The Great Father

The United States Government and the American Indians

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in the memorandum to modify it "by softening most of the mandatory words ['shall' and 'must'] and by placing more emphasis on flexibility in the application of some of the policies." But the revised regulations, printed in the Federal Register for August 11, 1951, did not calm the storm. The Association on American Indian Affairs continued its agitation, lawyer groups remonstrated, and a special committee of the American Bar Association added its sharp criticisms. Finally, on January 3 and 4, 1952, hearings were held by Secretary of the Interior Oscar Chapman in which arguments were presented against the proposed changes. In the end the critics won, for the department fell back to the procedures in use before Myer assumed office.  

BUREAU REORGANIZATION

The movement toward termination was accompanied by a reorganization of the Bureau of Indian Affairs. Effective July 1, 1947, the field installations within the continental United States were reorganized in order to increase administrative effectiveness. Five geographical districts were established, each including Indian service facilities within a group of states. The headquarters were at Minneapolis, Billings, Portland, Phoenix, and Oklahoma City. Thus there was established a hierarchical level between the commissioner and the local offices. But some saving was also instituted, as more than forty "at large" offices or stations were eliminated and their duties taken over by the district offices. Further simplification came in budgetary procedures, through consolidating the titles under which funds were requested from 116 to 29. "This amounted to a complete revision of budget structure," Brophy noted, "and has made for such efficiency that any inter-

34. The basic documents on the issue of tribal attorneys, including among other items statements of Secretary Chapman, Myer's memorandum of November 9, 1950, the opinion of Solicitor Martin G. White, June 22, 1951; recommendations of the Association of American Indian Affairs (presented by Felix S. Cohen), memorandum on Indians' right to counsel of law firms and individual lawyers, September 7, 1951; report of a special committee of the American Bar Association, "Regulations Governing Negotiation and Execution of Attorney Contracts with Indian Tribes," May 2, 1958; and transcript of the hearings on the proposed regulations are in OSI CCF 1937-1953, 5-6, Attorneys and Agents, boxes 317-19. The quotation is from D. S. Myer to the secretary of the interior, March 28, 1951, ibid., box 3159. See also Charles L. Black, Jr., "Counsel of Their Own Choosing," American Indian 6 (Fall 1951): 3-17; Clayton R. Koppes, "Oscar L. Chapman: A Liberal at the Interior Department, 1933-1953" (Ph.D. dissertation, University of Kansas, 1974), pp. 224-55. Support for Myer came in Senate Report no. 8, 83d-1, serial no. 11659.

35. CIA Report, 1946, p. 352
Yet the increasing work of the Washington office of the bureau called for another attempt at decentralization, which came in the fall of 1949. On September 3 Secretary J. A. Krug issued an order that set up three administrative units in headquarters—resources, community services, and administration—and established eleven area offices, at the following cities:

Juneau, Alaska
Phoenix, Arizona
Window Rock, Arizona
Sacramento, California
Minneapolis, Minnesota
Billings, Montana
Albuquerque, New Mexico
Anadarko, Oklahoma
Muskogee, Oklahoma
Portland, Oregon
Aberdeen, South Dakota

Under the area offices were the agencies, boarding schools, hospitals and sanatoriums, and irrigation projects. In addition to the area offices, there were ten detached field offices: Seminole Agency, Haskell Institute, Choc-taw Agency, Carson Indian Agency, Western Shoshone Agency, New York Agency, Cherokee Agency, Chilocco School, Osage Agency, and Intermountain School (see Table 14). Commissioner Nichols noted of the new organization: "I now have only six key employees reporting to me in the Washington Office as compared with twenty-four, on the day I took office. In the field service today only the eleven area directors and 10 superintendents of detached field offices report directly to me—as compared with nearly 100, previously."

The new organization, if it was to work more effectively than the five district offices, needed firm administrative direction, and that was provided by Dillon Myer. By effectively reducing the division directors in Washington to staff officers, he concentrated administrative decision in his own hands, and by giving substantial authority to the area directors, who would play a key role in termination activities, he strengthened the move toward withdrawal. Officials below the area level lost many of their responsibilities. The changes not only tightened the machinery of the bureau, with centralized power in the hands of the commissioner, but they eliminated to a large extent residual Collier influence among the division heads and among the field superintendents. Myer insisted that a major purpose of the reorganization was to decentralize the administration of Indian

affairs and to move it closer to the Indian people, but efficiency and control seemed more important to him than local initiative."

In all the controversies of his administration, Myer had fought back, explaining his positions to his superiors and rebutting the statements of critics in public statements of his own. But the critics had done their work too well. President Eisenhower, on taking office, asked for Myer's resignation, and the commissioner left office on March 20, 1953. Myer's role in termination was an important one. He had eliminated any major remnants of Indian New Deal influence by reorganizing the bureau, compiled extensive data (which was not always consistent or correct) concerning the readiness of tribes for termination, furthered the transfer of essential services away from the federal government, and drawn up legislation for the termination of some Indian groups. His programming and development made it possible for actual termination to proceed once Congress provided the authorizing legislation. 40

41. Ibid., p. 163.

CHAPTER 41

Termination in Action

Legislative Action.

Termination Laws.

Reversal of Policy.

The eight years of President Dwight D. Eisenhower's administration were the high point of termination. Building on the policy that had evolved under Truman and on the planning and programming of Commissioner Dillon Myer, Congress in 1953 formally endorsed the policy of termination and in succeeding years enacted laws to withdraw federal supervision from a number of small Indian groups and from two major tribes, the Menominee Indians of Wisconsin and the Klamath Indians of Oregon.

LEGISLATIVE ACTION

The new commissioner of Indian Affairs, chosen by Eisenhower after considerable consultation and delay, was Glenn L. Emmons. Emmons, a banker from Gallup, New Mexico, who had the support of the Navajos, was a mild-mannered man. He was concerned about traditional Indian interests, but he was committed enough to withdrawal of federal supervision that he cooperated with congressional and departmental moves toward termination. When Senator Watkins quizzed him at his nomination hearing, Emmons, although he noted that for some tribes it would take longer than for others, firmly asserted: "I think we should see that the Government trusteeship is liquidated just as rapidly as possible." He was careful to con-
quickly scaled off the occupied village, and a stand-off developed that won national and, indeed, worldwide news coverage. The AIM leaders were astute propagandists who fed the media their views and staged events that the television cameramen eagerly reported. For more than seventy days the impasse continued. The well-armed Indians were determined to hold out, and the government agents sought to end the occupation without a bloodbath. At length, through negotiations conducted in part with the aid of the National Council of Churches, the Indians withdrew on May 8, 1973.

The militant actions at Alcatraz, the Bureau of Indian Affairs, and Wounded Knee were effective in spotlighting the grievances of the Indians. The violence was condemned by many Indians, who declared that the activists were largely young urban Indians who did not have deep roots in the reservations, and by many whites, among whom a mild backlash developed. The denouement of all three events showed that violent confrontation would not force the federal government to accept Indian demands and thus was ultimately ineffective and to some degree counterproductive. Yet the reality of the miserable conditions of many Indians and the deep desire of Indians to have a larger say in their own destiny were driven home to American society. The move for self-determination continued in the administration and in Congress with a new urgency because of the outbreaks.

**TURNOVER AND TURMOIL IN THE BIA**

The agitation exhibited in the public confrontations was paralleled by turmoil within the Bureau of Indian Affairs. President Nixon's search for a suitable Republican Indian to head the bureau ended with the nomination on August 7, 1969, of Louis R. Bruce, a Mohawk-Oglala Sioux. Bruce was not experienced in the bureau, nor was he prominent in the national Indian community of the day, but he had been one of the founders of the National Congress of American Indians and had played a part in other Indian-related activities. A man of reason and good sense, committed to the cause of Indian self-determination, he had the misfortune to hold office during a volatile and controversial period of Indian affairs. He surrounded himself with young activist Indians, a "new team," who sought to work around the bureaucratic inertia of the old administrative setup.18


The struggle for power within the bureau reflected the growing agitation among Indians outside. The seizure and destruction of the offices of the bureau in November 1972 brought complete disruption to the organization. Bruce, Crow, and Assistant Secretary Harrison Loesch resigned, management was placed in the hands of Richard S. Bodman, assistant secretary of the interior for management and budget, and the offices of the bureau were scattered. On February 7, 1973, Morton appointed Marvin L. Franklin, a member of the Iowa Indian Tribe and an executive of the Phillips Petroleum Company, to a new position of assistant to the secretary for Indian affairs. Franklin assumed direct responsibility for all Indian programs and reported directly to the secretary. In May a new reorganization of the bureau was announced, "in order to implement the President's directive, reduce non-essential Central Office support staff and increase the effectiveness of the delivery system of services to Indians." The bureau was to be headed by a commissioner, who would report directly to the secretary of the interior, and a deputy commissioner. There were now six major offices: Indian education programs, tribal resource development, trust responsibilities, Indian services, public affairs, and administration. Until the commissioner and deputy could be chosen, the administration of Indian affairs remained in Franklin's hands. One thing was clear from the rearrangements, whatever confusion might have resulted from the changes: the direction of Indian affairs, once in the hands of a commissioner who reported to the assistant secretary of the interior for public land management, had now achieved a direct line to the secretary.

It took some time to find an Indian to serve as commissioner. Finally, on October 30, 1973, Nixon nominated Morris Thompson, an Athabascan Indian from Alaska who was then serving as director of the Juneau Area Office. When Thompson was sworn in on December 3, he was, at thirty-four, the youngest person to hold the office. Morton arranged that the new commissioner, on a comparable level of responsibility and authority with the assistant secretaries of the Interior Department, would report directly to him. When Thompson resigned three years later to return to Alaska as vice president of the Alcan Pipeline Company, he was replaced on December 7, 1976, as a "recess appointment" by Ben Reifel, a former longtime employee of the bureau and South Dakota representative and a member of the Sioux Tribe, who served only until President Jimmy Carter asked for his resignation on January 28, 1977. The Carter administration accomplished by administrative action what Nixon had hoped but failed to achieve by legislation: elevation of the head of Indian affairs to the assistant secretary level. After six months of Indian consultation, speculation, and rumor, the White House on July 12, 1977, announced the nomination of Forrest J. Gerard for the new position. A member of the Blackfeet Tribe, Gerard from 1971 to 1976 had headed the professional staff of the Senate Subcommittee on Indian Affairs and had worked previously for the Indian Health Service as a tribal relations officer and for the Bureau of Indian Affairs as legislative liaison officer. He was formally installed on October 13, 1977.

In December 1977, Carter's secretary of the interior, Cecil D. Andrus, appointed an eleven-member task force to develop recommendations for reorganizing the Bureau of Indian Affairs. After numerous meetings to elicit Indian input, the task force submitted its report on March 31, 1978. The report proposed that the top administration of Indian affairs be in the hands of the assistant secretary for Indian affairs and three deputies and that the area offices should be reviewed to determine the future role of each. Forrest Gerard modified the recommendations according to his own judgment. He rejected the proposed assistant and three deputies and re-instituted the commissioner of Indian affairs—who, with a deputy commissioner, would direct the day-to-day activities of the Bureau of Indian Affairs, leaving the assistant secretary, also with a deputy, to emphasize policy, planning, and evaluation. The area offices were continued as intermediate levels of authority, pending studies to be made of each area. Until a new commissioner could be located, Martin E. Seneca, Jr., was appointed to run the bureau as acting deputy commissioner. A year later, on September 28, 1978, the Bureau of Indian Affairs, news releases, December 4, 1971, and December 8, 1976. For brief biographies, see Michael T. Smith, "Morris Thompson, 1971–76," and "Benjamin Reifel, 1976–77," in Kvasnicka and Viola, Commissioners of Indian Affairs, pp. 141–48.


bility in local policy determinations. There was Indian support for the amendment, but the Interior Department and the Indian Health Service opposed the measure as unnecessary because, they asserted, blank grants could be made under existing authority. The bill passed the Senate in September, but it died in the House.51

Despite the strong rhetoric of Indian leaders about the failure of the act to provide genuine self-determination, in fact a large number of contracts were concluded under its provisions. In fiscal year 1980, 370 tribes contracted for the operation of $200 million worth of programs under the Indian Self-Determination Act, and $223 million was paid to the tribes to cover their overhead in the contracts. By the next year 480 grants had been made to tribal governments under the act to improve their capacity to operate federal programs under contract and in general to increase their effectiveness in serving tribal members.52

AMERICAN INDIAN POLICY REVIEW COMMISSION

The outbreaks of restless and frustrated Indians at the Bureau of Indian Affairs in 1972 and at Wounded Knee in early 1973 were clear evidence to many people that something needed to be done to meliorate the conditions in federal Indian relations that had led to such violence. One proposed solution came from Senator Abourezk, the leading congressional advocate of Indian rights. Abourezk on July 16, 1973, introduced a joint resolution to establish an American Indian Policy Review Commission. In defending the proposal, he criticized the existing legal relationship with the Indian people as "a complex mess" and declared: "No rational, uniform policy seems to be growing out of it. But every day, in some sort of headless, directionless way, it is shaping, or misshaping the lives of Indian people. Trying to make sense out of our Indian policy, that is, trying to come up with some coherent, rational, clear definition of it, is presently impossible. Our policy is labyrinthine. It is like a catacomb. It is layered upon layer of patchwork. Trying to sort it out makes playing three-dimensional chess look like child's play."53

53. Congressional Record, 119:24030, 24464.

Abourezk's proposed solution was the appointment of a congressional commission with members from both houses and from the Indian community to undertake an exhaustive review of the historical and legal elements in federal-Indian relations and to recommend legislation. The presuppositions behind the resolution were evident in the senator's listing of purposes: "First, to affirm the unique and longstanding relationship between the Indian people and the U.S. Government, and to recognize that this unique relationship forms the basis to undertake fundamental reform in Indian policies . . . Second, to admit openly that the Federal trust responsibility for the Indian people has not been fulfilled, and to admit further that by that failure Indian people have been denied full opportunity."54

Abourezk's resolution had a long preamble full of whereas's castigating the federal government for its failures in regard to the Indians. The resolution proposed a commission with an executive director, a general counsel, and advisory groups to study and analyze treaties, statutes, and other documents in order to determine precisely what the unique relationship was, to revise the policies, practices, and structure of federal agencies dealing with Indians, to examine the current and future needs of the Indians, to seek ways to strengthen tribal governments, and to recommend modifications of policies in line with the purposes of the study.55 What Abourezk and his supporters had in mind was a new Meriam Report that would provide a "systematic exploration of the contributing causes to the chaotic state of Indian affairs" with a "longer range objective of corrective action." The commission's report, it was hoped, would furnish a blueprint for future Indian policy. The Interior Department refused to take a stand on the resolution, declaring that the matter was entirely a congressional one that Congress should decide for itself. Senate hearings, however, showed strong support for the proposal from Indians and non-Indian advocates, and the Senate passed the resolution on December 5, 1973.56

The strong statements and the pro-Indian tone of the Senate resolution caused consternation among conservative congressmen and threatened a backlash that could destroy the positive features of the proposal, and the House of Representatives, under the leadership of Representative Lloyd Meeds of Washington, considerably moderated the resolution. It cut out

54. Ibid., p. 24464.
55. The original resolution is printed in Congressional Record, 119:19587-89.
Abourezk's long preamble and substituted an innocuous statement calling attention to the shifts and changes in policy and the need for a general review of the conduct of Indian affairs to update the Meriam Report.77

The resolution as it became law [PL 93–580], January 4, 1975, established a commission of eleven members—three senators, three representatives, and five Indians (three from federally recognized tribes, one urban Indian, and one from nonrecognized groups). The commission was charged to analyze official documents to determine "the attributes of the unique relationship," review policies and practices, collect data on Indian needs, and in general accomplish what Abourezk had originally had in mind. The commission was directed, furthermore, to appoint investigative task forces to consider specific problems. Each task force was composed of three members, a majority of whom were to be Indians, and support staff for the task forces was authorized. The law provided $2.5 million for the work of the commission and extended the life of the body to June 30, 1977.88

In the end there were eleven task forces, and thirty-one of the thirty-three members were Indians. They worked in the following areas: [1] trust responsibilities and the federal-Indian relationship; [2] tribal government; [3] federal administration and the structure of Indian affairs; [4] federal, state, and tribal jurisdiction; [5] Indian education; [6] Indian health; [7] reservation and resource development and protection; [8] urban and rural nonreservation Indians; [9] Indian law consolidation, revision, and codification; [10] terminated and nonrecognized Indians; and [11] alcohol and drug abuse. In addition, two special task force reports were prepared on Alaska Native issues and on the management of the Bureau of Indian Affairs.89

The American Indian Policy Review Commission held out great promise; an expert, historically accurate, and balanced analysis of Indian status and of the legal responsibilities of the federal government would have been of tremendous value in understanding past policies and planning future development. Unfortunately, little of this was realized, and the commission must be judged a failure.

89. The individual task force reports were published in 1976 and 1977 by the Government Printing Office. For the commission's findings and recommendations, see American Indian Policy Review Commission, Final Report [Washington: GPO, 1977].

The trouble began at the very start, with controversy over the appointment of the Indian members of the commission. Abourezk was chosen chairman of the commission and Meeks vice chairman, and they and the other congressional members selected the five Indian members: John Borbridge, Tlingit-Haida, Ada Deer, Menominee, and Jack Whitecrow, Quapaw-Seneca-Cayuga, representing federally recognized tribes; Louis R. Bruce, Mohawk-Siouxs, representing urban Indians; and Adolph Dial, Lumbee, representing nonrecognized groups. These Indians were able and knowledgeable persons, but their appointment was violently criticized by other Indians as not being properly representative, and the National Congress of American Indians sought an injunction, unsuccessfully, to prevent the commission's operation on that ground. There was political maneuvering in the appointment of Ernest Stevens, an Oneida from Wisconsin, as executive director and in the appointment of the task force members.90

The commission in its Final Report, submitted to Congress on May 17, 1977, set forth its "policy for the future" in the following summary recommendations:

Foundations of Federal Indian Law

1. That Indian tribes are sovereign political bodies, having the power to determine their own membership and power to enact laws and enforce them within the boundaries of their reservations, and
2. That the relationship which exists between the tribes and the United States is premised on a special trust that must govern the conduct of the stronger toward the weaker.

The Trust Responsibility

1. The trust responsibility to American Indians extends from the protection and enhancement of Indian trust resources and tribal self-government to the provision of economic and social programs necessary to raise the standard of living and social well being of the Indian people to a level comparable to the non-Indian society.
2. The trust responsibility extends through the tribe to the Indian member, whether on or off the reservation.
3. The trust responsibility applies to all United States agencies and instrumentalities, not just those charged specifically with administration of Indian affairs.

Federal Administration

1. The executive branch should propose a plan for a consolidated Indian Department or independent agency. Indian programs should be transferred to this new consolidated agency where appropriate.

2. Bureaucratic processes must be revised to develop an Indian budget system operating from a "zero" base, consistent with long-range Indian priorities and needs. Those budget requests by the tribes should be submitted without interference to Congress.

3. Federal laws providing for delivery of domestic assistance to State and local governments must be revised to include Indian tribes as eligible recipients.

4. To the maximum extent possible, appropriations should be delivered directly to Indian tribes and organizations through grants and contracts; the first obligation being to trust requirements.

Economic Self-Sufficiency

1. The first order of business of future Indian policy must be the development of a viable economic base for the Indian communities.

2. Adequate credit systems must be established for Indian economic development projects; funds must be established to provide for land acquisition and consolidation; and policies must be adopted which will favor Indian control over leases of their own natural resources.

3. Technical assistance must be available to tribes both in the planning and management stages of operations.

4. Every effort must be made to encourage and aid tribes in the development of economic projects relevant to their natural resource base.

Restoration and Recognition

1. Tribes which were terminated must be restored to their formal political status and Congress must establish a legal process for restoration.

2. Tribes which have been overlooked, forgotten, or ignored must be recognized as possessing their full rights as tribes.

Urban Indians

1. Federal Indian programs should address the needs of off-reservation Indians.

2. Programs directed to the needs of urban Indians should encourage and utilize urban Indian service centers.


Under thirteen chapters the report then listed and explained 206 specific recommendations for Congress to consider.

The *Final Report* and the reports of the eleven task forces on which it was based indicate why the work of the commission had so little effect. Instead of the balanced historical and legal report called for, the commission submitted a report based on the controversial positions of inherent full political sovereignty of the tribes and broad trust responsibilities of the federal government. The vice chairman of the commission submitted a vigorous dissent from the commission's report on these two points, claiming that the report was "one-sided advocacy" encompassing only a tribal view of the future of American Indian law and policy. Though Meeds's own position may have been as one-sided as the one he condemned, his minority report considerably weakened the impact of the commission's work.

Even without the vice chairman's dissent, however, the report of the commission was unlikely to become a widely accepted general plan for future Indian policy. In the first place, it was caught in the theoretical dilemma that plagued the whole movement for self-determination. Although the report was premised on the concept of full political sovereignty of the tribes, most of the 206 recommendations of the commission were proposals for the federal government to appropriate funds for Indian programs or in some other way to deliver services to the "sovereign" tribes. There was, moreover, such a barrage of demands for funds or other congressional and administrative action that it was difficult to know where to begin. In the second place, the task forces' work and their reports were by and large not of high quality. These reports in many cases were an accumulation of raw data, often not expertly gathered, and were short on convincing analysis and interpretation. They showed neither the historical nor legal understanding that the purposes of the commission demanded. Compared with the well-organized information and tightly argued conclusions provided by the technical experts who made up the Meriam survey team in the 1920s, the material published by the American Indian Policy Review Commission was unsatisfactory. Part of the failure was due, no doubt, to the limited resources and limited time with which the task forces worked (the final reports were hastily put together), but the lack of highly competent personnel was also a factor.

The commission and the task forces did, of course, provide some useful material, and their findings and recommendations influenced action by

the executive departments and the Congress on a number of aspects of Indian policy and administration. But the Final Report did not furnish the blueprint for the future that had been hoped for. Piecemeal changes continued to be made, and these did move the Indian communities toward a greater degree of self-determination and protection of their rights, but there was no overarching plan and no solution to the inherent problems arising from the tension between self-determination of the Indian tribes and the continuing trust responsibility of the federal government.

CHAPTER 46

Legal and Judicial Maneuvering

Fishing and Hunting Rights.
Inherent Sovereignty and Tribal Jurisdiction.

The 1970s were a decade of violent Indian protest, but they were also—and in the long run perhaps more significantly—a period in which Indians resorted to the courts to protect their rights and to demand a redressing of old wrongs. With increasing skill and considerable success, Indians and their lawyers made use of the American legal system to gain recognition of their claims and remedies for their grievances.

Many of the suits brought by Indians to recover land or to vindicate other rights were encouraged and supported by the Native American Rights Fund (NARF), a national legal defense organization founded in 1971. With headquarters in Boulder, Colorado, and a permanent office in Washington, D.C., NARF assembled a group of young lawyers expert in Indian law, two-thirds of them Indian, and used its funds to pursue cases and projects that would have national impact. Its priorities were preservation of tribal existence, protection of tribal land and other natural resources, promotion of basic human rights for Indians, holding government accountable for proper enforcement of laws governing Indian affairs, and development of Indian law. Its report for 1981 listed ninety-four activities, from agitation for Indian water rights, support of land claims, and promotion of federal acknowledgment for nonrecognized tribes to continuing development of a national Indian law library at Boulder. The organization proved the value of working expertly within the system of American law to protect Indian