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The Supreme Court, per Mr. Justice Van Devanter, said: [30]

> * * * Our decisions, while recognizing that the government has power to control and manage the property and affairs of its Indian wards in good faith for their welfare, show that this power is subject to constitutional limitations and does not enable the government to give the lands of one tribe or band to another, or to deal with them as its own. * * *

Thus, while Congress has broad powers over tribal lands, the United States does not have complete immunity from liability for the actions of Congress. If Congress takes vested tribal land from the Indians without either their consent or the payment of compensation, the United States is liable under the fifth amendment to the United States Constitution for the payment of just compensation,[31] which must include payment for the minerals and timber.[32] But the right of the Indians to just compensation is legally imperfect unless Congress itself passes legislation permitting suit by the Indians against the United

treaties with the tribe. *McCalib, Adm'r* v. *United States*, 83 Ct Cl. 79, 87 (1936). See *Shoshone Tribe* v. *United States*, 299 U. S. 476, 497 (1937), in which the Court said:

> * * * Power to control and manage the property and affairs of Indians in good faith for their betterment and welfare may be exerted in many ways and at times even in derogation of the provisions of a treaty.

Also see Op. Sol. M. 29616, February 19, 1938.

[30] *Chippewa Indians* v. *United States*, 301 U. S. 358, 375–376 (1937), aff'g 80 Ct. Cl. 410 (1935). Also see *Creek Nation* v. *United States*, 302 U. S. 620 (1938).

[31] The portion of this amendment which prohibits confiscation reads: "* * * nor shall private property be taken for public use without just compensation."

"* * * It is fundamental that tribal assets cannot be disposed of by the United States without the consent of the tribe or without compensation." Op. Sol. M. 29616, February 19, 1938, p 7.

If vested rights are created in a tribe by a treaty or agreement, the Federal Government becomes liable for its violation. As the Supreme Court said in the case of *United States* v. *Mille Lac Chippewas*, 229 U. S. 498 (1913):

> * * * That the wrongful disposal was in disobedience to directions given in two resolutions of Congress does not make it any the less a violation of the trust. The resolutions, unlike the legislation sustained in *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294, 307, and *Lone Wolf* v. *Hitchcock*, *Id.* 553, 564, 568, were not adopted in the exercise of the administrative power of Congress over the property and affairs of dependent Indian wards, but were intended to assert, and did assert, an unqualified power of disposal over the lands as the absolute property of the Government. Doubtless this was because there was a misapprehension of the true relation of the Government to the lands, but that does not alter the result (pp 509–510).

Accord: *Blackfeet et al. Nations* v. *United States*, 81 Ct Cl. 101 (1935).

Typical jurisdictional acts provide for recovery by a tribe against the United States "if * * * the United States Government has wrongfully appropriated any lands belonging to the said Indians" (act of May 26, 1920, sec. 3, 41 Stat. 623) (Klamath); or for "misappropriation of any of the * * * lands of said tribe" (act of June 3, 1920, sec 1, 41 Stat. 738) (Sioux); or "the loss to said Indians of their right, title, or interest, arising from occupancy and use, in lands or other tribal or community property, without just compensation therefor, shall be held sufficient ground for relief" (act of June 19, 1935, 49 Stat. 388) (Tlingit and Haida).

[32] *United States* v. *Shoshone Tribe*, 304 U. S. 111 (1938). Also see C T. Westwood, Legal Aspects of Land Acquisition, Indians and the Land, contributions by the delegation of the United States, First Inter-American Conference on Indian Life, Patzcuaro, Mexico, published by Office of Indian Affairs (April 1940), p. 4.

States as the United States is not liable to suit without its consent.[33] Section 1505 of the present Judicial Code authorizes the Court of Claims to adjudicate Indian claims against the United States accruing after August 13, 1946. More will be said later about this in connection with various Indian claims.

b. *Tribal Funds.*—The power of Congress over tribal funds is the same as its power over tribal lands, and is, historically speaking, a result of the latter power, since tribal funds arise principally from the use and disposition of tribal lands. It may authorize special uses of funds, such as to pay premiums on personal and property damage insurance [34] or, it may otherwise provide for their distribution.[35] The extent of congressional power has been expressed by the Attorney General as follows: [36]

> Now, as these royalties are tribal funds, it can not be seriously contended that Congress had not power to provide for their disbursement for such purposes as it might deem for the best interest of the tribe. That power resides in the Government as the guardian of the Indians, and the authority of the United States as such guardian is not to be narrowly defined, but on the contrary is plenary.
>
> Examples of the exercise of such power over the tribal property of Indians, and decisions sustaining it, are found in many of the adjudicated cases, among them *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294; *Lone Wolf* v. *Hitchcock*, 187 U. S. 553; *Gritts* v. *Fisher*, 224 U. S. 640; *Sizemore* v *Brady*, 235 U S. 441; *Chase* v. *United States*, decided April 11, 1921 (p 63).

The congressional control over tribal funds was defined by Justice Van Devanter in the case of *Sizemore* v. *Brady*.[37]

As in the case of lands, Congress cannot divert tribal funds from tribal purposes in the absence of Indian consent or corresponding benefit without being liable, when suit is brought, for the amount diverted. Thus, there has been occasion, not infrequently, for judicial analysis of the manner of disposition of tribal funds. On the whole

[33] However, suits against officers of the United States based on alleged illegal acts require no such statutory authority. *Lane* v. *Pueblo of Santa Rosa*, 249 U S 110 (1919), wherein it was held that the Secretary of the Interior could be enjoined from disposing of certain Indian lands as public lands of the United States.

[34] 60 Stat. 852, 25 U. S. C. 123a.

[35] The exercise of congressional power over tribal funds has been evidenced largely through legislation directing the mode of collection, deposit, and disbursement of such funds. This will be dealt with more extensively in considering the scope of administrative power over tribal funds

[36] 33 Op A G 60 (1921) Also see *Chickasaw Nation* v. *United States*, 87 Ct Cl. 91 (1938), cert. den 307 U S 646. Congress may appropriate tribal funds for the civilization and self-support of the Indian tribe. *Lane* v. *Morrison*, 246 U. S. 214 (1918).

[37] 235 U S 441 (1914).

The power of Congress over Osage tribal funds is upheld in *Ne-kah-wah-she-tun-kah* v. *Fall*, 290 Fed 303 (1923), app dism. 266 U. S 595 (1925).

that section "to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe" and (b) a tribe incorporated under section 17 may be given the power to make such grants without restriction.

Although the grant of an easement is held to be outside the prohibition of section 4, of the act of June 18, 1934, it would appear that section 16 of the act[25] requires the consent of an organized tribe to any grant of right-of-way which the Secretary is authorized to make.[27] Any doubt that may have existed was resolved by the act of February 5, 1948.[28] It is said that in granting consent, the Secretary has authority to impose conditions he deems necessary or pertinent, such as a requirement that an oil and gas pipeline be operated as a common carrier.[29] Provisions for compensation or payment of charges made in connection with grants of rights-of-way do not necessarily render the United States liable as an insurer of collection.[30]

10. Administrative Power—Tribal Funds

In defining the scope of Federal administrative power over tribal funds it is important to bear in mind certain distinctions between various classes of funds, all of which are, in some sense of the word, tribal.

Funds which an Indian tribe has derived from its own members or from third parties without the interposition of the Federal Government, as where tribal authorities hold a fair or dance and charge admission, are, in a very real sense, "tribal," yet it has never been held

[25] 48 Stat. 986, 25 U. S. C. 476.

[27] See 25 C. F. R. 256.3.

[28] 62 Stat. 17; 25 U. S. C. 323–328.

Before this act was passed, the Solicitor for the Department of the Interior had considered the impact of the Indian Reorganization Act on the Secretary's power to grant rights-of-way and had observed:

> * * * It is true that the United States in its sovereign capacity may condemn tribal land for certain purposes and may even appropriate tribal land by act of Congress subject to constitutional requirements of compensation. But the rights and powers with respect to tribal property granted by the Constitution and Charter of the Confederated Salish and Kootenai Tribes are effective against officers of the United States not acting under direct mandate of Congress. Indeed, unless officers of the Department can be restrained by the Tribe from disposing of tribal property, all meaning has vanished from the provision in section 16 of the Indian Reorganization Act granting to an organized tribe the power "to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe." The only persons against whom this provision can be directed are officers of the United States. Private individuals never have had the power to sell tribal land or to dispose of tribal assets. If then * * * the restrictions contained in the above-quoted provision do not run against the United States, they are meaningless and the constitutional provisions enacted in accordance therewith are a false promise (Memo. Sol. I. D., July 8, 1936).

[29] Memo. Sol. M. 36095, August 6, 1951.

[30] *Creek Nation* v. *United States*, 318 U. S. 629, 640 (1943).

that Federal administrative authorities have any control over such funds.[1]

A second class of funds which may be called "tribal" comprises those funds held in the Treasury of a tribe which has become incorporated under section 17 of the act of June 18, 1934, or organized under section 16 of that act. In both cases the scope of departmental power with respect to such funds is marked out by the provisions of tribal constitution or charter. Typically, departmental review is required where the financial transactions exceed a fixed level of magnitude or importance, but not in lesser matters. In the case of incorporated tribes, such departmental supervisory powers are generally temporary.[2]

A third class of funds consists of moneys held in the Treasury of the United States in trust for an Indian tribe. Balances in excess of $500 bear simple interest at the rate of 4 percent unless otherwise specified by law.[3] Funds specified to draw a certain rate of interest may not be transferred to accounts drawing a lower rate.[4] This class of funds, which is customarily referred to under the phrase "tribal funds," is of primary interest. These funds arise from two sources, in general:

1. Payments by the Federal Government to the tribe for lands ceded or other valuable consideration,[5] usually arising out of a treaty, and

2. Payments made to Federal officials by lessees, land purchasers, or other private parties in exchange for some benefit, generally tribal land or interests therein.

In view of the fact that the tribal land was subject to a considerable measure of control, it was natural to find a similar control placed over the funds derived from such lands. Congress has, in general, reserved complete power over the disposition of these funds, requiring that each expenditure of such funds be made pursuant to an appropriation act, although this strict rule has been relaxed for certain purposes. Thus

[1] It has been suggested that the Federal Government might bring suit on behalf of an Indian to insure a fair distribution of such funds, but there are no decisions on this point. See Memo. Sol. I. D., November 18, 1936 (Palm Springs).

[2] The Solicitor for the Department of the Interior has expressed the view that an unorganized tribe can likewise receive and hold in its tribal treasury funds derived from tribal resources, unless, in a particular instance, the tribe has been deprived of that power by treaty or statute. See Memo. Sol. I. D., February 25, 1943.

[3] 25 U. S. C. 161a, 161b.

[4] *Menominee Tribe of Indians* v. *United States*, 59 F. Supp. 137 (1945); 67 F. Supp. 672 (1946).

[5] The payment of annuities and distribution of goods is a ministerial duty, enforceable by mandamus, if the Secretary is arbitrary or capricious. *Work* v. *United States ex rel. Gowin*, 18 F. 2d 820 (1927). Cf. *United States ex rel. Coburn* v. *Work*, 18 F. 2d 822 (1927); *United States ex rel. Detling* v. *Work*, 18 F. 2d 822 (1927). The Court of Claims has held that Congress has the power to commute perpetual annuities granted to Indian tribes even without the consent of those tribes. *Pottawatomie Tribe of Indians* v. *United States*, 111 F. Supp. 256 (1953).

it has developed that administrative authority for any disbursement of "tribal funds," in the strict sense, must be derived from the language of some annual appropriation act or from those statutes which are, in effect, permanent appropriations of tribal funds for specified purposes.[6] Ordinarily, administrative expenses covering items for agency buildings and repairs, miscellaneous agency expenses, pay of superintendents and agents, and transportation of supplies may not be charged against funds appropriated to fulfill treaty obligations.[7] On the other hand, expenditures of tribal funds for the relief of destitute loyal Indians of other tribes, not in a state of hostility with the United States, does not necessarily create a liability on the part of the United States to restore those funds.[8] Disbursements from trust funds for medical equipment and supplies, construction of a hospital, medical attention, education, and construction of roads are proper,[9] and tribal funds may be used to purchase insurance protecting tribal members and property.[10]

Among the most important of the permanent authorizations for the disbursement of tribal funds are the various statutes providing for the division and apportionment of tribal funds among the members of the tribe. While any administrative control over these funds must be based on statutory authority, it is not necessary, nor is it indeed possible, that every detail of the expenditure shall be expressly covered by statute.

[6] The act of May 18, 1916, sec. 27, 39 Stat. 123, 158, 159; 25 U. S. C. 123, requires specific congressional appropriation for expenditure of tribal funds except as follows:

> * * * Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect: * * *

Provisions relating to the deposit or investment of funds are numerous. For example, the Secretary of the Interior is authorized to "invest in a manner which shall be in his judgment most safe, and beneficial for the fund, all moneys that may be received under treaties containing stipulations for the payment to the Indians, annually, of interest upon the proceeds of the lands ceded by them; and he shall make no investment of such moneys, or of any portion, at a lower rate of interest than 5 per centum per annum" (25 U. S. C. 158, R. S. § 2096, derived from act of June 14, 1836, 5 Stat. 36, 47, as amended by act of January 9, 1837, sec. 4, 5 Stat. 135).

Another important example is the act of June 24, 1938, 52 Stat. 1037, 25 U. S. C. 162a, which authorized the Secretary of the Interior to deposit in banks the trust funds of tribes and individual Indians, and to invest such funds in Government bonds. It repealed those provisions of an earlier act (May 25, 1918, 40 Stat. 591, 25 U. S. C. 162), under which the Secretary had been authorized to segregate tribal funds in the Treasury and credit them on an equal basis to each of the members of the tribe.

Beginning with the Department of the Interior Appropriation Act for 1951 (Sept. 6, 1950, 64 Stat. 595, 685), each annual appropriation act for the Department of the Interior has contained an authorization under which tribal funds are available for advancement to the tribe upon application by the appropriate tribal officials and approval of the Secretary.

[7] *Rogue River Tribe of Indians* v. *United States*, 64 F. Supp. 339 (1946).

[8] *Cherokee Nation* v. *United States*, 102 Ct. Cl. 720 (1945).

[9] *Sioux Tribe of Indians* v. *United States*, 78 F. Supp. 793 (1948), cert. den. 337 U. S. 908.

[10] 25 U. S. C. 123a.

The Court of Claims in the case of *Creek Nation* v. *United States* [11] said:

> * * * The Secretary of the Interior has only such authority over the funds of Indian tribes as is confided in him by Congress. He cannot legally disburse and pay out Indian funds for purposes other than those authorized by law. This rule is the test by which the legal right of the Secretary of the Interior to make the disbursements involved must be determined. The contention, however, that the Secretary of the Interior could legally make only such disbursements as were expressly authorized by Congress cannot be conceded. The authorities cited in plaintiff's brief in support of this contention, when considered in the light of the precise questions presented, do not sustain it. The opinion of Attorney General Mitchell of October 5, 1929 (36 Op. Attys. Gen. 98–100), in fact, refutes the contention, and in effect lays down the rule that the authority of the Secretary of the Interior over Indian property may arise from the necessary implication as well as from the express provisions of a statute. We think this is the correct rule and will apply it in determining whether the Secretary of the Interior was authorized to make the payments in question. The authority of the Secretary of the Interior to make the payments, or his lack of authority to make them, must be found in the treaties between the United States and the Creek Nation, and the various acts of Congress dealing with Creek tribal affairs (p. 485).

On the other hand, the administrative obligation imposed in connection with the creation of a trust fund for Indians is not discharged necessarily by turning over the funds to the tribal council to distribute to members without supervision.[12]

Quite apart from the necessity of finding some statutory source for authority to expend funds held in the United States Treasury in trust for an Indian tribe, there are certain positive statutory limitations upon the ways in which such funds may be disbursed. These statutes limit the administrative authority derived from appropriation acts construed in conjunction with section 17 of the act of June 30, 1834,[13] which gave the President power to "prescribe such rules and regulations as he may think fit, for carrying into effect the various provisions of this act, and of any other act relating to Indian affairs, and for the settlement of the accounts of the Indian department."

Perhaps the most important of these statutory limitations in effect today is that imposed by section 16 of the act of June 18, 1934,[14] which gives an organized tribe the right to prevent any disposition of its assets without the consent of the proper officers of the tribe. This includes the right to prevent disbursements of tribal funds by departmental officials, where the tribe has not consented to such disburse-

[11] 78 Ct. Cl. 474 (1933). On the lack of power of the Secretary to restore to the Creek orphan fund the funds erroneously expended for general benefit of tribe, see 16 Op. A. G. 31 (1878).

[12] *Seminole Nation* v. *United States*, 316 U. S. 286 (1942).

[13] 4 Stat. 735, 738, 25 U. S. C. 9, construed to cover disbursement of tribal funds in 5 Op. A. G. 36 (1848).

[14] 48 Stat. 984.

ments. Unless an act of Congress authorizing disbursements of tribal funds repeals relevant provisions of the Indian Reorganization Act, such appropriation legislation does not nullify the power of the tribe to prevent such expenditure.[15] Nor does it authorize tribal distribution of tribal funds contrary to tribal constitutions.[16]

There is a fourth category of funds which may be called "tribal funds" but which are subject neither to the uncontrolled tribal power pertaining to the first class of funds discussed; to the defined tribal power of the second class, nor to the detailed congressional control pertaining to the third class. This fourth category includes funds which have accrued to administrative officials as a result of various Indian activities not specially recognized or regulated by act of Congress. This fund is known by the title "Indian moneys, proceeds of labor."

The fund "Indian moneys, proceeds of labor" had its origin in the act of March 3, 1883,[17] as amended by the act of March 2, 1887.[18] In its amended form it read:

> That the Secretary of the Interior is hereby authorized to use the money which has been or may hereafter be covered into the Treasury under the provisions of the act approved March third, eighteen hundred and eighty-three, and which is carried on the books of that Department under the caption of "Indian moneys, proceeds of labor," for the benefit of the several tribes on whose account said money was covered in, in such way and for such purposes as in his discretion he may think best, and shall make annually a detailed report thereof to Congress.

A practice developed over the years to deposit in "Indian moneys, proceeds of labor" the miscellaneous revenues of Indian reservations, agencies, and schools which were not otherwise required to be deposited.

The Comptroller General in a report on Indian funds dated February 28, 1929,[19] stated:

> * * * The absolute control and almost indiscriminate use of these funds, through authority delegated to the several Indian agents by the Commissioner of Indian Affairs pursuant to section 463, Revised Statutes, is apparently causing complaint on the part of groups of Indians (p. 40).

The report also contained some evidence justifying the discontent of the Indians.

> * * * "Indian moneys, proceeds of labor," were being used for such purposes as the purchase of adding machines and office equipment, furniture, rugs, draperies, etc., for employees' quarters, papering and painting the superintendent's house, and the purchase of automobiles for the field units (p. 40).[20]

The Comptroller General concluded that—

> * * * This condition has through the years of practice brought about a very broad interpretation of what constitutes "the benefit" of the Indian (p. 39).[21]

The provision relating to "Indian moneys, proceeds of labor," as further amended, now reads:[22]

> All miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption "Indian moneys, proceeds of labor", and are hereby made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by section 123 * * * of this title.

The Solicitor for the Department of the Interior has taken the position that the foregoing statutory provisions relating to the deposit of miscellaneous revenues of Indian tribes operate as limitations on the administrative power of Federal officials over tribal funds, but they do not prohibit the receipt of tribal funds by tribal officials in those situations where no provision of Federal law or departmental regulation deprives the tribe of uncontrolled authority over the funds.[23] A clear distinction is drawn between those funds carried in the Treasury as "Indian moneys, proceeds of labor" which constitute the miscellaneous revenues of the Government from Indian agencies and schools and those which constitute the miscellaneous revenues of an Indian tribe.[24]

Congress can create individual credits in connection with tribal funds[25] and, in connection with termination of Federal supervision, Congress can vest shares of tribal funds in members as of a specified date.[26] Where Congress specifies that the per capita share shall go to persons named on a certain roll, or to their heirs, a share of a deceased member passes according to this statutory designation and not by will.[27]

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[15] Memo. Sol. I. D., October 5, 1936.
[16] Memo. Sol. I. D., August 7, 1941.
[17] 22 Stat. 582, 590; amended act of March 2, 1887, 24 Stat. 449, 463; act of May 17, 1926, sec. 2, 44 Stat. 560; act of May 29, 1928, sec. 68, 45 Stat. 986, 991, 25 U. S. C. 155.
[18] See Memo. Sol. M. 36092, July 31, 1951.
[19] S. Doc. 263, 70th Cong., 2d sess., 1928–29. For a discussion see American Indian Life, Bull. No. 14 (May 1929), American Defense Association, Inc., p. 19.

[20] S. Doc. 263, op. cit.
[21] Ibid.
[22] Act of March 3, 1883, 22 Stat. 582, 590; amended by act of March 2, 1887, 24 Stat. 449, 463; act of May 17, 1926, 44 Stat. 560; act of May 29, 1928, 45 Stat. 991; codified as 25 U. S. C. 155. Balances in this class of tribal funds in excess of $500 bear simple interest at 4 percent. See 25 U. S. C. 161b.
[23] Memo. Sol. I. D., February 25, 1943.
[24] Memo. Sol. I. D., August 20, 1945; Memo. Sol. I. D., November 27, 1945.
[25] Act of August 7, 1939, 57 Stat. 1252; 25 U. S. C. 541, Klamath and Modoc and Yahooskin Band of Snake Indians.
[26] Act of June 7, 1954, 68 Stat. 250, Menominee Tribe.
[27] 58 I. D. 680.

* * * While the powers of the Secretary of the Interior are broad, under the principle of guardianship referred to in the letter, there is no statutory provision which enables the Department to execute leases for the Indian owner of an allotment without his consent. Such consent is required, on the contrary, by statute and by the regulations for the leasing of Indian allotments. (Section 395, title 25 U. S. C.; section 3, Regulations Governing the Leasing of Indian Allotments for Farming, Grazing, and Business Purposes.) This is not a case where the heirs have not been determined and leasing by the Superintendent is permitted by the regulations due to uncertainty in the ownership of the land, nor is it a case where a minority of the heirs refuses to lease inherited land and the Government is authorized to intervene in order that the land may be of some economic value to the Indians (section 7, Leasing Regulations). * * *

The power of the Secretary to execute leases of inherited allotments, as distinguished from approving those executed by the Indian owners, was clarified by the act of July 8, 1940.[117]

In some cases Congress has laid down a policy requiring the consent of Indians to modifications of contracts affecting them.[118]

Some statutes[119] have empowered the Secretary to renew leases "upon such reasonable terms and conditions" as he may prescribe. In construing a provision in such a statute, the Solicitor of the Department of Interior said:[120]

* * * Such power obviously cannot be taken away by any act of the lessee through contract or otherwise. The only limitation to which the power is subject is that the conditions of renewal must be reasonable. The authority to determine the reasonableness of the conditions is also committed to the Secretary and in its exercise he is necessarily invested with broad discretion. That this power and authority extend to the imposition as a condition for renewal, a requirement that the operating royalty shall not exceed a figure to be determined by the Secretary to be the maximum economic royalty, I have little doubt.

12. *Administrative Power—Individual Funds*

Administrative power over the funds of individual Indians, as in the case of funds belonging to Indian tribes, is derived from express statutory provision in some instances and is implied on occasion from administrative powers exercised over the alienation, leasing, or other disposition of interests in restricted land. The usual sources of individual funds are the individualization of tribal funds and the proceeds, including income, from restricted land.

[117] Act of July 8, 1940, 54 Stat. 745, 25 U. S. C. 380.

[118] Timber contracts, act of March 4, 1933, 47 Stat. 1568; Op. Sol. M. 27499, August 8, 1933.

[119] See, for example, act of August 21, 1916, 39 Stat. 519 (Shoshone Indian Reservation).

[120] Memo. Sol. I. D., June 8, 1933.

The individualization of tribal funds may occur through the segregation of funds in the United States Treasury[1] or the per capita payment of annuities or other tribal moneys.[2] A number of statutes provide for the exercise of administrative powers in connection with the individualization of specific tribal funds.[3]

Legislation frequently provides for the individualization and per capita payment of judgments recovered by tribes in suits against the United States.[4]

Statutes restricting the Indian in the use of his segregated or individual funds may provide for the investment of his funds under the direction of the Secretary of the Interior. The statute may specify certain investments or may be more general, giving the official selective powers. In any case, he is bound strictly by the authority granted in the statute.[5]

A provision of a tribal charter may require approval by the Secretary for the distribution of funds to enrolled members.[6] On the other hand, a tribal constitution may empower the tribal council to veto a per capita payment authorized by the Secretary.[7]

If the Secretary of the Interior is empowered to handle the Indian's money, he cannot create trusts transferring such property from his authority to a private agency without the specific authority of Congress.[8]

[1] 25 C. F. R. 221.1 et seq. and 222.1 et seq.

The act of March 2, 1907, 34 Stat. 1221, 25 U. S. C. 119, as amended May 18, 1916, 39 Stat. 12, 25 U. S. C. 121, authorized the Secretary of the Interior to approve applications of individual Indians for the withdrawal and payment of pro rata shares of tribal funds.

The act of May 25, 1918, 40 Stat. 561, 591, 25 U. S. C. 162, authorized the Secretary to withdraw tribal funds from the United States Treasury and segregate them so as to credit an equal share to each recognized member of the tribe. This authority was repealed by the act of June 24, 1938, 52 Stat. 1037.

[2] See 25 C. F. R. 224.1 et seq.

[3] See, for example, the Osage Allotment Act of June 28, 1906, 34 Stat. 539, as amended and supplemented; the act of August 7, 1939, 53 Stat. 1252, as amended, 25 U. S. C. 541, et seq. (Klamath); the act of July 27, 1939, 53 Stat. 1128, 25 U. S. C. 571 et seq. (Shoshone judgment fund); the act of May 19, 1947, 61 Stat. 102, as amended, 25 U. S. C. 611, et seq. (Shoshone and Arapaho Tribes).

[4] Act of May 18, 1928, 45 Stat. 602, as amended, 25 U. S. C. 651, et seq. (Indians of California); act of August 30, 1954, 68 Stat. 979, 25 U. S. C. 771, et seq. (Indian tribes of Oregon), interpreted in Memo. Assoc. Sol. M. 36328, January 16, 1956; act of August 1, 1955, 69 Stat. 431, 25 U. S. C. 781, et seq. (Creek).

[5] See the act of June 24, 1938, 52 Stat. 1037, 25 U. S. C. 162a.

[6] Memo. Sol. M. 36146, November 14, 1952.

[7] 58 I. D. 628. See 58 I. D. 680 re inheritance of individualized funds.

[8] Memo. Sol. I. D., September 19, 1931. See also Op. Sol. M. 25258, June 26, 1929; 55 I. D. 500 (1936). Sec. 2 of the act of January 27, 1933, 47 Stat. 777, authorized the Secretary to permit,

> * * * in his discretion and subject to his approval, any Indian of the Five Civilized Tribes, over the age of twenty-one years, having restricted funds or other property subject to the supervision of the Secretary of the Interior, to create and establish, out of the restricted funds or other property, trusts for the benefits of

Footnote continued on p. 88.

by enabling it to apply them to the expenses of their Government, to the purpose of education, or to some object of general concern. When distributed to individuals, the amount is too small to be relied on as a support, yet sufficiently large to induce them to forego the labor necessary to procure their supplies. And it is found that those are the most industrious and thrifty who have no such aid.

Individual payments were introduced probably with a view to induce emigration, by paying those who choose to emigrate their supposed share of the annuity. Whatever may have been the policy which gave rise to it, neither policy nor justice requires its continuance.

With a view to prevent frauds of another kind, in reference principally to the payment of goods, the President is authorized to appoint an officer of rank to superintend the payment of annuities. This, and the provision relating to the purchase of goods for the Indians, will place sufficient guards to prevent fraudulent payments.

The committee have reason to believe abuses have existed in relation to the supply of goods for presents at the making of treaties, or to fulfil treaty stipulations. Those for presents are at the loss of the Government. Those under treaty stipulations are at the loss of the Indians. The goods for presents have been usually furnished by the Indian traders, and at an advance of from 60 to 100 per cent. This the Government has been obliged to submit to, or the trader will make use of his influence to prevent a treaty. Should this in future be attempted, the Government will now have a sufficient remedy by revoking the license. The goods furnished under treaties have been charged at (what has been represented as a moderate rate) and advance of 50 per cent, and at that rate delivered to the Indians. It is now provided that the goods in both cases are to be purchased by an agent of the Government; and where there is time (as in case of goods purchased under treaties) they are to be purchased on proposals based on previous notice.[26]

The objective of staffing the Indian Service itself with Indians was embodied in a provision of section 9 of this act reading:

And in all cases of the appointments of interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties.[27]

A related objective was to be achieved by the following provision in section 9, which is law to this day (except that the Secretary of the Interior has succeeded to the powers of the Secretary of War):

And where any of the tribes are, in the opinion of the Secretary of War, 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.[28]

The purpose behind these provisions is illuminated by a passage in the committee report which declares:

The education of the Indians is a subject of deep interest to them and to us. It is now proposed to allow them some direction in it, with the assent of the President, under the superintendence of the Governor, so far as their annuities (K) are concerned; and that a preference should be given to educated youth, in all the employments of which they are capable, as traders, interpreters, schoolmasters, farmers, mechanics, &c.; and that the course of their education should be so directed as to render them capable of those employments. Why educate the Indians unless their education can be turned to some practical use? and why educate them even for a practical use, and yet refuse to employ them?[29]

Other provisions of the act in question prohibit employees of the Indian Department from having "any interest or concern in any trade with the Indians, except for, and on account of, the United States."[30]

Provisions of earlier acts with respect to supplies and rations are reenacted (secs. 15 and 16). The latter provision is a reenactment of section 2 of the act of May 13, 1800, authorizing issuance of rations to Indians at military posts.

Section 17 centralizes responsibility for regulations authorized by law in the following terms:

That the President of the United States shall be, and he is hereby, authorized to prescribe such rules and regulations as he may think fit, for carrying into effect the various provisions of this act, and of any other act relating to Indian affairs, and for the settlement of the accounts of the Indian department.[31]

The purpose of this section is set forth in the following language of the committee report:

The President is authorized to make the necessary regulations for carrying into effect the several acts relating to Indian affairs. In 1829, such regulations having reference to the laws then in force, were reported to the House by Messrs. Clark and Cass, commissioners appointed for that purpose. They appear to have been drawn with great care, and, with such alterations as the bills reported require, would, in the opinion of the committee, be proper and efficient; and should the acts reported pass, it would be proper to have the regulations reported to Congress at the next session, when they can be adopted by an act of Congress, or go into operation under the general provision referred to.[32]

The fifth important segment of the existing law on Indian affairs that took shape under legislation of the 1830's is that relating to payments made to tribes, by reason of treaty provisions, by the Federal Government from proceeds derived from the disposition of ceded Indian lands. The act of January 9, 1837,[33] comprises three sections containing provisions of substantive law. The first section[34] requires the deposit in the United States Treasury of moneys received from the sale of lands ceded to the United States by treaties providing either for the investment or for the payment of such proceeds to the Indians.

[26] House report, op. cit., pp. 9, 10.
[27] 4 Stat. 735, 737, R. S. sec 2069, 25 U. S. C. 45.
[28] Ibid.

[29] House report, op. cit., p. 20.
[30] Sec. 14, 4 Stat. 735, 738.
[31] R. S. sec. 465, 25 U. S. C. 9.
[32] House report, op. cit., pp. 22, 23.
[33] Ch. 1, 5 Stat. 135.
[34] R. S. sec. 2093, 25 U. S. C. 152.

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Interior. Section 1 of this act[13] transfers to the Secretary of the Interior all "supervisory and appellate powers and duties in regard to Indian affairs, which may now by law be vested in the said Secretary of the Treasury * * *."

[13] Embodied in part in R. S. sec. 463, 25 U. S. C. 2.

10. *Legislation From 1870 to 1880*

The 1870's marked the first decade in which the growth of Federal Indian law was entirely a matter of legislation rather than of treaty. The decade is marked by a steady increase in the statutory powers vested in the officials of the Indian Service and by a steady increasing of control of Indians and Indian tribes. The termination of treaty-making was followed by legislative oversight or approval of agreements made by Congress with the Indians.

The Appropriation Act of March 3, 1871, provided not only for the termination of treatymaking with Indian tribes,[1] but also (sec. 3), for the withdrawal from noncitizen Indians and from Indian tribes of power to make contracts involving the payment of money for services relative to Indian lands or claims against the United States, unless such contracts should be approved by the Commissioner of Indian Affairs and the Secretary of the Interior. Since many of the grievances of the Indians were grievances against these officers, the Indians were effectually deprived by this statute of one of the most basic rights known to the common law, the right to free choice of counsel for the redress of injuries. These prohibitions were amplified by the act of May 21, 1872.[2]

A remarkable enactment of this period was that requiring Indian creditors of the United States to perform useful labor as a condition of receiving payments of money or goods which the United States was pledged to make. Such a provision, constituting permanent legislation, appears in section 3 of the Appropriation Act of June 22, 1874,[3] and again in section 3 of the Appropriation Act of March 3, 1875.[4]

An appropriation act of the following year consolidates power over Indian traders in the hands of the Commissioner of Indian Affairs, in the following terms:

> And hereafter the Commissioner of Indian Affairs shall have the sole power and authority to appoint Traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians.[5]

[1] 16 Stat. 544, 566, R. S sec. 2079, 25 U. S. C. 71.
[2] 17 Stat. 136, sec. 1, R. S. sec. 2103, 25 U. S. C. 81; sec 2, R. S sec. 2104, 25 U. S. C. 82, and R. S. sec. 2106, 25 U. S. C. 84; sec. 3, R. S. sec. 2105, 25 U S. C. 83.
[3] 18 Stat. 146, 176.
[4] 18 Stat. 420, 449.

During this period legislation was enacted requiring each agent having supplies to distribute—

> to make out, at the commencement of each fiscal year, rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not to the heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance.[6]

While these successive grants of power were being made to the administrative officers of the Indian department, a series of complaints against the abuses of power was leading to the multiplication of specific prohibitions against various administrative practices. Most of these prohibitions are comparatively unimportant, but mention should be made of provisions prohibiting Government employees from having any personal interest in various types of Indian trade and commercial activities relating thereto.[7]

[5] Sec. 5, act of August 15, 1866, 19 Stat. 176, 200, 25 U. S. C 261.
[6] Sec 4, act of March 3, 1875, 18 Stat. 420, 449, 25 U. S C. 133.
[7] Sec 10, act of June 22, 1874, 18 Stat. 146, 177, 25 U. S. C. 87.

11. *Legislation From 1880 to 1890*

The decade of the 1880's was marked by the rapid settlement and development of the West. As an incident to this process, legislation providing for acquisition of lands and resources from the Indians was demanded. If the Indian were civilized, he would not need so much land. The process of allotment and civilization was deemed as important for Indian welfare as for the welfare of non-Indians.

The first general statutory provision relating to disposition of Indian resources, other than land itself, is found in a paragraph of section 2 of the act of March 3, 1883,[1] which declares:

> The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the five civilized tribes, and not the result of the labor of any member of such tribe, shall be covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe; and the Secretary shall report his action in detail to Congress at its next session.

For some peculiar reason, this fund came to be known as "Indian moneys, proceeds of labor."

A few years later this provision was supplemented by the act of February 16, 1889,[2] authorizing the sale of dead timber on Indian

[1] 22 Stat 582, 590, 25 U. S. C. 155.
[2] 25 Stat 673, 25 U. S C. 196.

legislation during the decade from 1910 through 1919 is found in appropriation acts.

The first such measure is found in a proviso of the Appropriation Act of April 4, 1910,[3] which made specific the powers conferred upon the Secretary of the Interior the year before [4] with regard to irrigation projects on Indian reservations.[5]

The act of June 25, 1910,[6] constituted what is probably the most important revision of the General Allotment Act that has been made. Based on 33 years of experience in the administration of the act, it sought to fill gaps and deficiencies brought to light in the course of that period. These related particularly (*a*) to the administration of estates of allottees, (*b*) to the making of leases and timber contracts for allotted lands, and (*c*) to the cancellation or relinquishment of trust patents.

Section 1 of this act [7] set forth a comprehensive plan for the administration of allottees' estates, conferring plenary authority upon the Secretary of the Interior to administer such estates and to sell heirship lands. Section 2 [8] authorized testamentary disposition of allotments with the approval of the Secretary of the Interior and the Commissioner of Indian Affairs. Section 3 [9] permitted relinquishment of allotments by allottees in favor of unallotted children, who had been completely ignored in the original scheme of allotment to living Indians.

Section 4 of the act [10] permitted leasing of Indian allotments held by trust patent for periods not to exceed 5 years in accordance with regulations of the Secretary of the Interior, and conferred upon the Secretary power to supervise or expend for the Indians' benefit the rentals thereby received. Section 5 [11] made it unlawful to induce an Indian to execute any conveyance of land held in trust, or interests therein. Section 6 [12] contained various provisions for the protection of Indian timber against trespass and fire. Section 7 [13] contained a general authorization for the sale of timber on unallotted lands under regulations prescribed by the Secretary of the Interior. Section 8 [14] contained a similar authorization for timber sales on restricted allotted lands.

[3] 36 Stat. 269, 270.
[4] Act of March 3, 1909, 35 Stat. 781, 798.
[5] 36 Stat. 269, 270, 271, 25 U. S. C. 383–385.
[6] 36 Stat. 855.
[7] 36 Stat. 855, 25 U. S. C. 372.
[8] 36 Stat. 855, 856, 25 U. S. C. 373.
[9] 36 Stat. 855, 856, 25 U. S. C. 408.
[10] 36 Stat. 855, 856, 25 U. S. C. 403.
[11] 36 Stat. 855, 857, 25 U. S. C. 202.
[12] 36 Stat. 855, 857, 18 U. S. C. 1158, 1156.
[13] 36 Stat. 855, 857, 25 U. S. C. 407.
[14] 36 Stat. 855, 857, 25 U. S. C. 406.

Section 13 of the act [15] authorized the Secretary of the Interior to reserve from entry Indian power and reservoir sites, and the following section [16] authorized the Secretary of the Interior to cancel patents covering such sites upon making allotment of other lands of equal value and reimbursing the Indian for improvements on the canceled allotment. Other sections contained minor amendments to the General Allotment Act and related legislation.[17]

The provision of this act relating to testamentary disposition of allotments was amended and amplified by the act of February 14, 1913.[18] As amplified, the privilege of testamentary disposition subject to departmental approval was extended not only to Indians possessed of allotments, but also to Indians having individual Indian moneys or other property held in trust by the United States.[19]

The Appropriation Act of June 30, 1913, declared: [20]

> No contract made with any Indian, where such contract relates to the tribal funds or property in the hands of the United States, shall be valid, nor shall any payment for services rendered in relation thereto be made unless the consent of the United States has previously been given.

The Appropriation Act of August 1, 1914, contained provisions of substantive law authorizing quarantine of Indians afflicted with contagious diseases,[21] and gave recognition to the existence of agency jails by requiring reports of confinements therein.[22]

Included in the Appropriation Act of May 18, 1916, was a provision authorizing the leasing of allotted lands susceptible of irrigation where the Indian owner, by reason of age or disability, could not personally occupy or improve the land.[23]

The same appropriation act included a mandate to the Secretary of the Interior to make a comprehensive report of the use to which tribal funds had been put by administrative authorities. A proviso to this mandate which became an important part of existing Indian law declared that following the submission of such report, in December 1917—

> no money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other pay-

[15] 36 Stat. 855, 858, 43 U. S. C. 148.
[16] 36 Stat. 855, 859, 25 U. S. C. 352.
[17] See sec. 16, 36 Stat. 855, 859 (incorporated in 25 U. S. C. 312) (rights-of-way); sec. 17, 36 Stat. 855, 859 (incorporated in 25 U. S. C. 331) (amending secs. 1 and 4 of the original allotment act); sec. 31, 36 Stat. 855, 863, 25 U. S. C. 337 (allotments within national forests).
[18] 37 Stat. 678. See 25 U. S. C. 373.
[19] See also S. Rept. 720, 62d Cong., 2d sess., May 9, 1912, on H. R. 1832.
[20] 38 Stat. 77, 97, 25 U. S. C. 85.
[21] 38 Stat. 582, 584, 25 U. S. C. 198.
[22] 38 Stat. 582, 586, 25 U. S. C. 200.
[23] 39 Stat. 123, 128, 25 U. S. C. 394.

ments, all of which are hereby continued in full force and effect: *Provided further*, That this shall not change existing law with reference to the Five Civilized Tribes.[24]

The Appropriation Act of May 25, 1918, contained a number of "economy" provisions, the most important of which was that prohibiting the use of appropriations, other than those made pursuant to treaties—

> to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they lived and where there are adequate free school facilities provided.[25]

Another provision of this appropriation act contains a reminder of the recent admission of the States of New Mexico and Arizona to the Union, in the form of a prohibition against the executive creation of further Indian reservations in those two States.[26]

Section 28 [27] of this act authorized the Secretary of the Interior to withdraw from the United States Treasury and segregate all tribal funds held in trust by the United States, apportioning a pro rata share of such funds to each member of the tribe. This provision for the dividing up of tribal funds required a final roll of persons entitled to participate in the division. Such authorization was conferred by the Appropriation Act of June 30, 1919.[28]

This same act included a comprehensive scheme for the granting of leases and prospecting permits on tribal lands of nine Far Western States by the Secretary of the Interior, under such regulations as he might prescribe.[29] This statute, probably stimulated by wartime demand for minerals, made no provision for a tribal voice in the disposition of tribal property.

15. *Legislation From 1920 to 1930*

The decade from 1920 through 1929 marked a lull between the legislative activity in which the development of the allotment system was realized and the new trends toward corporate activity and the protection of Indian rights which were to take form in the following decade.

Seven statutes embodying permanent general legislation adopted during this decade deserve notice.

[24] 39 Stat. 123, 158–159, 25 U. S. C. 123.
[25] 40 Stat. 561, 564, 25 U. S. C. 297.
[26] 40 Stat. 561, 570, 25 U. S. C. 211.
[27] 40 Stat. 561, 591, 25 U. S. C. 162, repealed by act of June 24, 1938, sec. 2, 52 Stat. 1037, so far as the former statute authorized distribution of tribal funds.
[28] 41 Stat. 3, 9, 25 U. S. C. 163.
[29] Sec. 26, 41 Stat. 3, 31, 25 U. S. C. 399, amended by act of December 16, 1926, 44 Stat. 922, and act of May 11, 1938, 52 Stat. 347, 25 U. S. C. 396A–396F.

The Appropriation Act of February 14, 1920, contained a direction to the Secretary of the Interior to require owners of irrigable land under Indian irrigation projects to make payments for costs of construction.[1] The same statute contained a proviso authorizing the Secretary of the Interior to make and enforce regulations to secure regular attendance of "eligible Indian children who are wards of the government" in Federal or State schools.[2]

The Appropriation Act of March 3, 1921, contained general authorization for the leasing of restricted allotments for farming and grazing purposes, subject to departmental regulations.[3]

By the act of May 29, 1924,[4] Congress authorized the execution of oil and gas leases "at public auction by the Secretary of the Interior, with the consent of the council speaking for such Indians," wherever such lands were subject to mining leases under the act of February 28, 1891.[5]

Perhaps the most significant legislation of the decade was the act of June 2, 1924, which made "all noncitizen Indians born within the territorial limits of the United States" citizens of the United States.[6] The title of this act as given in the Statutes at Large, "An act to authorize the Secretary of the Interior to issue certificates of citizenship to Indians" is the result of a clerical error which has been a source of considerable misunderstanding. The bill as originally introduced contemplated a procedure whereby the Secretary of the Interior was to issue such certificates. The act as finally passed, however, acted of its own force to confer citizenship upon the Indian and in fact as passed by both Houses the title of the bill reads: "A bill granting citizenship to Indians, and for other purposes." [7] This act brought to completion a process whereby various classes of Indians had successively been granted the status of citizenship.

[1] 41 Stat. 408, 409, 25 U. S. C. 386.
[2] 41 Stat. 408, 410.
[3] 41 Stat. 1225, 1232, 25 U. S. C. 393.
[4] 43 Stat. 244, 25 U. S. C. 398.
[5] 26 Stat. 794, 795, 25 U. S. C. 397.
[6] 43 Stat. 253, 8 U. S. C. 3.
[7] See H. Rept. 222, 68th Cong., 1st sess., February 22, 1924, on H. R. 6355, wherein the Committee on Indian Affairs said:

> At the present time it is very difficult for an Indian to obtain citizenship without either being allotted and getting a patent in fee simple, or leaving the reservation and taking up his residence apart from any tribe of Indians. This legislation will bridge the present gap and provide means whereby an Indian may be given citizenship without reference to the question of land tenure or the place of his residence * * *.

The Senate amended the bill so as to eliminate all departmental discretion in its application. See S. Rept. 441, 68th Cong., 1st sess., April 21, 1924; and see 65 Congressional Record 8621–8622, 9303–9304.

By the act of May 17, 1926,[9] Congress acted to regularize the handling of "Indian moneys, proceeds of labor," making such moneys—

> available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by section 27 of the Act of May 18, 1916 (39 Stat. L. 159).[9]

The act of March 3, 1927,[10] was a comprehensive statute on oil and gas mining upon unallotted lands within Executive order reservations. Section 1 of this act[11] extended to Executive order reservations the leasing privileges already applicable to other reservations under the act of May 29, 1924, noted above.[12]

Section 2 of this act[13] provided for the deposit of rentals, royalties, and bonuses in the Treasury of the United States to the credit of the Indian tribe concerned, such funds to be available for appropriation by Congress. This section contained a significant proviso indicating a new trend in Indian legislation:

> *Provided*, That said Indians, or their tribal council, shall be consulted in regard to the expenditure of such money, but no per capita payment shall be made except by act of Congress.

Section 3 of the act[14] subjected proceeds and operations under the act to State taxation. Section 4 contained general legislation not restricted to the matter of oil and gas leases:

> * * * hereafter changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: *Provided*, That this shall not apply to temporary withdrawals by the Secretary of the Interior.[15]

This limitation of a basic executive power in the field of Indian affairs is the precursor of a series of limitations upon executive authority enacted in the following decade.

The unfavorable comparisons drawn by the Meriam report[16] in 1928 between the service standards of the Indian Bureau and those of State agencies led to a series of statutes looking to the transfer of power over Indian affairs from the Interior Department to the States. A first step in this devolution of power was taken by the act of February 15, 1929,[17] which directed the Secretary of the Interior to permit the agents and employees of any State to enter upon Indian lands.[18]

> * * * for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or to enforce compulsory school attendance of Indian pupils, as provided by the law of the State, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe.

[9] 44 Stat. 560, 25 U. S. C. 155.
[9] See H. Rept. 897, 69th Cong., 1st sess., April 15, 1926, on H. R. 11171.
[10] 44 Stat. 1347.
[11] 44 Stat. 1347, 25 U. S. C. 398a.
[12] 43 Stat. 244.
[13] 44 Stat. 1347, 25 U. S. C. 398b.
[14] 44 Stat. 1347, 25 U. S. C. 398c.
[15] 44 Stat. 1347, 25 U. S. C. 398d. See S. Rept. 1240, 69th Cong., 2d sess., January 11, 1927, on S. 4893.
[16] Meriam, Problem of Indian Administration (1928).
[17] 45 Stat. 1185, 25 U. S. C. 281.
[18] See H. Rept. 2135, 70th Cong., 2d sess., January 17, 1929, on H. R. 15523.

16. *Legislation From 1930 to 1940*

The decade from 1930 to 1940 was as notable in the history of Indian legislation as that of the 1830's or the 1880's.

The Leavitt Act of July 1, 1932,[1] afforded Indians relief from tremendous costs for construction of irrigation projects, some of which they had never requested and from which they had received little or no benefit. The Leavitt Act authorized the Secretary of the Interior—

> to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: * * *.

Legislative oversight in the form of congressional rescission by concurrent resolution was provided.

A further provision of this act deferred the collection of construction charges against Indian-owned lands until the Indian title thereto should have been extinguished. Legislation along similar lines was later extended to non-Indian users of water on Indian irrigation projects.[2]

The first legislative result of the depression in the field of Indian affairs was an act designed to meet the problem of defaults on timber contracts. The act of March 4, 1933, permitted the Secretary of the Interior, with the consent of the Indians involved, expressed through a regularly called general council, and of the purchasers, to modify the terms of uncompleted contracts of sale of Indian tribal timber.[3] Similar provision was made with respect to allotted timber.[4] In all such modified contracts Indian labor was to be given preference.[5] The requirement of Indian consent marks a trend that was to continue through the remainder of the decade.[6]

[1] 47 Stat 564, 25 U. S. C. 386a. See also H. Rept. 951, 72d Cong., 1st sess.
[2] Act of June 22, 1936, 49 Stat. 1803, 25 U. S. C. 389 et seq.
[3] Act of March 4, 1933, sec. 1, 47 Stat. 1568, 25 U. S. C. 407a.
[4] Sec. 2, 47 Stat. 1568, 25 U. S. C. 407b.
[5] Sec. 3, 47 Stat. 1568, 1569, 25 U. S. C. 407c.
[6] See H. Rept. 1302, 72d Cong., 1st sess., May 13, 1932; S. Rept. 1281, 72d Cong., 2d sess., February 21, 1933, on H. R. 6684.

held by the Secretary of the Interior for an Indian tribe and stolen while in his custody,[17] or to compensate for the defaults of States on State bonds.[18]

e. The Composition of the Tribe.—As has been already noted, the question of what individuals are entitled to share in tribal personal property does not differ essentially from the parallel question considered with respect to reality. The chief difficulties with respect to the proper distribution of tribal funds have arisen in connection with the amalgamation of distinct tribes,[19] the splitting of single tribes,[20] and the loss of membership by or adoption of particular individuals.

Where several tribes or bands are interested in a single fund, Congress has sometimes provided for distribution in accordance with respective numbers.[21]

The interest of the various groups of Cherokees in national funds has been a source of legislation [22] and litigation [23] for many years.

Special statutes occasionally provide for the payment of shares of tribal funds to persons newly added to tribal rolls.[24]

f. Interest on Tribal Funds.—When tribal funds are held by the United States for the benefit of the tribe, the question frequently arises whether interest on such funds is due to the tribe and, if such be the case, what the appropriate rate of interest may be. Ordinarily this question must be answered by reference to the terms of the treaty, act of Congress, or agreement by which the fund in question was established.[25]

[17] Act of July 12, 1882, sec. 1, 12 Stat. 539, 540 (Kaskaskias, Peorias, Piankeshaws, and Weas).

[18] Thus the act of March 3, 1845, 5 Stat. 766, 777, includes an appropriation "To make good the interest on investments in State stocks and bonds, for various Indian tribes, not yet paid by the States, to be reimbursed out of the interest when collected * * *." Act of August 31, 1842, 5 Stat. 576 (Wyandott).

[19] See e. g., act of January 19, 1891, 26 Stat. 720 (division of Sioux Nation).

[20] See e. g., treaty of July 19, 1866, with Cherokee Nation, 14 Stat. 799 (incorporation of friendly tribes).

[21] Treaty of July 27, 1853, with Comanche, Kiowa, and Apache Indians, art 6, 10 Stat. 1013, 1014; act of January 18, 1881, sec. 3, 21 Stat. 315, 316 (Winnebago); cf. treaty of August 25, 1828, art. 2, 7 Stat. 315, 316 (Winnebago, Potawatomie, Chippewa, and Ottawa Indians); cf. also act of March 2, 1889, sec. 2, 25 Stat. 1013, 1015 (United Peorias and Miamis). See also the act of May 24, 1950, 64 Stat. 189, providing for a distribution of the judgment fund to the Indians of California. And see the act of August 30, 1954, 68 Stat. 979, 25 U. S. C. 771, authorizing the Secretary to prepare separate rolls of the Indians "of the blood" of several named tribes, and bands, to withdraw the tribal funds from the Treasury, and "to make appropriate and equitable per capita payments therefrom."

[22] See act of August 7, 1882, 22 Stat. 302, 328; act of March 3, 1883, 22 Stat. 582, 585–586; act of August 23, 1894, 28 Stat. 424, 441, 451.

[23] *Cherokee Nation* v. *Blackfeather*, 155 U. S. 218 (1894); *Cherokee Nation* v. *Journeycake*, 155 U. S. 196 (1894), aff'g *Journeycake* v. *Cherokee Nation*, 28 Ct. Cl. 281 (1893).

[24] Act of June 2, 1924, 43 Stat. 253 (Cheyenne and Arapaho).

[25] See Crow Indians of Montana, Modification of Agreement, 20 Op. A. G. 517 (1893).

Under some treaties what amounted to interest payments were designated "annuities." [26]

The act of April 1, 1880,[27] authorized the Secretary of the Interior to deposit such funds in the United States Treasury, in lieu of investment, with a provision that interest should be payable "semiannually * * * at the rate per annum stipulated by treaties or prescribed by law." The act of February 12, 1929,[28] as amended by the act of June 13, 1930,[29] provides for the payment of simple interest at the rate of 4 percent per annum on tribal funds, "upon which interest is not otherwise authorized by law." [30] This general provision is inapplicable where another law specifies a higher rate of interest on a particular fund.[31]

When tribal funds held by the United States were segregated for pro rata distribution and deposited in banks, section 28 of the act of May 25, 1918,[32] required as a condition of the deposit that the bank agree to pay interest on such funds "at a reasonable rate." Subsequently, section 324 (c) of the Banking Act of 1935 [33] prohibited payment of interest by member banks of the Federal Reserve System on demand deposits, and repealed "so much of extisting law as requires the payment of interest with respect to any funds deposited by the United States * * * as is inconsistent with the provision of this section as amended." It was administratively determined that this statute superseded the requirement of interest payment on funds on demand deposit in such banks, and that such funds might lawfully be deposited in banks not paying interest thereon.[34] This holding was limited to banks which are members of the Federal Reserve System,[35] and had no application to tribal funds not segregated for pro rata distribution, as to which a fixed interest is due to the tribe.

The act of June 24, 1938,[36] authorized the Secretary of the Interior to withdraw from the United States Treasury and to deposit in banks

[26] *United States* v. *Blackfeather*, 155 U. S. 180 (1894), rev'g *Blackfeather* v. *United States*, 28 Ct. Cl. 447 (1893); but cf. *Sioux Indians* v. *United States*, 277 U. S. 424 (1928), aff'g 58 Ct. Cl. 302 (1923).

[27] 21 Stat. 70, 25 U. S. C. 161.

[28] 45 Stat. 1164.

[29] 46 Stat. 584, 25 U. S. C. 161a.

[30] Sec. 2 of this act fixes the same interest rate for "Indian Money, Proceeds of Labor" accounts over $500 (25 U. S. C. 161b). Secs. 3 and 4 relate to accounting and to deposit of accrued interest (25 U. S. C. 161c, 161d).

[31] See *Menominee Tribe of Indians* v. *United States*, 59 F. Supp. 137 (1945). On the question of prompt deposit in the proper fund, see *Menominee Tribe of Indians* v. *United States*, 67 F. Supp. 972 (1946). A failure to pay interest at the rate agreed to in a treaty may form the basis for a claim against the United States though the reduction giving rise to the claim was ordered by a provision in an appropriation act. See *Choctaw Nation* v. *United States*, 91 Ct. Cl. 320 (1941).

[32] 40 Stat. 591.

[33] 49 Stat. 684, 714–715.

[34] Op. Sol. M. 28231, March 12, 1936.

[35] Op. Sol. M. 28519, May 27, 1936.

[36] 52 Stat. 1037, 25 U. S. C. 162a.

tribal funds on which the United States is not obliged by law to pay interest at higher rates than can be procured from the banks."

Although the right of an Indian tribe to interest in connection with recovery against the United States is beyond the scope of this chapter, we may note the general rule laid down by Taft, *C. J.*, in *Cherokee Nation* v. *United States*,[37] based upon section 177 of the Judicial Code:

> * * * we should begin with the premise, well established by the authorities, that a recovery of interest against the United States is not authorized under a special Act referring to the Court of Claims a suit founded upon a contract with the United States unless the contract or the act expressly authorizes such interest.[38]

g. *Creditors' Claims.*—The question of whether funds due to or held in trust for the tribe by the United States should be subjected to the claims of creditors has been expressly covered in a number of special statutes relating to the disposition of such funds.[39] In a few cases general payment by the Secretary of the Interior to all of the creditors of a given tribe is authorized, but generally the statute authorizes payment of a designated claim, based either upon tribal agreement,[40] or upon depredations.[41] General legislation on depredation claims authorized the Court of Claims to adjudicate such claims in suits against the United States, with permission to interested Indians to appear as parties defendant.[42] Judgments rendered against Indian tribes were to be satisfied out of annuities, other funds, or any appropriations for the benefit of the tribe, and, if all these sources failed, from the Treasury of the United States, such payments to be reimbursable out of future tribal annuities, funds, or appropriations. Thereafter the regular appropriation acts authorized the Secretary of the Interior to make payments to successful claimants under the act of March 3, 1891, by deducting such sums from tribal funds, having

[37] 270 U. S. 476, 487 (1926).

[38] For an example of such expression see *United States* v. *Blackfeather*, 155 U. S. 180 (1894), rev'g *Blackfeather* v. *United States*, 28 Ct. Cl. 447 (1893) (holding that where interest is due on the proceeds of land ceded by the tribe, to be sold by the Federal Government in public sale, and such lands are actually sold at private sale at lower price than that designated, and subsequently under a special jurisdictional act, it is adjudicated that the tribe is entitled to the difference, the tribe is also entitled to interest thereon; the case being brought within the exception to the rule above cited, by a treaty provision for the payment of "five per centum on the amount of said balance, as an annuity") (p. 188). Compare *United States* v. *Alcea Band of Tillamooks*, 341 U. S. 48 (1951), where the jurisdictional act contained no provision authorizing an award of interest.

[39] Act of June 22, 1854, 10 Stat. 781 (Sac and Fox); act of June 16, 1880, 21 Stat. 259, 277 (Cheyenne). Act of May 16, 1874, sec. 1, 18 Stat. 47 (Sioux).

[40] Act of August 5, 1882, 22 Stat. 728 (Kansas); act of April 4, 1888, 25 Stat. 79 (Potawatomie); act of May 27, 1902, 32 Stat. 207 (Menominee).

[41] Act of March 3, 1883, 22 Stat. 804, 805 (Cheyenne and Arapaho); act of March 3, 1885, 23 Stat. 478, 498 (Cheyenne and Arapaho).

[42] Act of March 3, 1891, 26 Stat. 851.

due regard for the educational and other necessary requirements of the tribe or tribes affected.[43]

The general rule is that tribal funds held by the United States will not be subjected to claims of third parties unless payment of such claims is clearly authorized by statute or treaty,[44] or by lawful action of the tribe itself.[45]

[43] Act of August 23, 1894, 28 Stat. 424, 476; act of June 8, 1896, 29 Stat. 267, 306; act of February 9, 1900, 31 Stat. 7, 26; act of February 14, 1902, 32 Stat. 5, 27.

[44] Claim of Board of Foreign Missions Under Treaty With the Cherokees, 5 Op. A. G. 268 (1850); the Cherokee Fund Not Liable for Damages, etc., 3 Op. A. G. 481 (1839); Transfer of Stocks From the Chickasaw to the Choctaw Fund, 3 Op. A. G. 591 (1840).

[45] To the effect that a tribe may assume collective responsibility for debts incurred by individual members, and that the President, at the request of the tribe, may turn annuity funds over to the creditor, see: Contracts of the Potawatomie Indians, 6 Op. A. G. 49 (1853); Contracts of Indians, 6 Op. A. G. 462 (1854).

23. *Tribal Right To Receive Funds*

The right of an Indian tribe to receive funds or other personal property from the United States or from third parties depends, of course, upon the language of the treaty, statute, or agreement, in which such promise of payment appears. In this section we shall attempt to determine the principal sources of tribal rights to income, and to analyze the manner in which such payments are handled.

a. *Sources of Tribal Income.*—The principal source of tribal income, at least since the Revolution, has been the sale of tribal resources—chiefly land, timber, minerals, and more recently, water power.[1] Since sale of such resources was, for more than a century, largely restricted to the United States, most of the tribal income received prior to 1891, when the first general leasing law was enacted, was paid to the tribe by the United States. Failure to appreciate the basis of such payments is said to have helped to create a popular misimpression that all payments made by the United States to Indians were matters of charity. An illustration of this sentiment is said to be found in section 3 of the act of June 22, 1874,[2] which provides that able-bodied male Indians receiving supplies pursuant to appropriation acts should perform useful labor "for the benefit of themselves or of the tribe, at a reasonable rate, to be fixed by the agent in charge, and to an amount equal in value to the supplies to be delivered." A more rational view is that Congress thereby was seeking to foster in-

[1] The license litigated in *Federal Power Commission* v. *Oregon*, 349 U. S. 435 (1955), involved a power site partially on the Warm Springs Indian Reservation which will provide revenues for those Indians. The question of power revenues also has been a focal point in the controversy over condemning Indian lands for the construction of Yellowtail Dam. See Memo. Sol. M. 35093, March 28, 1949, partially overruled by M. 36395, March 22, 1957.

[2] 18 Stat. 146, 176; reenacted as permanent legislation in sec. 3 of the act of March 3, 1875, 18 Stat. 420, 449, 25 U. S. C. 137.

dustry, rather than permit indolence on the part of the Indians and thus perform its duty in advancing them in the arts and crafts of civilization.

In numerous treaties, agreements, and statutes, the United States has agreed to pay money to an Indian tribe, in consideration of land cessions or other disposition of Indian property.[3] Where the tribal organization permitted, provision was frequently made that payment should go directly to the treasurer of the tribe; in other cases payments were to be made to chiefs, or to heads of families, or per capita to all adults; in some cases payment was to be made in goods or services.[4]

Many of the early treaties provided for payments to be made in goods.

Ordinarily payments promised in a treaty and paid in annual installments called annuities[5] were due to the tribe, and like obligations of one nation to another, were deemed satisfied when the tribal authorities had received the funds in question.[6] For the United States

[3] Art. 4 of treaty of November 7, 1825, with Shawnee Tribe, 7 Stat 284, 285; art. 4 of treaty of October 27, 1832, with Potowatomies, 7 Stat. 399, 401; art. 3 of treaty of September 10, 1853, with Rogue River Tribe, 10 Stat. 1018, 1019, art. 3 of treaty of May 12, 1854, with Menomonee Tribe, 10 Stat. 1064, 1065; art 6 of treaty of May 30, 1854, with Kaskaskia and Peoria and Piankeshaw and Wea Tribes, 10 Stat. 1082, 1083; art. 3 of treaty of June 5, 1854, with Miami Tribe, 10 Stat. 1093, 1094; art. 4 of treaty of September 30, 1854, with Chippewa Indians of Lake Superior and the Mississippi, 10 Stat. 1109, 1110; arts. 3 and 4 of treaty of September 3, 1839, with Stockbridge and Munsee Tribes, 11 Stat. 577, 578; art. 7 of treaty of August 7, 1856, with Creek and Seminole Tribes, 11 Stat. 699, 702; art. 3 of treaty of March 10, 1865, with Ponca Tribe, 14 Stat. 675, 676, art. 46 of treaty of April 28, 1866, with Choctaws and Chickasaws, 14 Stat. 769, 780, art. 11 of treaty of October 1, 1859, with Sacs and Foxes of the Mississippi, 15 Stat. 467, 470; treaty of February 23, 1867, with Senecas, mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Boeuf, and certain Wyandottes, 15 Stat. 513, act of April 15, 1874, 18 Stat. 29 (Seminoles); act of February 19, 1875, 18 Stat 330, 331 (Seneca Nation) act of March 3, 1875, 18 Stat. 402, 413 (Choctaws), act of February 28, 1877, 19 Stat 265 (Cherokees); act of June 16, 1880, 21 Stat. 238, 248 (Cherokee Nation), act of July 7, 1884, 23 Stat. 194, 212 (Creek Nation); act of March 1, 1889, 25 Stat 757, 758 (Muscogee or Creek Nation); act of August 19, 1890, 26 Stat. 329 (Omaha Tribe); act of February 13, 1891, 26 Stat. 749, 752 (Sac and Fox and Iowa); joint resolution of March 31, 1894, 28 Stat. 579, 580 (Cherokee Nation); act of February 7, 1903, 32 Stat. 803 (Colville Indian Reservation), act of August 26, 1922, 42 Stat. 832 (Agua Caliente Band).

[4] On the scope of obligations thereby assumed by the United States, see *United States* v. *Omaha Tribe of Indians*, 253 U. S. 275, 281 (1920), and cf *United States* v. *Seminole Nation*, 299 U. S. 417 (1937).

[5] Although it has long been the custom to make new appropriations each year, Congress has made appropriations to Indian tribes payable over extended periods. Act of April 21, 1806, 2 Stat 407, act of March 3, 1819, 3 Stat 517 ("annually, for ever"), act of January 9, 1837, 5 Stat. 135; act of March 3, 1811, 2 Stat 660 ("five hundred dollars * * * to be paid annually to the said nations, which annuities shall be permanent").

[6] This was so self-evident that most of the early treaties did not mention the fact A few treaties, however, did make explicit the understanding that distribution of payments made to the tribe was to be in the hands of the tribal authorities · Treaty of September 3, 1836, with the Menomonie Nation of Indians, 7 Stat 506, treaty of February 22, 1855, with the Mississippi Bands of Chippewa Indians, 10 Stat. 1165 Other treaties emphasized this understanding, without making it explicit, by providing that the United States reserve the right to apportion annuities among the different bands or tribes with which a single treaty was made, but reserving no similar right to apportion funds within a band or tribe Treaty of July 27, 1853, with the Comanche, Kiowa, and Apache Tribes or Nations of

Footnote continued on p. 727.

to have presumed to satisfy its obligation by direct payment to the individual members of the tribe would have been a departure from the canons of international law to which the Federal Government was trying to assimilate its relationship with the Indian tribes. Furthermore, payments to tribal authorities saved the Federal Government from the necessity of making difficult adjudications that might lead to dissatisfaction. But such payments of trust funds to a general council where a treaty provided them for the benefit of individual Indians, did not necessarily discharge the obligation of the United States if it had knowledge of fraudulent or corrupt practices of the council in distributing the funds.[7] Payments to tribal authorities thus sometimes led to worse dissatisfactions on the part of individual members of the tribes who considered themselves discriminated against. This accounts for the practice of reserving to the United States, by treaty provision, the right to distribute to the members of the tribe the moneys or goods owing to the tribe.[8] Occasionally the treaty provided that this distribution was to be made on the basis of an

Indians, 10 Stat 1013, treaty of September 30, 1854, with the Chippewa Indians of Lake Superior and the Mississippi, 10 Stat. 1109. In this connection, see *Chitto* v. *United States*, 138 F Supp. 253 (1956), where in the Court of Claims has overruled the Indian Claims Commission and has allowed the Choctaw Nation to intervene where it appeared that the United States intended to offset an award to the Chitto group of Mississippi Choctaws against funds held for the Choctaw Nation. Proffered evidence newly discovered indicated that the Choctaw Nation had paid these claimants.

[7] See *Seminole Nation* v. *United States*, 316 U. S. 286 (1942), and the Seminole Treaty of March 21, 1866, 14 Stat. 759. For a recent law establishing individual credits see the act of March 29, 1948, 62 Stat 92, 25 U. S C. 544, applicable to the Klamath tribes.

[8] At first these treaties provided simply that the United States might "divide the said annuity amongst the individuals of the said tribe," treaty of December 30, 1805, with the Piankeshaw, 7 Stat. 100. In the treaty of January 8, 1821, with the Choctaw, 7 Stat. 210, per capita distribution is promised in order to remove "any discontent which may have arisen in the Choctaw Nation, in consequence of six thousand dollars of their annuity having been appropriated annually, for sixteen years, by some of the chiefs, for the support of their schools." Other treaties promising equal distribution are. Treaty of October 4, 1842, with the Chippewa Indians of the Mississippi and Lake Superior, 7 Stat. 591; treaty of January 4, 1845, with the Creek and Seminole Tribes of Indians, 9 Stat. 821, treaty of March 17, 1842, with the Wyandott Nation of Indians, 11 Stat. 581 Later treaties generally reserved a more comprehensive right in the President of the United States to determine how moneys due to the Indian tribe should be paid to the members of the tribe or expended for their use and benefit Treaty of March 16, 1854, with the Omaha Tribe of Indians, 10 Stat. 1043, treaty of May 6, 1854, with the Delaware Tribe of Indians, 10 Stat. 1048; treaty of June 5, 1854, with the Miami Tribe of Indians, 10 Stat. 1093; treaty of October 17, 1855, with the Blackfoot and other tribes of Indians, 11 Stat 657, treaty of January 22, 1855, with the Dwamish and other tribes of Indians in Territory of Washington, 12 Stat 927, treaty of January 26, 1855, with the S'Klallams, 12 Stat. 933, treaty of January 31, 1855, with the Makah Tribe of Indians, 12 Stat. 939, treaty of June 25, 1855, with the Confederated tribes of Indians in Middle Oregon, 12 Stat. 963; treaty of July 1, 1855, with Qui-nai-elt and Quil-leh-ute Indians, 12 Stat. 971, treaty of February 18, 1861, with the Confederated tribes of Arapahoe and Cheyenne Indians, 12 Stat. 1163, treaty of March 6, 1865, with the Omaha Tribe of Indians, 14 Stat. 667, treaty of September 29, 1865, with the Great and Little Osage Indians, 14 Stat. 687, treaty of March 2, 1868, with the Ute Indians, 15 Stat. 619

agreement between the tribal authorities and the agents of the Federal Government.[9]

Generally such per capita payments comprised only a portion of the funds due to the tribe, the remainder of such funds being invested or expended in other ways.[10] Occasionally an Indian treaty provided for complete per capita distribution of tribal funds.[11] Since 1871, and particularly during the years following the General Allotment Act, when per capita distribution of property was looked upon as an effective means of terminating tribal organization, numerous statutes provided for per capita payment of tribal funds.[12]

In recent decades compensation to Indian tribes for land or other property has generally taken the form of statutory provisions requiring that certain sums be placed "to the credit of" a given tribe.[13] Frequently specific provision is made covering the interest to be paid upon the fund and covering also the purposes for which and the manner in which the fund may be expended.[14] Where a tribe has several different funds to its credit the statute, if clearly drafted, specifies the particular fund to which the sum in question is to be added.

Some statutes merely provide that funds shall be deposited in the United States Treasury and be subject to appropriations by the Congress for a designated group or tribe of Indians.[15]

Since 1847 the President has been empowered, in his discretion, to pay over moneys due to Indian tribes to the members thereof, per capita, instead of to the officers or agents of the tribe.[16] Questions of interpretation, however, continued to arise even after the 1847 statute.

Where the manner of payment is in issue it has been said that a requirement of execution of a receipt or release by the tribe indicates that payment to tribal officers rather than heads of families is intended.[17]

Again, it has been said:

> Ordinarily a debt due to a nation, by a treaty, ought to be paid to the constituted authorities of the nation; but where the treaty and the law appropriating the money both direct the payment to all the individuals of the nation *per capita*, the treaty and the statute must prevail.[18]

This was said more than 100 years ago, long before Indians generally had become citizens of the United States. International aspects of this problem no longer exist.

The statutes dealing with payments due from the United States to Indian tribes represented, until the end of the 19th century, the chief

[9] See, for example: Treaty of September 29, 1837, with the Sioux Nation of Indians, 7 Stat. 538; treaty of October 18, 1848, with the Menomonee Tribe of Indians, 9 Stat. 952, treaty of May 10, 1854, with the Shawnees, 10 Stat. 1053; treaty of June 19, 1858, with the Mendawakanton and Wahpakoota Bands of the Sioux Tribe of Indians, 12 Stat. 1031, treaty of June 19, 1858, with the Sisseeton and Wahpaton Bands of Sioux Tribe of Indians, 12 Stat. 1037.

[10] Treaty of January 14, 1837, with Saganaw Chippewas, 7 Stat. 528; treaty of October 21, 1837, with Sacs and Foxes, 7 Stat. 540; treaty of October 19, 1838, with Ioways, 7 Stat. 568; treaty of August 5, 1851, with Bands of Dakotas, 10 Stat, 954; treaty of March 15, 1854, with Ottoes and Missourias, 10 Stat. 1038; treaty of May 10, 1854, with Bands of Shawnees, 10 Stat. 1053; treaty of April 19, 1858, with Yancton Sioux, 11 Stat. 743.

[11] Treaty of January 31, 1855, with Wyandott Tribe, 10 Stat. 1159.

[12] Act of March 3, 1881, sec. 5, 21 Stat. 414, 433–434; act of May 15, 1888, sec. 1, 25 Stat. 150 (Omahas); act of July 4, 1888, 25 Stat. 240 (Winnebago Reservation); act of October 19, 1888, 25 Stat. 608 (Cherokee); act of June 6, 1900, sec. 1, 31 Stat. 672, 673 (Fort Hall Reservation); act of March 1, 1901, 31 Stat. 848, 859 (Cherokee); act of March 1, 1901, 31 Stat. 861, 870 (Creek); act of June 30, 1902, 32 Stat. 500, 503 (Creek), act of March 3, 1909, 35 Stat. 751 (Quapaw); act of June 25, 1910, sec. 21, 36 Stat. 855, 861 (Sisseton and Wahpeton); joint resolution of August 22, 1911, 37 Stat. 44; act of April 18, 1912, 37 Stat. 86 (Osage Tribe); act of May 11, 1912, sec. 3, 37 Stat. 111 (Omaha Tribe); act of June 4, 1920, sec. 11, 41 Stat. 751, 755 (Crow); act of March 3, 1921, 41 Stat. 1249 (Osage); act of June 4, 1924, 43 Stat. 376 (Eastern Band of Cherokees).

[13] Act of December 15, 1874, 18 Stat. 291, 292 (Eastern Band of Shoshones); act of April 10, 1876, sec. 3, 19 Stat. 28, 29 (Pawnee Tribe); act of April 25, 1876, sec. 2, 19 Stat. 37 (Menominee Indians); act of August 15, 1876, sec. 4, 19 Stat. 208 (Otoe and Missouria and Sac and Fox of the Missouri Tribes); act of June 28, 1879, 21 Stat. 40, 41 (Osage Indians); act of March 3, 1881, sec. 4, 21 Stat. 380, 381 (Otoe and Missouria Tribes); act of March 3, 1885, sec. 3, 23 Stat. 340, 343 (Cayuse, Walla-Walla, and Umatilla Indians); act of March 3, 1885, sec. 4, 23 Stat. 351, 352 (Sac and Fox and Iowa Indians); act of September 1, 1888, sec. 6, 25 Stat. 452, 455 (Shoshone and Bannack Tribes); act of January 14, 1889, sec. 7, 25 Stat. 642, 645 (Chippewas); act of June 12, 1890, sec. 3, 26 Stat. 146, 147 (Menomonees); act of October 1, 1890, sec. 4, 26 Stat 658, 659 (Round Valley Indian Reservation); act of March 3, 1901, 31 Stat. 1455 (Chippewa Indians); act of June 13, 1902, 32 Stat. 384 (Ute Indian Reservation); act of August 17, 1911, 37 Stat. 21 (Rosebud Indian Reservation); act of July 1, 1912, 37 Stat. 186 (Umatilla Indian Reservation); act of July 10, 1912, 37 Stat. 192 (Flathead Indians); act of February 14, 1913, sec. 6, 37 Stat. 675, 677 (Standing Rock Indian Reservation), act of August 22, 1914, sec. 1, 38 Stat. 704 (Quinaielt Reservation); act of March 2, 1917, sec. 2, 39 Stat. 994, 995 (Fort Peck Indians); act of March 3, 1919, 40 Stat. 1320, 1321 (Rosebud Indians); act of December 11, 1919, sec. 2, 41 Stat. 365, 366 (Fort Peck Indians); act of May 31, 1924, sec 1, 43 Stat. 247 (Quinaielt Reservation); act of February 28, 1925, 43 Stat. 1052 (Chippewa Indians); act of August 25, 1937, sec. 3, 50 Stat. 811 (Agua Caliente or Palm Springs Band).

[14] See *Menominee Tribe of Indians* v. *United States*, 67 F. Supp 972 (1946) applying 26 Stat. 146. See also *Menominee Tribe of Indians* v. *United States*, 59 F. Supp. 137 (1945) and 25 U S. C. 161a.

[15] Act of June 7, 1924, sec. 1, 43 Stat. 596 (Pyramid Lake Indian Reservation).

[16] Act of March 3, 1847, sec. 3, 9 Stat. 203, amending act of June 30, 1834, sec. 11, 4 Stat. 735, 737. The 1847 provision was subsequently embodied, with other material, in R. S. sec. 2086 and 25 U. S. C. 111.

[17] "The direction that the money shall be paid to the Creek nation is not decisive, because payment to the heads of families is a mode of making payment to the nation. But the condition that a release of all claim for the whole sum shall first be executed by the Creek nation, is not equivocal, because such a release could not be executed by the heads of families or by individuals. And when the act directs that the payment shall be made to the Creek nation, and that the release shall be executed by the Creek nation, the inference would seem to be very strong against a distribution *per capita* But when the act goes one step further, and requires that the persons to whom the money shall be paid shall make satisfactory proof that they have full power and authority to receive and receipt for the same, the inference becomes irresistible against a distribution and payment to heads of families, which would be entirely irreconcilable with this provision" (pp. 48–49). Payment of Certain Moneys to the Creeks, 5 Op. A. G. 46, 48–49 (1848). The later portion of this opinion, apparently inconsistent with the above quotation, was revised in 5 Op. A G. 98 (1849). Cf. Payment of Certain Moneys to the Cherokees, 5 Op. A. G. 320 (1851).

[18] Payment of Certain Moneys to the Cherokees, 5 Op. A. G. 320 (1851). Accord: Miami Indians, 6 Op. A. G. 440 (1854) (treaty provision, ambiguous, superseded by statute)

source of tribal income, supplemented only sporadically by special statutes or treaties authorizing the leasing or sale of tribal lands to other Indian tribes [19] or to non-Indians.

A further source of income of considerable importance during recent decades is constituted by judgment awards in suits against the United States.

In recent years, various jurisdictional acts have at times provided that no part of the judgment that may be awarded pursuant to the act shall be paid out in per capita payments to the Indians concerned.[20] This proviso represented a tendency to devote recoveries from judgments in claim cases to the rebuilding of the tribal estate rather than to temporary payments which were easily dissipated.

An important source of income due to Indian tribes from non-governmental sources developed with the building of railroads across Indian reservations.

Most of the statutes which grant rights-of-way to railroads or other transportation or communication companies provide for payment of compensation to the Indian tribe. A majority of the statutes relating to railroads contain the phrase "that the said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands said line may be located," a specified sum,[21] which was frequently fixed at $50 per mile of road. In a few instances similar language referring to a definite tribe is used instead of the more general language above noted.[22] A few statutes provide that the railway company shall pay the required sum "to the Secretary of the Interior, for the benefit of the particular nations or tribes or individuals through whose lands said line may be

[19] Various early statutes provided for payment by one Indian tribe to another in connection with intertribal land transference. See, for example, act of June 5, 1872, 17 Stat. 228 (payment by Kansas Tribe to Osage Tribe).

[20] See, for example, act of March 3, 1931, 46 Stat. 1487 (Pillager bands of Chippewa Indians).

[21] Act of July 4, 1884, 23 Stat. 69, 71; act of July 4, 1884, 23 Stat. 73, 74; act of February 18, 1888, 25 Stat. 35, 37; act of May 14, 1888, 25 Stat. 140, 142; act of May 30, 1888, 25 Stat. 162, 163; act of June 26, 1888, 25 Stat. 205, 207; act of June 21, 1890, 26 Stat. 170, 171; act of June 30, 1890, 26 Stat. 184, 185–186; act of September 26, 1890, 26 Stat. 485, 487; act of February 24, 1891, 26 Stat. 783, 785; act of March 3, 1891, 26 Stat. 844, 846; act of February 27, 1893, 27 Stat. 487, 489; act of February 27, 1893, 27 Stat. 492, 493; act of March 1, 1893, 27 Stat. 524, 525–526; act of December 21, 1893, 28 Stat. 22, 24; act of August 4, 1894, 28 Stat. 229, 231; act of April 6, 1896, 29 Stat. 87, 89; act of January 29, 1897, 29 Stat. 502, 504; act of March 23, 1898, 30 Stat. 341, 342. The provision in question is found in sec. 5 of each of the foregoing statutes.

[22] Act of January 16, 1889, sec. 5, 25 Stat. 647, 649 (White Earth Band of Chippewas); act of February 28, 1889, sec. 5, 25 Stat. 684, 685 (Yankton Indian Reservation); act of March 2, 1896, sec. 5, 29 Stat. 40, 41 (Choctaw).

located." [23] A few such statutes provide simply for payment directly to the tribe concerned.[24] Other statutes provide for payment without specifying the manner of such payment.[25] The United States did not, however, necessarily become the insurer of collection of the amounts stipulated to be paid by the railroads. Indeed, in its duty as guardian, the United States is not obliged to enforce an unconscionable bargain for the benefit of the Indians.[26]

In 1899 the matter of railroad rights-of-way, hitherto dealt with in piecemeal legislation, was covered by a general statute [27] which provided:

> That where a railroad is constructed under the provisions of this Act through the Indian Territory there shall be paid by the railroad company to the Secretary of the Interior, for the benefit of the particular nation or tribe through whose lands the road may be located, such an annual charge as may be prescribed by the Secretary of the Interior, not less than fifteen dollars for each mile of road, the same to be paid so long as said land shall be owned and occupied by such nation or tribe, which payment shall be in addition to the compensation otherwise required herein.

The various general statutes authorizing the leasing of Indian lands, and other forms of disposition of Indian tribal property which have been analyzed earlier, generally have provided that the proceeds from such transactions shall be deposited to the credit of the tribe concerned.[28]

The following table shows various general statutes directing that specified forms of tribal income be deposited to the credit of the tribe.

[23] Act of March 18, 1896, sec. 5, 29 Stat. 69, 71; act of March 30, 1896, sec. 5, 29 Stat. 80, 82; act of February 28, 1899, sec. 4, 30 Stat. 912, 913.

[24] Act of April 25, 1896, 29 Stat. 109 ("deposit with the treasury of the tribe to which the lands belong").

[25] Act of April 24, 1888, sec. 4, 25 Stat. 90, 91; act of July 26, 1888, sec. 3, 25 Stat. 350, 351 (Puyallup); act of March 2, 1889, sec. 2, 25 Stat. 1010 (Leech Lake and White Earth Indian Reservations); act of February 20, 1893, 27 Stat. 468 (Puyallup); act of July 18, 1894, sec. 2, 28 Stat. 112 (White Earth, Leech Lake, Chippewa, and Fond du Lac Reservations); act of August 23, 1894, sec. 2, 28 Stat. 489 (Leech Lake, Chippewa, and Winnebagoshish Reservations); act of March 28, 1896, 29 Stat. 77.

[26] *Ft. Peck Indians of Ft. Peck Reservation* v. *United States*, 132 F. Supp. 222 (1955), sustaining deferment of principal and interest on Indian lands purchased by non-Indians, where default followed dry years and permitting reappraisal of the value of certain lands.

[27] Act of March 2, 1899, 30 Stat. 990, 992, sec. 5.

[28] Special acts applying to particular tribes make similar provisions for depositing proceeds of leases, etc., in the United States Treasury to the credit of the designated tribe. Act of April 15, 1912, 37 Stat. 85 (homesteaders' payments on Couer d'Alene Reservation); act of August 9, 1916, 39 Stat. 445 (sale of Kiowa townsite reserve); act of May 23, 1908, 35 Stat. 268 (sale of Chippewa timber); act of May 29, 1908, 35 Stat. 458 (sale of Spokane surplus lands). Cf. act of February 18, 1909, 35 Stat. 636 (Kiowa, Comanche, and Apache); act of June 17, 1910, 36 Stat. 533 (Cheyenne-Arapahoe).

U. S. C. sec. No.	Source of income	Date of act	Statute citation	Provision
25:314	Rights-of-way	Mar. 2, 1899, sec. 3, amended Feb. 28, 1902.	30 Stat. 991	"Payment to the Secretary of the Interior for the benefit of the tribe or nation."
25:319	Rights-of-way for telephone, etc.	Mar. 3, 1901, sec. 8.	31 Stat. 1083	"Pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate"
25:321	Right-of-way for pipelines.	Mar. 11, 1904, amended Mar. 2, 1917, sec. 1.	33 Stat. 65, 39 Stat. 973.	"Pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate"
25:320	Acquisition of lands by railways for materials and reservoirs.	Mar. 3, 1909	35 Stat. 781	"Deposited in the Treasury of the United States to the credit of the tribe or tribes."
25 407	Sale of timber	June 25, 1910, sec. 7.	36 Stat. 857	"Shall be used for the benefit of the Indians of the reservation in such manner as he [Secretary of the Interior] may direct"
25.190	Sale of agency tracts, etc.	Apr. 12, 1924	43 Stat. 93	"Deposited in the Treasury of the United States to the credit of the Indians owning the same."
25:400a	Mining lease of agency reserves.	Apr. 17, 1926	44 Stat. 300	"Deposited in the Treasury of the United States to the credit of the Indians for whose benefit the lands are reserved subject to appropriation by Congress for educational work among the Indians or in paying expenses of administration of agencies"
16:615	Sale of burnt timber on "Public Domain."	Mar. 4, 1913, amended July 3, 1926.	37 Stat. 1015, amended 44 Stat. 891.	"Transferred to the fund of such tribe or otherwise credited or distributed as by law provided."
30.86	Agricultural entries on surplus coal lands.	Feb. 27, 1917, sec. 4.	39 Stat. 944, 945.	"Shall be paid into the Treasury of the United States to the credit of the same fund under the same conditions and limitations as are or may be prescribed by law for the disposition of the proceeds arising from the disposal of other surplus lands in such Indian reservation"
16:810	Water power license rentals.	June 10, 1920, sec. 17.	41 Stat. 1063, 1072.	"Shall be placed to the credit of the Indians of such reservation"

In addition to the foregoing specific provisions, there are other currently effective statutes relating to the leasing of Indian lands which do not specify the manner in which the receipts are to be handled.[29]

The act of March 3, 1883, as amended,[30] provided:

All miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes, and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption "Indian moneys, proceeds of labor", and are hereby made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds imposed by section 27 of the Act of May 18, 1916 (Thirty-ninth Statutes at Large, page 159).

[29] Act of February 28, 1891, sec. 3, 26 Stat. 795, 25 U. S. C. 397 (grazing leases); act of August 15, 1894, sec. 1, 28 Stat. 305, 25 U. S. C. 402 (farming leases); act of July 3, 1936, 44 Stat. 894, 25 U. S. C. 402a (lease of irrigable land); act of May 11, 1938, 52 Stat 347, 25 U. S. C. 396a (mining leases). Act of August 9, 1955, 69 Stat. 539, 25 U. S. C 415 (public, religious, educational, recreational, residential, business, and other purposes).

[30] Sec. 1, 22 Stat. 590, as amended by act of March 2, 1887, 24 Stat. 463; act of May 17, 1926, sec. 1, 44 Stat. 560; act of May 29, 1928, sec. 1, 45 Stat. 986, 991, 25 U. S C A. 155.

That this act did not limit the power of an Indian tribe to receive payments based on use of tribal land was the view taken by the Department of the Interior in holding that tribes organized under section 16 of the act of June 18, 1934, but not incorporated under section 17, might deposit such receipts in their own treasury. This conclusion was concurred in by the Comptroller General. The position of the Interior Department and of the Comptroller General was set forth in an opinion of the Comptroller General dated June 30, 1937,[31] from which the following excerpts are taken:

"* * * the act of May 27, 1926 (44 Stat. 560), amending the act of March 3, 1883 (22 Stat. 590), governs the use of revenues received by officials or employees of the Interior Department, and has no application to such payments as may lawfully be made to tribal officers under the provisions of the act of June 18, 1934, and constitutions adopted thereunder and approved by the Secretary of the Interior. The legislative history of the act of 1883 and the act of 1926 shows that these statutes were designed to control and regularize departmental receipts and accounts. They were not intended to regulate or to prohibit payments made directly to tribal officers.[32] * * *

"The question of whether an organized tribe may enter into negotiations and agreements respecting the use of tribal land and requiring payment to a regularly bonded tribal officer, by virtue of such agreements, is primarily an administrative question to be determined by the Secretary of the Interior in consideration of such factors as the experience of the Indian tribe in handling funds, the amount of the funds involved, the extent of the activity undertaken by tribal officers or other members of the tribe in developing sources of tribal revenue, and similar factors.

"Under Article IX, section 3 of the Constitution of the Gila River Pima-Maricopa Indian Community, those community lands which are not assigned to particular individuals for their private benefit or to groups of individuals operating as districts may be used by the community or may be leased by the council to members of the community, rentals to accrue to the community treasury to be used for the support of the helpless or other public purposes. This provision supersedes prior administrative regulations requiring all leases to be approved by the superintendent of the agency and further requiring that all payments made on the leases should be deposited in the United States Treasury. Under the present constitutional provisions the receipts in question are not revenues or receipts of the United States, the agreements from which they arise are not agreements approved by the superintendent and consequently such receipts are not affected by the act of May 17, 1926, or regulations issued thereunder, with respect to the accounting and deposit of tribal trust funds."

* * * * * * *

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"Article VIII, section 3 of the Constitution of the Cheyenne River Sioux Tribe, above referred to, provides 'Tribal lands may be leased by the tribal council, with the approval of the Secretary of the Interior, for such periods of time as are permitted by law.' Nothing is said in this section or in any other section of the

[31] A-86599

[32] Material in quotations is quoted by the Comptroller General from the Interior Department letter of submission.

constitution as to whether rentals paid under such leases shall be paid to the disbursing agent of the reservation for deposit in the United States Treasury or to the bonded treasurer of the tribe for deposit in the tribal treasury. Presumably this is left, like the other terms of the lease, to the discretion of the Tribal Council and the Secretary of the Interior."

* * * * * * * * * *

The additional powers granted in the new act do not expressly mention the control by the tribe of their own finances, and there is, therefore, some doubt whether such authorization was intended. However, having in view the broad purposes of the act, as shown by its legislative history, to extend to Indians the fundamental rights of political liberty and local self-government, and there having been shown the fact that some of the power so granted by the new act would require the use of tribal funds for their accomplishment—being necessary incidents of such powers—and the further fact that the act of June 25, 1936, 49 Stat. 1928, provides that section 20 of the Permanent Appropriation Repeal Act, 48 Stat. 1233, shall not apply to funds held in trust for individual Indians, associations of individual Indians, or for Indian corporations chartered under the act of June 18, 1934, this office would not be required to object to the procedures suggested in your memorandum for the handling of tribal funds of Indian tribes organized pursuant to the said act of June 18, 1934.

Following this ruling by the Comptroller General, the Solicitor for the Department of the Interior held [33] that the provisions of title 25, United States Code, section 155, relating to the deposit of miscellaneous revenues of Indian tribes, operate as limitations on the administrative power of Federal officials but do not prohibit the receipt of tribal funds by tribal officials in those situations where no provision of Federal law, or departmental regulation, deprives the tribe of uncontrolled authority over the funds.

b. *Manner of Making Payments to Tribe.*—Although a good deal of the foregoing discussion has dealt inevitably with the manner as well as the source of payments made to an Indian tribe, it remains to note the various general statutes which have regulated the manner of making such payments. Generally such statutes have been limited to details of payment not covered by the treaty or act under which the payment is due. But in certain cases grave questions have arisen as to the compatibility between the statutes creating the debt and the statutes determining the manner of its discharge.

For the most part, these early statutes were designed to guard against fraud and unfairness in the distribution of funds and supplies. The act of June 30, 1834,[34] contained two general provisions covering the payment of Indian annuities:

SEC. 11. *And be it further enacted*, That the payment of all annuities or other sums stipulated by treaty to be made to any Indian tribe, shall be made to the chiefs of such tribe, or to such person as said tribe shall appoint; or if any tribe

[33] Memo. Sol. I. D., February 25, 1948.
[34] 4 Stat. 735.

shall appropriate their annuities to the purpose of education, or to any other specific use, then to such person or persons as such tribe shall designate.

SEC. 12. *And be it further enacted*, That it shall be lawful for the President of the United States, at the request of any Indian tribe to which any annuity shall be payable in money, to cause the same to be paid in goods, purchased as provided in the next section of this act (p. 737).

As subsequently amended,[35] these provisions are embodied in the United States Code in the following form:

§ 111. Payment of annuities and distribution of goods. The payment of all moneys and the distribution of all goods stipulated to be furnished to any Indians, or tribe of Indians, shall be made in one of the following ways, as the President or the Secretary of the Interior may direct:

First. To the chiefs of a tribe, for the tribe.

Second. In cases where the imperious interest of the tribe or the individuals intended to be benefited, or any treaty stipulation, requires the intervention of an agency, then to such person as the tribe shall appoint to receive such moneys or goods; or if several persons be appointed, then upon the joint order or receipt of such persons.

Third. To the heads of the families and to the individuals entitled to participate in the moneys or goods.

Fourth. By consent of the tribe, such moneys or goods may be applied directly, under such regulations, not inconsistent with treaty stipulations, as may be prescribed by the Secretary of the Interior, to such purposes as will best promote the happiness and prosperity of the members of the tribe, and will encourage able-bodied Indians in the habits of industry and peace.

Various other early statutes still unrepealed required civil and military officers to certify to the actual delivery of goods owing to Indians,[36] authorized the President to require that payments and deliveries be made by the various superintendents,[37] permitted payment of annuities in coin,[38] or goods (at the request of the tribe),[39] authorized Indians 18 years of age or over to receive annuities,[40] required the Secretary of the Interior to designate disbursing officers handling per capita payments,[41] extended these safeguards to the payment of judgment moneys,[42] required the presence of the "original package" when goods are distributed,[43] and required reports as to the status of tribal fiscal affairs generally,[44] reimbursable accounts,[45] and

[35] Act of March 3, 1847, sec. 3, 9 Stat. 203; act of August 30, 1852, sec. 3, 10 Stat. 41, 56; act of July 15, 1870, secs. 2 and 3, 16 Stat. 335, 360, 25 U. S. C. 111.
[36] Act of June 30, 1834, 4 Stat. 735, 737, R. S. sec. 2088, 25 U. S. C. 112.
[37] Act of March 3, 1857, sec. 1, 11 Stat. 169, R. S. sec. 2089, 25 U. S. C. 113.
[38] Act of March 3, 1865, sec. 3, 13 Stat. 541, 561, R. S. sec. 2081, 25 U. S. C. 114.
[39] Act of June 30, 1834, sec. 12, 4 Stat. 735, 737, R. S. sec. 2082, 25 U. S. C. 115.
[40] Act of March 1, 1899, sec. 8, 30 Stat. 924, 947, 25 U. S. C. 116.
[41] Act of June 10, 1896, sec. 1, 29 Stat. 321, 336, 25 U. S. C. 117.
[42] Act of March 3, 1911, sec. 28, 36 Stat. 1058, 1077, 25 U. S. C. 118.
[43] Act of April 10, 1869, 16 Stat. 13, 39, R. S. sec. 2090, 25 U. S. C. 132.
[44] Act of March 3, 1911, sec. 27, 36 Stat. 1058, 1077, 25 U. S. C. 143; repealed by 68 Stat. 968.
[45] Act of April 4, 1910, sec. 1, 36 Stat. 269, 270, amended June 10, 1921, sec. 304, 42 Stat. 20, 24; 25 U. S. C. 145.

attendance records for the occasions when goods were distributed.[46]

The foregoing statutes are designed primarily to protect the Indians against lax or dishonest officialdom. A separate body of legislation is directed against immorality on the part of the Indians.

Section 3 of the act of March 3, 1847,[47] as it appears today in title 25 of the United States Code, provides:

> § 180. Withholding of moneys or goods on account of intoxicating liquors. No annuities, or moneys, or goods shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons leading the officers or agents, whose duty it may be to make such payments or distribution, to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and headmen of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country.

The act of March 2, 1867,[48] still unrepealed, forbade the payment of treaty funds to an Indian tribe which, since the last distribution of funds, had engaged in hostilities against the United States, or against its citizens. The act of April 10, 1869, also still unrepealed, forbade delivery of goods pursuant to treaty to chiefs who had violated a treaty.[49]

We have already noted that the act of June 22, 1874,[50] required the beneficiaries of obligations from the United States to perform useful labor in order to secure the sums or supplies owing them. At various times provisions were made that tribes at war with the United States should not receive annuities or appropriations. Thus, section 2 of the Appropriation Act of March 3, 1875,[51] provided:

> That none of the appropriations herein made, or of any appropriations made for the Indian service, shall be paid to any band of Indians or any portion of any band while at war with the United States or with the white citizens of any of the States or Territories (p. 449).

Section 1 of the same act, still carried in the United States Code as section 129 of title 25, provides:

> The Secretary of the Interior is authorized to withhold, from any tribe of Indians who may hold any captives other than Indians, any moneys due them from the United States until said captives shall be surrendered to the lawful authorities of the United States.

[46] Act of February 14, 1873, 17 Stat. 437, 463, R. S. sec. 2109, 25 U. S. C. 146.
[47] 9 Stat. 203, R. S. sec. 2087, 25 U. S. C. 130.
[48] 14 Stat. 492, 515, R. S. sec. 2100, 25 U. S. C. 127.
[49] 16 Stat. 13, 39, R. S. sec. 2101, 25 U. S. C. 138.
[50] 18 Stat. 146; made permanent by act of March 3, 1875, sec. 3, 18 Stat. 449; 25 U. S. C. 137.
[51] 18 Stat. 420.

Many of these laws while of historical interest now merely indicate a need for repealing obsolete laws and recodifying those still important in Indian affairs.

A third type of statute governing Federal payments and distributions is concerned with the issue of tribal payments versus individual payments. During the allotment period a persistent effort was made to individualize annuities and funds, for somewhat the same reasons that created the desire to individualize land.

The Appropriation Act of March 3, 1877,[52] contained a direction to each agent having supplies to distribute—

> * * * to make out rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not the heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance: *Provided, however,* That the Commissioner of Indian Affairs may, in his discretion, issue supplies for a greater period than one week to such Indians as are peaceably located upon their reservation and engaged in agriculture.

The purpose of this provision was apparently to curtail the tribal control that chiefs might exercise through the distribution of food and clothing and to transfer control to the Indian agents.

The act of March 2, 1907,[53] authorizes the Secretary of the Interior to apportion "tribal or trust funds on deposit in the Treasury of the United States" among the members of the tribe concerned.[54]

General segregation and distribution of tribal funds to members appearing on "final rolls" made by the Secretary of the Interior was authorized by section 28 of the act of May 25, 1918,[55] and section 1 of the act of June 30, 1919.[56] The repeal of the distribution features of the latter statute by the act of June 24, 1938,[57] parallels the termination of the allotment policy.

Other miscellaneous statutes relating to the handling of funds due from the United States to Indian tribes relate primarily to matters of accounting procedure and the enforcement of appropriation limitations.[58]

[52] Sec. 2, 19 Stat. 271, 293.
[53] 34 Stat. 1221, 25 U. S. C. 119.
[54] Sec. 2 of this act provides for payments to helpless Indians, 35 Stat. 1221, amended by act of May 18, 1916, 39 Stat. 128; 25 U. S. C. 121.
[55] 40 Stat. 561, 591, 25 U. S. C. 162 (segregation of funds). To the effect that the preparation of a "final roll" under congressional direction cannot, in the nature of the case, prevent a later Congress from authorizing a new roll, see Op. Sol. M. 27759, January 22, 1935 (Creek).
[56] 41 Stat. 3, 9, 25 U. S. C. 163 (enrollment).
[57] 52 Stat. 1037, 25 U. S. C. 162, 162a.
[58] R. S. sec. 2097, 25 U. S. C. 122 (limitation on application of tribal funds); act of May 18, 1916, sec. 27, 39 Stat. 123, 158, 25 U. S. C. 123 (expenditure from tribal funds without specific appropriations); act of April 13, 1926, 44 Stat. 242, 25 U. S. C. 123a

Footnote continued on p. 738.

(tribal funds; use to purchase insurance for protection of tribal property); act of May 9, 1936, sec. 1, 52 Stat. 291, 316, 25 U. S. C. 123b (tribal funds for traveling and other expenses); act of May 24, 1922, 42 Stat. 552, 575, 25 U. S. C. 124 (expenditures from tribal funds of Five Civilized Tribes without specific appropriations); act of June 30, 1919, sec. 17, 41 Stat. 3, 20, 25 U. S. C. 125 (expenditure of moneys of tribes of Quapaw Agency); R. S. sec. 2092, 25 U. S. C. 131 (advances to disbursing officers); act of March 1, 1907, 34 Stat. 1015, 1016, 25 U. S. C. 134 (appropriations for supplies available immediately); act of March 3, 1875, 18 Stat. 420, 450, 25 U. S. C. 135 (supplies distributed so as to prevent deficiencies); act of July 1, 1898, sec. 7, 30 Stat. 571, 596, 25 U. S. C. 136 (commutation of rations and other supplies); act of March 1, 1907, 34 Stat. 1015, 1016, 25 U. S. C. 139 (appropriations for subsistence); act of March 1, 1907, 34 Stat. 1015, 1016, 25 U. S. C. 140 (diversion of appropriations for employees and supplies); act of January 12, 1927, sec. 1, 44 Stat. 934, 939, 25 U. S. C. 148 (Supp.) (appropriations for supplies; transfer to Indian Service supply fund; expenditure).

24. Tribal Right To Expend Funds.

Tribal power to expend funds is controlled largely by statutory law, agreements which vary in form and detail, provisions in tribal constitutions and charters, or varying combinations of these controls. Statutes at times may establish special funds and carry authorizations for expending those funds for specified purposes. Specifications of this nature may be modified by subsequent legislation of Congress granting more general authority.[1] Congress, on the other hand, may vest rights in individual Indians by prescribing per capita payments from tribal funds to persons whose names appear on a specified roll,[2] or it may vest rights in connection with legislation for the termination of Federal supervision.[3] Disbursements from trust fund for medical equipment, supplies, construction of hospital facilities, medical attention and construction of roads have been held to be proper.[4] But administrative expenses covering items for agency buildings and repairs, pay of superintendent or agents and transportation of supplies may not be charged to tribal funds established by treaty.[5]

Since the United States and the Indian tribe have each an interest in tribal funds held in the Treasury of the United States, the normal method of disposing of such funds has been by common consent of the tribe and the Federal Government. So far as treaty funds are concerned, treaty provisions, many of which are still in force, embodied a common agreement concerning the disposition of tribal money. Following the treaty period, agreements with Indian tribes, approved by act of Congress, served a similar purpose. In recent years various new formulas have made their appearance embodying, in one way or another, the agreement of the tribe and the United

[1] See Memo. Sol. M. 36092, July 31, 1951, relating to the Red Lake Indian Sawmill Fund.
[2] 58 I. D. 680.
[3] See Memo. Sol. M. 36288, June 23, 1955, and sec. 3 of the Menominee Termination of Federal Supervision Act of June 17, 1954, 68 Stat. 250.
[4] *Sioux Tribe of Indians* v. *United States*, 78 F. Supp. 793 (1948), cert. den. 337 U. S. 908.
[5] *Rogue River Tribe* v. *United States*, 64 F. Supp. 339 (1946).

States concerning expenditure of tribal funds. However, this does not necessarily preclude action on the part of the Federal Government commuting perpetual annuities due under treaty stipulations. This can be done with or without the consent of the tribe and notwithstanding the claim that authority is lacking to cut off the rights of future members of the tribe.[6]

Judgment moneys awarded to the Blackfeet Indians by the Court of Claims have been made "available for disposition by the tribal council of said Indians, with the approval of the Secretary of the Interior, in accordance with the constitution and bylaws of the Blackfeet Tribe * * *."[7] Other statutes provided for the expenditure of tribal funds for objects designated or approved by the tribal council concerned.[8] Perhaps the earliest of such provisions is found in section 3 of the Appropriation Act of February 17, 1879,[9] providing for the diversion of various appropriations to alternative uses "within the discretion of the President, and with the consent of said tribes, expressed in the usual manner." This provision was repeated in subsequent appropriation acts[10] and made permanent by the act of March 1, 1907.[11]

There is an implied agreement between Federal and tribal authorities in acts authorizing the Secretary of the Interior to appropriate money for the expenses of tribal councils,[12] tribal delegates,[13] and tribal attorneys.[14]

There are, of course, a great number of statutes authorizing the expenditure of tribal funds without express reference to the wishes of the tribe,[15] and the problem of Federal power to expend tribal funds

[6] *Pottawatomie Tribe of Indians* v. *United States*, 111 F. Supp. 256 (1953). There is authority in the Indian Claims Commission to examine agreements for the commutation of perpetual annuities for fraud, duress, or perhaps even mistake. See also 64 Stat. 573 requiring a referendum vote of the Choctaws on commuting an annual payment of $10,520 for $350,666.67.
[7] Joint resolution of June 20, 1936, 49 Stat. 1568. Accord: Act of March 2, 1889, 25 Stat. 1012 (Yankton).
[8] Act of June 20, 1936, 49 Stat. 1543 (Crow); act of March 1, 1929, 45 Stat. 1439 (Klamath); act of May 31, 1933, sec. 1, 48 Stat. 108 (Pueblos).
[9] 20 Stat. 295, 315.
[10] See, for example, act of May 11, 1880, sec. 5, 21 Stat. 114, 133.
[11] 34 Stat. 1015, 1016, 25 U. S. C. 140.
[12] Act of March 2, 1929, 45 Stat. 1496 (Crow); act of June 1, 1938, 52 Stat. 605 (Klamath).
[13] Act of March 3, 1881, 21 Stat. 435, 453 (Miami, Peoria, Wea, Kaskaskia, and Piankeshaw); joint resolution of June 7, 1924, 43 Stat. 667 (Fort Peck); joint resolution of May 10, 1926, 44 Stat. 498 (Fort Peck); act of June 14, 1926, 44 Stat. 741 (Klamath).
[14] Act of April 11, 1928, 45 Stat. 423 (Chippewa of Minnesota); act of June 26, 1934, 48 Stat. 1216 (Nez Perce).
[15] See, for example, act of March 3, 1873, 17 Stat. 627 (Nez Perce); act of June 27, 1902, 32 Stat. 400 (Chippewa of Minnesota); act of June 28, 1906, 34 Stat. 547 (Menominee); act of May 26, 1920, 41 Stat. 625 (Five Civilized Tribes).
Expenditure from tribal funds for a wide diversity of purposes considered beneficial to

Footnote continued on p. 740.

without Indian consent is dealt with elsewhere. It may be noted, however, that the omission of express reference to tribal consent in appropriation provisions referring to tribal funds does not necessarily imply the absence of such consent. In fact, many provisions for the appropriation of tribal funds are sought at the request of the tribe concerned, although no reference to this fact appears on the face of the statute.

The present state of the law with respect to the power of an Indian tribe to expend funds or dispose of other personal property held by the United States in trust for the tribe is that any such expenditure must be authorized by act of Congress.[16] The situation is analogous to that of a private trust, where the trustee must consent to expenditures by the beneficiary out of the trust fund. In the case of the trust funds of an Indian tribe, the power to determine the propriety of expenditures is vested in Congress and only in a very few cases has Congress delegated its power of decision to administrative authorities.[17]

The history of Indian appropriation legislation shows a continuous struggle between two principles: on the one hand, it is insisted that Congress, in which is vested constitutional power over appropriations, must retain full control of the subject; on the other hand, it is argued that continuity, prudent foresight in the expenditure of funds, and true economy require the setting aside of tribal funds for definite

the tribe are authorized in a vast number of statutes. See, for example, act of January 12, 1877, 19 Stat. 221 (Osage).

The cost of various improvements upon tribal lands has been met out of tribal funds, sometimes with a provision that the cost of the improvement shall be repaid to the tribe by the individual Indian benefited. Act of February 21, 1921, sec. 2, 41 Stat. 1105, 1106 (Red Lake Indian Reservation).

Federal appropriations for improvements upon tribal lands have frequently been made reimbursable obligations against future tribal funds or against such funds as might arise from disposal of the lands improved. *Act of July 8, 1916, 39 Stat. 353* (Quinault Indian Reservation); act of March 3, 1921, sec. 6, 41 Stat. 1355, 1357 (Fort Belknap); act of February 14, 1923, 42 Stat. 1246 (Paiute); act of February 9, 1925, 43 Stat. 819 (Chippewa).

Various other statutes authorize payments from tribal funds to individual members of the tribe who have particular claims upon tribal bounty. Act of April 29, 1902, 32 Stat. 177 (Choctaw-Chickasaw); act of June 3, 1924, 43 Stat. 357 (Red Lake Indians); Cf. joint resolution of February 11, 1890, 26 Stat. 669.

Certain tribal funds have been made available for loans to individual members of the tribe. Act of March 4, 1925, 43 Stat. 1301 (Crow); act of May 15, 1935, 49 Stat. 244 (Crow).

Between 1916 and 1925 a number of statutes were enacted appropriating tribal funds, or Federal funds, to be reimbursed out of future tribal funds, for roads, bridges, public schools, and other public improvements. Act of June 26, 1916, 39 Stat. 237 (Ponca); act of August 21, 1916, 39 Stat. 521 (Spokane); act of February 20, 1917, 39 Stat 926 (Navajo); act of June 7, 1924, 43 Stat. 607 (Navajo); act of February 26, 1925, 43 Stat. 994 (Navajo).

[16] Funds other than trust funds may be expended without such authorization.

[17] Cf. 25 U. S. C. 139, 140.

purposes in a manner that will avoid the redtape and delays of reappropriation.[18]

Actual practice has usually been a compromise between these two principles. In section 27 of the act of May 18, 1916,[19] Congress provided:

> No money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect: *Provided further*, That this shall not change existing law with reference to the Five Civilized Tribes.

To this list of purposes for which expenditures may be made from tribal funds by administrative authorities without specific congressional appropriation, a specific addition was made by the act of April 13, 1926,[20] as amended, which declares:

> The funds of any tribe of Indians under the control of the United States may be used for payments of insurance premiums for protection of the property of the tribe against fire, theft, tornado, hail, earthquake, or other elements and forces of nature, and for protection against liability on account of injuries or damages to persons or property and other like claims.

Interior Department appropriation acts often contain, in addition to specific appropriations out of designated tribal funds for specific purposes, general appropriations of the following form:[21]

> In addition to the tribal funds authorized to be expended by existing law, there is hereby appropriated $3,100,000, from tribal funds not otherwise available for expenditure for the benefit of Indians and Indian tribes, including pay and travel expenses of employees: care, tuition, and other assistance to Indian children attending public and private schools (which may be paid in advance or from date of admission); purchase of land and improvements on land, title to which shall be taken in the name of the United States in trust for the tribe for which purchased; lease of lands and water rights; compensation and expenses of attorneys and other persons employed by Indian tribes under approved contracts; pay, travel and other expenses of tribal officers, councils, and committees

[18] In other fields of Government, the public purpose corporation has been created to facilitate businesslike handling of appropriations, and this same objective was a major factor in the scheme of tribal incorporation established by the act of June 18, 1934, 48 Stat 984, 25 U. S. C. 461 et seq.

[19] 39 Stat. 159, 25 U. S. C. 123. On the basis of this statute the Comptroller General has held that contracts with attorneys for payment of fees out of tribal funds should not be approved by the Secretary of the Interior in the absence of express statutory authorization. Comptroller's Decisions A. 24931, November 8, 1928; A. 27759, July 1, 1929; A 29173, May 8, 1930; A. 34858, January 26, 1931; A. 45091, October 20, 1932; A. 81210, December 2, 1936; A. 44289, October 11, 1932. The Interior Department took the position, in view of the Comptroller General's opinion of June 30, 1937, discussed supra, that these decisions do not apply to funds in the treasury of an organized tribe. Memo. Sol. I. D., January 18, 1938. And see Memo. Sol. I. D., February 25, 1943, relating to the funds of unorganized tribes.

[20] 44 Stat. 242, 25 U. S. C. 128a.

[21] Act of June 16, 1955, 69 Stat. 141. For an earlier example see the act of May 9, 1938, 52 Stat. 291, 315.

thereof, or other tribal organizations, including mileage for use of privately owned automobiles and per diem in lieu of subsistence at rates established administratively but not to exceed those applicable to civilian employees of the Government * * *.

Beginning with the Department of the Interior Appropriation Act for 1951 (September 6, 1950, 64 Stat. 595, 685), each annual appropriation act for the Department of the Interior has contained an authorization under which tribal funds are available for advancement to the tribe upon application by the appropriate tribal officials and approval of the Secretary.

Furthermore, as we have already noted, "miscellaneous revenues * * * not the result of the labor of any member of such tribe" may be deposited in a fund peculiarly misnamed "Indian moneys, proceeds of labor," and thereafter such funds are available for expenditure "in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they were collected * * *" subject to the limitations as to tribal funds imposed by section 27 of the act of May 18, 1916.[22]

In view of the present state of the law, an Indian tribe seeking a particular disposition of "tribal funds" or "trust funds" in the Treasury of the United States, must request a specific congressional appropriation unless "Indian Moneys, Proceeds of Labor" are available *or* the purpose is one of the four purposes for which Congress has given the Secretary of the Interior permanent spending authority, *or* the purpose is one as to which the current Interior Department appropriation act vests temporary authority over disposition in that Department. Under any of these three exceptions administrative authority rather than congressional appropriation must be obtained.

These limitations upon the power of an Indian tribe to dispose of funds or other personal property in which it has an equitable interest do not extend to funds or personal property over which the tribe has full legal ownership,[23] even though such funds or property are voluntarily deposited for safekeeping with a local superintendent and therefore technically under the Permanent Appropriation Repeal Act of June 26, 1934,[24] within the Treasury of the United States. The act of June 25, 1936,[25] specifically provides:

[22] 39 Stat. 159, 25 U. S. C. 155. See also Memo. Sol. I. D., January 24, 1936. See Comp. Gen. A. 86599, and Memo. Sol. I. D., February 25, 1943.

[23] The expenditure of a part of the funds of the Cherokee Nation for the relief of destitute loyal Indians of other tribes during a period while the Cherokees were in a State of hostility to the United States, did not under relevant acts of Congress or the treaty of July 19, 1866, 14 Stat. 799, create any liability on the part of the United States to restore to the Cherokee fund the amounts so expended. *Cherokee Nation* v. *United States*, 102 Ct. Cl. 720 (1945).

[24] 48 Stat. 1224.

[25] 49 Stat. 1928.

That section 20 of the Permanent Appropriation Repeal Act, approved June 26, 1934 (48 Stat. 1233), shall not be applicable to funds held in trust for individual Indians, associations of individual Indians, or for Indian corporations chartered under the Act of June 18, 1934 (48 Stat. 984).

Since funds so deposited by an incorporated tribe are not subject to congressional appropriation, it must be held a fortiori that funds not so deposited but retained by the tribe are not ordinarily subject to congressional appropriations. Charters issued to incorporated tribes recognize that funds held in the treasury of an incorporated tribe are subject to disposition, in accordance with the limitations of the charter, by the corporation, and are not in any way subject to congressional appropriation.[26] This conclusion may be based upon the narrow ground that section 17 of the act of June 18, 1934, expressly authorizes a chartered tribe to "dispose of property * * * real and personal," but it seems more satisfactory to place the conclusion upon the broader ground that the various statutes relating to appropriations of "tribal funds" and "trust funds" use these words in a technical sense, as terms of art, to refer to a well-understood category of funds which are held in the Treasury of the United States to the credit of the tribe pursuant to some law or treaty, and that, therefore, these limitations are inapplicable to funds in the actual possession of the tribe itself.

This view is in accord with the historic fact that Congress has never presumed to interfere with the expenditure of funds held in tribal treasuries, even when the collection of such funds by tribal authorities is regulated by specific legislation requiring reports to Congress by a tribal treasurer.[27]

The difference between the power of an Indian tribe to dispose of personal property and its power over real property may be summed up in a sentence: A tribe may not validly alienate realty except with the consent of the Federal Government, given by Congress or by an official duly authorized by Congress to consent to particular forms of alienation; on the other hand, a tribe has power of disposition over tribal personal property, except insofar as such property has been removed from its control and placed in the possession of the Federal Government pursuant to some law or treaty.

[26] Sec. 8 of the Southern Ute Tribe charter authorized a per capita distribution of profits of tribal corporate enterprises or income over or above sums necessary to defray corporate obligations. However, no such distribution to members in any one year could include more than one-half of the accrued surplus, without the approval of the Secretary of the Interior. Further, no distribution of the financial assets of the tribe could be made except as provided by the charter or as authorized by Congress. Accordingly, while current net income for any fiscal year could be distributed by the tribe without Secretarial approval as well as up to one-half of the accrued surplus, approval would be required for distribution of more than those amounts. See Memo. Sol. M. 36146, November 14, 1952.

[27] See, for example, act of February 28, 1901, 31 Stat. 819 (Seneca lease rentals). Cf. act of August 14, 1950, 64 Stat. 442 (Seneca lease rentals).

Among the limitations voluntarily assumed by Indian tribes with respect to the disposition of tribal moneys and other personalty, we may briefly note:

(1) Limitations contained in tribal constitutions.[28]

(2) Limitations contained in tribal charters.[29]

[28] See, for example, the following provisions of the constitution and bylaws of the Hualapai Tribe, approved December 17, 1938:

Art. VI, Section 1. The Hualapai Tribal Council shall have the following powers:

* * * * * * *

(e) To deposit all Tribal Council Funds to the credit of the Hualapai Tribe in an Individual Indian Moneys Account, Hualapai Tribe of the Truxton Canon Agency, such funds to be expended only upon the recommendation of the Tribal Council in accordance with a budget having prior approval of the Secretary of the Interior.

* * * * * * *

BYLAWS OF THE HUALAPAI TRIBE OF THE HUALAPAI RESERVATION, ARIZONA

ARTICLE 1—Duties of Officers.

* * * * * * *

SEC. 4. *Treasurer.*—The Treasurer shall accept, receive, receipt for, preserve, and safeguard all funds in the custody of the Tribal Council. He shall deposit all funds in such depository as the Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession and custody, at such times as requested by the Tribal Council. He shall not pay out or disburse any funds in his possession or custody, except in accordance with a resolution duly passed by the Council. The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the Council and at such other times as the Council or the Commissioner of Indian Affairs may direct. The Treasurer shall be required to give a bond satisfactory to the Tribal Council and to the Commissioner of Indian Affairs. Until the Treasurer is bonded, the Tribal Council may make such provision for the custody and disbursement of funds as shall guarantee their safety and proper disbursement and use.

[29] See, for example, the following provisions from sec. 5 of the corporate charter of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, ratified April 25, 1936:

5. The tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the constitution and bylaws of the said tribe, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the tribal constitution and bylaws:

* * * * * * *

"(b) To purchase, take by gift, bequest, or otherwise, own, hold, manage, operate and dispose of property of every description, real and personal, subject to the following limitations:

* * * * * * *

"'5. No distribution of corporate property to members shall be made except out of net income.'

* * * * * * *

"(d) To borrow money from the Indian credit fund in accordance with the terms of section 10 of the act of June 18, 1934 (48 Stat. 984), or from any other governmental agency, or from any member or association of members of the tribe, and to use such funds directly for productive tribal enterprises, or to loan money thus borrowed to individual members or associations of members of the tribe: *Provided,* That the amount of indebtedness to which the tribe may subject itself shall not exceed $100,000, except with the express approval of the Secretary of the Interior.

* * * * * * *

"(f) To make and perform contracts and agreements of every description, not inconsistent with law or with any provisions of this charter, with any person, as-

Footnote continued on p. 745.

(3) Limitations contained in tribal loan agreements.

(4) Limitations contained in tribal trust agreements.

The grant of funds to Indian tribes for particular uses, under the Emergency Appropriation Act of April 8, 1935,[30] raised additional questions as to the powers of an Indian tribe in handling funds. In response to the question put by the Commissioner of Indian Affairs whether an Indian tribe might "use the proceeds of rentals of land improved through rehabilitation grants to finance additional construction projects or to meet general tribal expenses or to make per capita payments," the Solicitor of the Interior Department ruled:[31]

4. When money has been granted to an Indian tribe to be used for a particular purpose, e. g., the development of springs on tribal land or the construction of houses, the Presidential letter above set forth imposes no duty on the tribe when once the money has been properly expended. The fact that such expenditures may increase tribal income from the issuance of leases or permits on tribal land, or tribal income from other enterprises, does not subject a part of that income, or all of it, to any lien on the part of the Federal Government. Such income may, therefore, be received and disbursed by the Indian tribe in any manner not prohibited by Federal law or by the constitution, bylaws, or charter of the tribe, unless the tribe has specifically agreed to use such rentals or income for a specific purpose. It is, of course, within the power of a tribe to agree, through its representative council or other officers, that certain income available to the tribe shall be used only for designated purposes not inconsistent with law.

Following this determination, the Indian Office entered into trust agreements with various Indian tribes under which the Indian tribe became trustee of the funds granted and the proceeds thereof for the benefit of needy Indians entitled to the benefits of the act in question.

sociation, or corporation, with any municipality or any county, or with the United States or the State of Montana, including agreements with the State of Montana for the rendition of public services and including contracts with the United States or the State of Montana or any agency of either for the development of water-power sites within the reservation: *Provided,* That all contracts involving payment of money by the corporation in excess of $5,000 in any one fiscal year, or involving the development of water-power sites within the reservation, shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

"(g) To pledge or assign chattels or future tribal income due or to become due to the tribe under any notes, leases, or other contracts, whether or not such notes, leases, or contracts are in existence at the time: *Provided,* That such agreements of pledge or assignment shall not extend more than 10 years from the date of execution and shall not cover more than one-half the net tribal income in any 1 year: *And provided further,* That any such agreement shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

"(h) To deposit corporate funds, from whatever source derived, in any National or State bank to the extent that such funds are insured by the Federal Deposit Insurance Corporation, or secured by a surety bond, or other security, approved by the Secretary of the Interior; or to deposit such funds in the postal-savings bank or with a bonded disbursing officer of the United States to the credit of the tribe."

[30] 49 Stat. 115.

[31] Op. Sol. M. 28316, March 18, 1936.

On the other hand, Congress may permit the leasing of allotted lands, subject to the approval of the Secretary of the Interior, but specifically providing that the allottees "* * * shall have full control of the same, including the proceeds thereof * * *." [21]

A perusal of the acts cited indicates a general intent of Congress to retain, for a time, governmental control of the proceeds from the disposition of restricted allotted lands and to leave to the discretion of administrative officials the time and manner of distributing or expending such funds, subject to the qualification that they be used for the benefit of the Indian.

[21] Osage Allotment Act of June 28, 1906, sec. 7, 34 Stat. 539, 545

4. *Sources of Individual Personal Property—Individualization of Tribal Funds*

A second important source of individual funds is the individualization of tribal funds.[1] Since tribal funds generally represent the income from disposition of tribal lands, the Federal Government has commonly extended the restrictions on the land to the proceeds therefrom. By a further extension, Congress has frequently imposed, as conditions to the right of the individual to participate in tribal funds, certain restrictions affecting his use of the funds after they have become individualized.

By the act of March 2, 1907,[2] Congress provided generally for the distribution of tribal funds among individuals. Those Indians whom the Secretary of the Interior believed capable of managing their affairs could have placed to their credit upon the books of the United States Treasury their pro rata share of the tribal funds held in trust by the United States, and they could draw upon this credit without any further governmental control.[3] Section 2 of the act provided that the Secretary of the Interior might pay to disabled Indians their shares in tribal property, under such rules and conditions as he might

[1] On regulations regarding moneys, tribal and individual, see 25 C. F. R. 221.1 et seq. Individualization of funds is provided for by, or will be a natural result of, the program of terminating Federal supervision over Indian tribes (H. Con. Res. 108, 83d Cong., 1st sess.). In this connection see the act of June 17, 1954, 68 Stat. 250, as amended by act of July 14, 1956, 70 Stat. 549 (Menominee); act of August 13, 1954, 68 Stat. 718 (Klamath); act of August 18, 1954, 68 Stat. 724 (Grand Ronde); act of August 23, 1954, 68 Stat. 768 (Alabama and Coushatta); act of August 27, 1954, 68 Stat. 868 (Ute Tribe of Uintah and Ouray); act of September 1, 1954, 68 Stat. 1099 (Paiute); act of August 1, 1956, 70 Stat. 893 (Wyandotte); act of August 2, 1956, 70 Stat. 937 (Peoria), act of August 3, 1956, 70 Stat. 963 (Ottawa). The closing of the final roll may effect a vesting of shares in the tribal property and assets. See Memo. Sol. M. 36288, June 23, 1955, relating to the Menominee Termination Act. See also 58 I. D. 680 re per capita shares of deceased members whose names appear on a specified roll, and 64 Stat. 189 relating to per capita payments to the Indians of California.

[2] 34 Stat. 1221, 25 U. S. C. 119.

[3] Op. Sol. M. 25258, June 26, 1929.

prescribe. As later amended [4] this section authorized the Secretary of the Interior upon application by an Indian "mentally or physically incapable of managing his or her own affairs," to withdraw the pro rata share of such Indian in the tribal funds, and to expend such sums on behalf of the Indian.

Section 28 of the Appropriation Act of May 25, 1918,[5] which specifically excluded from its scope the funds of the Five Civilized Tribes and the Osages, in Oklahoma, authorized the Secretary of the Interior to withdraw tribal funds from the Treasury of the United States and to credit recognized members of the tribe with equal shares. However, this authority was revoked by section 2 of the act of June 24, 1938.[6] Nevertheless, the Indian may still apply for funds as his pro rata share in tribal assets, under the act of 1907.[7] The granting of such applications is contrary to the general administrative policy of conserving tribal funds, but in special circumstances such pro rata distributions are still made. It has been held by the Interior Department that, under section 16 of the act of June 18, 1934,[8] such applications must receive the approval of the tribal council, if the tribe in question is organized under that act.[9]

The individual may be awarded, by special statute, a specified sum from the tribal funds on deposit in the United States Treasury. A typical act is the act of February 12, 1932,[10] providing for payment of $25 to each enrolled Chippewa of Minnesota from tribal funds, under such regulations as the Secretary of the Interior may prescribe.[11]

In the individualization of tribal funds, Congress has at various times laid down directions under which the Secretary of the Interior should expend the funds.

In the act of March 3, 1933,[12] Congress provided for the distribution of tribal funds of the Ute Indians. The shares of all were to be deposited as Indian money accounts [13] and subject to disbursement for the individual's benefit in the following ways: for improving lands, erecting homes, purchase of equipment, livestock, household goods and in other ways as will enable them to become self-supporting. The shares of the aged, infirm, and other incapacitated members were to

[4] Amended by act of May 18, 1916, 39 Stat 123, 128, 25 U. S. C. 121.

[5] 40 Stat. 561, 591–592.

[6] 52 Stat 1037.

[7] 34 Stat. 1221.

[8] Memo Sol. I D, September 21, 1939.

[9] 48 Stat 984, 987, 25 U. S. C 476.

[10] 47 Stat. 49. Congress sometimes passes several such acts in a single Congress See for example, 62 Stat. 88, 206, and 1218.

[11] See also 63 Stat. 60, authorizing per capita payments from the proceeds of sale of Chippewa timber.

[12] 47 Stat. 1488

[13] "Indian money accounts" are those accounts under the administrative control of superintendents or disbursing agents containing funds, regardless of derivation, belonging to individuals (25 C. F. R. 221 1 and 221.3).

be used for their support and maintenance. As for minors, their shares might be invested or spent in the same fashion as prescribed for adults, but when their funds were to be invested or expended, the consent of the parents and the approval of the Secretary of the Interior was necessary.[14]

Acts providing for the payment of judgments in favor of a tribe may limit the rights of the Indian in individualized tribal funds by the qualification that "the per-capita share due each member * * * be credited to the individual Indian money account of such member for expenditure in accordance with the individual Indian money regulations." [15] Various resolutions authorizing the distribution of judgments rendered in favor of Indian tribes provide for per capita payments to each enrolled member, such distribution to be made under such rules and regulations as the Secretary of the Interior may prescribe.[16]

By virtue of these acts, Congress has given to the Secretary of the Interior authority over individual funds derived from the tribal property held in trust comparable to the authority over funds derived from the individual's restricted property.

5. *Sources of Individual Personal Property—Payments From the Federal Government*

A third source of individual personalty comprises the various forms of direct payment to individual Indians from the Federal Government. In this connection a distinction must be drawn between obligations assumed by the Federal Government toward the various tribes, by reason of the sale of tribal lands or otherwise, and obligations running directly to the members of the tribes. Problems arising out of the former situation are dealt with earlier. For the present we are concerned only with the situations in which the Federal Government has undertaken to make payments, in money or goods, to individual Indians.

Gifts of agricultural aids and clothes [1] were sometimes made for the purpose of civilizing the Indians. Gifts were also justified simply on the ground that the Indian needed the bounty for subsistence.[2]

a. *Annuities.*[3]—Periodic payments of either money or goods are called "annuities." According to the terms of the instrument, an annuity might be a specific amount for a specified number of years,[4] or it might be a specified amount for life [5] or while the Indians are at peace.[6] Congress has the power, of course, to commute annuities.[7]

Frequently the individual recipients of annuities were the chiefs or others of the tribe who were influential in keeping the peace and in treatymaking.[8] Treaties often provided that a sum of money or other

[14] Cf., act of June 1, 1938, 52 Stat 605, 25 U. S. C. 551 et seq., as amended by sec. 2 (b), act of August 7, 1939, 53 Stat. 1252, 25 U. S. C. 541 et seq. (Klamath).

[15] Joint resolution, June 20, 1936, 49 Stat. 1569, authorizing distribution of judgment in favor of Gros Ventre Indians among enrolled members.

[16] The joint resolution of June 20, 1936, 49 Stat. 1568, provides for a per capita payment of $85, and places the remainder of the fund awarded to the Blackfeet Tribe at the disposal of the tribal council and the Secretary of the Interior.

Under the joint resolution of April 29, 1930, 46 Stat. 260, the Secretary of the Interior is authorized to pay a judgment in favor of the Iowa Tribe to members of the tribe in pro rata shares. The competent members receive their entire shares in cash; the shares of the others, including minors, are deposited to the individual credit of each and subject to existing laws governing Indian moneys

The right of the Chippewa allottee on the Lac du Flambeau Reservation to the proceeds derived from the sale of tribal timber is controlled by the act of May 19, 1924, 43 Stat. 132. After providing for the sale under rules and regulations prescribed by the Secretary of the Interior, the act states that the net proceeds are to be distributed per capita. Those whom the Secretary shall deem competent to handle their own affairs shall receive their shares. As for the others, their shares are deposited to their individual credit and paid to them or used for their benefit under the Secretary's supervision

And see 25 U. S C 771, et seq (Tillamook and other tribes of Oregon).

[1] The act of March 30, 1802, sec 13, 2 Stat. 139, 143, provided in part:

> That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States, to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper * * *

In the Appropriation Act of March 3, 1875, 18 Stat 420, were numerous appropriations for agricultural pursuits Miamies of Kansas were given money for grain and seed for farming purposes (p 432), money in aid of agricultural pursuits, was given to Poncas (p 436), River-Crows (p. 437). Appropriations for clothes were made to Bannocks (p. 440); to Shoshones (p. 440), Six Nations of New York (p 441), Cheyennes and Arapahoes (p 424); Crows (p 429).

The acts of April 30, 1888, sec. 17, 25 Stat. 94, 101, and of March 2, 1889, sec. 17, 25 Stat 888, 895, dividing the Sioux lands, provided for the distribution of cattle and farming implements among the Sioux allottees

[2] The Appropriation Act of March 3, 1875, 18 Stat 420, made an appropriation for subsistence to those Apaches of Arizona and New Mexico "who go and remain upon said reservations and refrain from hostilities, * * *" (p 423), appropriation for the aged, sick, infirm, and orphans among the Assiniboines (p 424), the Blackfeet, Bloods, and Piegans (p. 424)

The Appropriation Act of June 25, 1864, 13 Stat 161, provided for the subsistence of Indians who remained loyal to the United States, including members of the Five Civilized Tribes and affiliated tribes (pp. 180–181). The Appropriation Act of March 3, 1865, 13 Stat 541, provided for the subsistence of a number of Chippewas of the Mississippi.

In the treaty of August 9, 1814, with the Creek Nation, 7 Stat. 120, the United States agreed to furnish members of the Creek Nation with the necessaries of life until they were able to take care of themselves to some extent.

[3] For regulations regarding annuity and other per capita payments, see 25 C. F. R. 224 1 et seq.

[4] By the treaty of October 7, 1863, art 10, 13 Stat 673, 675, with the Tabeguache Band of Utah Indians, each family was to receive a number of sheep and cattle annually for 5 years

[5] Treaty of January 20, 1825, with Choctaw Nation, 7 Stat 234, treaty of September 26, 1833, with Chippewa, Ottowa, and Potawatamie Indians, 7 Stat. 431, treaty of September 24, 1829, with Delaware Indians, 7 Stat. 327; treaty of January 7, 1806, 7 Stat. 101, 102 (Cherokee chief received $100 per year for life); treaty of September 20, 1828, 7 Stat. 317, 318 (Potowatamie chief received $100 per year in goods for life)

[6] Appropriation Act of March 3, 1875, 18 Stat. 420, 423 (granted supplies to those who refrained from fighting). Act ratifying agreement with Utes, April 29, 1874, 18 Stat. 36, 38.

[7] *Pottawatomie Tribe of Indians* v *United States,* 111 F Supp 256 (1953)

[8] Art. V of the treaty with the Chippewas, October 2, 1863, 13 Stat. 667, provided that the Chippewa chiefs receive a house and annuity, to encourage peace and to encourage others to become orderly

Treaty with the Chickasaw, October 19, 1818, 7 Stat. 192, 194 Because of their friendliness to the United States, the chiefs were to receive $150 in cash or in goods.