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T-925

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.³⁴

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 Mastin 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, 1938; and transcript of the hearings on the proposed regulations are in OSI CCF 1937-1953, 5-6, Attorneys and Agents, boxes 3517-19. The quotation is from D. S. Myer to the secretary of the interior, March 28, 1951, *ibid.*, box 3519. 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, 83-1, serial 11659.

ested person, looking at the 29 permanent titles, can tell how much the administrative expense is, and how much each one of the major activities such as education, health, forestry, etc., cost in 1 year."³⁵

Accompanying these structural changes was a new emphasis on decentralization through delegation of powers. A law of August 8, 1946, "to facilitate and simplify the administration of Indian affairs" authorized the secretary of the interior, in individual cases arising under general regulations, to delegate any powers he had to the commissioner of Indian affairs, and the commissioner, similarly, to delegate them to subordinate officials.³⁶ Accordingly, the secretary gave the commissioner final authority to act in certain matters pertaining to health and welfare, education, land and minerals, irrigation, forestry, grazing, and fiscal affairs, and the commissioner authorized field officers to make final decisions in the same cases. Brophy's purpose was clearly stated: "I am more convinced than ever that we must get closer to the people if our programs are to yield the greatest benefit to the Indians and the country. We must constantly strive to have greater participation by the Indians in the initiation, formulation, and execution of our policy work. There should be a real sharing of ideas about goals and how to reach them and their (the Indians') views as well as those of the entire staff of the Service should be weighed and considered."³⁷

Brophy's attempt to decentralize the bureau's organization with the five district offices did not work effectively. The dominance of the old system of functional lines from Washington headquarters to the field jurisdictions and the set ways among the rank and file could not be replaced without more decisive leadership than Brophy was able to provide, and the whole concept of decentralization was inadequately worked out. Specific operating instructions were lacking, and the agency superintendents, resenting the new layer of authority, preferred to deal directly with Washington and often did so. Congress, moreover, in its appropriations for 1949 authorized funds for only the Portland and Billings district offices.³⁸

35. CIA Report, 1946, p. 352.

36. 60 *United States Statutes* 939; *House Report* no. 1164, 79-1, serial 10935; *Senate Report* no. 1318, 79-1, serial 11015.

37. Department of the Interior, Order no. 2252, September 9, 1946, OSI CCF 1937-1953, 1-12, Administration General, Instructions and Orders, Interior, part 65; Memorandum, J. A. Krug, to the commissioner of Indian affairs, September 9, 1946, and Order no. 537, September 16, 1946, OIA Circulars (M1121, reel 4); CIA Report, 1947, pp. 349-50.

38. *Report of the Committee on Indian Affairs to the Commission on Organization of the Executive Branch of the Government*, pp. 42-43; 62 *United States Statutes* 1116. There is full discussion of the organization of regional offices in Theodore W. Taylor, "The Regional Organization of the Bureau of Indian Affairs" (Ph.D. dissertation, Harvard University, 1959); see especially pp. 186-90.

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:

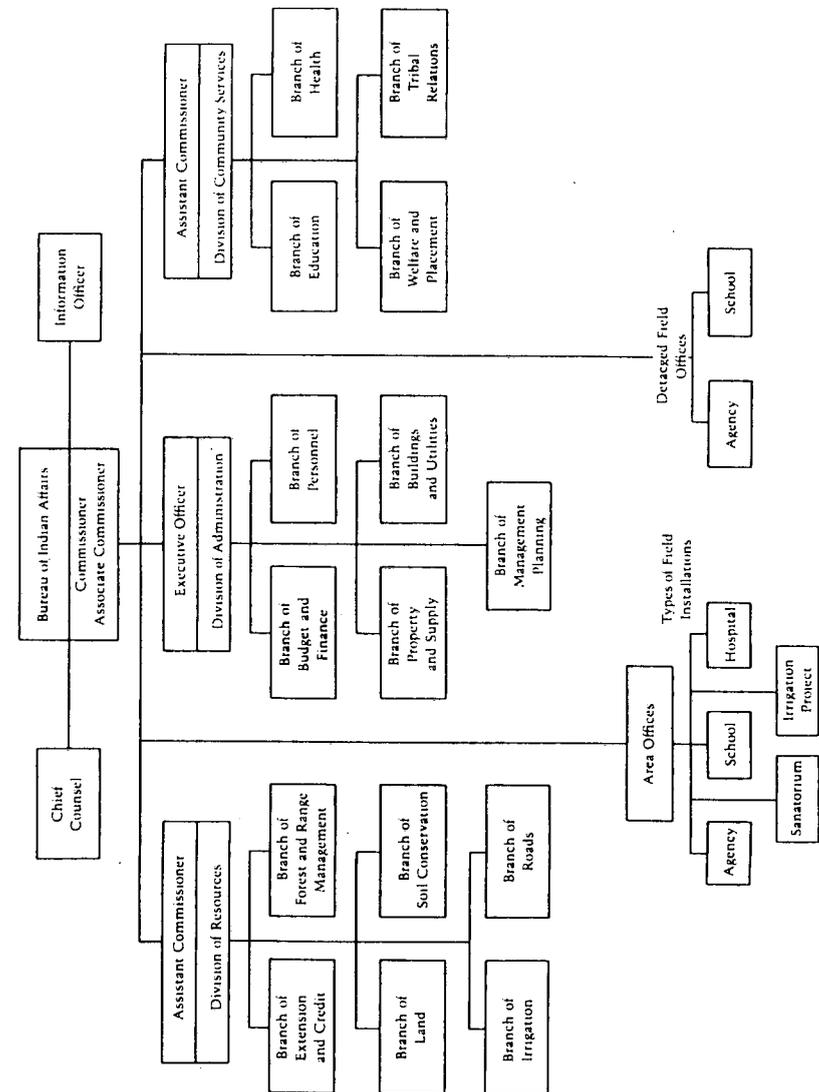
Juneau, Alaska	Albuquerque, New Mexico
Phoenix, Arizona	Anadarko, Oklahoma
Window Rock, Arizona	Muskogee, Oklahoma
Sacramento, California	Portland, Oregon
Minneapolis, Minnesota	Aberdeen, South Dakota
Billings, Montana	

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, Choctaw 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."³⁹

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

39. Department of the Interior, Order no. 2535, September 13, 1949, OSI CCF 1937-1953, 1-12, Instructions and Orders, Interior; Order no. 549, September 14, 1949, and supplements of October 21, November 8, 1949, October 6, 1950, OIA Circulars (M1121, reel 4); address of John R. Nichols to Oklahoma-Kansas Superintendents' Association, November 17, 1949, OSI CCF 1937-1953, 5-11, Administration General, part 16. See also United States Department of the Interior, *Official Organization Handbook for Use in 1949-1950*.

TABLE 14: Organization Chart of the Bureau of Indian Affairs, 1950



affairs and to move it closer to the Indian people; but efficiency and control seemed more important to him than local initiative.⁴⁰

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.⁴¹

40. Hasse, "Termination and Assimilation," pp. 126-29.

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 sealed 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 blood-bath. At length, through negotiations conducted in part with the aid of the National Council of Churches, the Indians withdrew on May 8, 1973.¹⁷

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

17. The importance of the media in the events was noted and criticized in "Trap at Wounded Knee," *Time* 101 (March 26, 1973): 67; Desmond Smith, "Wounded Knee: The Media Coup d'Etat," *Nation* 216 (June 25, 1973): 806-9; Terri Schultz, "Bamboozle Me Not at Wounded Knee," *Harper's Magazine* 246 (June 1973): 46-48, 53-56.

18. A brief, sympathetic sketch of Bruce is Joseph H. Cash, "Louis Rook Bruce, 1969-73," in Robert M. Kvasnicka and Herman J. Viola, eds., *The Commissioners of Indian Affairs, 1824-1977* (Lincoln: University of Nebraska Press, 1979), pp. 333-40. Bruce dis-

When Bruce took office, the bureau was run by the commissioner, a deputy commissioner, and six assistant commissioners for community services, economic development, education, administration, engineering, and program coordination. The organization soon underwent realignment, which Secretary Hickel said would "help make the Bureau more responsive to the needs of the Indian people and . . . provide the necessary flexibility in developing and carrying out programs to meet those requirements." The deputy commissioner and the six assistant commissioners were eliminated and replaced by an associate commissioner for education and programs (overseeing staff directors for education programs, community services, and economic development) and an associate commissioner for support services (overseeing directors of management services and operating services). At the end of the year Hickel proposed sweeping changes as well in the field organization, to abolish the sixty-three agency superintendent positions and replace them with "field administrators" with increased authority, intended "to achieve the objections of President Nixon in placing the Indian people in closer contact with decision-makers and in broadening their opportunities to guide and improve their own affairs." The area directors were to keep their advisory capacity and retain technical and general service functions.¹⁹ Thus began a decade of shuffling and reshuffling of the administration of national Indian affairs, an unfortunate situation in a time of great agitation and rapid change.

The Hickel-Bruce administration, which was geared to an increased voice of Indians in the high-level management of Indian affairs, was soon cut short. In November 1970 Hickel resigned, to be replaced by Rogers C. B. Morton at the end of January 1971. Morton was less flexible and innovative than Hickel, and he moved to tighten the administration of the bureau. On July 23 he appointed John O. Crow to the reactivated position of deputy commissioner. Crow, a part-Cherokee who had had long experience in the bureau (he had served as acting commissioner of Indian affairs between Nash and Bennett), with Morton's backing, opposed Bruce and his young advisers. In December Morton abolished the associate commissioner positions and made the major program offices (now thirteen in number) the district responsibility of the commissioner and the deputy commissioner.²⁰

cussed his policies and programs in "The Bureau of Indian Affairs, 1972," in Jane F. Smith and Robert M. Kvasnicka, eds., *Indian-White Relations: A Persistent Paradox* (Washington: Howard University Press, 1976), pp. 242-50.

19. *Indian Record*, January 1969, p. 4; Office of the Secretary of the Interior, news releases of January 9 and November 25, 1970.

20. Office of the Secretary of the Interior, news release, December 8, 1971. The bitter struggle between opposing forces in the Bureau of Indian Affairs is described in Steve Nickeson, "The Structure of the Bureau of Indian Affairs," *Law and Contemporary*

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.²¹ 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.²² 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

Problems 40 (Winter 1976): 61-76. See also Peter Collier, "Wounded Knee: The New Indian War," *Ramparts* 11 (June 1973): 25-29, 56-59.

21. Office of the Secretary of the Interior, news release, December 8, 1972; Bureau of Indian Affairs, news release, December 8, 1972.

22. Office of the Secretary of the Interior, news releases, February 7 and May 15, 1973.

the Sioux Tribe, who served only until President Jimmy Carter asked for his resignation on January 28, 1977.²³

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, 1977.²⁴

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.²⁵ 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 Septem-

23. Office of the Secretary of the Interior, news releases, October 30 and November 28, 1973; Bureau of Indian Affairs, news releases, December 4, 1973, and December 8, 1976. For brief biographies, see Michael T. Smith, "Morris Thompson, 1973-76," and "Benjamin Reifel, 1976-77," in Kvasnicka and Viola, *Commissioners of Indian Affairs*, pp. 341-48.

24. *Indian Record*, July-August 1977, p. 1, and October 1977, p. 4; Bureau of Indian Affairs, news release, October 14, 1977. The position of assistant secretary was formalized in 42 *Federal Register* 53682 (October 3, 1977).

25. 43 *Federal Register* 16284-304 (April 17, 1978). Note that the American Indian Policy Review Commission also had a task force working on the organization of the Bureau of Indian Affairs. See American Indian Policy Review Commission, Task Force Three, *Report on Federal Administration and Structure of Indian Affairs* (Washington: GPO, 1976), and American Indian Policy Review Commission, *Bureau of Indian Affairs Management Study* (Washington: GPO, 1976). These recommendations seem to have had little effect.

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, block 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 \$22.3 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 labyrinthian. It is like a catacomb. It is layer upon layer of patchwork. Trying to sort it out makes playing three-dimensional chess look like child's play."⁵³

51. "Amend the Indian Self-Determination and Education Assistance Act," *Hearings before the United States Senate Select Committee on Indian Affairs, 95th Congress, 2d Session, on S. 2460 (1978)*; *Senate Report no. 95-1200, 95-2, serial 13197-12*.

52. "United States Department of the Interior Budget Justifications, FY 1982: Bureau of Indian Affairs," printed in *Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 97th Congress, 1st Session, Subcommittee on the Department of the Interior and Related Agencies (1981)*, part 2, pp. 256-59.

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: 39587-89.

56. "Establishment of the American Indian Policy Review Commission," *Hearings before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, United States Senate, 93d Congress, 1st Session, on S. J. Res. 133 (1973)*; *Senate Report no. 93-594, 93-1, serial 13017-8*. The Interior Department position is expressed in letters of Assistant Secretary John Kyl to Henry M. Jackson, July 19, 1973, and August 14, 1973, printed in *Senate Report no. 93-594, pp. 4-5*.

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.⁵⁷

The resolution as it became law (P.L. 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, 1977.⁵⁸

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.⁵⁹

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.

57. "Establishment of the American Indian Policy Review Commission," *Hearing before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, House of Representatives, 93d Congress, 2d Session, on H. J. Res. 881, S. J. Res. 133* (1974); *House Report no. 93-1420, 93-2, serial 13061-9*.

58. 88 *United States Statutes* 1910-14. See also Kirke Kickingbird, "The American Indian Policy Review Commission: A Prospect for Future Change in Federal Indian Policy," *American Indian Law Review* 3, no. 2 (1975): 243-53.

59. 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 Meeds 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-Sioux, 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.⁶⁰

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.

60. For criticisms of the commission's formation, see Mark Thompson, "Nurturing the Forked Tree: Conception and Formation of the American Indian Policy Review Commission," and Donald A. Grinde, Jr., "Politics and the American Indian Policy Review Commission," in *New Directions in Federal Indian Policy: A Review of the American Indian Policy Review Commission* (Los Angeles: American Indian Studies Center, University of California, Los Angeles, 1979), pp. 5-28.

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.⁶¹

61. *Final Report*, pp. 4-9.

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.⁶²

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

62. "Separate Dissenting Views of Congressman Lloyd Meeds, D-Wash., Vice Chairman of the American Indian Policy Review Commission," *Final Report*, pp. 571-612. A rebuttal to the dissent was supplied by Senator Abourezk and printed on pp. 615-17.

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

Land Claims and Conflicts. Water Rights.

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 righting 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