officials who had authority within the society in question, they ran the risk of their actions being ignored Therefore they felt compelled to solve factional conflicts that prevented a determination that a single set of officers had authority In this case, the effort failed

### Conclusions

The top leadership of the national government charged with dealing with Native Americans during the 1920s believed in the forced assimilation ideology The long-range goal of national policy, as they saw it, was to speed the assimilation of Indians into American society, whether this was what they desired or not Clearly, such assimilation meant, as they saw it, the destruction of Native American governments The ideal was that Bureau officials would deal eventually only with individual Indians At the same time, the existing structure of Indian law, embodied in statutes as well as court decisions, recognized the continuing sovereignty of Indian societies, even though this sovereignty had been restricted by a century of national control

Moreover, this structure of national law required government officials to act as guardians of Indian property and to engage in a number of actions to prepare Indians for assimilation and move them in this direction For a number of reasons, the day when the Bureau of Indian Affairs could go out of existence and Indians could be treated like any other citizens (as this ideology saw it) had not yet arrived

In some cases during the 1920s, the Bureau followed the logic of the forced assimilation ideology In refusing to approve a national intertribal organization or a government for the entire Sioux Nation, the principal justification was the animus against Indian governments However, it may also have been significant that in both of these instances the issue was whether or not to create new structures above the local level Perhaps the Bureau officials thought that existing local governments had to be tolerated for a time but that enlarging the sphere of government, at least on Indian initiative, was another matter

In spite of the dominant ideology during this period, however, the Bureau did deal with Indian governments and even had an informal means of "recognizing" such governments Moreover, at various times during the 1920s government officials created new Indian governments or tried to do so

In the Navajo case, the primary reason was the desire to provide non-Indian access to Indian resources, when advised that the law required Indian consent to oil leases, the BIA response was to create bodies that could give such consent The fact that a new structure at the level of the Navajo Nation as a whole was necessary to meet Bureau goals did not prove to be a barrier in this case At the same time, local agency initiatives to organize new Navajo governing structures were supported Both types of structures survived, came under Navajo control, and became the basis for present governance in the Navajo Nation

Another attempt to develop Indian resources for the benefit of non-Indians led in the Flathead case to the attempted creation of a new local governing structure In this instance, clearly the objective was to circumvent and/or override an existing Indian governing structure whose leadership did not agree with the Bureau's plans for the reservation

The creation of the United States Pueblo Council paralleled the Navajo case in that a new level of government was developed, Herbert Hagerman led both of these efforts But the Pueblo case also resembled the Flathead case In both instances, the Bureau was attempting to circumvent and/or override an already existing structure that had been developed by the Indians themselves but was not in agreement with Bureau policy

In the final instance reported in this chapter, Assistant Commissioner Meritt attempted to resolve a long-standing factional dispute at Santa Clara Pueblo by making a "decision" that he expected the Pueblo to accept and follow In

this instance, the perceived problem was that there were two structures claiming authority within the Pueblo because the consensus underlying the former governing pattern had broken down. The national government in this case tried to resolve the problem by fiat.

These case histories, although they represent only some of the most important issues involving Indian self-government during the 1920s, justify an overall conclusion. The absence of any clearly stated policy toward Indian governments, either in statutory or administrative form, resulted in inconsistent and arbitrary actions. Moreover, the absence of rules maximized the prospects that the Bureau would see questions of Native American governance primarily in terms of their relevance to the goals of the Bureau. The fact that the dominant forced assimilation model led them to believe that the long-range goal was the abolition of Indian governing structures strengthened this tendency.

In none of the cases cited here was the primary purpose to further Indian self-government. In two cases it was in fact to frustrate already-existing Indian governments and in two more it was to deny Indian initiatives to organize new governments above the level at which traditional organization existed. As long as the Bureau assumed that it had *carte blanche* authority over Indian governments but in fact had no guiding policy determining when to use such authority, it was unlikely that its decisions in this area would serve Indian desires for self-government.

However, it is also clear that, in spite of the dominance of the forced assimilation ideology, in practice the Bureau of Indian Affairs during the 1920s did not consistently attempt to deny the existence of Native American governments and deal only with individual Indians. Partly because of existing law and partly because Indian governments had not in fact disappeared uniformly, the Bureau's actions often acknowledged and dealt with such governments. No doubt this was also true in many agencies on matters that did not involve national BIA action.

## Chapter Two

### The Status of Indian Governments During the 1920s

Although the record of BIA involvement with Native American governments during the 1920s shows clearly that there were many such governments in existence at that time, both the extent and the character of existing Indian governments are unknown in an overall sense. Yet answers to the questions whether Native governments had died out in many societies and whether such governments as still existed were traditional or imposed by non-Indians are of crucial importance to attempts to understand how the Indian Reorganization Act affected Indian self-government.

During the 1920s and up to passage of the IRA in 1934, there were numerous statements that many if not most Indian governments had disappeared, leaving in effect a governmental vacuum on many reservations. For example, the alleged decay of Pueblo governments was a crucial argument in the attempt to extend national law over these societies.

Obviously, the creation of governments under authority of the IRA meant one thing where no prior government existed and another where the new governments replaced existing ones. Likewise, the question of the extent to which those Indian governments that clearly existed when the IRA became law were traditional and/or created by Indians themselves is of central importance in evaluating how the IRA affected Native American patterns of governance.

Unfortunately, there is at present no definitive national summary of the status of Native American governance from 1920 to 1934. Neither the Bureau of Indian Affairs nor the Department of the Interior kept meaningful central files on this question, almost all the relevant files are contained in agency files. No doubt it is theoretically possible to examine the relevant portions of all these thousands of often voluminous files to develop an overall picture of the nature of Indian governance for this period, but no one has invested the very large amounts of time that would be necessary to arrive at such a picture. Even a complete account based on government documents would have to be corrected with information from other sources, however, Bureau files are not always complete or completely accurate.

After passage of the IRA, in preparation for votes on each reservation to determine whether the Indians would accept the Indian Reorganization Act, a detailed questionnaire was submitted to each agency, asking for information on governing structures. The replies to these are in the files of the Organization Division in the National Archives Building. A compilation of these returns would be the easiest way to attempt to get a comprehensive picture of the status of Native American governments at that time, although it is apparent that some of the organizations reported in that questionnaire were formed in response to introduction of the bill that became the IRA. But this too would be a large undertaking.

### The 1929 Survey of Business Councils

The only known attempt at a systematic survey of the nature of Indian governments during the 1920s resulted from a BIA circular during the Burke administration in early 1929.<sup>1</sup> On March 14, 1929, Burke sent Circular 2565 to all superintendents of agencies and schools, asking them for information about business councils on reservations. Of approximately 120 officials who received the circular, 78 replied, and the material from these communications is summarized here, in the absence of anything better.

The information provided in response to this circular is obviously incomplete, for several reasons. First, approximately one-third of the officials did not reply to the request for information. Second, the replies are often couched in vague terms, it is often difficult to tell the situation on each reservation under the authority of the superintendent or precisely what was the nature of existing governments mentioned in the replies. Third, the circular asked for information about business councils—only one type of government—although a number of superintendents did report on other kinds of governing structures. Fourth, in many cases the information provided was obviously too brief to describe the actual nature of the structures reported.

With these necessary caveats, the replies to Circular 2565 do provide more information in one place on important questions about Native American governance than any other source. They reveal, first, the existence and vitality of many clearly traditional governments, although the superintendents were not asked about this topic.

The traditional structure of Pueblo governments, noted above in discussing the Santa Clara case, was described by the superintendents of both the Northern and Southern Pueblo Agencies. This structure was no doubt developed centuries earlier in response to the Spanish conquest (and the later reconquest in 1692, after the Pueblo Revolt of 1680). It provides basically for a governing

structure dominated by non-elected religious leaders—in most cases the *caciques* of the moieties, as at Santa Clara. Even today the Pueblos are secretive about the nature of the religious structures underlying the secular forms, but the essence of the selection procedure is that the *caciques* nominate candidates for secular offices in noncompetitive elections. The superintendent of the Northern Agency provided this comment on the Pueblo pattern of governance:

They have no form of constitution or laws governing their elections. In practically all cases the Cacique is the ruling man, and he chooses the Governor of his Pueblo. The Indians, in talking it over call it an election, but very few of them have what really could be called an election. This present form of government has been in existence for hundreds of years and there is no way of introducing any other business committee as long as the old form of government exists in the Pueblos.

While the Governor is supposed to be the head of the village, he cannot act on any proposition you put up to him without first holding a meeting with his Council and getting advice from the Cacique.

Of course the stability and strength of this pattern, maintained over many centuries in the face of attempts by Spanish, Mexican, and American governments to exercise control over the Pueblos, demonstrate that the fundamental pattern has constitutional status. While the superintendent for the Hopi Agency reported only that there was no business committee among these people and there was no report for Zuni, traditional structures strongly resembling those in the Eastern Pueblos also existed among Hopis and Zuni at the village level.

Several superintendents reported non-elective chiefs or councils, even though they had not been asked about governments of this type. For example, it was reported that the White Mountain Apache Tribe had a "Tribal Council, according to their old Indian custom, consisting of the head chief and a number of sub-chiefs." The superintendent then gave information about the selection of these officers and their lifetime terms of office. The superintendent with responsibility for relations with the Havasupai Tribe reported that "these Indians recognize, to a certain extent, among themselves a chief and about three sub-chiefs, and statements made by these headmen usually bear considerable weight." Of the Seminole Tribe it was reported that "the government of the tribe is made up of a council of the oldest men from each clan. One business meeting is held each year." The superintendent with jurisdiction over the Walapai Tribe reported that "there are three men who style themselves 'chiefs' and members of the tribe go to them frequently for advice and business matters." The Puyallup Tribe was said to be governed by a group of seven men, elected for life, who were the successors to the "council of the tribe," which

"did all the tribal business, selected and recommended who would be the chief, sub-chiefs, made treaties etc., and did all affairs for the tribe." At least as the superintendent perceived it, the government of the Yuma Tribe apparently was traditional but losing authority, he reported that "when I took charge here, the tribal business appeared to be handled by a committee of three old Indians, Chappo Jackson, Martin Acquinas and Nelson Rainbow, but their decisions were not accepted by a large portion of the Indians of the reservation."

The persistence of traditional attitudes toward governance is clear from the many reports of elected officials who served for life. Perhaps a society in transition was indicated by the report of the superintendent for the Quapaw Tribe that the chief had just died and had not yet been replaced but that there was a "Tribal Committee" elected for an indefinite period. In sixteen cases business committees were reported whose members served for life or an indefinite term.

Two societies were reported to have general councils that met from time to time. These were the Fort Totten Reservation and the Umatilla Tribe.

If all of the above societies are counted as traditional governments, there were forty-five in this group, the largest category that can be derived from answers to the circular, even though there were no questions asked about this type of governing structure.

In several cases, the only thing that can be learned from the replies is that there was some kind of tribal council. For example, it was reported for the Fort Berthold Agency that there was an appointed "Tribal Business Committee," but no information was given on who appointed it or what its terms of office were. In the case of "the Indians living on the Public Domain, in Southern Oregon," the superintendent reported that he had read in the newspaper that there was "some kind of an organization that has been handling their affairs in connection with the claims of the Siuslaw, Umpqua and Coos Indians against the Government" and that he understood they had "succeeded in having their claims referred to the Court of Claims." Clearly, this organization was not under Bureau control, but no detail was provided about it.

In thirty cases it was reported that there was a business committee, but obviously the nature of these committees varied greatly. In twelve cases it was simply reported that there was a business committee. In two cases—the Prairie Band of Pottawatomis and the Lac Courte Oreilles Band of Chippewa Indians—it was reported that there were business committees appointed by the superintendent.

In only twenty cases did the business committee apparently resemble a model based on contemporary non-Indian notions. In nine cases business committees reportedly were based on written constitutions. In several of these, however, the term of office apparently was indefinite. Ten groups were

reported to have business committees elected for fixed terms of office, although without written constitutions. In all, thirty-two business committees were reported.

Finally, thirty-four groups were reported to have had no business committees at the time of the responses to the circular. This of course did not mean that there were no other governing structures, the superintendents may have omitted mention of them because they were not asked about them. In only a few cases did the superintendents assert that there were no governing structures at all. While not too much can be made of the numbers from the replies to this circular, it is striking that business committees clearly having nontraditional structures were reported in few cases and that traditional structures or structures with traditional features were most commonly reported.

Another way to approach trying to get an overall picture is to look at the prevalence of societies whose governments were based on written constitutions. Certainly, such documents were not traditional with Native American societies before the arrival of Europeans. According to Vine Deloria Jr. and Clifford Lytle,

The most profound and persistent element that distinguishes Indian ways of governing from European-American forms is the very simple fact that non-Indians have tended to write down and record all the principles and procedures that they believe essential to the formation and operation of a government. The Indians, on the other hand, benefiting from a religious, cultural, social, and economic homogeneity in their tribal societies, have not found it necessary to formalize their political institutions by describing them in a document.<sup>2</sup>

However, a number of Indian societies, particularly the Five Civilized Tribes (the Choctaws, Chickasaws, Creeks, Cherokees, and Seminoles) adopted written constitutions and other features of the Euro-American style of governance after European contact. Lester Hargrett has published a bibliography of pre-IRA constitutions, listing such documents for eight societies plus constitutions for the Indian Territory and the State of Sequoyah. Two subsequent collections of constitutions, laws, and related documents before 1934 add up to fifty-three volumes.<sup>3</sup>

What happened to the Five Civilized Tribes is instructive about both the hostility often exhibited by Congress toward Native American self-government and the strength of the judge-made pattern of Indian law. These societies were forcibly removed from the southeastern United States to the Indian Territory (later the state of Oklahoma) during the 1830s. Their constitution-based governance structures survived and flourished in spite of this move and also the forced negotiation of new treaties after the Civil War.

However, as white pressure to secure Indian Territory lands increased, Congress began a series of efforts that resulted ultimately in the destruction of the governments of the Five Civilized Tribes, both by subjecting them to allotment and by mounting a direct assault on their independence.<sup>4</sup>

The Five Tribes refused to agree to voluntary allotment (the Dawes Act did not apply to them), and Congress in the 1890s passed special legislation to force individual allotment on them, creating a special commission (headed by Dawes) to carry out the work. In 1898 the Curtis Act abolished the tribal courts for these five societies, at various times control over their own revenue and schools was taken from them, in 1906 legislation to destroy their governments and constitutions was passed, and in 1908 a bill to force the sale of their tribal buildings became law. As a result of these actions, leaders no longer could be selected by the Indians, the last "executive elected during the days of the tribal governments" died in 1939. Instead, for many decades the president of the United States appointed tribal leaders. In spite of this dismal record, the courts never ceased to doubt the existence of the governments of these societies, and, in 1970, Congress passed legislation once more allowing them to elect their own leaders.<sup>5</sup>

There is no overall record of how many written constitutions existed in Indian country by the time of the Indian New Deal. As noted above, replies to the 1929 survey indicated only nine business committees based on written documents. However, there is no reason to believe that this is a complete count.

Felix Cohen, in the first edition of his *Handbook of Federal Indian Law*, after noting that students of Indian law know about the written constitutions of the Five Civilized Tribes, remarked that "what is not generally known is that many other Indian tribes have operated under written constitutions." In a footnote, he listed sixty-five "constitutions or documents in the nature of constitutions recorded in the Interior Department" prior to approval of any constitutions drawn up under authority of the IRA.<sup>6</sup> A few of these were organized in response to the first notice to Indians that a major revision of Indian law was planned, but most predate the Indian Reorganization Act.

### Conditions Affecting Indian Governments

In the absence of adequate information about the nature of Native American governments before the IRA, it is instructive to look at some of the basic factors that have affected the survival or modification of such governments.

First, it is obvious that the capacity for self-government of many Native American societies was profoundly affected over a long period by the enor-

mous loss of life brought on by disease, warfare, and poverty. While the population before 1492 of what would become the United States cannot be determined with accuracy, it is now accepted that an estimate of 2 million is too low, to many scholars who have studied this question 8 million is more likely, and much higher totals have been put forward. In any case the reduction to the nadir of about 250,000 (between 1890 and 1900) represents a staggering loss of life. Russell Thornton has written that this loss of life in all the Americas (while the Euro-American population of these same areas was expanding very rapidly) is the greatest demographic disaster in human history.<sup>7</sup>

Entire societies disappeared in the United States in the nineteenth century or earlier, chiefly because of the impact of European diseases, for which Native Americans had not yet developed immunity, other societies were nearly wiped out. The Mandan Tribe, for example, fell to a population of only a little over 100 in 1837 after an epidemic of smallpox. Such catastrophes must in many cases have had a devastating effect on governance in these societies, even if governments survived in some form. Smallpox and other disease organisms are no respecters of status. The leaders of many societies, who carried with them the accumulated political wisdom of many centuries if not millennia of political life, must have been among those taken prematurely by death, and traditional structures were sometimes weakened by calamities of this magnitude.<sup>8</sup>

Second, the experience of coping with reservation life and the growing attempts of US government officials to control the Indians on reservations must have forced changes in governing structures. In most cases before the rise of the reservation system, Native American governance was focused primarily on activities within each society, although of course there were experiments in bringing together the leaders of various societies, the most famous of which is the Iroquois Confederacy. When most Native Americans found themselves confined to reservations and dealing on a daily basis with national officials with much power over them, their governments perforce had to change somewhat.

A major and extremely important effect of the removal and reservation policies was that the Indians forced to make these changes had most of their lands taken from them in a number of ways, many illegal. The loss of economic resources and the consequent shifts in the ways by which societies made their livings were catastrophic in some cases and traumatic in all cases. The high rates of Indian poverty during the 1920s were one measure of the continuing impact of these forced changes.

However, the nature and scope of these forced economic changes was not the same for all groups. In their excellent history of the Navajos, Garrick Bailey and Roberta Glenn Bailey have noted that for several decades after the

return from Fort Sumner in 1868 the Navajos were able to survive the reduction in hunting and adjust their herding practices successfully, in spite of the new conditions. Reservation life did not initially destroy their cohesion or seriously threaten the preservation of their culture. The period from the late 1860s until an economic collapse in the 1890s was also a time of increasing prosperity for the members of this society.<sup>9</sup>

Similarly, the various Pueblo peoples of the Southwest were able to continue their predominantly agricultural way of life initially after the American conquest. But even these societies lost significant amounts of land and precious water to whites. On the other hand, the destruction of the buffalo herds on the Plains had much more rapid and devastating results for societies relying primarily on hunting. The economic effects of confinement to reservations for societies dependent primarily on fishing must also have been different. In brief, forced changes in the economic bases of Native American societies resulting from the loss of land and resources combined with the creation of the reservation system were often destructive to societal cohesion and consequently social structure, including governance. But these effects varied in intensity and character as well as in the rapidity of change, and no single generalization is adequate for all societies, except that the overall result was an enormous loss of land and resources.

Third, various changes in group structure resulted from other major aspects of the way that reservations were established. Native American governmental practices necessarily were disrupted when members of various societies were forced by European governments and later the American government to radically change their lives. For example, the removal policy forced many Indians to leave their homelands for the Indian Territory, this policy clearly often had drastic effects on previous governance patterns. For example, the removal of the Cherokees from Georgia created a bitter factional split within the society, because some Cherokees were willing to cooperate with removal, for various reasons, while others remained strongly opposed.

Also, US government policies sometimes created new problems of interaction with other Native American societies. Not infrequently, for example, the reservation policy placed on one reservation two or more peoples who had not previously lived together. This happened at the Wind River, Flathead, Klamath, Warm Springs, and Duck Valley Reservations, to name only a few. In these cases, necessity forced the establishment of new governing structures to develop means of coordinating the decisions of two or more governments while simultaneously dealing with US officials.<sup>10</sup>

In a similar fashion, the establishment of reservations sometimes divided peoples. Although a huge Sioux reservation on which various subdivisions of

the Sioux Nation might have lived was once provided for by treaty, eventually the Sioux found themselves divided among a number of reservations, chiefly in South Dakota. Presumably the attempt by some Sioux leaders during the 1920s to create a governing structure at the level of the nation was one response to this situation. The creation of the All-Pueblo Council during the 1920s was an Indian response to the need to have a structure that could counter government policies applying to all or most Pueblos.

Sometimes the national government saw a need to establish new governing structures that Native peoples themselves may not have needed, because no structures existed above local levels and government officials found it easier to deal with fewer governments. The creation of the council that ultimately became the government of the Navajo Nation is one example of this.

Another factor of substantial importance that has not always been recognized was that not all Indians ended up—or stayed—on reservations. By the 1920s, as noted in the Meriam Report (discussed in chap. 3), there were substantial numbers of Indians living in urban areas in a non-reservation context. Almost certainly these “scattered” or “urban” Indians found it more difficult to take their governments—of whatever kind—with them or reconstruct governance structures under the new and inevitably more atomized conditions of life outside Native communities.

Fourth, a number of features created by national government policy based on the forced assimilation policy either brought about changes in Indian life or divided Native American societies. The extent to which such societies genuinely enjoyed the homogeneity referred to by Deloria and Lytle is difficult to know with precision, but the cumulative impact of various policies either carried out or encouraged by national policy over several decades, among other effects, increased the divisions within such societies and, therefore, the difficulty of making consensus-based decisions.

For many decades before the 1930s missionaries and others representing non-Indian religions had been making extensive efforts to convert Indians to various forms of Christianity. During the Grant administration the national government followed a policy (almost certainly in conflict with the establishment clause of the First Amendment to the US Constitution) of allowing various religious denominations to choose Indian agents on many reservations. Agents so chosen sometimes also attempted to convert the Indians on the reservations to their faith. There are still reservations on which at least nominally the largest religious group is the one originally promoted by agents chosen in this fashion. While church selection of agents was abandoned after only a few years, missionaries continued to make extensive efforts to convert Indians on many reservations, and many of these efforts were at least partially

successful.<sup>11</sup> The conversion of Indians may have been most effective where the missionary efforts were accompanied by the building of schools and hospitals under religious auspices.

These missionary efforts undoubtedly weakened traditional Native American religions, but they also divided Indian communities on religious grounds, since there were usually traditionalists who resisted conversion efforts. Although again there is no systematic national summary of the various effects of these religious changes, their net result was surely to weaken traditional Indian religions, which usually were intimately intertwined with governing structures and practices. While the theocratic structures of the New Mexico Pueblos were unusual, in many instances there was a union of religious and political life, not the separation mandated by the US Constitution and generally practiced in non-Indian society. To the extent that this was the case, traditional governance must have been affected adversely.

These matters are complex, and simplistic assumptions about them must be handled with caution. For one thing, apparent conversions to Christianity may well have been temporary, replaced in old age or when events changed with a reversion to other and more deeply held beliefs. As DeMallie's studies of Black Elk's visions as reported by John G. Neihardt make clear, the expositor of one of the most comprehensive versions of traditional Sioux religious visions, who wanted to record what he had learned so that it would not be lost, was for thirty years a convert to Catholicism who maintained during this extensive period that he had rejected the old ways.<sup>12</sup>

For another thing, peoples not acquainted with monotheism may well incorporate new elements into their belief systems without dropping old ones. As an example, a member of the Pyramid Lake Paiute Tribe managed at the same time to be an Episcopal lay leader, a Northern Paiute shaman, and a road chief in the peyote church.<sup>13</sup>

Bailey and Bailey report that religious beliefs changed very little on the Navajo Reservation until the 1950s. Moreover, while after that point the peyote religion and various Protestant religions spread rapidly on the reservation, there is much reason to think that many Navajos simply added nontraditional beliefs and practices to their traditional religion. Bailey and Bailey state that "it can be argued that new religious rituals and practices are being integrated into Navajo ritual practices, and that since the 1950s, the Navajo ritual inventory has actually expanded, rather than diminished."<sup>14</sup> Nevertheless, on many reservations traditional beliefs probably weakened and religious diversity and conflict increased, a primary component of the former homogeneity of many of these societies had declined.

Missionaries or missionary-oriented agencies often exerted influence on Indian life at levels above that of the reservation. The Board of Indian Com-

missioners, which played a significant role in national Indian policy from its establishment in 1869 to its abolition by Commissioner Collier, from the beginning had members who were chosen from religious ranks and usually included missionary representatives and/or reflected their views. Similarly, the Indian Rights Association, for decades the most important private group concerned with national Indian policy, was missionary-oriented. Collier abolished the Board of Indian Commissioners partly because of its pro-missionary orientation, and the Indian Rights Association opposed his plans for a comprehensive new Indian statute at least partly because it correctly perceived Collier to be hostile to efforts to convert Indians to nontraditional religions (see chap. 8). While we lack an adequate national summary of the impact of missionary efforts over many decades to influence Indian societies, it is obvious that these efforts weakened traditional Native American governance patterns by introducing previously nonexistent divisions.

Similarly, by the early 1930s the US government, some local governments, and various private groups had attempted over many decades to change Indian ways of life through educational means. Few educators of Indians before the 1930s had sought to preserve Native American cultures. Moreover, these educational efforts relied strongly on boarding schools. These institutions must have been particularly harmful to the preservation of Indian cultures, because they removed children from their families and societies for long periods. One of the most important of these early boarding schools, the Carlisle Indian School, was headed for decades by army officer Richard Pratt, who chose this format deliberately because he felt it would "civilize" Indians most effectively and quickly, and his model was often duplicated later for similar reasons.

Frederick E. Hoxie has pointed out that in the early years of this century, at the national level the BIA moved away from boarding schools. This development was part of a general replacement of the kind of education favored by Pratt with vocational instruction and assumed that most Indians would be engaged in manual labor and that there was no need to prepare Indian children for higher education. Captain Pratt was removed as director of Carlisle, and in 1918 his school, which had produced a number of Indian graduates who went on to become highly educated and successful in the non-Indian world, was closed. Hoxie cites evidence that behind these changes lay racist assumptions. Unlike Pratt, who was explicit that Indians were "savages" but also that they possessed the inherent capacity to be educated to any level attained by white Americans, BIA leaders, important congressional figures and "friends of the Indian" during this time advanced the view that Indians were racially incapable of "civilization," an opinion that condemned them to low-income and low-status positions in society.<sup>15</sup> These changes undoubtedly reduced the quality of education available to Indians through the national government, but

they did not necessarily change the direction of pressure through the schools to abandon tribal ways and assimilate to general American society

No doubt not all educators of Indian youth in practice were zealous in pursuit of assimilationist goals, and no doubt also formal Indian education had limited effect on Indian life, for several reasons. First, of course, formal education was seldom imposed on adults, even if the schools had changed every Indian child, there would have been a lag in terms of the total impact on Native American societies. Also, for many decades formal European-oriented education was not universal for Indian children, the national government did not provide enough schools to educate all children within the Navajo Nation, for example, until well after World War II. Finally, by no means was it the case that Native American parents gave up their attempts to pass on their cultures to their children. Even if the children were removed to boarding schools, the parents had opportunities to teach them their Native languages and many other aspects of their cultures before they were old enough to attend these schools. Again too, it is apparent that the resilience of societies in retaining cultural beliefs and practices in the face of formidable obstacles is often great, Pratt and others often complained that their students "went back to the blanket" when they returned home.

Nevertheless, there can be little doubt that the impact of formal education intended to make over Indians culturally must have been great, forcing some people away from their inherited cultures and toward what the US government wanted them to become. At the very least, assimilation-directed education was one of the factors producing a division between "progressives" and "traditionalists" within many societies. This factional development undermined the consensus that had often existed earlier and on which traditional decision-making depended.

The evidence reviewed in the last chapter makes it clear that administrators often made attempts to change or abolish Native American governments, although there was no concerted and consistent effort in this direction and these same officials often in practice acknowledged the legitimacy of Indian governments. The net result of these efforts over many decades surely was to destroy some governments and profoundly change others.

### The Allotment Policy and Self-Governance

The allotment policy, which dominated national efforts to assimilate Indians from the 1880s on and had the most important effects on Indians, not only weakened traditional beliefs but also introduced still another major division within many societies. Ultimately, the IRA sharply reversed this policy, be-

cause John Collier and other reformers realized that it had led to the loss of enormous amounts of Indian land, on top of the even larger reductions made earlier by the removal policy and the establishment of the reservation system. The allotment policy also struck a blow at the development of Indian farming and ranching, which had been increasing before the advent of the general allotment policy but which declined after 1887.<sup>16</sup> But allotment also created divisions within Indian communities.

The allotment policy began on a piecemeal basis, in the 1850s, through inclusion of allotment clauses in various treaties or statutes applying to specific societies, but it became one of the few supposedly general policies with passage of the General Allotment, or Dawes, Act in 1887. As noted above, the Five Civilized Tribes were later allotted under legislation applying only to them, which was also the situation for several other societies.

Indian heads of families were each allotted 160 acres of agricultural land, or larger amounts of grazing land, other members of Indian households received smaller amounts. Originally these lands were held in trust by the US government for twenty-five years, during which time they could not be sold. At the end of this period, the head of household would be granted a fee patent to the land and could sell it without restriction. Indians were asked to select the lands that they would be assigned, if they refused, the government selected lands for them. A key decision in the legislative process leading to enactment of the Dawes Act was to make allotment compulsory.<sup>17</sup> The remainder of reservation lands after all allotments had been made was considered surplus and was made available to non-Indians.

There were various ideas and motivations behind the allotment policy. Opponents of the policy during the years it was debated in Congress before 1887 warned that behind it lay greed for Indian lands and that its adoption would permit the looting of Indian property by non-Indians. A major study of the act concludes, "It is probably true that the most powerful force motivating the allotment policy was the pressure of the land-hungry western settlers." Hoxie has likewise noted that it combined "western venality" with "reformers' sweet promises."<sup>18</sup> It is apparent also that the desire of railroad interests for rights-of-way across Indian lands played an important role.

These reasons for the policy were not often publicly stated but clearly interacted with idealistic motives, Brian Dippie is probably correct when he writes that "the beauty of a general policy of allotment in severalty was that it managed to accommodate both East and West. It appealed simultaneously to humanitarian instincts and overt self-interest."<sup>19</sup> Both factors were present among whites, of course, few Indians asked for or supported allotment.

Massachusetts Senator Henry L. Dawes, who played the leading role in establishing the policy as chair of the Senate Committee on Indian Affairs after

1881, typically presented allotment in idealistic terms. Although Massachusetts no longer had a significant Indian population, Hoxie has suggested that Dawes's embrace of Indian reform in 1879 "saved his [political] career." Dawes led a group of Republican senators—mainly from New England—who retained from their Reconstruction days an interest in moral reform and believed themselves to be genuinely "friends of the Indians."<sup>20</sup>

The starting point for the thinking about Indian policy that characterized Dawes and those who followed his lead was their strong belief that Native Americans were "savages" who would benefit from becoming "civilized." As Hoxie has put it, the most basic premise behind this policy was that "the destruction of 'savagery' and the expansion of Christian 'civilization' would convert individual natives into docile believers in American progress." The assimilation policy had three elements. It "assumed that landownership, citizenship, and education would alter the traditional cultures, bringing them to 'civilization'."<sup>21</sup>

By 1887 a near-consensus had developed among the "friends of the Indians" that making individual land-owning farmers of Indians was the key element in a plan to bring about their forced assimilation into American society, and therefore was beneficial to Indians in the long run. The development of this consensus was facilitated by yearly meetings of the small number of national figures concerned with Indian policy—in or out of government—at the Lake Mohonk Conferences.

Several individuals in and out of government, however, including Dr. T. A. Bland, publisher of *Council Fire*, opposed it. A strongly worded minority report of a House committee in 1880 opposed the policy on the ground that it would destroy Native American "communism" and bring about the loss of Indian lands and their "extermination." In 1881, when the principal congressional debate over allotment took place, Colorado Senator Henry M. Teller opposed it vigorously. He predicted, accurately, that its chief effect would be the loss of Indian lands.<sup>22</sup>

The continuing power of the Jeffersonian ideal of a society consisting of equal property-owning, self-reliant men, which had formed the ideological basis for the homestead acts and related national policies dealing with resources in the latter half of the nineteenth century, contributed a great deal to the attractiveness of this policy among both idealists and plunderers. At least some of the reformers were aware, however, that their idealistic conceptions dovetailed with desires of Western legislators to forward the interests of some of their non-Indian constituents. Dawes himself had once opposed allotment as a general policy; he explained his crucial change of heart on the issue by saying that "every year I have been weakening on it because I have come, from year to year, to the conclusion that this pressure upon the Indian for his lands

has come to be irresistible, and that we have got to make provision for him now just as quick as we can, or we shall lose the opportunity."<sup>23</sup>

This bears an uncomfortable resemblance to the assertion that it was necessary to "save" a Vietnamese village by destroying it. What he said to justify this view, however, was that it would be easier for Indians to retain their lands against Western assaults on them if the lands were in private hands. It did not work out that way. Perhaps Dawes was also influenced by his view that allotment would make it possible in the not too long run to reduce the size and costliness of the Bureau of Indian Affairs, thus also appealing to a segment of congressional opinion.

The role of scholarly theorizing and/or widespread popular ideas in explaining why the allotment policy was adopted is not easy to determine. Hoxie argues correctly that the few nineteenth-century "scientists"—most of whom were technically amateurs—who wrote seriously on American Indians were largely advocates of an evolutionary theory postulating uniform stages of human development from savagery to civilization. That is, very little scholarly opinion was available to the "friends of the Indians" that dissented from the existing mind-set of these activists. However, not all of these thinkers agreed that allotment as a policy made sense. Lewis H. Morgan, one of the most influential of these thinkers, published a book in 1881 opposing the policy, when the most extensive congressional debate on allotment was going on. He died in that year and so had no direct influence on the movement that led to the 1887 statute, however.<sup>24</sup>

Hoxie has drawn attention to the treatment of other minorities defined in racial terms during the nineteenth century. However, these matters are complex. While the savagism/civilization framework of ideas clearly denigrated Native American cultures, it also could deny the racist assumption that Indians were savages by nature. This is most clear in the firmly expressed opinions of Captain Richard Pratt, the founder of Carlisle Indian School; he stated forthrightly that both Indians and African Americans were fully capable of becoming as "civilized" as he presumed Euro-Americans to be. It was merely necessary that federal officials assume the obligation of giving the Indians the right kind of education to enable them to realize this potential. While Pratt took it for granted that Native Americans were somehow retarded on a universal path toward civilization, he also refused to entertain the possibility that this was the case because they were inherently inferior to Euro-Americans.<sup>25</sup>

Yet white racism was a significant feature of American society during the nineteenth century, and its interrelationships with attitudes and policy toward Native Americans largely remain unexplored. Partly because of the unique legal status of Native Americans, combined with the fact that the federal government dealt with them through a separate governmental agency after the

first part of the century, Indian policy tended to remain the domain of a restricted group of government and nongovernment leaders at the national level. There was little obvious overlap between attitudes and policy toward Native Americans, African Americans, and Asian Americans, all of whom suffered legal discrimination and private hostility in various ways and to varying degrees. Apparently the structures of ideas behind these policies varied too.

Scholarly views about Native Americans changed in the early part of the twentieth century in a way hostile not only to nineteenth-century ethnocentric conceptions of Native Americans but even more firmly to racism. Anthropology became a genuine academic discipline in the United States only after 1900. As part of a general development toward specialization and professionalization in American universities, this branch of knowledge achieved status in a few leading universities as a separate field of study and began expansion into many others. The young discipline reached agreement on the subjects to be studied and techniques for studying them, and it started producing a substantial body of scholarly literature. At first this literature was largely about Native Americans, although nothing in the discipline's theoretical structure required this result.<sup>26</sup>

This growing professionalization, however, was accompanied by a significant departure from the structures of ideas shared by most scholarly students of Native Americans in the previous century. The two chief founders of contemporary American anthropology—Franz Boas at Columbia University and Alfred Kroeber at the University of California, Berkeley—rejected the nineteenth-century evolutionary theories. Both men had a distaste for overarching theories, but included in their approach was a refusal to accept ethnocentric and racist underpinnings for theories of human nature and society.

Elvin Hatch has written of both these developments of the new century. From early in the century at least through the 1930s anthropologists, initially largely following Boas and Kroeber, were cultural relativists. They saw peoples in cultures and societies outside the European orbit as making choices that were different from, but not inferior to, those made by Europeans and their descendants in other parts of the world. Along with this rejection of the savagery/civilized dichotomy, twentieth-century anthropologists also rejected the notion that human groups were divided by fundamental inherited differences along a scale ranging from inferior to superior. Hoxie is correct that the new science of man undermined the fundamental notions behind all ideologies that assumed Native Americans should and would become more "civilized." But anthropology also undermined all attempts to portray Indians as unable to imitate Western civilization, and so worked against notions that Indians were doomed to occupy inferior positions in American society. It is no accident that when John Collier developed conceptions of Indian policy

that went beyond cultural pluralism to view Native American societies as superior to those of European origin he found allies within the anthropological community.

The effect of these changes in the scholarly world and in underlying popular views explaining group differences are difficult to relate directly to federal government policy, however. As chapter 1 has shown, the top federal officials charged with implementing national Indian policy during the 1920s explicitly endorsed the old assimilationist goals of their predecessors, there is little evidence that they based their work on the changed scholarly views. These statements by government officials also demonstrate little concern with why the ideology had not yet produced the intended results, although several decades had passed since it became the theoretical basis for federal government policy.

In any case, the views of the idealists who helped enact the allotment policy or of government officials charged with carrying it out were not the only factors in determining what actually happened in Indian country. In addition to the actions taken—or not taken—by Indians themselves, the land pressures that played a major role in enacting allotment continued.

An important part of the thinking behind the allotment policy was the assumption that, over a relatively short period, the Dawes Act and similar legislation would somehow work to destroy Indian societies and their governments, thus individualizing these societies. As Dawes put it, "The idea is to take the Indians out one by one from under the tribe, place him in a position to become an independent American citizen, and then before the tribe is aware of it its existence as a tribe is gone." The report of a committee of the House of Representatives in 1884 on a bill similar to the one that eventually passed said that one of the effects of the bill would be that "a process of tribal disintegration is at once started."<sup>27</sup>

Nevertheless, it is a curious fact that the Dawes Act did not provide explicitly for various mechanisms to bring about the desired results. In particular, it did not mandate the destruction of Indian governments. As Leonard Carlson has put it, "The reformers had an almost mystical faith in the power of private property to transform American Indians and assimilate them into hardworking farmers." Earlier, Angie Debo had used the same phrase—"almost mystical faith"—to describe the deeply rooted belief that private property was the basic foundation of civilized life. Senator Dawes stated that allotment was a "self-acting machine" that would automatically improve Native American societies.<sup>28</sup> But exactly what would happen as a result of individualizing property ownership was not made clear by the statute.

There was also confusion—some of which persists to the present—over the role of citizenship in bringing about this result. Two sections of the Dawes Act were believed by the reformers to push in the direction of ending the unique

legal status of Native American societies, but neither did so, nor was there sound reason to believe either could have had this effect

One of these provisions conferred US citizenship on successfully allotted Indians. Initially, the allottee was to become an American citizen as soon as the allotment was issued, but in 1906 the Dawes Act was amended to confer citizenship when a fee patent for the land was issued.

In 1887, most American Indians were not citizens of the United States, because the Supreme Court had ruled in 1884, in *Elk v. Wilkins*, that the Fourteenth Amendment's conferral of citizenship on all persons born in the United States and "subject to its jurisdiction" did not apply to Indians because they were not yet subject to the jurisdiction of the national government.<sup>29</sup> Obviously the authors of the Dawes Act thought that citizenship would eventually result in making US citizens of most allottees, but this was incorrect without explicit congressional action.

It was also widely assumed that US citizenship would automatically weaken Native American societies, but this view was based on unrealistic notions about the meaning of citizenship. There was a notion that assumption of US citizenship would annul tribal citizenship, but nothing in the statute required this result and the courts did not hold that the two levels of citizenship were any more incompatible than national and state citizenship.

It may also have been assumed that US citizenship would automatically give Indians the right to vote in state and national elections and thus make Indians full participants in the political order of the wider society. If so this was equally unrealistic. The right to vote was and is granted by states, subject to restrictions laid down in the federal Constitution. States have in the past denied the right to vote to large numbers of US citizens (e.g., women before adoption of the Nineteenth Amendment in 1920) and have extended it to non-citizens (e.g., immigrants who had applied for citizenship in some states before this practice was abandoned in the 1920s). After all Indians were declared by Congress in 1924 to be US citizens, it was a quarter of a century before all states granted Indians the right to vote.<sup>30</sup>

The reformers also thought that citizenship automatically extended the protection of important constitutional rights, but they were equally mistaken on this point. Almost all constitutional rights enjoyed against either the states or the national government are rights of persons, not citizens. In principle they apply to all under the jurisdiction of the national government and are not dependent on citizenship. Hoxie, for example, is incorrect when he asserts that the Supreme Court, in the civil rights cases, "promised that national standards of citizenship would not be enforced in the South." This opinion held that the Congress had not been granted by the Fourteenth Amendment to the Constitution the authority to pass legislation applying to individuals, it had nothing

to do with citizenship. The period when Congress adopted allotment was also the time when it in practice gave up protecting the rights of Southern blacks supposedly guaranteed by the Civil War amendments, but again this had nothing to do with citizenship.<sup>31</sup>

In short, the assumption that making US citizens of Indians would significantly change their legal status and thus weaken Indian governments was unrealistic, and this provision of the Dawes Act did not have such an effect. It was equally unrealistic to believe that by becoming citizens, Indians would automatically increase their commitment to general American culture—the goal of forced assimilation.

A second provision of the Dawes Act made Indians subject to state jurisdiction as another consequence of individual ownership of land. Section 6 originally stated that "upon the completion of said allotments and the presenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside." Subjecting entire Native American societies to local and state law would certainly have diminished Indian self-government, but the courts prevented this from happening, in spite of the explicit language of this provision.

Initially the Supreme Court did interpret the provision literally. In 1905, in the *Heff* case, its first decision about the meaning of section 6 of the Dawes Act, the court said that "when the United States grants the privileges of citizenship to an Indian, gives to him the benefit of and requires him to be subject to the laws, both civil and criminal, of the State, it places him outside the reach of police regulations on the part of Congress," and it went on to speak of the "emancipation from Federal control" worked by this provision. However, in subsequent decisions the Supreme Court began to retreat from this position. Hoxie has chronicled these developments carefully and noted their substantial effects.<sup>32</sup>

In 1916, in *United States v. Nice*, the *Heff* decision was explicitly overruled. By this time the Supreme Court was saying that "citizenship is not incompatible with tribal existence or continued guardianship" by the national government. Further, it noted approvingly that "both Congress and the administrative officers of the Government have proceeded upon" the theory that "the tribal relation and the wardship of the Indians were not to be disturbed" by the allotment policy. In effect, this held that tribal sovereignty had not been abolished by allotment.<sup>33</sup>

This development resulted from several factors. The most important of these was the structure of Indian law built up over many decades, in the absence of clear evidence that Congress intended major changes in this structure,

the courts interpreted Indian law as they had traditionally. Another part of the reason for this outcome was probably the long period of trusteeship before a fee patent could be issued. Originally, section 6 had gone into effect as soon as an allotment was made, but in 1906 the law was amended to grant citizenship and begin state jurisdiction with the issuance of a fee patent to land.<sup>34</sup>

The basic period before such a patent could be issued originally was twenty-five years, but Congress changed this in 1906 when it adopted two amendments to the Dawes Act that had the effect of making the period of trust status indefinite in many cases. One change authorized the secretary of the Interior to issue fee patents to Indians before the expiration of the twenty-five-year period upon a finding that the Indian was "competent" to manage his own property. This provision was used to grant fee patents to many Indians who promptly lost their land to whites. However, another statutory provision in the same year authorized the president to extend the trust period *beyond* twenty-five years.<sup>35</sup> Thereafter, government officials who wished to protect Indian ownership of allotted lands could, and did, do so by extending the trust period. These facts, since they meant that entire reservations would not pass out of trust status at the same time, probably affected the court's interpretation of the statute.

Still another factor was that allotment was in practice a patchwork process. Hoxie has noted that "the Dawes Act was little more than a statement of intent" because "it contained no timetables and few instructions as to how it would be implemented." For this and other reasons, not all reservations were allotted, and even on allotted reservations not all lands were allotted or opened to non-Indian settlement. The assumption of some reformers seems to have been that all so-called surplus lands would quickly pass into white hands, leaving no trust lands on reservations after fee patents were issued (and therefore less reason for the existence of Indian governments), but again this did not happen.<sup>36</sup>

In many cases lands on reservations were in timber or otherwise unsuitable for growing crops or for grazing. In dry areas of the West (which included the very large Navajo Reservation) 160-acre parcels would have been useless to individuals for farming purposes. As a result, a number of reservations were never allotted at all. (There were some allotments on public domain lands adjoining the present Navajo Reservation, but there was never an attempt to allot most of this reservation).<sup>37</sup>

In other cases, the only lands that could be allotted were the irrigated portions of the reservation, but there was not enough of this type of land for standard allotments to all households. The Pueblos were never allotted, at least partly for this reason. Other reservations with irrigated lands, such as the Walker River Reservation in Nevada, were allotted under special statutes that mandated much smaller allotments than those provided for in the Dawes Act

In short, allotment did not have the effect of eliminating completely Indian lands held in trust and could not have worked out to this result, regardless of how it was administered. Inevitably much reservation land remained in trust status even after allotment had run its course. The partial preservation of reservation land bases, even if diminished, undoubtedly favored the preservation of Native American governments.

The allotment act increased the control exerted over Indian life by the Bureau of Indian Affairs, however, a development that must have had corrosive effects on Indian governments. Again, the hope of reformers was that allotment would allow movement toward "getting the federal government out of the Indian business," but the reverse happened.

Allotment increased the size of the Bureau because more officials were needed to process the allotments and to control the use of allotted lands and the income from them in the usually long period before fee patents for the land could be issued. This became more important after Congress, in 1891, allowed the leasing of allotted lands to non-Indians. Leasing reached ludicrous levels and, in some states, the Bureau of Indian Affairs followed rules for inheriting allotments that resulted in extreme subdivision of Indian lands among many owners. These and other requirements of the allotment policy were among the reasons that "the number of employees of the Office of Indian Affairs in Washington increased by more than two and one-half times between 1900 and 1920 [and] Congressional appropriations to run the Office of Indian Affairs grew from \$9.6 million in 1903 to \$15 million in 1928."<sup>38</sup>

Although it did not "break up the tribal mass," as President Theodore Roosevelt had predicted, allotment did have tragic consequences for Native Americans. The primary effect was that Indian lands were drastically reduced. John Collier told congressional committees in 1934 that the Indian land base had shrunk from 138 million to 48 million acres as a result of allotment, a reduction to 35 percent of the lands held in trust before 1887. A more recent estimate is that "Indian lands under the supervision of the Office of Indian Affairs declined from 104.3 million acres in 1890 to 52.7 million acres in 1933," a drop to slightly over 50 percent of the 1887 level.<sup>39</sup>

This huge loss, whatever its precise size, resulted from the sale of surplus lands and governmental decisions to take Indian land for public purposes but also from the loss of allotted lands after the expiration of the trust period. Carlson wrote that "the best available evidence suggests that up to 80 percent or more of Indians granted patents in fee sold it or had it sold for them on account of delinquent mortgage or tax payments within a few years of being declared competent."<sup>40</sup>

This devastating loss of Indian lands resulted overall in a reduction in the number of Indians who had been farming or ranching before the allotment

policy began. More important for this book is the fact that ultimately one of the most important unintended effects of the allotment policy was to help lay the foundation for major policy change during the New Deal. When the Meriam Report established that the chief effect of the allotment policy had been the loss of Indian lands rather than the improvement of Indian life, it concluded that at least major changes in the allotment policy were in order. John Collier's discovery of the importance of this fact was a major turning point in his search for alternatives to the policy of forced assimilation.

Still another effect of the allotment policy had a more direct impact on Indian self-government in the early 1930s. Some Indian allottees became successful farmers or ranchers. These individuals may have been the most assimilated members of their societies, they were the most likely to serve on business councils or the boards of directors of cattlemen's associations and to have demonstrated competence in dealing with the non-Indian economic order. Otis has noted that divisions between "conservatives" and "progressives" resulted from allotment both before and after 1887, this division partly coincided with the new distinction between land owners farming in a basically Anglo-American way and those not taking this step.<sup>41</sup>

These successful farmer/ranchers often defended allotment and other aspects of the policies suggested by the forced assimilation ideology. When the proposal that became the IRA was sent to Congress, some of the strongest opponents were Indians who objected to the sections designed to end the issuance of allotments and return allotted lands to the control of Indian governments.

### Conclusions

A major argument of this chapter has been that, by the early 1930s, a number of factors had produced substantial changes in the capacity of Native American societies to govern themselves and on the nature of governance in such societies, even though we do not possess a clear national summary of what Indian governments were like at the end of this period. These effects were not entirely in the direction of destroying any governing structures at all, although during the 1920s there were frequent assertions that this was the case and obviously some traditional structures had disappeared without replacement.

Instead, it is highly likely that the chief effect of the factors noted above was to transform the nature of Indian governance by changing the societies in which such governments functioned and the structures through which they were governed. Particularly, the number of assimilated Indians had increased and become more important on many reservations, because several kinds of changes forced on these societies had pushed in the same direction. An in-

direct effect of this change probably was the voluntary modification of traditional governance structures and patterns.

There no doubt would have been some movement in this direction even if deliberate attempts by national officials, missionaries, teachers, and others had not attempted to assimilate Indians and if the allotment policy had never begun. Indians by 1930 lived surrounded by a non-Indian society that had attractions for Indians, even though it also produced many harmful pressures on Indians and their cultures. At least elements of this surrounding society would have been favorably regarded by many Indians even in the absence of attempts to force them to assimilate. Moreover, the non-Indian society itself had changed substantially since 1887, and there is no reason to believe that all Indians would have rejected all these changes if left to themselves to decide the matter.

The attraction of non-Indian society was based in part on the greater material affluence of the wider society. The desire to abandon Indian ways in order to do better economically is not without coercive aspects, especially when a major reason for Indian poverty is the forced reduction of the resources available to Indians as the result of the taking of Indian lands and resources. Nevertheless, some part of the increase in the number of Indians who had at least partly given up aboriginal beliefs and practices would have taken place without assistance from the policies discussed above.

In brief, culture change was continuous within both Native American and Euro-American societies in the decades between the first significant encounters (which occurred at different dates in various societies) to the beginning of the Indian New Deal. There could not have been many Native American societies that had maintained their pre-Euro-American governance structures unchanged.

In other words, while systematic overall information is not available on the extent of traditional governments in 1934, a more serious problem is to evaluate how important were the changes that had taken place. The fundamental essence of pre-Euro-American practices may very well have survived numerous and extensive superficial changes in a great many Native American societies. For example, it has been argued that a feature of many traditional Indian governing practices was the high valuation put on consensus, in contrast with the notion of deciding matters by majority rule. There is no reason why a business committee could not in practice operate under consensus rules, just as there is no reason why a superficially more traditional council of elders could not fail to achieve consensus, in the face of extensive divisions within the society as a result of the types of culture change discussed in this chapter. No attempt has been made here to offer a definitive definition (applicable to hundreds of societies) of what constituted traditional governing institutions and

practices in 1934, and apparently no one else has attempted to produce such a blueprint

More important, undoubtedly, is the question of whether the changes made in this area in many and perhaps most Native American societies before the Indian New Deal were initiated and controlled by (or at least had received the free consent) of the Native American societies themselves. This is an even more difficult question, in part because it is not clear in many cases what constitutes consent

In Western European societies of the last few centuries, a constituent act involving a major part of the society—a constitutional settlement such as the one that took place in the United States during the 1780s, for example—is commonly acknowledged to constitute consent. But it is less certain how to determine the degree of consent involved in important constitutional changes that occur piecemeal over many decades—such as the substantial expansion of the federal government, in relation to state governments, since the 1930s.

Similar problems are involved in evaluating changes in Native American societies. For example, Assistant Indian Commissioner Scattergood, during the Hoover administration, is quoted as stating that the governing structures of the New Mexico Pueblos were not “traditional” but had been created by the Spanish centuries before (see chap. 4). There can be little doubt that the governing structure that was accepted as traditional in the 1930s for these societies had been created much earlier in response to attempts by Spanish officials to control the Pueblos. However, this structure allowed the continuance of the underlying religiously controlled former governing structure while new surface structures more visible and more Euro-American in apparent character were created. We do not know, however, precisely how this change came about or the degree to which these developments were initiated or controlled by the Pueblos or the Spanish officials. But it is apparent that by 1934 these structures had become “traditional” in the Pueblos and firmly based on the consent of the members of these societies.

Likewise, the status of the Navajo Tribal Council as of 1934 presents difficulties in understanding how far it was based on the consent of the members of this society. There is no doubt that a new level of government was initiated in the 1920s for its own purposes by the Bureau of Indian Affairs rather than the Navajos. But there also is no doubt that at some point Navajos began to control this structure and regard it as their own. This was most evident during the 1930s, when attempts by the national government to restructure the Navajo Tribal Council were rejected by the Navajo Nation. Down to today this council apparently is based on the consent of the Nation, although there has never been a formal constituent act in a Euro-American sense.

Bailey and Bailey's excellent study of Navajo history during the reservation years concludes that the Navajo are different from other Indians because they were able to resist major change in the most important areas until quite recently but also have been able to control the changes that have reached them so that at no time have the integrity of Navajo social structure or their most fundamental cultural beliefs been threatened. In other words, this society has been fundamentally able to control culture change over many decades.<sup>42</sup>

The extent to which similar conclusions can be reached about other societies, however, is not certain, no doubt others are also “different.” Dippie's study of the remarkable persistence of the myth that Indians are disappearing, despite evidence that they remain culturally different from the general American society, suggests that several major factors may have been overlooked. One of these may well be differences in gender roles. Anna Ickes remarks in her 1933 study of Southwestern Indians that “it is women, white or red, who preserve tradition tenaciously.” In her 1920s study of the Omaha Tribe, anthropologist Margaret Mead reports the differential impacts of forced culture change on this group in an insightful way. Omaha men could no longer hunt buffalo and did not take to farming as a way of life. But Omaha women, who had traditionally planted crops and taken care of children and household duties, essentially went on doing the same things even after confinement to a reservation. Moreover, they were the primary educators of young children, with the result that Omaha culture continued to be transmitted to new generations, even though men were forced to change radically their adult behaviors.<sup>43</sup>

Regardless of conclusions on this question, however, one of the most important changes in Indian life by the early 1930s was the fragmentation and division in Native America created by the partial successes of the forced assimilation policy and the other factors affecting Indian life. It would no doubt be an oversimplification to categorize all Indians at this time as traditionalists or progressives, but these terms or similar ones have been used and reflect important realities on many reservations.

Hazel Hertzberg's study of the first national organization of Indians, the Society of American Indians, is revealing on this score. The society was active for only a few years, from roughly 1911 to 1916, although it survived in some form until the early 1920s. During its heyday the group worked to speed up the pace of assimilation. Its members were chiefly individuals who had become successful in the non-Indian world—physicians Charles Eastman and Carlos Montezuma, anthropologist Arthur C. Parker, Protestant ministers Henry Roe Cloud and Sherman Coolidge, Catholic priest Philip Gordon, attorneys Denison Wheelock and Thomas Sloan, for example. These individuals had accepted the assimilationist ideology, although not necessarily all the ways by

which the national government had attempted to secure the triumph of this ideology, and they wished to make it easier for other Indians to follow their path<sup>44</sup>

Hertzberg's study, as well as further information about Dr. Montezuma, illustrates the difficulty of understanding politics in these terms, however. Before becoming inactive, some members of the Society of American Indians defended members of the peyote religion, a distinctively Indian religion followed by members of a number of societies. Later, Dr. Montezuma became a defender of traditional Indians and moved to a reservation<sup>45</sup>

Factionalism based on the traditionalist/progressive division has been noted in the previous chapter, at one point during the 1920s the Bureau of Indian Affairs was supporting a "progressive" group claiming to have representation in many Pueblos. H. Craig Miner has documented the role that assimilated Indians among the societies living in the Indian Territory in the nineteenth century often played in introducing railroads, mining, lumbering, and non-Indian towns into the territory against the desires of the more traditional Indians<sup>46</sup>. No doubt other examples have been documented.

One reply to the 1929 circular asking about business committees reported factionalism of this sort. The superintendent with responsibility for the Yuma Tribe wrote, "At the present time there are two distinct factions: the younger or progressive faction, and the Older people who hold to the old tribal customs." Probably other replies would have mentioned such a split if there had been questions on this issue.

James Madison, not only one of the most important leaders in creating the Constitution of the United States but also the major theorist who elucidated the principles behind this document, argued in *Federalist #10* that the existence of factions was rooted in "the nature of man." By factions he meant irreconcilable divisions within society of the sort that make achievement of consensus in favor of "the permanent and aggregate interests of the community" difficult to achieve<sup>47</sup>. In other words, contemporary democracy in the United States and other large-scale industrialized societies takes for granted the centrality of conflict among group interests.

But smaller societies accustomed to unanimity and organized on different principles may need to modify their governance structures to take the new kind of group differences into account. As the Santa Clara example indicates, long-standing and pervasive factionalism is difficult to reconcile with many traditional Native American approaches to government.

To summarize, a crucial question is the nature of Native American governance at the time of passage of the IRA. While systematic national data are not available, fragmentary evidence plus knowledge of factors affecting Indian governance prior to this time make it obvious that the forced assimilation pol-

icy had not by 1920 succeeded in destroying Native American governments on a wholesale basis. Although self-government is not discussed by Hoxie, this finding is consistent with his conclusion that by 1920 the allotment policy had failed to achieve the goals of its principal authors.

Certainly the vacuum theory did not apply to very many Native American societies. But there is also no evidence of a single uniform pattern of Indian governance. Both Indian societies and the governmental structures serving them were more complex in 1934 than they were in 1887.

8 Vine Deloria Jr and Clifford M Lytle, *The Nations Within The Past and Future of American Indian Sovereignty* (New York Pantheon Books, 1984)

9 Curtis Berkey, "John Collier and the Indian Reorganization Act," *American Indian Journal* 2, no 7 (July 1976) 2-7, "The Legislative History of the Indian Reorganization Act," *American Indian Journal* 2, no 7 (July 1976) 15-22, "Implementation of the Indian Reorganization Act," *American Indian Journal* 2, no 8 (August 1976) 2-7, J Leiper Freeman Jr, "The New Deal for Indians A Study in Bureau-Committee Relations in American Government" (Ph D diss, Princeton University, 1952)

10 "The next session of Congress will be for the Indians and the Indian service a fateful time" John Collier, "Indian Administration—Some Policies, Hopes, and Fears," in *Proceedings of the National Conference of Social Work* (Chicago University of Chicago Press, 1933), 675

11 Frederick E Hoxie, *A Final Promise The Campaign to Assimilate the Indians, 1880-1920* (Lincoln University of Nebraska Press, 1984)

#### CHAPTER ONE INDIAN SELF-GOVERNMENT AND THE NATIONAL GOVERNMENT DURING THE 1920S

1 The current version of this work is Felix S Cohen, *Felix S Cohen's Handbook of Federal Indian Law 1982 Edition* (Charlottesville, Va Michie Bobbs-Merrill, 1982), hereafter *Handbook of Federal Indian Law, 1982*

2 6 Peters 515, 559 (1832)

3 See Francis Paul Prucha, *American Indian Treaties The History of a Political Anomaly* (Berkeley University of California Press, 1994) This is the most thorough treatment of the subject, in spite of Prucha's view that the United States should never have entered into treaties with Native American nations

4 21 U S 543 (1823)

5 See Imre Sutton, ed, *Irredeemable America* (Albuquerque University of New Mexico Press, 1985)

6 *U S v Winans*, 198 U S 371 (1905), *U S v Winters*, 207 U S 564 (1908), *Handbook of Federal Indian Law, 1982*, 452, 575-96

7 187 U S 553 (1903) See also Blue Clark, *Lone Wolf v Hitchcock Treaty Rights and Indian Law at the End of the Nineteenth Century* (Lincoln University of Nebraska Press, 1994)

8 *Handbook of Federal Indian Law, 1982*, 217-20, Charles F Wilkinson, *American Indians, Time, and the Law Native Societies in a Modern Constitutional Democracy* (New Haven Yale University Press, 1987), 78-82

9 55 *Decisions of the Department of the Interior* (1938), 14, Felix S Cohen, *Handbook of Federal Indian Law 1942 Edition* (Washington, D C Government Printing Office, 1942), 122, hereafter *Handbook of Federal Indian Law, 1942*

10 Thus and subsequent quotations in this section are from *The Code of Laws of the United States* (Washington, D C Government Printing Office, 1926)

11 *Handbook of Federal Indian Law, 1942*, 149-50, pointed out this statute and suggested that it might be implemented

12 *Pueblo of Santa Rosa v Fall*, 273 U S 315, 320 (1927)

13 *Opinions of the Solicitor of the Department of the Interior Relating to Indian Affairs, 1917-74* (Washington, D C Government Printing Office, n d ), 1 235-46

14 *Handbook of Federal Indian Law, 1942*, 122

15 The name of the national government agency charged with dealing with Indians has changed over time, and there have been informal usages within the agency at variance with the official name For example, it has often been referred to as the Indian Service, although that has never been its formal name, or the Indian Office, sometimes the latter means the Washington headquarters of the agency For the sake of simplicity, it is referred to here as the Bureau of Indian Affairs, its contemporary designation, or the BIA

16 Robert M Kvasnicka and Herman J Viola, eds, *The Commissioners of Indian Affairs, 1824-1977* (Lincoln University of Nebraska Press, 1979), 187, 190, 194-95, 205, 212, 231, 234, 244, 252, and Elisabeth Tooker, "Ely S Parker," in *American Indian Intellectuals*, ed Margot Liberty (St Paul West Publishing Co, 1978), 15-30 Lawrence C Kelly, "United States Indian Policies, 1900-1980," in *History of Indian-White Relations*, ed Wilcomb E Washburn, vol 4 of *Handbook of North American Indians* (Washington, D C Smithsonian Institution, 1988), 66, uses this term, although not extensively See also Richard O Clemmer's term *directed acculturation* in "Directed Resistance to Acculturation A Comparative Study of the Effects of Non-Indian Jurisdiction on Hopi and Western Shoshone Communities" (Ph D diss, University of Illinois, Urbana-Champaign, 1972)

17 Albert Bushnell Hart and Herbert Ronald Ferleger, *Theodore Roosevelt Cyclopaedia* (New York Roosevelt Memorial Association, 1941), 250

18 *Messages and Papers of the Presidents* (New York Bureau of National Literature), 14 6674 Brian W Dippie, *The Vanishing American White Attitudes and U S Indian Policy* (Lawrence University Press of Kansas, 1982), 182-85, says that Roosevelt was in practice a gradualist The "pulverizing engine" remark is from Roosevelt's first annual message to Congress, in 1901 See Hart and Ferleger, *Theodore Roosevelt Cyclopaedia*, 250 It had been taken from a 1900 address by Merrill E Gates to the Lake Mohonk Conference, the chief annual forum for the friends of the Indian of that time

19 Hoxie, *A Final Promise*

20 Lawrence C Kelly, "Charles Henry Burke, 1921-29," in *The Commissioners of Indian Affairs*, ed Kvasnicka and Viola, 251-61

21 House Committee on Indian Affairs, *Indians of the United States Hearings on the Condition of Various Tribes of Indians*, 66th Cong, 1st sess, 1919, 151

22 *Report of the Commissioner of Indian Affairs to the Secretary of the Interior* (Washington, D C Government Printing Office, 1921), 25

23 G E E Lindquist, *The Red Man in the United States* (New York George H Doran Co, 1923), 36-37, v-vi, Herbert Corey, "He Carries the White Man's Burden," *Collier's* 71 (May 12, 1923) 13

- 24 Hubert Work, "Our American Indians," *Saturday Evening Post* 196 (May 31, 1924) 92
- 25 This and subsequent material in this section are from National Archives Building, Record Group 75, Records of the Bureau of Indian Affairs (hereafter, NAB, RG 75), Central Classified Files, 1907-36 (hereafter, CCF), File 41164-1921-054
- 26 David E. Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (Austin: University of Texas Press, 1997), 136-37, 222-23
- 27 NAB, RG 75, CCF, File 56297-1921-054
- 28 House Committee, *Reservation Courts of Indian Offenses Hearings*, 69th Cong., 1st sess., 1926, 2
- 29 *Ibid.*, 1-2
- 30 William T. Hagan, *Indian Police and Judges: Experiments in Acculturation and Control* (New Haven: Yale University Press, 1966)
- 31 See Garrick and Roberta Glenn Bailey, *A History of the Navajos: The Reservation Years* (Santa Fe: School of American Research, 1986). In 1990, when respondents were strongly encouraged to choose a single race to which they belonged, 306,000 persons identified themselves as Cherokees and 219,000 as Navajos. Edna Paisano et al., *American Indian Population by Tribe for the United States, Regions, Divisions, and States 1990* (Washington, D.C.: Bureau of the Census, 1992)
- 32 Mary Shepardson, *Navajo Ways in Government: A Study in Political Process*, Memoir 96, American Anthropological Association (June 1963), 37
- 33 *Ibid.*, 47
- 34 *Ibid.*, 14
- 35 Lawrence C. Kelly, *The Navajo Indians and Federal Indian Policy, 1900-1935* (Tucson: University of Arizona Press, 1968), 26-27
- 36 Shepardson, *Navajo Ways in Government*, 78
- 37 Letter to Commissioner Burke, February 14, 1928, in NAB, RG 75, CCF, File 1928 [sic]. For a biography of Dodge, whose life spanned the forced exile of the Navajos to Fort Sumner until after World War II, see David M. Brugge, "Henry Chee Dodge: From the Long Walk to Self-Determination," in *Indian Lives: Essays on Nineteenth- and Twentieth-Century Native American Leaders*, ed. L. G. Moses and Raymond Wilson (Albuquerque: University of New Mexico Press, 1985), 91-112
- 38 Herbert J. Hagerman to Commissioner Burke, September 6, 1926, in NAB, RG 75, CCF, File 43010-1926-054
- 39 Kelly, *Navajo Indians and Federal Indian Policy*, 48-55
- 40 *Ibid.*, 61-70; Aubrey W. Williams Jr., *Navajo Political Process* (Washington, D.C.: Smithsonian Institution Press, 1970), 18-23, 36
- 41 NAB, RG 75, CCF, File 36351-1929-054
- 42 See Donald C. Parman, *The Navajos and the New Deal* (New Haven: Yale University Press, 1976), and Peter Iverson, *The Navajo Nation* (Westport, Conn.: Greenwood Press, 1981)
- 43 NAB, RG 75, CCF, File 259 (054-1937) contains minutes of these meetings
- 44 Williams, *Navajo Political Process*, 1, 33-40

- 45 Senate Committee on Indian Affairs, *Survey of Conditions of the Indians in the United States Part 16, Flathead Reservation, Mont.*, 71st Cong., 2d sess., 1930, 3271, 3283-86, 3318. Other materials in this section are from the Papers of John Collier at Yale University
- 46 Senate Committee, *Survey of Conditions* (1930), 3321-25
- 47 *Ibid.*, 3294, 3477
- 48 *Ibid.*, 3333-41; *American Indian Life*, August 26, 1927, 1-4; Coe to Burke, December 14, 1928, in NAB, RG 75, "Circulars, 1904-1934." When this material was found for me during the 1970s by archivist Richard Crawford, it was in an unlabeled box
- 49 Coe to Burke, December 14, 1928
- 50 Burke to Coe, May 25, 1929, in NAB, RG 75, "Circulars, 1904-1934"
- 51 *Ibid.*
- 52 *Ibid.*
- 53 Senate Committee, *Survey of Conditions* (1930), 3358
- 54 *Ibid.*, 3506
- 55 *United States v. Sandoval*, 231 U.S. 28 (1913)
- 56 Lawrence C. Kelly, *The Assault on Assimilation: John Collier and the Origins of Indian Policy Reform* (Albuquerque: University of New Mexico Press, 1983), 180-95, 193-211
- 57 *Ibid.*, 213-19; Philp, *Collier's Crusade for Indian Reform*, 26-35. Collier's salary for the first two years was provided by Mrs. Kate Vosburg of Azusa, California
- 58 "Proceedings of All-Pueblo Indian Council: September 2, 1929," in NAB, RG 75, CCF, File 48858-1929-054
- 59 Kelly, *Assault on Assimilation*, 232-54; Philp, *Collier's Crusade for Indian Reform*, 36-54
- 60 Kelly, *Assault on Assimilation*, 301-10, 334-38, 340, 346-47; Philp, *Collier's Crusade for Indian Reform*, 55-69
- 61 Kelly, *Assault on Assimilation*, 311-14, 334-39; Philp, *Collier's Crusade for Indian Reform*, 61, says that there were thirty delegates; Kelly, *Assault on Assimilation*, 312, says that there were fewer than twenty. See also NAB, RG 75, CCF, File 39554-1924-054
- 62 Kelly, *Assault on Assimilation*, 253-63; Philp, *Collier's Crusade for Indian Reform*, 45-49
- 63 NAB, RG 75, CCF, File 43010-1926-054. Subsequent material in this section is from this file
- 64 "Report of the Proceedings of the All-Pueblo Indian Council: October 6, 1926," *ibid.*, and "Proceedings of the All-Pueblo Indian Council: 1929," *ibid.*, File 48858-1929-054
- 65 "Report of the Proceedings of the All-Pueblo Indian Council: October 6, 1926," *ibid.*, File 43010-1926-054
- 66 W. W. Hill, *An Ethnography of Santa Clara Pueblo, New Mexico* (Albuquerque: University of New Mexico Press, 1982), 181-90

67 Nancy S Arnon and W W Hill, "Santa Clara Pueblo," in *The Southwest*, ed Alfonso Ortiz, vol 9 of *Handbook of North American Indians* (Washington, D C Smithsonian Institution, 1979), 302

68 Edward P Dozier, "Factionalism at Santa Clara," *Ethnology* 5 (1966) 176-77

69 Dozier, "Factionalism at Santa Clara," 177-78, Arnon and Hill, "Santa Clara Pueblo," 302

70 Dozier, "Factionalism at Santa Clara," 179

71 This quotation and other material in this section are from NAB, RG 75, CCF, File 53130-1927-054

72 Ibid, File 48858-1927-054

73 Dozier, "Factionalism at Santa Clara," 180-83, Arnon and Hill, "Santa Clara Pueblo," 302

#### CHAPTER TWO THE STATUS OF INDIAN GOVERNMENTS DURING THE 1920S

1 NAB, RG 75, "Circulars, 1904-1934"

2 Deloria and Lytle, *The Nations Within*, 17-18

3 *The Constitutions and Laws of the American Indian Tribes* (1878, reprint, Wilmington, Del Scholarly Resources, Inc, 1973), Lester Hargrett, *A Bibliography of the Constitutions and Laws of the American Indians* (Cambridge Harvard University Press, 1947)

4 Angie Debo, *And Still the Waters Run The Betrayal of the Five Civilized Tribes* (Princeton Princeton University Press, 1968)

5 *Handbook of Federal Indian Law*, 1982, 770-84, Debo, *And Still the Waters Run*, 258

6 *Handbook of Federal Indian Law*, 1942, 129

7 Russell Thornton, *American Indian Holocaust and Survival A Population History since 1492* (Norman University of Oklahoma Press, 1987), especially 91-109 Dippie, *The Vanishing American*, has argued that population statistics about Native Americans have usually been and remain unreliable because they are affected by the persistence of the notion of the vanishing Indian, but there can be no doubt about the immense population losses experienced by most of these groups

8 Various disruptive effects of disease are discussed by Thornton For some surprising impacts of disease, see Calvin Martin, *Keepers of the Game Indian-Animal Relationships and the Fur Trade* (Berkeley University of California Press, 1978)

9 See Bailey and Bailey, *A History of the Navajos*

10 Some of the case histories relied on by Taylor's *New Deal and American Indian Tribalism* in drawing his conclusions about the impact of the IRA on Indian self-government and some of the strongest criticism of the IRA's impact on Indian self-governance have involved instances in which the underlying problem involved levels of government, not traditional vs nontraditional patterns For example, the national government during the 1930s created the Hopi Tribal Council as an attempt to develop a Hopi government above the village level without dis-

turbing government at the lower level The original Hopi Constitution stated, for example, that the *kikmongwis* (the village religious leaders, who were still active in most villages) had to certify members of the new council from their villages Oliver La Farge, who led this effort, has left (in the National Archives) ample documentation of the desire to create a new level dominated by leaders at the village level, although no one has yet used these materials to write an adequate history In spite of this, eventually the elected council largely became autonomous from the underlying religious organization, with the result that Traditionalist Hopis denounced it as threatening or replacing the old order See Richard O Clemmer, "The Hopi Traditionalist Movement," *American Indian Culture and Research Journal* 18, no 3 (1994) 125-65

11 See Robert H Keller Jr, *American Protestantism and United States Indian Policy, 1869-82* (Lincoln University of Nebraska Press, 1983), Loring Benson Priest, *Uncle Sam's Stepchildren The Reformation of United States Indian Policy, 1865-1887* (Lincoln University of Nebraska Press, 1942)

12 Raymond J DeMallie, ed, *The Sixth Grandfather Black Elk's Teachings Given to John G Niehardt* (Lincoln University of Nebraska Press, 1984)

13 Omer C Stewart, "Three Gods for Joe," *Tomorrow* 4, no 3 (1956) 71-76

14 Bailey and Bailey, *A History of the Navajos*, 277-80

15 Hoxie, *A Final Promise*, 189-210

16 On the Dawes Act and its background, see Priest, *Uncle Sam's Stepchildren*, Robert W Mardock, *The Reformers and the American Indian* (Columbia University of Missouri Press, 1971), Henry E Fritz, *The Movement for Indian Assimilation, 1860-1890* (Philadelphia University of Pennsylvania Press, 1963), Wilcomb E Washburn, *The Assault on Indian Tribalism The General Allotment Law (Dawes Act) of 1887* (Philadelphia J B Lippincott Co, 1975), and D S Otis, *The Dawes Act and the Allotment of Indian Lands* (Norman University of Oklahoma Press, 1973)

17 The early allotment bills provided that allotment would take place only if Indian societies consented to the policy This approach was dropped because there was little Indian support for allotment Priest, *Uncle Sam's Stepchildren*, 235-36 See also Washburn, *The Assault on Indian Tribalism*, 10, 24-25, and Hoxie, *A Final Promise*, 246

18 Otis, *The Dawes Act and the Allotment of Indian Lands*, 20-21, Hoxie, *A Final Promise*, 72

19 Dippie, *The Vanishing American*, 163

20 Hoxie, *A Final Promise*, 29-38.

21 Ibid, ix, 42

22 Washburn, *The Assault on Indian Tribalism*, 37-39, 44-45, 49, Otis, *The Dawes Act and the Allotment of Indian Lands*, 11, 22

23 Washburn, *The Assault on Indian Tribalism*, 22

24 Hoxie, *A Final Promise*, 116-45, Washburn, *The Assault on Indian Tribalism*, 18-19

25 Richard Henry Pratt, *Battlefield and Classroom* (New Haven Yale University Press, 1964), 7-8, 194-95, 269-73, and E A Gilcreast, "Richard Henry Pratt and

American Indian Policy, 1877-1906 A Study of the Assimilation Movement" (Ph D diss, Yale University, 1967), 101-3

26 Elvin Hatch, *Theories of Man and Culture* (New York: Columbia University Press, 1973). See also Marvin Harris, *The Rise of Anthropological Theory* (New York: Thomas Y. Crowell, 1968)

27 Priest, *Uncle Sam's Stepchildren*, 246-47; Washburn, *The Assault on Indian Tribalism*, 52

28 Leonard A. Carlson, *Indians, Bureaucrats, and Land: The Dawes Act and the Decline of Indian Farming* (Westport, Conn.: Greenwood Press, 1981), 21, 80; Debo, *And Still the Waters Run*, 21; Otis, *The Dawes Act and the Allotment of Indian Lands*, 57

29 *Elk v. Wilkms*, 112 U.S. 94 (1884), *Handbook of Federal Indian Law*, 1982, 641-42

30 Congressional Research Service, Library of Congress, *The Constitution of the United States of America: Analysis and Interpretation* (Washington D.C.: Government Printing Office, 1973), 99-101, 1543-50. In 1875 the US Supreme Court, in turning back an attempt to argue that the 14th Amendment had granted women the right to vote, declared specifically that this right is not one of the privileges and immunities of United States citizenship but that citizenship "is understood as conveying the idea of membership of a nation, and nothing more." See *Minor v. Happersett*, 88 U.S. 627, 628.

31 See, for example, Richard Kluger, *Simple Justice* (New York: Alfred A. Knopf, 1976), 51-83. I am not aware of any significant attempt to compare the congressional voting patterns on both civil rights and Indian policy.

32 *In re Heff*, 197 U.S. 488, 509 (1905)

33 *United States v. Nice*, 241 U.S. 591, 598, 601 (1916)

34 *U.S. Statutes* (1906) chap. 2348

35 *Ibid.*, chaps. 2348, 3504

36 Hoxie, *A Final Promise*, 77

37 Carlson, *Indians, Bureaucrats, and Land*, 50. In 1924, the Supreme Court ruled that the Dawes Act did not prohibit the allotment of timber lands, in spite of the specific limitation to agricultural and grazing lands in the act. However, this decision did not result in widespread allotment of timber lands, partly because the authority to make such an allotment in the specific case before the court was an unusual provision in a treaty with the Quileute and other tribes authorizing such action. See *U.S. v. Payne*, 264 U.S. 446 (1924), and Lewis Meriam et al., *The Problem of Indian Administration* (New York: Johnson Reprint Corporation, 1971), 464-66.

38 Carlson, *Indians, Bureaucrats, and Land*, 15, 43-44, 173

39 House Committee, *Readjustment of Indian Affairs: Hearings*, 73d Cong., 2d sess., 1934, 217; Carlson, *Indians, Bureaucrats, and Land*, 158

40 Carlson, *Indians, Bureaucrats, and Land*, 58

41 Otis, *The Dawes Act and the Allotment of Indian Lands*, 95

42 Bailey and Bailey, *A History of the Navajos*, 289-97

43 Anna Wilmarth Ickes, *Mesa Land: The History and Romance of the American Southwest* (Boston: Houghton Mifflin Co., 1933), 134; Margaret Mead, *The Changing Culture of an Indian Tribe* (1932, reprint, New York: Capricorn Books, 1966)

44 Hazel W. Hertzberg, *The Search for an American Indian Identity: Modern Pan-Indian Movements* (Syracuse: Syracuse University Press, 1971)

45 Peter Iverson, *Carlos Montezuma and the Changing World of American Indians* (Albuquerque: University of New Mexico Press, 1982)

46 H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907* (Columbia: University of Missouri Press, 1976)

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#### CHAPTER THREE CONFLICT AND CONSENSUS THE 1920S

1 Randolph C. Downes, "A Crusade for Indian Reform, 1922-1934," *Mississippi Valley Historical Review* 32, no. 3 (1945): 331-54

2 Hazel W. Hertzberg, "Indian Rights Movement, 1887-1973," in *History of Indian-White Relations*, ed. Washburn, vol. 4 of *Handbook of North American Indians*, 305-6

3 Phulp, *Collier's Crusade for Indian Reform*, 24-27; Kelly, *Assault on Assimilation*, 118-20, 124-37

4 Kelly, *Assault on Assimilation*, 245-46, 267-80, 288, 328-34, 355

5 *Ibid.*, 270, 284, 307, 313, 324, 336-37; Phulp, *Collier's Crusade for Indian Reform*, 47, 55-56; Downes, "A Crusade for Indian Reform," 336-37

6 Phulp, *Collier's Crusade for Indian Reform*, 33-35; Kelly, *Assault on Assimilation*, 217-18, 229-30; Hertzberg, "Indian Rights Movement," 308

7 D'Arcy McNickle, *Indian Man: A Life of Oliver La Farge* (Bloomington: Indiana University Press, 1971), 63-65, 88-90; Kelly, *Assault on Assimilation*, 237, 355

8 *Proceedings of the National Conference of Social Work* (Chicago: University of Chicago Press), various years; Kelly, *Assault on Assimilation*, 293

9 Charles Lam Markmann, *The Noblest Cry: A History of the American Civil Liberties Union* (New York: St. Martin's Press, 1965); Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990). The correspondence referred to in the following paragraph is in the *American Civil Liberties Union Papers*, Princeton University (hereafter, *ACLU Papers*), vol. 338

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11 *Ibid.*, 207-8; Zitkala-sa [Gertrude Bonnin], *American Indian Stories* (Washington, D.C.: Hayworth Publishing House, 1921)

12 Hertzberg, *The Search for an American Indian Identity*, 171, 188-90

13 *Congressional Record, Senate*, April 24, 1926, pp. 8152-58; Kelly, *Assault on Assimilation*, 207; Hertzberg, "Indian Rights Movement," 309

14 Hertzberg, "Indian Rights Movement," 310

15 *Congressional Record, Senate*, December 15, 1925, pp. 818-27; Jennings C. Wise and Vine Deloria Jr., *The Red Man in the New World Drama* (New York: Macmillan Co., 1971)