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I am submitting herewith a dissertation written by E. Fletcher McClellan entitled "The Politics of American Indian Self-Determination, 1958-75: The Indian Self-Determination and Education Assistance Act of 1975." I have examined the final copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Political Science.

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and recommend its acceptance:

Accepted for the Council:

Vice Provost
and Dean of the Graduate School

THE POLITICS OF AMERICAN INDIAN SELF-DETERMINATION, 1958-75: THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT OF 1975

A Dissertation

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The completion of this project after a decade of research, writing, and revision comes as a welcome relief to not only the author but his family, friends, colleagues, and mentors. They share this modest accomplishment with me.

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I dedicate this dissertation to my mother and father. Your words challenged me to finish what I began. Your example calls me to find new challenges.

ABSTRACT

In the 1960s and early 1970s, the policy of the U.S. government toward American Indians shifted from termination of federal protection of tribal entities to federal support of tribal self-determination. This study examined the factors which produced passage of one of the most important reforms of this period, the Indian Self-Determination and Education Assistance Act of 1975, which enabled Indian tribes to assume control of federal programs. Data for this analysis were gathered from interviews with participants in the Indian affairs legislative process, congressional documents, executive branch records in the National Archives, and secondary sources.

The findings of the study revealed several features of the agenda-building process in the 1960s: (1) the emergence of Indian political activism; (2) federal program expansion for Indians, including tribally-administered community action programs; (3) policy entrepreneurship in Congress, particularly Senators Robert and Edward Kennedy, Sam Ervin, and George McGovern; and (4) presidential intervention. Presidents Johnson and Nixon presented special messages on Indian affairs to Congress, and Nixon proposed legislation which promoted "self-determination without termination." By early 1971 the major proponents of termination, the Senate Interior Committee and chairman Henry Jackson, reversed their position on Indian policy and formulated their own legislative program.

The early 1970s were the most productive period of legislative

reform in Indian affairs since the Indian New Deal. The factions which contributed to legislative activism included: (1) an abortive attempt by Interior Department officials in 1970-71 to promote self-determination under existing authority by contracting with tribes which wanted to administer federal programs; (2) Jackson's subsequent sponsorship of a bill which authorized contracting, the Indian Self-Determination Act; (3) the escalation of Indian protest activity; (4) vigorous legislative leadership by Senator James Abourezk and Representative Lloyd Meeds, chairmen of the Senate and House Indian affairs subcommittees; and (5) rivalry between the Senate Interior and Labor and Public Welfare Committees, and between Jackson and Kennedy over Indian education reform, which resulted in the addition of an education section to the Indian Self-Determination Act. The study concluded with analysis of how the Indian policy process was transformed from a "subsystem" (J. Leiper Freeman, The Political Process) to a policy network.

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LIST OF ABBREVIATIONS

AFDC	Aid to Families with Dependent Children
AFN	Alaskan Federation of Natives
AIM	American Indian Movement
AIO	Americans for Indian Opportunity
AIPA	American Indian Press Association
AIPC	All Indian Pueblo Council
AIPRC	U.S. American Indian Policy Review Commission
BIA	U.S. Bureau of Indian Affairs
CERT	Council of Energy Resource Tribes
CETA	Comprehensive Employment Training Act
CICSB	Coalition of Indian Controlled School Boards
EOP	U.S. Executive Office of the President
ESEA	Elementary and Secondary Education Act of 1965
GAO	U.S. General Accounting Office
GSA	U.S. General Services Administration
HEW	U.S. Department of Health, Education, and Welfare
HUD	U.S. Department of Housing and Urban Development
ICAP	Indian Community Action Programs
ICC	U.S. Indian Claims Commission
ICERR	Interstate Congress for Equal Rights and Responsibilities
IDIL	Institute for the Development of Indian Law
IET	Indian Education Training, Inc.
IHS	U.S. Indian Health Service

IRA	Indian Reorganization Act of 1934
JOM	Johnson-O'Malley Act of 1934
NAACP	National Association for the Advancement of Colored People
NARF	Native American Rights Fund
NCAI	National Congress of American Indians
NCIO	U.S. National Council on Indian Opportunity
NEA	National Education Association
NFFE	National Federation of Federal Employees
NIEA	National Indian Education Association
NIYC	National Indian Youth Council
NTCA	National Tribal Chairman's Association
OEO	U.S. Office of Economic Opportunity
OMB	U.S. Office of Management and Budget
P.L. 93-638	Indian Self-Determination and Education Assistance Act of 1975
USOE	U.S. Office of Education
TBT	Trail of Broken Treaties Caravan

CHAPTER I

INTRODUCTION

In 1953 a Republican-controlled Congress, with the concurrence of a Republican administration, declared that the new policy of the federal government toward American Indians was to terminate the special relationship between the United States and Indian tribes. Termination meant, when Congress determined that the tribes were self-sufficient, ending the responsibilities of the U.S. government to protect Indian lands and resources from outside encroachment, to provide for the economic and social well-being of the Indian people, and to respect the rights of the tribes to self-government. With federal protection removed, policymakers expected that Indians would assimilate more quickly into the society-at-large. Assimilation, the advocates of termination believed, was the solution to the "Indian problem," since it was the perpetuation of tribal cultures that was "holding Indians back."

Seventeen years later, a Republican President (who was Vice-President at the time the termination policy was adopted) called upon Congress to formally repudiate termination, because the policy is "morally and legally unacceptable, because it produces bad practical results, and because the mere threat of termination tends to discourage greater self-sufficiency among Indian groups."[1]

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[1]U.S., President, Public Papers of the Presidents of the United States, Richard M. Nixon, 1970 (Washington, DC: Government Printing

Instead, President Richard Nixon proposed a policy of Indian "self-determination without termination" in several bills which would "break decisively with the past and create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions."[2] The most important of these empowered tribes to take over Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) programs whenever the tribal council or Indian community group voted to do so. In taking over programs, tribes would not lose federal funding for them, nor federal protection of tribal sovereignty over reservation lands.

On January 4, 1975, President Gerald Ford signed the Indian Self-Determination and Education Assistance Act (Public Law 93-638), described by many observers as the most significant piece of Indian legislation in forty years. Similar in its content to the legislation proposed by President Nixon, the act contained a

> commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.[3]

Office, 1971), pp. 564-76.

[2]Ibid.

[3]Indian Self-Determination and Education Assistance Act, U.S. Code, vol. 9, title 25, sec. 450 (1982).

Public Law 93-638, together with other congressional actions taken in the early 1970s, signalled a reversal of federal policy toward American Indians from termination to "self-determination without termination." Through the Ford, Carter, and Reagan administrations, the self-determination act remained the framework for federal efforts toward the tribes. The focus of the analysis to follow is on this major and lasting policy shift.

The Purposes of This Study

Three broad purposes guide the content and direction of this study. The first is to illuminate the substance of U.S. policy toward Indians. In the century after the military and political might of the U.S. government ended Indian resistance to the expansion of white settlements across the continent and ended formal recognition of Indian tribes as sovereign nations to be dealt with by treaty, federal policymakers searched for ways to assimilate Indians into mainstream American culture and society. From the 1880s to the 1920s, Indian reservation land was broken into individual allotments for Indian families as attempts were made to "civilize" Indians through education and religious conversion.[4]

However, when it became clear that the allotment policy worsened conditions among Indians, reformers called for policies which would respect the Indian way of life and restore tribal enterprises. In

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[4]See Chapter II below.

1934 the Indian Reorganization Act reestablished the reservation system and tribal self-government. It was not long, however, before leading congressmen began to criticize the new policy for preventing Indians from adjusting to modern life, for promoting communism, and for perpetuating a large federal bureaucracy at great cost to taxpayers.

By the late 1940s, both federal administrators and congressmen devised a new approach to assimilation, one which terminated federal protection of Indian lands, resources, and rights of self-government on a tribe-by-tribe basis. When federal authorities determined that a tribe was "self-sufficient," special legislation was passed to terminate federal responsibility for that tribe. By 1961 fourteen tribes were terminated, with disastrous consequences for several of them, while the rest of Indian country awaited its turn.

In the midst of the termination drive, the movement for Indian self-determination emerged. This study analyzes the ideas underlying the movement and their impact upon subsequent federal policy development. The analysis focuses on the division of opinion among Indians and between Indians and the federal government over what "self-determination" means. To most Indians, self-determination means tribal sovereignty--control over people, lands, and resources, and exercise of the right of tribes to choose their way of life without outside interference. However, Indians disagree on whether tribal autonomy can be achieved by reforming the BIA and federally-recognized tribal governments or by restoring Indian tribes to the status of independent nations to be dealt with directly by Congress. In the 1970s federal policymakers took the reform

route, defining self-determination as increased Indian participation in program development and administration, but not tribal sovereignty. Numerous limits on tribal autonomy, including federal control over the management of lands and resources, remain.

The second purpose is to reveal the character of the process which led to such an important transformation in policy. With the decline of Indian affairs as a policy area of high priority to national policy-makers, which it was during the period of western expansion, Indian policies during the first half of the twentieth century were largely determined by the BIA in the Department of Interior, congressional committees on Indian affairs, and non-Indian groups. J. Leiper Freeman, in his study of Indian reorganization policy from 1928 to 1945, characterized these major participants and their interactions as a relatively autonomous Indian policy subsystem, the decisions of which tended to be ratified without significant change or involvement by general system actors such as the President, congressional party leaders and the national party organizations.[5]

Within the subsystem, pressures for a restoration of tribal authority over reservations came from non-Indian reform groups based in the eastern United States. These groups achieved effective access

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[5]J. Leiper Freeman, Jr., "The New Deal for Indians: A Study in Bureau-Committee Relations in American Government" (Ph.D. dissertation, Princeton University, 1952); and The Political Process: Executive Bureau-Legislative Committee Relations, rev. ed. (New York: Random House, 1965).

to the BIA during the administration of Franklin D. Roosevelt. Working on behalf of a politically and economically weak Indian clientele at the height of the New Deal's popularity, the reform coalition succeeded in persuading the Indian affairs committees to adopt the Indian Reorganization Act of 1934.

Congressional support for federally-protected tribal governments and natural resources was temporary. By 1937 key members of the Indian affairs committees, supported by conservative ideological organizations and advocates of large-scale development of Indian lands, pressed for a return to rapid assimilation policies. This movement for a policy reversal was given further impetus by the appointment of pro-termination administrators to head the BIA in the latter part of the Truman administration. The culmination of these efforts was the adoption of the termination policy in 1953. As with tribal reorganization, termination was approved with little intervention by the President, his staff, or congressmen who were not members of the Interior committees. Indian participation again was limited in the policy formation process.[6]

In contrast to the tribal reorganization and termination periods, policy change in the 1960s and 1970s involved several new actors inside and outside the Indian policy subsystem. This study argues that the political mobilization of the Indian community provided a major impetus

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[6]Gary Orfield, A Study of the Termination Policy (Denver: National Congress of American Indians, 1966). Due to committee reorganization in 1946, the Indian affairs committees became subcommittees of the Interior and Insular Affairs Committees of both houses of Congress.

for policy change.[7] The use of protest tactics by young Indians, bolstering the lobbying efforts of a growing number of national and regional Indian organizations, drew attention to Indian self-determination demands at a time when public sensitivity to the concerns of minority groups was at its height. These activities led to the involvement of congressional committees and members of Congress not affiliated with the Interior committees, and executive departments and agencies outside the Interior Department in the Indian policy process. Ultimately, it was presidential intervention--both direct and indirect through the actions of White House staff and the Vice-President's office--which marked a turning point in the drive for policy change. In the midst of this turbulent political environment, advocates of Indian self-determination took control of the Interior committees and produced reform legislation.

The third purpose is to apply the findings of the analysis to the general study of American public policy. Numerous policy scholars have observed that different patterns of political relationships are associated with different types of public policies defined in terms of their impact on society.[8] At least one political scientist, Kenneth Meier, has classified federal policy toward Indian tribes as primarily distributive in nature--a policy that distributes services or benefits

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[7] See Chapter III below.

[8] See, for example, Theodore Lowi, "American Business, Public Policy Case Studies, and Political Theory," World Politics, 16 (July 1964):677-715.

to particular segments of the population (individuals, groups, corporations, or communities).[9] The pattern of political interaction most closely associated with the making of distributive policies, according to Randall Ripley and Grace Franklin, is that of the subsystem or subgovernment.[10] Studies of such issue areas as water resources, farm subsidies, and veterans affairs revealed that leaders of executive bureaus, congressional committees, and interest groups were the primary actors involved in the shaping of policy in their respective areas.[11]

Most studies of subgovernments or "iron triangles," as they are sometimes called, emphasize their stability and autonomy from system-wide decision-makers such as the President and congressional party leaders within the realm of policy and decision over which they are powerful. Though considerable disagreement may exist within subgovernments, such as interservice rivalries in military procurement policy, most subgovernments contain the internal unity necessary to promote their joint interests and resist intervention by "outsiders." At worst, according to Ripley and Franklin, "outsiders" will achieve only temporary

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[9]Kenneth Meier, Politics and the Bureaucracy (North Scituate, MA: Duxbury Press, 1979).

[10]Randall Ripley and Grace Franklin, Congress, the Bureaucracy, and Public Policy, 3rd ed. (Homewood, IL: Dorsey Press, 1984).

[11]Among the numerous entries in the subgovernment literature are: Freeman, Political Process, Ripley and Franklin, Congress, Bureaucracy, and Public Policy, Emmette Redford, Democracy in the Administrative State (New York: Oxford University Press, 1969); Arthur Maass, Muddy Waters (Cambridge, MA: Harvard University Press, 1951); Douglas Cater, Power in Washington (New York: Vintage Books, 1964).

victories, since subgovernments are "smart" enough to adapt their policies to serious threats from the political environment.[12]

However, Emmette Redford and others point out that subgovernmental activity may involve more complex interactions than simple triangular images may suggest.[13] Ross Hopkins, from his study of the Forest Service, argues that interactions and influence within subgovernments may vary considerably from issue to issue and that subgovernments are easily penetrable by such outsiders as cabinet members and the Office of Management and Budget.[14] Furthermore, in an important 1977 article, Hugh Heclo questions whether the subgovernment model is useful for describing decision-making patterns even in the areas over which subgovernments are supposed to be dominant.[15]

According to Heclo, "Based largely on early studies of agricultural, water, and public works policies, the iron triangle concept is not so much wrong as it is disastrously incomplete."[16] The increase

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[12]Ripley and Franklin, Congress, the Bureaucracy, and Public Policy, p. 135.

[13]Redford, Administrative State, pp. 96-106.

[14]Ross B. Hopkins, "Reevaluating the Policy Subsystem Concept with Speculation on the Impact of Congressional Changes on Policy Subsystems," paper presented at the annual meeting of the Southern Political Science Association, Atlanta, GA.

[15]Hugh Heclo, "Issue Networks and the Executive Establishment," in The New American Political System, ed. Anthony King (Washington, DC: American Enterprise Institute, 1979).

[16]Ibid., p. 88.

in the number of federal policies and programs in the 1960s and 1970s, the proliferation of interest groups, and the expansion of the number of political executives in the upper and middle levels of bureaucracy have made it impossible, argues Heclo, to clearly identify who the dominant actors are in any given policy area. Frequently, groups and governmental policies will conflict with one another, blurring the lines between policy areas. For example, the water resources subgovernment has had to accommodate concerns expressed by environmental groups, while traditional agricultural policies have encountered opposition by a number of environmental, consumer, and public health groups and agencies. Political executives in the Executive Office of the President and cabinet departments are recruited increasingly more for their knowledge of specialized policy areas rather than partisan loyalties, and intervene regularly in bureau decisions. Thus, policymaking in Washington is evolving, says Heclo, from stable and recognizable subgovernments to issue networks, whose effect "is to overlay the once stable political reference points with new forces that complicate calculations, decrease predictability, and impose considerable strains on those charged with governmental leadership."[17]

These recent questions about the nature of subgovernment activity and the utility of the "iron triangle" concept for understanding how the policy process works, derived from studies of the politics of various policy areas, provide an important backdrop for the analysis

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[17]Ibid., p. 105.

of Indian affairs politics in the 1960s and 1970s. According to the foregoing analysis, the characterization of the politics of Indian policy as a typical example of politics in the distributive policy areas is, to paraphrase Heclo, not so much wrong as it is incomplete. There are at least three ways in which the politics of Indian self-determination differs from the standard versions of subgovernment politics. First, as Redford observed, compared to other issue areas in the distributive arena, the Indian affairs subgovernment is more conflict-ridden internally.[18] So much so, in fact, that the termination policy of the 1950s represented an unusual attempt by a subgovernment to self-destruct. The rise and recognition of demands for Indian self-determination illustrates how such an attempt was thwarted. Second, the emergence of Indian political activity, the involvement of executive agencies and congressional committees not previously part of the Indian policy subgovernment, and the intervention of the President during the 1960s and 1970s suggests that the Indian policy subgovernment is evolving into an issue network. How and to what extent is such an evolution occurring? This study of Indian self-determination offers an opportunity to test Heclo's observations. It explores how, within a policy arena, patterns of political relationships can change over time, such that the influence of the classic subgovernment participants in distributive policy may decline as issue networks develop. Third, although there are aspects of federal policy toward Indian tribes which

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[18]Redford, Administrative State, pp. 101-2.

are described accurately as distributive and which are managed by sub-governments, there are other issues in Indian affairs which are re-distributive in character, such as land returns and the allocation of water rights, and which involve macropolitical actors. Indeed, the reawakening of nationalism among the Indian people and the demands of Indian radicals that the U.S. honor its treaty commitments to the tribes propelled Indian affairs politics out of the distributive arena. Thus, the examination of Indian policymaking activity in the 1960s and 1970s may suggest that the interaction between politics and policy is dynamic and fluid--different issues with different policy effects and different political processes emerge in a given policy area.[19]

The study of federal policy in Indian affairs also provides insight into the dynamics of policy development and execution. Political scientists who adopt what Charles O. Jones calls the policy process approach examine how public problems are acted on in government and develop generalizations of basic activities in the policy process--getting problems on the government agenda, formulating policy proposals, adopting policies, implementing programs, and evaluating the impact of policies.[20] The manner in which demands for tribal self-determination

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[19]See Michael T. Hayes, "The Semi-Sovereign Pressure Groups: A Critique of Current Theory and an Alternative Typology," Journal of Politics, 40 (February 1978):134-61, for his discussion of "issue movement" from arena to arena as the relative power of interest groups changes. For a review of the academic controversy surrounding the Lowi policy typology, see Graham Wootton, Interest Groups: Policy and Politics in America (Englewood Cliffs, NJ: Prentice-Hall, 1985), pp. 239-43.

[20]Charles O. Jones, An Introduction to the Study of Public Policy, 3rd ed. (Monterey, CA: Brooks/Cole). For example, see J. Clarence

were dealt with presents an opportunity to test and develop propositions in the nature of political activity at each stage of the policy process, from initiation to evaluation.

To take an example of just one stage, observers of the agenda-setting process attach considerable importance to the influence of interest groups upon the content of the government agenda.[21] Groups with established access to public officials are more likely to have their problems or solutions to problems receive serious attention than groups which lack access. When Indians in the 1960s and early 1970s resorted to protest tactics to achieve recognition of their demands for self-determination, they were doing what Roger Cobb and Charles Elder say is necessary for all politically disadvantaged groups in the agenda-setting process--expand the scope of conflict to gain support from sympathetic outsiders.[22] However, as both Cobb and Elder and Michael Lipsky note, protest is a tool which involves considerable

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Davies, The Politics of Pollution, 2nd ed. (Indianapolis: Bobbs-Merrill, 1975); Martha Derthick, Policymaking for Social Security (Washington, DC: Brookings Institution, 1979); Mark V. Nadel, The Politics of Consumer Protection (Indianapolis: Bobbs-Merrill, 1971); Theodore R. Marmor, The Politics of Medicare (Chicago: Aldine-Atherton, 1973); A. Lee Fritschler, Smoking and Politics, 3rd ed. (Englewood Cliffs, NJ: Prentice-Hall, 1983); Jeffrey L. Pressman and Aaron B. Wildavsky, Implementation (Berkeley: University of California Press, 1973); Daniel A. Mazmanian and Paul A. Sabatier, Implementation and Public Policy (Glenview, IL: Scott, Foresman, and Co., 1983).

[21]David B. Truman, The Governmental Process (New York: Alfred A. Knopf, 1951).

[22]Roger Cobb and Charles Elder, Participation in American Politics: The Dynamics of Agenda-Building, 2nd ed. (Baltimore: Johns Hopkins University Press, 1983); see also E. E. Schattschneider, The Semi-

risks and is successful only under certain limited conditions.[23] Through the period which is the focus of this study, Indian protest efforts were sometimes successful, sometimes not; hence, the case of Indian self-determination permits an examination of the conditions under which protest can be an effective political resource for interest groups in the agenda-building process.

Furthermore, the political activity of an interest group is not the only factor affecting the shape of the official agenda. According to John Kingdon, policymakers also must be aware that possible solutions to the problem exist which are politically and economically feasible and that the larger political environment is supportive of government action.[24] Whether an issue rises up the decision ladder depends largely on timing and leadership, according to Kingdon. If there is a confluence of favorable events, policy entrepreneurs must take advantage of the opportunity to push their pet problem or solution to key decision makers; otherwise, years or even decades may pass before a similar set of circumstances arises.

Sovereign People (New York: Holt, Rinehart, and Winston, 1960).

[23]Michael Lipsky, "Protest as a Political Resource," American Political Science Review, 62 (December 1968):1144-58.

[24]John Kingdon, Agendas, Alternatives, and Public Policies (Boston: Little, Brown and Co., 1984). Kingdon's description of agenda-setting and policy formulation is based on the "garbage can model of organizational choice" developed in Michael Cohen, James March, and John Olsen, "A Garbage Can Model of Organizational Choice," Administrative Science Quarterly, 17 (March 1972):1-25.

Therefore, if Kingdon is right, the decisions of federal officials in Congress and the executive branch to give serious attention to Indian demands were based not only on group pressure but also on information that a viable alternative to termination existed and that the Indian issue would bring larger political or policy rewards. Certainly more than the presence of Indian protest activity is necessary to explain why Presidents Johnson and Nixon responded favorably to Indian concerns. This study applies Kingdon's framework to the agenda-setting activities in Indian affairs during the 1960s, in hopes of providing a broader understanding of the agenda-building process.

Research Sources and Methodology

At the core of this work is a case study of how the Indian Self-Determination and Education Assistance Act of 1975 (P.L.93-638) was passed into law. The law was chosen for several reasons. First, many members of the Indian policy community identify it as one of the most important, if not the most important, congressional acts affecting Indian tribes in the last half-century.[25] Second, the passage of

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[25]For example, both Alvin Josephy, Jr. and Vine Deloria, Jr. in their recent books have prominently mentioned P.L.93-638 as a major piece of Indian legislation. See Alvin Josephy, Jr., Now That the Buffalo's Gone (New York: Alfred A. Knopf, 1982); Vine Deloria, Jr. and Clifford M. Lytle, American Indians, American Justice (Austin: University of Texas Press, 1983). Also see U.S., Congress, American Indian Policy Review Commission, Final Report, Committee Print (Washington, DC: Government Printing Office, 1977), p. 81; William T. Hagan, American Indians, rev. ed. (Chicago: University of Chicago Press, 1979), p. 169.

P.L.93-638 was the culmination of over a decade of legislative effort to alter Indian policy. From the adoption of termination policy in the 1950s to the repudiation of termination in the mid-1970s, a cycle of policy change was completed. Since 1975, there have been no major changes in Indian policy. The late 1970s and early 1980s were a time of consolidation of Indian gains and implementation of Indian legislation passed in the early 1970s.[26] Third, the events leading to passage of Indian self-determination legislation cover a substantial timespan. The beginning point is the decision of Secretary of the Interior Fred A. Seaton in the fall of 1958 not to recommend the termination of federal responsibility to any tribe without its consent. This decision, which was a reaction to the intense opposition of the Indian community, marked an end to aggressive implementation of the termination policy. It gave the tribes and others concerned with Indian policy the temporary reprieve needed to begin formulating a political alternative to termination. That alternative, the self-determination policy, has its conceptual origin in the mid-1960s with the experimental Indian Community

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[26]Recent books which deal with some aspect of Indian policy and process during this period include Nicholas C. Peroff, Menominee Drums: Tribal Termination and Restoration, 1954-1974 (Norman: University of Oklahoma Press, 1982); Theodore W. Taylor, American Indian Policy (Mt. Airy, MD: Lomond Publications, 1983); Robert L. Bee, The Politics of American Indian Policy (Cambridge, MA: Schenkman, 1982); Margaret Szasz, Education and the American Indian: The Road to Self-Determination, 2nd ed. (Albuquerque: University of New Mexico Press, 1977); Peter Mathiessen, In the Spirit of Crazy Horse (New York: Viking Press, 1983); Francis Paul Prucha, The Great Father: The United States Government and the American Indians, vol. 2 (Lincoln: University of Nebraska Press, 1984), pp. 1085-1208; Charles F. Wilkinson, American Indians, Time, and the Law (New Haven, CT: Yale University Press, 1987).

Action Programs created as part of the War on Poverty. After President Nixon proposed the original reform bill in July 1970, four-and-a-half years passed before Congress adopted its version. In this period, the politics of Indian policy changed in important ways. An examination of the circumstances leading to the passage of P.L.93-638 thus provides a rich opportunity for the study of the contemporary content, politics, and dynamics of U.S. policy toward Indians.

Dates are drawn from several sources. Interviews were conducted in Washington, DC on three separate occasions (August 15-18, 1974; March 5-7, 1980; and June 16-21, 1980). The persons interviewed were chosen on the basis of their direct participation in or intimate knowledge of the events surrounding the passage of P.L.93-638. An effort to interview members of different segments of the Indian policy community was made. To gain the perspective of the Nixon White House, two interviews were conducted with the President's principal advisor on Indian affairs. The congressional viewpoint was ascertained from interviews with several staff members of the House and Senate Interior Committees. The Bureau of Indian Affairs was represented by three former commissioners of Indian affairs, and several of their assistants in the areas of legislative liaison, budget analysis, and contracting of programs. Indian leaders outside the government were contacted, including the executive director of the National Congress of American Indians. Members of the Indian press corps who covered the events of the period were extremely helpful in providing background information.

Other sources include published congressional hearings and committee reports, relevant proceedings chronicled in the Congressional Record, and presidential messages contained in the Public Papers of the Presidents. Internal memoranda contained in the files of the House and Senate Interior committees were analyzed. The files of the National Council on Indian Opportunity, an advisory group in the Office of the Vice-President which existed from 1968 to 1974, were inspected at the National Archives.

In addition, data were gathered from secondary sources such as press reports, books, and articles in the scholarly and popular press. Of these materials, the most useful were the files of the defunct American Indian Press Association, which can now be found at the National Congress of American Indians office in Washington, DC. Also, the numerous books written by the historian Alvin Josephy, Jr. and the noted Indian author and activist Vine Deloria, Jr. were of great help, especially in covering the emergence of Indian political activity in the 1960s.[27]

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[27]Among the books by Josephy: The Indian Heritage of America (New York: Alfred A. Knopf, 1971); Now That the Buffalo's Gone. Deloria's works include: Custer Died For Your Sins (New York: Avon Books, 1969); We Talk, You Listen (New York: Dell, 1970); Behind the Trail of Broken Treaties (New York: Delta Books, 1974); American Indians, American Justice; The Nations Within: The Past and Future of American Indian Sovereignty (New York: Pantheon, 1984), with Clifford Lytle.

The Plan of the Study

The historical, legal, and political background for the political events on Indian affairs during the 1960s and 1970s is provided in Chapter II. Topics include the legal context of U.S.-Indian relations, the development of Indian policy and the Indian policy process from the 1780s to the 1950s, and the key participants involved in Indian policy activity entering the 1960s.

Chapter III describes how demands for Indian self-determination emerged in the 1960s, how these demands reached the agendas of Presidents Johnson and Nixon and other governmental actors outside the Indian subgovernment, and how policy proposals addressing Indian concerns were formulated. The major features of this analysis include the rise of Indian political organizations and Indian militancy, the efforts of the Kennedy and Johnson administrations to respond to Indian demands, the continued reluctance of the congressional Interior committees and, to a lesser extent, the BIA to recognize the Indian self-determination movement, and the intervention of Senators Robert Kennedy, Edward Kennedy, Walter Mondale, and President Nixon on behalf of Indian interests.

The process by which policy proposals generated in the 1969-70 period were translated into the Indian Self-Determination and Education Assistance Act of 1975 is chronicled in Chapter IV. It treats the efforts during President Nixon's first term of office to convince the Interior committees to act on the President's Indian self-determination

proposals. These efforts were partially successful in that the Senate Interior Committee, led by Senator Henry Jackson, abandoned its historic attachment to termination in early 1971. However, inaction by the House Interior Committee prevented consideration of the President's Indian bills. It also examines the major policy actions of this period which helped build support for self-determination legislation, including the passage of the Kennedy-Mondale sponsored Indian Education Act of 1972.

The dramatic actions of Indian militants in late 1972 and early 1973 which focused world attention on the plight of American Indians, and key personnel changes in Congress set the stage for passage of tribal takeover legislation in the 93rd Congress. Chapter IV assesses the significance for Indian policy development of the seizure by Indian militants of the Bureau of Indian Affairs main building in Washington, DC on election eve 1972, the occupation of Wounded Knee, South Dakota in February-May 1973, and the 1972 national election. The chapter goes on to describe the bargaining, compromise, and coalition-building among congressmen, BIA leaders, and Indian lobbyists over the contents of what eventually would become P.L.93-638. Among the interesting aspects of this process are a battle for preeminence in promoting Indian progress between Kennedy and Jackson, the emergence of Senator James Abourezk (D-S.D.) and Representative Lloyd Meeds (D-Wash.) as genuine Indian advocates while serving as the respective chairmen of the Indian affairs subcommittees, and the development of a serious rift between the Nixon administration and Indian leaders as its legislative

proposals approached congressional passage.

As Congress considered statutory changes, there were also administrative efforts to bring about Indian self-determination. The substance of these initiatives and the controversy which surrounded them is described in Chapter V. Among the questions considered are the extent to which policy change can be achieved through the administrative process and whether the BIA was prepared to implement a policy of Indian self-determination once P.L.93-638 was enacted. In Chapter VI, the major participants in the Indian policy process in the post-Nixon era are described and compared to the participants of the pre-self-determination period. Also presented is an assessment of the place of P.L.93-638 in the history of federal policies toward Indian tribes and of the act's effect on the problems of Indian people. Finally, the findings of the study are related to theoretical issues of concern to scholars of American public policies and processes.

CHAPTER II

THE CONTEXT OF POLICY CHANGE: FEDERAL POLICIES AND PROCESSES IN INDIAN AFFAIRS TO 1958

Policy change in Indian affairs is not a rare phenomenon. In fact, changes in federal policy toward American Indians occur at almost regular intervals, as if each generation of policymakers felt compelled to present its own "solution" to the "Indian problem." At the root of these fluctuations in federal policy is a lack of consensus over what the goals of public policy toward Indian tribes should be. Attempts have been made at extermination of the tribes by means of armed conquest, assimilation by education and religious conversion, and segregation by forced removal at various points in U.S. history. As the struggle to define policy goals continued through the nineteenth and the early twentieth centuries, the Indian tribes--beset with poverty, despair, and disunity--were virtually powerless to affect the course of U.S. policy.

Not until the 1930s, when federal protection of Indian tribes was restored under the Roosevelt administration, did Indian interests begin to be recognized. Still, the major architects of federal policy toward Indians were the members of the congressional Indian affairs committees and subcommittees. With the acquiescence of the Bureau of Indian Affairs, these members of Congress pushed through in 1954 a policy with the stated goal to end federal protection of Indian tribes as rapidly as possible.

This chapter presents an overview of U.S. government policies toward Indian tribes and the Indian policy process prior to the 1960s. First, a review of Indian policy development from the beginning of the Republic to 1958 is provided. Then, the evolution of the Indian policy process is described. Finally, the prominent actors in Indian policy, their roles and relationships entering the 1960s are described. Particular emphasis will be given to Indian policies and processes since the 1920s since modern U.S.-Indian relationships have their beginnings in that period.

Federal Policy Toward Indian Tribes from the Founding to 1958

The Legal Status of Indian Tribes

For over two centuries the key legal issue surrounding U.S.-Indian relations has been the extent to which Indian tribes should be regarded as sovereign entities with rights and powers of self-government. This issue has never been fully resolved, as the federal government has followed different and sometimes conflicting legal theories.[1]

One theory holds that Indian tribes are independent, sovereign entities with full rights and powers of self-government, including

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[1]This summary of the legal status of Indian tribes relies upon the following sources: U.S., Congress, American Indian Policy Review Commission, Final Report, Committee Print (Washington, DC: Government Printing Office, 1977), pp. 95-227 (hereafter cited as AIPRC Final Report); Felix H. Cohen, Handbook of Federal Indian Law (Washington, DC: Government Printing Office, 1945); Felix H. Cohen, The Legal Conscience (New Haven, CT: Archon Books, 1960); Lawrence H. Tribe, American Constitutional Law (Mineola, NY: Foundation Press, 1978), pp. 1012-19; Vine Deloria, Jr., Behind the Trail of Broken Treaties (New York: Delta Books, 1974), pp. 85-263; Vine Deloria and Charles

the power to conduct diplomatic relations. This theory served as the basis for the early treaties negotiated between the American colonies and Indian tribes.[2] Each side recognized the other as a sovereign nation and observed the principle that land must be obtained by transferable title. Furthermore, as the practice of treaty-making continued into the mid-nineteenth century, responsibility for the acquisition of Indian land rested with the federal government, not with the various states and territories.[3]

Another important consequence of the early treaties was the development of inherent responsibility by the federal government for the land occupied by the Indians.[4] As trustee for the tribes, the federal government was obligated to advocate and defend the rights of Indian

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Lytle, American Indians, American Justice (Austin: University of Texas Press, 1983); Charles Wilkinson, American Indians, Time, and the Law (New Haven, CT: Yale University Press, 1987).

[2]For a discussion of relations between European nations and the Indian tribes before the American Revolution, see Cohen, Legal Conscience, pp. 230-252, and Deloria, Broken Treaties, pp. 87-139.

[3]A contemporary variation of the total sovereignty approach is presented in Deloria, Broken Treaties. Indian tribes, according to Deloria and his collaborator, Kirke Kickingbird, should be considered as protectorates with quasi-international independence similar to the states of Singapore, Monaco, and San Marino. All of these tiny states are surrounded by larger nations, which provide protection, but are recognized diplomatically by other nations and retain control over their destinies.

[4]It is generally recognized that the trust relationship was first set forth in Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831). Chief Justice Marshall characterized the relationship between the federal government and the Cherokees as "perhaps unlike that of any other two people in existence."

tribes conferred by treaty and statute, and to protect the integrity of tribal boundaries from unauthorized entry by U.S. citizens. Though the trustee responsibility was altered in the 1830s when the federal government began efforts to relocate the tribes further west, responsibility of federal officials to protect Indian rights and reservation lands has continued.[5]

On the other hand, there are those who maintain that Indians are subjects of the United States by right of conquest and that the tribes have no claim whatsoever to sovereign status. Under this interpretation, Indians have no special rights and privileges relative to those of other citizens, and the federal government has no special responsibility to protect Indians and their lands from the jurisdiction of state and local governments. The first U.S. President to formally endorse this theory was Andrew Jackson, who refused to enforce a U.S. Supreme Court

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[5]According to Reid Chambers, the trust relationship cannot be defined with precision in all respects. Rather, it is a "working, dynamic doctrine which has been expanded over the years." Generally, the doctrine applies to Indian lands. Title to land in Indian country is held by the United States in trust for the tribe. Trust land is not subject to taxation, and individual Indians on trust land are free of state taxes [McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973), which struck down a state attempt to levy a personal income tax on a reservation Indian]. Trust land and their resources must be managed for the sole benefit of the tribe so that they will be preserved. Reid Chambers, "Judicial Enforcement of the Federal Trust Responsibility to Indians," Stanford Law Review, 27 (1975):213-48; also Charles Wilkinson and James Volkman, "Judicial Review of Indian Treaty Abrogation: As Long as Water Flows, or Grass Grows upon the Earth--How Long a Time is That?" California Law Review, 63 (1975):601-55. However, many observers of Indian affairs argue that the scope of the trust responsibility should be broadened to require the U.S. government to provide adequate social services to Indians and take other appropriate actions to protect tribal self-government. AIPRC Final Report, pp. 125-38.

decision that held Indian tribes not to be subject to state law. Since that time, advocates of breaking up reservation lands and dissolving tribal loyalties among Indians have relied on the Jackson doctrine.

How have the federal courts defined the legal status of Indian tribes? In general, the courts have pursued a middle course between the full sovereignty and no sovereignty approaches. In the precedent-setting case of Worcester v. Georgia (1832)[6] Chief Justice John Marshall asserted that Indian tribes are "dependent domestic nations" with rights of self-government and a clear legal right to occupy tribal lands. Thus, according to the Chief Justice, states had no power to remove Indians from their lands, nor were Indians subject to the civil and criminal jurisdiction of the states. However, the tribes were subject to the power of Congress by right of conquest, and their power to conduct diplomatic relations with foreign nations was thereby terminated.[7]

Subsequently, two conflicting interpretations of the Worcester decision emerged, each of which has been used to justify different federal policies toward Indians. According to Felix Cohen, a noted legal scholar and author of the Handbook of Federal Indian Law, the Worcester decision was an affirmation of full tribal sovereignty within

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[6] 31 U.S. (6 Pet.) 515.

[7] Two dissenting justices in the Cherokee Nation case, Thompson and Story, asserted that the Cherokees were a foreign nation within the terms laid down by the U.S. Constitution and the Supreme Court. Justice Johnson, in agreement with Marshall that the Cherokee Nation was not a foreign state, compared the Indian tribe's legal existence to that of the Israelites waiting in the desert--though their land had been occupied by others, their right to self-government had never been taken away from them.

U.S. borders. Powers of local self-governance were subject to qualification by treaties and by express legislation of Congress, but, said Cohen, "save as expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government."[8]

Though the most recent Supreme Court decisions have adopted the Cohen tribal sovereignty analysis,[9] another interpretation of Worcester, one that sharply limits the sovereign powers of tribes, has also been

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[8]Cohen, Handbook of Federal Indian Law, p. 123.

[9]In Williams v. Lee, 358 U.S. 217 (1959), the Supreme Court gave recognition to the continued strength of the doctrine of tribal sovereignty. "The broad principles established in Worcester v. Georgia remained the law, although as 'modified . . . . Where essential tribal relations were not involved and where the rights of Indians would not be jeopardized.'" Tribe, American Constitutional Law, p. 1015. According to the Court in McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973), "the Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution to the issues in this suit, but because it provides a backdrop against which the applicable treaties and Federal statutes must be read." The Worcester decision is repeatedly cited by the courts in support of the conclusion that Indian tribes possess all elements of internal sovereignty and that their sovereign attributes can be diminished only by Congress, not by the states. These sovereign attributes include such basic governmental powers as the following: (1) the power to establish legislatures, usually called tribal councils [Williams v. Lee, 358 U.S. 217 (1959)]; (2) the power to establish tribal courts [Williams v. Lee, supra]; (3) the power to tax [Barton v. Oglala Sioux Tribe, 259 F.2d 553 (8th circ. 1958)]; (4) the power to grant marriages and divorces [United States v. Quiver, 241 U.S. 602 (1915)]; (5) the power to regulate hunting and fishing [Colville Tribe v. State of Washington, 412 F. Supp. 651 (E. D. Wash. 1976)]; (6) the power to control economic development through zoning regulation and other land use planning devices [Santa Rosa Band of Indians v. Kings Court, 532 F.2d 655 (9th cir. 1975)]; (7) the power to regulate non-Indian individuals in Indian country [United States v. Mazurie, 419 U.S. 544 (1975)].

recognized by the federal courts. Relying on dicta in the Marshall opinion, administrators and jurists in the nineteenth and early twentieth centuries applied a theory of wardship or guardianship to the U.S.-Indian relationship.[10] This approach sanctioned federal (and, as authorized by Congress, state and private) intervention in tribal matters on the grounds that Indians were not competent to manage their own affairs.[11]

Both interpretations of the Marshall opinion in Worcester v. Georgia have served as the legal basis for U.S.-Indian relations at one time

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[10]For example, see United States v. Kagama, 118 U.S. 375 (1886), which upheld congressional power to enact the Major Crimes Act and thus infringe on internal tribal resolution of disputes; McBratney v. United States, 104 U.S. 621 (1882), which allowed state court jurisdiction over the murder of a non-Indian by a non-Indian within Indian country absent a congressional grant of authority to the states; and Lone Wolf v. Hitchcock, 187 U.S. 553 (1903), which upheld the unilateral federal sale of tribal land in violation of treaty provisions requiring tribal consent. According to Marshall, the relationship of the tribes to the United States "resembles that of a ward to his guardian." Cohen argues that henceforth, the term "wardship" became popularized, and that legislators and administrators operated on the premise that Indian tribes and Indian individuals were wards. This notion was reinforced by the existence of a Bureau of Indian Affairs and the "tendency of non-lawyers to confuse two very different legal relationships--trusteeship and guardianship. Guardianship is a relation that limits the personal rights of a ward. Trusteeship is a relation that limits the property rights of a trustee and makes the trustee the servant of the trust beneficiary." Cohen, The Legal Conscience, pp. 331-34.

[11]A contemporary view that rejects the Cohen position that Indian tribes are sovereign entities, save as expressly limited by congressional action, is presented in the separate dissenting views of Representative Lloyd Meeds (D-Wash.) vice-chairman of the American Indian Policy Review Commission. In a brief drafted by Frederick Martone, an Arizona attorney, Meeds asserted that mere ownership of land by Indians does not give rise to governmental powers. Indian tribes "lost their sovereignty through discovery, conquest, session, treaties, statutes, and history." Thus, according to Meeds, Indian tribes have no inherent powers of self-government except those expressly granted by Congress. Meeds states that tribes should not have power over non-Indians and that Indians and their lands should be subject to the powers of state governments, including taxation. AIPRC Final Report, pp. 567-612.

or another. This underscores the fact that, since Worcester, the federal courts have deferred to Congress in the formulation of Indian policy.[12] The periodic shifts in federal policy in the following decades have not been hindered by judicial review.[13]

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[12]The U.S. Constitution explicitly mentions Indian tribes in two places. "Indians not taxed" are excluded from the count for determining the number of representatives in the House of Representatives to which a state is entitled. More importantly, in the enumerated powers delegated to Congress in Article I, section 8, the Congress is given power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." In addition, Congress has ratified many treaties with Indians; therefore, the treaty-making power and the power to spend money for the "general Welfare of the United States" have also been used to support Congress's authority over Indian affairs. Relying primarily on the commerce clause and the treaty-making power, the Supreme Court has recognized that Congress has exclusive power over Indian affairs. The Court frequently applied the "political questions" doctrine to cases involving Indian tribes, saying that matters dealing with Indians are essentially political matters to be settled only by Congress. Cherokee Nation v. Hitchcock, 187 U.S. 294 (1902) (upheld the authority of the Secretary of Interior to lease Cherokee lands for mineral exploration). Lone Wolf v. Hitchcock, 187 U.S. 533 (1908) (upheld allotment of Kiowa lands). Administrative agencies hold only such powers over Indians as Congress has granted to them. Courts, therefore, have struck down administrative action over the Indians because the action was not within the scope of authority delegated by Congress to the agency, even though Congress itself clearly had the power to take the action in question, e.g. Ruiz v. Morton, 415 U.S. 199 (1973) (BIA authority to deliver services to Indians is not strictly limited to reservation Indians). AIPRC Final Report, pp. 106-07.

[13]This is not to say, however, that the Supreme Court has not exercised its power of judicial review toward actions of state governments that attempt to limit the powers of tribal governments or regulate the conduct of individual Indians in Indian country. Indeed, "The United States Supreme Court, construing congressional statutes, has remained a bulwark against asserted State jurisdiction in Indian country." See Williams v. Lee, supra; McClanahan v. Arizona Tax Commission, supra; also Bryan v. Itasca County, 426 U.S. 373 (1976), where the Court struck down an attempt by Minnesota to tax Indian-owned property on the reservation. AIPRC Final Report, pp. 117-19.

The Treaty-Making Period: Policy Development Through 1871

The practice of negotiating treaties with the Indian tribes was continued by the federal government until 1871.[14] Early treaties with the Indians not only recognized the tribes as sovereign nations, but also promised certain tribes, such as the Delawares, representation in Congress in return for their military support against European states. However, as the United States gained military superiority over the frontier and as demands by settlers for land occupied by the Indians intensified, treaty-making became a method by which Indians could be induced to abandon their native lands and move westward.[15]

Committed to opening up the frontier to white settlers, President Jackson and his supporters in Congress secured enactment of the Indian Removal Act of 1830, which authorized the President to attempt to re-negotiate treaties with the southern tribes in order to gain their consent to removal to the western territories.[16] Between passage of

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[14]This description of the history of U.S.-Indian relations to 1960 is drawn from the following sources: Deloria, Broken Treaties; John Collier, Indians of the Americas (New York: Mentor Books, 1947), pp. 99-171; D'Arcy McNickle, Native American Tribalism (London: Oxford University Press, 1973); Robert F. Berkhofer, Jr., The White Man's Indian (New York: Alfred A. Knopf, 1978), pp. 113-97; Virgil J. Vogel, This Country Was Ours (New York: Harper and Row, 1972); Murray Wax, Indian Americans: Unity and Diversity (Englewood Cliffs, NJ: Prentice-Hall, 1971); AIPRC Final Report, pp. 51-82; Wilkinson, American Indians, Time, and the Law; Francis Paul Prucha, The Great Father (Lincoln: University of Nebraska Press, 1984).

[15]Wilkinson, American Indians, Time, and the Law, pp. 14-16. It should be emphasized that the removal policy was not inspired entirely by greed or racism. For many, removal of the Indians to the west was a humanitarian gesture. Prucha, The Great Father, pp. 179-81.

[16]McNickle, Native American tribalism, pp. 71-74. As early as

the Act and 1840, 13,000 Cherokees and members of four other tribes moved to the Oklahoma territory. Removal treaties with other tribes east of the Mississippi River followed in the 1840s.

Though the removal policy was criticized as a dubious and often fraudulent legal device to obtain land, removal also placed the Indian nations outside the boundaries of organized states and territories and thus, theoretically at least, enhanced the likelihood that they might enjoy self-government.[17] Some advocates of removal believed that a western Indian territory, governed by a federation of tribes, might be established on a permanent basis with representation in Congress. However, once the tribes were relocated, most U.S. officials lost interest in this proposal.[18]

Furthermore, reformers concerned with the welfare of Indians questioned the policy of segregating Indian tribes from the rest of American society on grounds that segregation perpetuated the "uncivilized"

1817, writing to President Monroe, Jackson declared, "I have long viewed treaties with the Indians an absurdity not to be reconciled to the principles of our government," p. 56.

[17]Deloria, Broken Treaties, pp. 129-31. For example, the treaty of Dancing Rabbit Creek, which resulted in the removal of the Choctaws from Mississippi to Oklahoma, provided that the U.S. government would preserve the sovereign existence of the Choctaw Nation from encrochment by state or territorial governments. Despite his reputation as an opponent of Indian sovereignty, President Jackson endorsed the idea that the tribes should have full control over their new homelands in the west. Wilkinson, American Indians, Time, and the Law, p. 17. The many treaties negotiated between the U.S. and Indian tribes are set forth in Charles Kappler, ed., Indian Affairs: Laws and Treaties (Washington, DC: Government Printing Office, 1904).

[18]AIPRC Final Report, p. 55.

life-style of the natives. Believing with Thomas Jefferson that an enlightened policy toward Indians was one which transformed tribal peoples into independent, literate, land-owning families, the reformers sought ways to assimilate Indians into the dominant culture.[19] As far back as 1819, Congress created a fund for the "civilization" of the Indians and, in 1824, established the Bureau of Indian Affairs (BIA) in the War Department to administer the funds. The Indian Bureau was transferred to the newly-created Department of Interior in 1849 in hopes of furthering the peaceful transformation of the tribes.

As a consequence, the treaty-making process of the 1850s and 1860s became "a device for eroding the independence of tribal governments and for legitimizing interference both by Congress and by the executive in the day-to-day management of tribal society."[20] For example, the Yankton Sioux Treaty of 1858 permitted the President to discontinue annuity payments to any Indians who "fail to make reasonable and satisfactory efforts to advance and improve their condition," and it delegated authority to the Secretary of the Interior to impose the same penalty on families who refused to send children to school.

To hasten assimilation and bring an end to fighting between government agents and the Indians, President Ulysses S. Grant's Peace Policy,

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[19]Jefferson promoted a policy of encouraging private trading companies to extend credit to Indians and persuade Indians to settle debts by selling hunting lands. The resulting loss of hunting territory, Jefferson hoped, would provide incentive for Indians to take up intensive agriculture and introduce the idea of treating improved farm land as private property. McNickle, Native American Tribalism, pp. 70-71.

[20]AIPRC Final Report, p. 56.

inaugurated in 1869, supplanted corrupt civilian agents in the BIA with soldiers and men nominated by various religious denominations. A Board of Indian Commissioners was appointed to review Indian policies and supervise contract compliance on the part of those who supplied rations, clothing, and other goods to the reservations. The Commission urged that each head of an Indian family or single person over 21 should receive a plot of land and that remaining tribal properties should be sold to support education and agricultural improvements.

In a significant policy shift, Congress passed an amendment to the Indian Appropriations Act of 1871, declaring that no Indian tribe would be recognized as a sovereign nation and no further Indian treaties would be signed. Under the amendment, existing treaties negotiated with the tribes were still binding on the federal government, but the tribes were denied the right to renegotiate past treaties. This action signaled an era in which the U.S. was to deal with Indian groups unilaterally by legislation, and with Indian persons not as citizens of their own nations but as wards of the United States government.

Assimilation and Allotment: 1871-1920

As armed conflict between Indian tribes of the west and the federal government subsided in the early 1880s, Congress and the public once again turned their attention toward the goal of "rehabilitating" the Indians, whose tribal customs and joint ownership of property were viewed as major obstacles to Indian progress. Indian ceremonies and other cultural and religious activities were outlawed. The BIA began a system of boarding schools for Indian children in the 1870s, based

on the model of the Carlisle Indian Training School in Pennsylvania.[21] According to the proponents of the boarding school approach, if Indian children were to become self-reliant adults in American society, it was necessary to separate them from the influence of tribal customs, force them to give up their native tongue and culture, immerse them in the beliefs of white Americans, and teach them useful trades and skills. For the next sixty years, the boarding school approach was the dominant mode of Indian education; three-fourths of Indian children were enrolled in boarding schools by 1933.

The most radical reform of the period was the General Allotment Act of 1887, or Dawes Severalty Act.[22] Backed by leading public figures, religious and civic groups, and welfare organizations, the Dawes Act was viewed as the ultimate solution to the "Indian problem."

The purpose of the law was to hasten assimilation by destroying the basis for tribal relations and transforming Indians into self-sufficient farm families. The major feature of the act was the breakup of tribal lands into individual homesteads or allotments for each Indian family. Title to the land was to be held in trust for twenty-five years or longer, depending on the discretion of the President. When the trust period expired, U.S. citizenship would be conferred

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[21]Margaret Szasz, Education and the American Indian, 2nd ed. (Albuquerque: University of New Mexico Press, 1977), pp 8-15; William Hagan, American Indians, rev. ed. (Chicago: University of Chicago Press, 1979), pp. 134-37.

[22]Wilcomb E. Washburn, The Assault on Indian Tribalism: The General Allotment Law of 1887 (Philadelphia: J. B. Lippincott, 1975); Prucha, The Great Father, pp. 659-71.

upon allottees and others who separated themselves from the tribe and took up "the ways of civilized life."[23]

Despite the well-meant intentions of reformers, the effects of the Dawes Act were disastrous for the Indians. Acquisition of surplus lands after allotment facilitated the passage of Indian lands into non-Indian lands. This process was accelerated by amendments to the Dawes Act which permitted long-term leasing of lands for farming or grazing and gave the Secretary of Interior power to issue "certificates of competency" to Indians to freely dispose of property. By 1930, 90 million acres of land were ceded to non-Indians out of 140 million acres owned by Indians in 1887. In the two decades following 1887, the Indian population declined. Traditional tribal activities were disrupted. The life which resulted was characterized by an "economy based upon land rental fees, seasonal labor, and occasional handouts from the government and private charities."[24]

Tribal Reorganization: 1920-1945

Though reports by journalists and concerned citizens about the problems of life in Indian country heightened public awareness, it

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[23]As a final legislative attempt to encourage the transfer of lands out of Indian control, the Burke Act of 1906 authorized the Secretary of Interior to issue "certificates of competency" wherever he found an Indian to be capable of handling his own affairs. Subsequently, BIA personnel leased much of the land held by "incompetent" Indians to non-Indians as an exercise of its "guardianship" function. Much of the lands which were sold outright to non-Indians were held by mixed-blood Indians who were declared "competent" by virtue of their infusion of white blood. Deloria, Broken Treaties, pp. 189-90.

[24]AIPRC Final Report, p. 68.

was not until the defeat of the so-called Bursum Bill in 1921 and the passage of the Pueblo Lands Act of 1924 that a public demand for reform of Indian policy was heard. The Bursum Bill, endorsed by Secretary of Interior Albert Fall (who was later implicated in the Teapot Dome scandal), addressed a complex issue involving disputed claims to Pueblo lands occupied by non-Indians between 1876 and 1912. The bill placed the burden of proof of ownership on the Pueblos, a procedure which would have made it impossible for the Pueblos to keep their land since the original title had been granted by the Spanish and Mexican governments. Opponents of the bill, led by John Collier, head of the newly-formed American Indian Defense Association, portrayed it as a conspiracy by corrupt politicians to rob the Pueblos of their land and endanger one of the last remaining traditional tribal societies. Following the defeat of the Bursum Bill, a Pueblo Lands Act was passed which established a board to disentangle the maze of claims.[25]

Bolstered by their initial successes, reform groups pressured Congress and the executive branch to change federal policy in Indian affairs. Through their efforts, Indians were finally granted U.S. citizenship in 1924.[26] At the request of President Coolidge's

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[25]Collier, Indians of the Americas, pp. 143-54; Prucha, The Great Father, pp. 797-806.

[26]By virtue of the Indian Citizenship Act of June 2, 1924 all Indians born in the United States are citizens of the United States. Although various federal statutes granted many Indians citizenship prior to 1924, it had been held that the 14th amendment did not confer citizenship on Indians. As U.S. citizens, Indians are also citizens of the state in which they reside. Indians are thus citizens of three

Secretary of Interior, Hubert Work, the Brookings Institute published in 1928 an extensive study of Indian problems which was highly critical of the land allotment policy. The study, known as the Meriam Report, found that the conditions of the Indian people had worsened during the allotment period:

> The income of the typical Indian family was low . . . only 2 percent of the Indians had incomes of over $500 a year. Partly as a result of this poverty the health of the Indians in comparison with the rest of the population was bad. The death rate and infant mortality were high. Tuberculosis and trachoma were extremely prevalent. Living and housing conditions were appalling; diet was poor; sanitary provisions were generally lacking, and the system of public health administration and relief work was inadequate. The education system had no well-considered broad educational policy. A uniform curriculum was being applied throughout the Indian school systems, although the different tribes were at quite different stages of development. Indian children were being fed at reservation schools on an average expenditure of eleven cents a day per child, and were being forced to heavy domestic work actually to ease the financial burden but ostensibly to acquire training in useful industrial arts.[27]

The Meriam Report, though stopping short of advocating the abandonment of the eventual goal of assimilation, recommended strengthening the Indian family and social structure by restoring some measure of the resource base and self-governance tribes had enjoyed prior to 1887.

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separate political entities. Generally speaking, as citizens of the nation they are subject to the laws of the federal government, no matter where they may be located. As citizens of the tribal government, they are subject to tribal laws when they are on the reservation and within its jurisdiction (except in Public Law 280 states as described below). They are subject to state law while off the reservation.

[27]Lewis Meriam et al., The Problem of Indian Administration (Baltimore: The Johns Hopkins Press, 1928), p. 29; Prucha, The Great Father, pp. 806-13.

It also called for an end to the practice of taking children away from their homes and placing them in off-reservation boarding schools and, instead, advocated an increase in the number of reservation day schools.

The findings and recommendations of the Meriam Report, together with the findings of a four-year investigation by the Senate Committee on Indian Affairs, served as the basis for policy change.[28] With the election of Franklin D. Roosevelt to the presidency in 1932 and the appointment of Collier in 1933 to head the Bureau of Indian Affairs, the movement to repeal allotment and restore tribal relations succeeded with the passage of the Indian Reorganization Act (IRA) or Wheeler-Howard Act of 1934. Since that time, the IRA has served as the foundation for contemporary U.S.-Indian relations. Under the provisions of the IRA, procedures were established for the reorganization of Indian tribes into corporate entities for the purpose of tribal economic development and self-government. The Secretary of Interior was authorized to purchase individual allotments and other lands for the purpose of restoring a tribal land base. Moreover, the responsibility of the federal government for protecting tribal lands was reassumed, and such lands were exempted from state and local taxation. Also established by the IRA were a revolving loan fund for the development of tribal business

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[28]J. Leiper Freeman, "The New Deal for Indians: A Study in Bureau-Committee Relations in American Government" (Ph.D. dissertation, Princeton University, 1952).

entities and a scholarship fund for Indians seeking higher education.[29]

Subsequently, under referenda procedures required by the law, 189 tribes chose to reorganize under the terms of the IRA, 14 tribes which did not vote were brought under the IRA, while 77 tribes rejected the IRA.[30] Under the act the federally-recognized tribes have rights

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[29]The House and Senate Indian Affairs Committees made substantial changes in the original bill drafted and submitted by Collier. Several important provisions were deleted, including: (1) a statement of policy declaring the intent of Congress to promote the study of Indian civilization and to preserve special cultural contributions; (2) directions to the Commissioner of Indian Affairs to propose a curriculum for Indian schools adapted to the needs of Indian students, including courses in Indian history, Indian arts and crafts and problems of the Indian administration; (3) the power of Indian tribes to compel the transfer from the community for any cause of any employee of the BIA locally assigned; (4) authority of the Secretary of Interior to delegate to any Indian community the authority to perform any act, service, or function which the U.S. administers for the benefit of Indians; (5) authority of the Secretary of Interior to train Indians in various services administered by the BIA; (6) establishment of a U.S. Court of Indian Affairs with original jurisdiction over cases relating to Indian affairs, its decision subject to review by federal appellate courts. Freeman, "The New Deal for Indians." See, generally, Vine Deloria and Clifford Lytle, The Nations Within (New York: Pantheon, 1984).

[30]Under Collier's original bill, the Commissioner of Indian Affairs would have discretion to issue federally-approved constitutions and bylaws to Indian tribes for the purpose of establishing tribal governments. However, Congress altered this provision by making tribal organization under the IRA optional. The tribes were given one year to vote in a referendum on whether they wanted to organize an IRA tribal government. Collier made a major effort to convince the tribes to organize. Some critics of IRA tribal governments charged that the BIA manipulated tribal membership lists and counted nonvoters as supporters of IRA organization in order to set up tribal governing bodies. Graham Taylor, The New Deal and American Indian Tribalism (Lincoln: University of Nebraska Press, 1980), pp. 17-39. For other assessments of the administration and impact of the Indian New Deal see Lawrence Kelly, The Navajo Indians and Federal Indian Policy, 1900-1940 (Tucson: University of Arizona Press, 1968); Donald Parman, The Navajo Indians and the New Deal (New Haven: Yale University Press,

and powers of self-government, including authority to deal with crimes committed on the reservation under tribal laws.[31]

Although the IRA represented a shift of federal policy from that of the assimilation-oriented allotment era, the ultimate goals of the act have never been clear. Certainly, as implemented, the IRA does not grant complete sovereignty to tribal governments.[32] For one thing, any transaction involving the lease or transfer of tribal lands must be approved by the Secretary of Interior under his trust responsibility. For another, the Secretary must approve tribal constitutions and bylaws. In his study of the administration of the IRA, Graham Taylor concluded

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1976); Kenneth Philp, John Collier's Crusade for Indian Reform, 1920-1954 (Tucson: University of Arizona Press, 1977); Prucha, Great Father, pp. 917-1012; Laurence M. Hauptman, The Iroquois and the New Deal (Syracuse: Syracuse University Press, 1981).

[31]Tribal councils and courts possess original jurisdiction over communal and civil cases within Indian country (which usually means all land within reservation boundaries). As a general rule the states have no jurisdiction over matters involving Indian tribes or Indian people in Indian country absent a federal statute giving them jurisdiction. In 1977 there were 117 tribal courts handling over 70,000 cases.

For its part, Congress has occasionally altered the jurisdictional scheme in Indian country. Angered by the result in Ex parte Crow Dog, 109 U.S. 556 (1883), in which the Supreme Court ruled that a federal court had no jurisdiction to try an Indian for the murder of a fellow Indian which occurred in Indian country, Congress passed the Major Crimes Act in 1885. This act extended jurisdiction over seven enumerated crimes, which have now been expanded to fourteen. Thus, federal courts have jurisdiction over any Indian in Indian country who commits one of the specified crimes against the person or property of another Indian or any other person. This act was followed by the General Crimes Act, which provides for federal jurisdiction over crimes, other than the enumerated major crimes, by both Indians and non-Indians in Indian country. The act provides that, with some exceptions, federal laws applicable to federal enclaves will be effective in Indian country.

[32]For a discussion of the limitations that the IRA and its

that many of the constitutions approved by Interior did not adequately reflect traditional governing practices of the tribes, thus inhibiting the development of tribal self-government.[33] Furthermore, IRA constitutions are criticized for not providing adequate checks and balances to curb the abuse of power by tribal chairmen and councils. Finally, critics charge that Interior has abandoned its responsibility to take care of Indians living off the reservation and to encourage non-federally recognized tribes to reorganize under the provisions of the IRA. After the initial blitz of referenda in the 1930s and early 1940s, no new federal reservations were established. This fact is important, for only federally-recognized tribal organizations under the IRA are determined to be eligible for the full range of federal services.[34]

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implementation have placed upon tribal self-governance, see AIPRC Final Report, pp. 187-97; Vine Deloria, Jr., Custer Died for Your Sins (New York: Avon Books, 1969), pp. 128-47; Robert Burnette and John Koster, The Road to Wounded Knee (New York: Bantam Books, 1974), pp. 178-94; Deloria, Broken Treaties, pp. 192-206; Taylor, The New Deal and American Indian Tribalism.

[33]Taylor, The New Deal and American Indian Tribalism, pp. 92-118.

[34]The Interior Department has maintained that the provision of services to Indians is limited by the Snyder Act to reservation Indians only, and particularly federally-recognized tribes. However, an opinion by the Assistant Solicitor for the Division of Indian Affairs, Department of the Interior in December 1971 stated that the Snyder Act "authorizes the expenditure of funds for the purposes, within the named program categories, for the benefit of any and all Indians of whatever degree, whether or not members of federally-recognized tribes, and without regard to residence so long as they are within the United States." AIPRC Final Report, p. 435. In Ruiz v. Morton, 415 U.S. 199 (1974), the Supreme Court stopped short of requiring the BIA to provide social services to all Indians, but stated that the provision of BIA services "clearly has not been limited to reservation Indians only." 415 U.S. 212.

In addition, the Interior Department has been accused of promulgating rules and regulations which severely restrict tribal self-government.[35] Foremost among these charges are claims that Interior has not faithfully lived up to its responsibilities under the act to: (1) consult with tribal governments during the budgetary process; (2) promote the development of a genuine Indian Service with Indians assuming positions of authority in the BIA; and (3) defend Indian lands and resources from encroachment by state and local governments, private interests, and other federal agencies. Finally, Congress and the Bureau of the Budget (now the Office of Management and Budget) are criticized for inadequate funding of the act, particularly for the purchase of additional Indian lands, college scholarships, and business loans.

Nevertheless, many observers assert that the IRA provides a permanent basis for tribal self-determination, i.e. for tribes to choose how they will reconcile themselves to the demands of the "outside" world, given adequate federal support.[36] Tribes are recognized in

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[35]Indeed, the Secretary of Interior has the authority to review and, at his discretion, veto any tribal ordinances issued by IRA-authorized tribal governments. On two occasions, the Secretary of Interior claimed the authority to revoke the constitutions of tribes which had not organized under the IRA. AIPRC Final Report, pp. 188-89.

[36]Commissioner Collier believed the process of developing tribal self-government would be enhanced by bringing in other federal and state agencies to provide services to the tribes. By abandoning the monopoly of the BIA over service delivery to the tribes, Collier hoped that orientation of the Indian Service would "shift from that of dispatch management to that of cooperative advice and technical assistance." Collier supported cooperative intergovernmental efforts between the BIA and other agencies such as the Civilian Conservation Corps, the Soil Conservation Service, and at the state level, state and local education agencies providing educational services to Indian children under the Johnson-O'Malley Act of 1934. AIPRC Final Report, pp. 245-46.

federal law as distinct political communities with basic domestic and municipal functions. Tribal chairmen elected under the terms of the IRA are recognized by federal agencies, congressional committees, and private agencies as the representatives of their respective groups. If nothing else, the IRA stabilized the Indian land base and restored tribal relations. Under Collier, the study and practice of tribal customs was revived. Programs in bilingual education and training of Indian teachers were begun. During Collier's twelve years as commissioner sixteen boarding schools were closed and eighty-four reservation day schools were opened.[37]

The Termination Period: 1945-1958

On the other hand, there were those who regarded the IRA as only a temporary measure which would provide a more orderly transition from tribal dependence on federal protection to "self-sufficiency" for Indians as "first-class citizens" who no longer need special rights or privileges.[38] This view was articulated by many congressional

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[37]Szasz, Education and the American Indian, pp. 37-88.

[38]This section describing the termination period is drawn from Freeman, "The New Deal for Indians," which describes the deterioration of BIA-congressional relations between 1937 and 1945; Szasz, Education and the American Indian, pp. 106-22, which examines Indian education policy during the 1940s and 1950s; Felix S. Cohen, "The Erosion of Indian Rights, 1950-1953: A Case Study in Bureaucracy," Yale Law Journal, 62 (1953):348-90. A very useful study of this period is Gary Orfield, A Study of the Termination Policy (Denver: National Congress of American Indians, 1966), which focuses on the events surrounding the enactment and implementation of the Menominee Termination Act. More recent studies include Donald L. Fixico, Termination and Relocation: Federal Indian Policy, 1945-60 (Albuquerque: University of New Mexico Press, 1986); and Larry W. Burt, Tribalism in Crisis: Federal Indian Policy, 1953-61 (Albuquerque: University of New Mexico Press, 1982).

supporters of the IRA; indeed, even Senator Burton K. Wheeler, the principal sponsor of the Indian Reorganization Act, urged from 1937 onward that the IRA be repealed. During the war years, measures were introduced to abolish the BIA. Reservation day schools were criticized for adapting education to the Indian and his reservation way of life. After serving the longest tenure of any BIA commissioner in U.S. history, Collier was forced to resign in 1945.

The movement to repeal the IRA gave way in the late 1940s to a more politically viable effort to terminate federal trusteeship responsibility and service delivery to tribes designated as having achieved self-sufficiency. Congress ordered the Interior Department to issue a report on the ability of each tribe to manage its own affairs without federal assistance. Acting Commissioner of Indian Affairs William Zimmerman, testifying before the Senate Government Operations Committee in 1947, listed ten tribes as excellent prospects for termination. He prescribed a draft bill which would end federal supervision for self-sufficient tribes, but only after tribal properties were held in trust for fifty years.[39]

Taking Zimmerman's recommendations one step further, Commissioner of Indian Affairs Dillon Myer announced in 1950 his intention to withdraw federal support with the full understanding, but not necessarily consent, of the affected tribe. Myer, the former head of the Wartime Relocation

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[39]Orfield, Study of Termination Policy, Chapter II, p. 2; Deloria, Custer Died, pp. 61-65.

Agency responsible for the internment of Japanese-Americans during World War II, took numerous administrative measures to prepare the way for termination. He initiated the controversial relocation program, which placed Indian teenagers in urban centers for permanent off-reservation employment.[40] Federal boarding and reservation day schools in five states were closed in 1952, as Indian students were transferred into public schools.

Myer's efforts to deemphasize federal involvement in Indian life were supported by the first Hoover Commission report in 1949 on the reorganization of the executive branch.[41] The Commission proposed

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[40]Though the announced intention of the program to provide jobs to young Indians was lauded, it became evident that development of reservation resources under Myer lagged behind efforts devoted to relocation and that real alternatives were not provided. In practice, Indians were placed in low paying, menial, often temporary work and located in the poorest housing. Participants in the program were not screened for their ability to adjust to city life, and were placed in cities as far from their home communities as possible to discourage their easy return. Most importantly, according to anthropologist Nancy O. Lurie, ". . . whereas Indians view relocation, whether through their own efforts or under the Government program as a temporary measure to gain capital, knowledge, and skills to enable them to support themselves at home, the Indian Bureau viewed it as a sort of 'final solution' to the 'Indian problem.'" Lurie, Current Anthropology, 2 (December 1961):480-81.

[41]Other administrative initiatives taken by Myer were criticized by John Collier and the former associate solicitor in the Interior Department during the Roosevelt administration, Felix Cohen. According to Cohen, Myer's administration was responsible for: (1) using federal funds to influence Indian tribal elections; (2) setting up regulations to require Interior Department approval of attorneys hired by tribes to represent them in court; (3) penalizing Indians critical of the BIA by imposing credit restrictions on the tribe; (4) refusing to remove restrictions on the sale of liquor to Indians unless tribes agreed to abolish tribal courts; (5) closing down hospitals on Indian reservations, forcing Indians needing medical care to leave the reservation; (6) closely monitoring the personal lives of individual Indians; (7)

that Indian welfare services be transferred to state governments and that the BIA should be placed in the Federal Security Agency [later to become the Department of Health, Education, and Welfare (HEW)].[42] Congress partially complied with the Commission's recommendation in 1954, when it approved the transfer of Indian health programs from the BIA to the newly-created Indian Health Service in HEW,[43] and

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imposing regulations which worked toward decreasing Indian landholdings and leasing Indian-held property without Indian consent; (8) testifying in opposition to proposed legislation in Congress which would extend Indian civil liberties; (9) designing a new "area office" system, stripping reservation agents of powers to regulate tribal activity, and thus preventing BIA administrators from developing too close an attachment to the tribe. Interestingly, says Cohen, Congress increased BIA appropriations considerably during this period as the BIA gained greater control over tribal activity. This could explain why BIA personnel seemed to be enthusiastic about the job of "winding down the Indian Bureau." Cohen, "The Erosion of Indian Rights, 1950-1953."

[42]The task force that looked into the administration of Indian affairs was chaired by George Graham, a Princeton University political science professor. The Commission was not unanimous in its recommendations concerning Indian affairs. Vice-Chairman of the Commission Dean Acheson, joined by Commission members James H. Rowe, Jr. and James Forestal, dissented from what he considered to be a partisan attack on the Indian New Deal, observing: "Recollections of the painful history which surrounds the cases of Cherokee Nation v. Georgia and Worcester v. Georgia make a novice in this field pause before endorsing a recommendation to assimilate the Indian and to turn him, his culture, and his means of livelihood over to state control." U.S. Commission on the Organization of the Executive Branch of the Government, Indian Affairs Task Force, A Report to the Congress (Washington, DC: Government Printing Office, 1949).

[43]This move had unintended consequences. Moving Indian health functions to HEW gave HEW a stake in maintaining U.S.-Indian relationships. Two other congressional acts in 1950 also increased HEW's interest in Indian affairs. In P.L. 815 Indians were included in federal aid for school construction programs and in P.L. 874 Indians became eligible for the impact aid program. Public schools serving children on non-taxable federal property, including Indian reservations,

permitted states, under certain conditions, to assume criminal jurisdiction over Indian reservations.[44]

The breakthrough for the termination forces came with the 1952 election, which gave the Republicans control of Congress and the White House. Under the leadership of Senator Arthur V. Watkins (R-Utah), chairman of the Senate Indian Affairs Subcommittee, the 82nd Congress passed an act to terminate federal supervision of Indian tribes "at the earliest possible time." Operationally, this meant that federal protection of Indian lands and resource rights and federal assistance

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would be compensated for their efforts. "The result was that by 1958 the federal government was more substantially involved in Indian education than ever. This activity was strange if it wanted to reduce and finally eliminate the Federal budget for Indians." Deloria and Lytle, American Indians, American Justice, p. 19. As the next chapter will show, increasing HEW's responsibility for Indian education and health also brought congressmen serving on the HEW oversight committees (House Education and Labor, Senate Labor and Public Welfare) into the debate on changing federal policy toward the tribes.

[44]Public Law 280, as the latter action is known, gave the states jurisdiction over some criminal and civil matters in Indian country. The law provided for state assumption of jurisdiction on the reservation in three ways: (1) assumption of jurisdiction was mandated in six states (California, Minnesota, Nebraska, Oregon, Washington, Alabama); (2) in states with state constitutional disclaimers barring jurisdiction in Indian country, assumption could be accomplished by an alternative state action (Arizona, Montana, New Mexico, North Dakota, South Dakota, Utah, Washington); and (3) in all other states, assumption originates at the option of the state (Idaho, Mississippi, Nevada). Since 1968, no state can assume jurisdiction without the consent of tribes in question. See page 110 below. Moreover, states can retrocede or relinquish jurisdiction back to the tribes. Public Law 280 excludes from state jurisdiction all matters pertaining to trust property and treaty rights. Moreover, in Bryan v, Itasca County, 426 U.S. 373 (1976) the Supreme Court held that Public Law 280 limited state jurisdiction to matters involving the application of state criminal and civil law. The Court found that P.L. 280 did not extend general regulatory powers such as property taxation over Indian lands and Indian individuals.

would be terminated at the discretion of Congress, not at the initiative (nor necessarily with the consent) of the tribe. Fourteen tribes,[45] in separate acts of Congress, were subsequently terminated. Some tribes, such as the Menominees of Wisconsin, who required no federal subsidies and paid for their own schools and hospitals, were apparently self-sufficient. The Menominees and other tribes had won large monetary settlements against the U.S. government from the U.S. Court of Claims, and were told that Congress would not appropriate the judgment funds unless the tribe agreed to termination.

The effects of the termination policy upon the tribes were depressingly similar to those of the allotment act. For instance, with its federal exemption from state taxation removed, the Menominees were forced to sell most of their land in order to pay state capital gains and local property taxes on a previously successful saw mill run by the tribe. At the same time, the tribal community became fragmented, the reservation became the poorest county in Wisconsin, and the state government had to assume the responsibility and expense of providing essential services.[46]

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[45]The tribes which were terminated and the date on which Congress authorized termination are as follows: (1) Menominees of Wisconsin (1954); (2) Klamaths of Oregon (1954); (3) Western Oregon tribes and bands (1954); (4) Alabama-Coushattas of Texas (1954); Mixed-blood Utes of Utah (1954); (6) Southern Paiutes of Utah (1954); (7) Lower Lake rancherias of California (1954); (8) Wyandottes of Oklahoma (1956); (9) Reoreas of Oklahoma (1956); (10) Ottawas of Oklahoma (1956); (11) Coyote Valley rancherias of California (1957); (12) California rancherias (1958); (13) Catawbas of South Carolina (1959); (14) Poncas of Nebraska (1962).

[46]Orfield, Study of Termination Policy; also U.S., Congress, House,

Indian tribes viewed termination as another threat to their existence. Significantly, tribal leaders contacted government officials to urge an end to termination.[47] Meetings were coordinated by the National Congress of American Indians, created in 1944 by the tribes to lobby for the Indian people. Finally, in September 1958 Secretary of the Interior Fred A. Seaton announced a temporary halt to the termination policy. Seaton stated that no further administrative efforts to terminate federal support would occur without tribal consent.

The Indian Affairs Policy Process to 1958

The First Century

Through the period of exploration and settlement of the continental United States, the nature of relations between the United States and the Indian tribes was a problem of great importance to the federal government and the American public. From the early treaties between the American colonies and the tribes to the passage of the General Allotment Act of 1887, Congress and the executive branch paid great attention to Indian affairs. Presidents took an active role in developing policy initiatives in the area of United States-tribal

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Committee on Interior and Insular Affairs, Menominee Restoration Act. Hearings before the Subcommittee on Indian Affairs on H.R. 7421, 93rd Cong. 1st sess., 1973; McNickle, Native American Tribalism, pp. 108-12.

[47] Orfield, Study of Termination Policy. Also active was the American Association on Indian Affairs, an eastern reform group composed primarily of non-Indians, which traced its beginnings to the Collier-led reform movement of the 1920s.

relations, for example the Peace Policy of President Grant. The Dawes Act was widely debated in public forums and in the chambers of Congress. The Indian problem ranked high on the national policy agenda throughout the first century of the American republic.[48]

However, the significance of Indian affairs to national policymakers declined considerably after 1890. Military defeat and the allotment policy ended tribal resistance to governmental and private encroachment upon Indian lands and culture. Management of the Indian question, in the words of James Q. Wilson, "had become the more or less routine administration of Indian schools and the allocation of reservation land among Indian claimants."[49] Allotment had solved the "Indian problem" by making Indian problems invisible.

At the same time, profound changes were occurring in the American policy process. The emergence of lobbying as a vital element in government, the proliferation of major policy issues confronting a country experiencing rapid urbanization and industrialization, the development of committee government in the Congress and the establishment of numerous subcabinet agencies reduced the opportunity for general system-level actors--the President, cabinet officials, and leaders of Congress--to dominate policymaking activity. According to Lawrence Dodd and Richard

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[48]For example, see Washburn, The Assault on Indian Tribalism. According to Vogel, all Presidents from Washington to Theodore Roosevelt made mention of Indian affairs in formal messages to Congress. This Country Was Ours, pp. 263-85.

[49]James Q. Wilson, "The Bureaucracy Problem," The Public Interest, 6 (Winter 1967):5.

Schott, policymaking responsibility by the late 1800s and early 1900s was transferred to subsystems or subgovernments--congressional committees with statutory and funding authority over specialized policy areas, executive agencies with jurisdiction parallel to that of congressional committees, and interest groups with the heaviest stakes in the nature of governmental policy in the area.[50]

What was happening throughout the federal policymaking structure was also occurring in Indian affairs. Responsibility for the formulation and administration of Indian policy shifted to the congressional committees with jurisdiction over Indian matters, dominated by western members of Congress whose districts contained Indian reservations, and the Bureau of Indian Affairs. The Indian affairs public mainly consisted of state and local officials, residents, and commercial interests in the western United States who had regular contacts with the Indian people, and non-Indian welfare and religious organizations based in the eastern United States who sought to represent Indian interests. Together, these governmental and nongovernmental entities comprised the Indian affairs subsystem which dominated federal policy toward Indians through the middle of the twentieth century.

The Indian Affairs Subsystem: 1920-1958

The studies of J. Leiper Freeman and Gary Orfield of the development of the Indian New Deal and termination policies, respectively,

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[50]Lawrence Dodd and Richard Schott, Congress and the Administrative State (New York: John Wiley and Sons, 1979). Of course, the subgovernment concept has been long recognized in the political science literature.

are similar in their characterization of Indian policymaking activity as subsystem-dominated.[51] The impetus for policy change in the 1920s and early 1930s came from John Collier, head of the American Indian Defense Association, and other non-Indian reform groups, including the Indian Rights Association, the General Federation of Women's Clubs, and the American Civil Liberties Union.[52] The foci of their lobbying efforts were the leadership of the BIA and the House and Senate committees on Indian affairs and subcommittees on Indian affairs appropriations. Conflict between bureau leaders and the Senate Indian Affairs Committee, along with declining public support for the Hoover administration, prevented passage of reform legislation in the 1928-32 period. However, the appointment of Collier to the BIA commissioner's post in 1933, his ability to mobilize support from reformers and his administrative superiors, and the popularity of President Franklin D. Roosevelt and the New Deal led to the passage of the Indian Reorganization Act of 1934. The act, drafted by Collier and his staff and altered considerably by the Indian affairs committees, was accepted by both houses of Congress with little debate and few amendments. The BIA proceeded to organize tribal governments, consolidate lands

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[51]Freeman, "The New Deal for Indians"; Freeman, The Political Process, rev. ed. (New York: Random House, 1965); Orfield, Study of the Termination Policy.

[52]The Society for American Indians, which was formed in 1911, represented an early attempt by middle-class Indians to influence national legislation. The group contained well-known Indian leaders and intellectuals such as Carlos Montezuma and Arthur Parker and was a forceful advocate of Indian citizenship. However, its advocacy of immediate abolition of the BIA was too extreme for most Indian and non-Indian reformers. The group disbanded in the mid-1920s. Hazel Hertzberg, The Search for an American Indian Identity (Syracuse: Syracuse University Press, 1971).

under tribal ownership, and provide economic assistance to the tribes; however, the appropriations subcommittees on Indian affairs kept a tight rein on federal spending and the Senate Committee on Indian Affairs mounted attacks on Collier and the IRA after 1936.

As public and congressional support for the Roosevelt administration's domestic policies declined in the late 1930s and as Collier's relations with the Congress deteriorated, the congressional committees on Indian affairs emerged as the major source of policy initiatives. Though congressional efforts to repeal the IRA and abolish the BIA during World War II failed, Collier was forced to resign in 1945. For the next decade federal policy toward Indians was dominated by Senator Watkins, chairman of the Senate Indian affairs subcommittee, who advocated termination of federal responsibility for tribes on the reservations. Threatened by severe appropriations cutbacks and the proposal of the Hoover Commission that services to the tribes be turned over to state governments, the BIA (reluctantly under Zimmerman and enthusiastically under Myer) swung over to Watkins's point of view.

Takeover of the 82nd Congress by the Republicans provided the catalyst for policy change. Working together with House Indian affairs subcommittee chairman E. Y. Berry (R-S.D.), Watkins sponsored House Concurrent Resolution 108, declaring Congress's intention to terminate federal supervision of the tribes as soon as possible. The resolution passed the House amid a series of private bills, while the Senate endorsed the resolution the day it was submitted, without a word spoken either in support or in opposition. Watkins and Berry, with few other

committee members in attendance, held joint committee hearings on bills singling out tribes for termination. Spokesmen for the BIA argued that the tribes be given more time to prepare for federal withdrawal, but generally showed no inclination to challenge the wisdom of Congress. Some tribes sent delegations to Congress to testify against termination or ask for more time. Three tribes, with determined support from local congressmen and senators, succeeded in getting Watkins to withdraw termination bills. Three tribes could not afford to send spokesmen to Washington; all were terminated. Five tribes who had won large monetary judgments against the government had to accept termination in order to receive favorable committee recommendations to the floors of both houses for appropriation of judgment funds. After the passage of termination bills, the Senate committee continued to be actively involved in overseeing the process of federal withdrawal.[53]

The Indian Affairs Policy Process Entering the 1960s: An Overview of Actors, Roles, and Interactions

Indian Political Organization and the Policy Process

Before examining how the political movement for Indian self-determination evolved, it is necessary to describe the major actors and relationships which existed in the Indian affairs subsystem entering the 1960s. During the 1920-58 period, Indian political activity slowly developed. Commissioner Collier and his advisers drafted the Indian

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[53]Orfield, A Study of the Termination Policy.

New Deal legislation without Indian input, but Collier campaigned extensively for Indian support while Congress considered the Roosevelt administration's Indian bills. Following passage of the IRA, over 250 Indian tribes were given the opportunity to accept its provisions. Nearly two hundred tribes, bands, and Indian communities had adopted constitutions establishing tribal governments by 1945.[54]

There was little intertribal political activity until the formation of the National Congress of American Indians (NCAI) in 1944. The first authentic national political organization of Indians, the NCAI emerged from the tribes' shared experiences and grievances with the BIA accumulated during the implementation of the IRA.[55] There was also common recognition that direct contact between Indian representatives and Congress was necessary for the continued survival of the tribes. The membership of NCAI came from federally-recognized tribes; thus, the

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[54]Many tribes with strong traditions of self-government, such as the Iroquois and the Navajos, rejected the IRA. See Hauptman, Iroquois and the New Deal, pp. 56-69; Kelly, Navajo Indians and Federal Indian Policy, pp. 167-70. The most strident opponent of Collier and the IRA was the American Indian Federation, a diverse group of Indians influenced by the writings of Carlos Montezuma, who was a bitter opponent of the BIA in the early 1900s. Though many members of this organization were orthodox conservatives who opposed the New Deal, the group developed ties with right-wing extremists and was discredited by the early 1940s. Hauptman, pp. 34-55; Hertzberg, Search for American Indian Identity, p. 289.

[55]Taylor, The New Deal and American Indian Tribalism, pp. 146-49. Taylor asserts that the NCAI contributed substantially to the establishment of the Indian Claims Commission by Congress in 1946. The ICC was an administrative board set up to hear Indian claims of treaty violations by the U.S. government and award monetary damages. The Commission was not authorized to return lands to the Indians. To some, the ICC represented the culmination and conclusion of the Indian New Deal. To others, it represented the beginning of the termination era.

organization was concerned principally with relations between the U.S. government and reservation Indians. Throughout its history, the group remained critical of government agencies. NCAI was not subsidized with federal funds, nor were federally-employed Indians permitted to serve as officers of the organization.

Despite its critical start, the NCAI found it difficult through the 1940s and 1950s to exert influence on national policy. The number of member tribes fluctuated from thirty to over one hundred. Cohesion was limited by factional rivalries and the tradition of decentralized leadership among Indians. According to Vine Deloria, executive director of the NCAI in the early 1960s, "Unity for unity's sake is not yet a concept that has been accepted by the tribes nor has unity for future action been understood."[56]

Intertribal political organization also was hampered by the serious social and economic conditions of reservation life. Throughout the mid-century, Indians ranked the lowest among racial and ethnic groups in employment, income, and educational attainment.[57] As a result, Indian leaders developed an overriding local orientation. To cope with economic demands by Indian constituents, many tribal chairmen formed alliances with BIA reservation agents, who were in a position

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[56]Deloria, Custer Died, pp. 196-221.

[57]See Sar A. Levitan and William B. Johnston, Indian Giving: Federal Programs for Native Americans (Baltimore: Johns Hopkins University Press, 1975); AIPRC Final Report, pp. 85-94; U.S., Commission on Civil Rights, The Navajo Nation: An American Colony (Washington, DC: Government Printing Office, 1975).

to dispense favors. Since the federal government was the largest employer on most reservations, favorable government decisions were important to a tribal leader's future.[58] Moreover, in cases where commercial and industrial interests put intense pressure on tribal governments to grant long-term leases for use of Indian lands and resources, some tribal leaders found it impossible to hold out for better terms on behalf of the tribe.[59]

Only the threat of termination in the 1950s produced an unusual degree of political activity and unity by the tribes. Though the more fully-assimilated Indians supported or at least acquiesced in termination policy, a consensus formed among most tribes that termination of federal responsibility without tribal consent was a death sentence issued to the tribes and must be resisted. Led by the NCAI, the tribes obtained

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[58]Descriptions of tribal politics can be found in Burnette and Koster, Road to Wounded Knee; Alvin Josephy, Now That the Buffalo's Gone (New York: Alfred A. Knopf, 1982); Deloria, Custer Died; Robert L. Bee, The Politics of American Indian Policy (Cambridge, MA: Schenkman, 1982), pp. 23-64.

[59]For example, according to Alvin Josephy, the Navajos signed leases with corporations to permit exploration of reservation resources in the late 1940s and 1950s, long-term leases which offered the tribe low royalties without escalation clauses. One contract gave Utah International, Inc. in 1957 the right to strip mine Navajo coal for royalty payments of from 15 to 37 1/2 cents a ton. In 1977, after the nation's energy crisis appeared, the Navajos were still receiving the same royalties, even though the retail price of coal had risen between $15 and $20 a ton. A major culprit in permitting such sweetheart deals to be arranged between corporations and tribes, says Josephy, is the Interior Department, which as trustee must approve all leases of reservation land and resources and which frequently pressured tribes to approve inequitable contracts. Josephy, Now that the Buffalo's Gone, pp. 221-23.

a temporary halt to federal termination efforts in 1958.

After the immediate threat of termination passed, many obstacles had to be overcome before Indians would press for a new federal policy. Political activity within the Indian community subsided, as the severe social and economic problems on the reservation once again took precedence. Thousands of young Indians left the reservation to seek opportunities in urban areas. Divisions among Indian leaders reappeared: tribal chairmen competed with each other for federal and private economic support; reservation opponents of tribal chairmen charged that not enough aid filtered down to reservation Indians; reservation Indians fought any efforts to aid off-reservation Indians; and traditional Indians resented tribal leaders who obtained power in a form of government alien to Indian ways.

In addition, Indians confronted a federal policymaking establishment in the late 1950s which appeared indifferent or hostile to their concerns. Certainly, a major obstacle to policy change toward the tribes was Congress, particularly the Interior committees and Indian affairs subcommittees, which were the primary backers of termination. Just as frustrating to Indians, however, was the apparent unwillingness or inability of the Bureau of Indian Affairs to serve as an advocate of tribal rights and resources within the federal government. How to turn the Bureau into an Indian advocate was a problem which, for Indians, has plagued their relationship with the federal government for over a century.

The Bureau of Indian Affairs and the Policy Process

A complex relationship between the BIA and its Indian clientele developed after the transfer of the Bureau to the Department of Interior in 1849. Until the 1920s the Bureau's relationship to American Indians "was defined in terms of the administration of Indian land, the discharge of treaty obligations respecting the land, and the implementation of those doctrines over a conquered and subject people."[60] During the allotment period, the Bureau supervised the breakup of reservation lands and was partially responsible for the transfer of those lands, by sale or lease, into non-Indian hands.

However, with the granting of U.S. citizenship to Indians during the reform period of the 1920s, the BIA's responsibilities were broadened to include the administration of programs created by Congress to give the "new citizens" proper training. Under the Snyder Act of 1921, the Indian Bureau and other federal agencies were authorized to administer any programs and services that contribute to "the benefit, care, and assistance of the Indians throughout the United States." The BIA has since developed a comprehensive set of programs for Indian tribes, administering programs in education (along with local public schools, which contracted with the BIA for funds to educate Indian children under the Johnson-O'Malley Act of 1934), health (until 1954, when health

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[60]Edgar S. Cahn and David W. Hearne, eds., Our Brother's Keeper: The Indian in White America (New York: New American Library, 1969), pp. 4-5. See also AIPRC Final Report; Bee, Politics of Indian Policy; Josephy, Now That the Buffalo's Gone; and Deloria, Custer Died for recent evaluations of the BIA.

programs were transferred to the Indian Health Service established in the Department of Health, Education, and Welfare), welfare, economic and industrial development (including agriculture and the development of natural resources), employment, housing, road construction, and law enforcement.

Indians and other observers criticized the bureau for what they call the heavy-handed and paternalistic manner by which these programs and services were administered. In numerous studies from the 1920s to the 1960s, the BIA was accused of narrowly defining its role of trustee for the nation to honor and implement promises to the Indians as that of "a competent to an incompetent, a parent to a child, a guardian and his ward."[61] Writing in 1934, Felix Cohen observed that:

> Over the years, any order or command or sale or lease for which no justification could be found in any treaty or act of Congress came to be justified by BIA officially as an act of "guardianship" and every denial of civil, political, or economic rights to Indians came to be blamed on their alleged "wardship." Under the reign of these magic words nothing Indian was safe. The Indian's hair was cut, his dances were forbidden, his oil lands, timber lands, and grazing lands were disposed of by Indian agents and Indian commissioners for whom the magic word "wardship" always made up for any lack of statutory authority.[62]

For a brief time, during the New Deal administration of John Collier, efforts were made to curb the power of the Indian Bureau over Indians. Political rights and liberties were extended to Indians, individually

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[61]Cohen, The Legal Conscience, p. 331. [62]Ibid., pp. 332-33.

and as members of tribes. However, Bureau administrators in the late 1940s and 1950s increased their control over tribal activities in preparation for termination. By making all decisions over tribal and individual trust property, by adhering to the boarding school concept of educating Indian children, and by insisting that it review and approve all major tribal government decisions, the BIA attracted severe and constant criticism from its Indian clientele.

Remarkably, however, Indians tolerated Bureau practices because they saw the BIA as the lesser of the evils. Those who would abolish the Bureau, with the best of intentions, to "free" the Indian from bureaucratic paternalism "will find as their most vehement opponent the Indian himself."[63] The Indians fought to preserve the BIA because, as one study put it:

> The Bureau and only the Bureau stands between the Indian and extinction as a racial and cultural entity. Only the Bureau stands between the Indian and total, unilateral renunciation of all Federal treaty obligations. The Bureau has been and only the Bureau remains the special protector of the Indian and his champion, at times, against predatory interests. The Bureau and the solemn promises of the Federal government are symbolically synonymous in the mind of the Indian. To destroy one is to destroy both.[64]

Despite its persistent compromising of Indian interests, the Bureau was defended by Indians as their agency. Threats to the Bureau or proposed changes in its structure were resisted by Indians as threats to their own survival.

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[63]Cahn and Hearne, Our Brother's Keeper, p. 14. [64]Ibid.

For its part, the Bureau of Indian Affairs was in a difficult political position. Its Indian clientele, though large in number and dispersed throughout numerous congressional districts,[65] was so fragmented that it was not a significant voting force in any part of the country.[66] Moreover, attempts by the BIA to assert vigorously Indian land, water, and mineral resource rights, or to promote tribal autonomy in such matters as criminal justice, ran the great risk of angering non-Indian groups and officials, who had greater access to federal officials than Indians.

The structure of the BIA's constituency also limited the agency's influence in policies promoted by the executive branch. With rare exceptions since the 1880s, Presidents rarely have intervened in Indian matters, choosing instead to delegate authority to the Interior

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[65]Official 1970 census figures count 793,200 Indians in the U.S. Many believe the actual number was closer to one million. About half of the Indian population lives on reservations, while most of the remainder live in urban areas. Cities with the largest Indian populations are, in descending order, Los Angeles, Tulsa, Oklahoma City, San Francisco, Phoenix, and New York City. Interestingly, one-fourth of Indians live outside western states. One-fourth of the Indian population lives in the northeast, and North Carolina has the fifth-largest Indian population (behind Arizona, New Mexico, Oklahoma, and California). Although there are 481 identified tribal entities, half of all Indians belong to nine tribes (some of which have several subgroups). The largest tribe is the Navajo to which nearly 100,000 people belong, followed in order by the Cherokee, Sioux, Chippewa, and Pueblo tribes. Levitan and Johnson, Indian Giving, pp. 1-4.

[66]Having many clients across many congressional districts contributes to agency power in Washington. Francis Rourke, Bureaucracy, Politics, and Public Policy, 3rd ed. (Boston: Little, Brown and Co., 1984), p. 98. To the degree that Indians do not possess sufficient resources or cohesion to affect the political process, the BIA is handicapped politically. For the classic description of the factors which contribute to group power, see David B. Truman, The Governmental Process (New York: Alfred A. Knopf, 1951).

Department and the Bureau of the Budget (BOB). The BOB reflected the low priority most Presidents gave to Indian affairs in deciding how much of the BIA's appropriations request was included in the President's budget and when requests for new statutory and funding authority were part of the President's legislative program. Historically, the BOB (now the Office of Management and Budget) guarded the President's policy priorities against not only the tendencies of agencies to expand their authority and budgets but also against attempts by Congress to reorder national priorities. Balancing these various concerns was the BOB's job. This tended to put the BIA at a disadvantage, since the agency lacked a powerful clientele and numerous friends in Congress.[67]

Within the Interior Department, the Bureau's interests in asserting Indian control over lands, water, and mineral resources collided with such sister agencies as the Bureau of Land Management (which regulates use of public lands), the Bureau of Reclamation (which develops water resources) and the Bureau of Mines (which manages natural resource development). Though all federal agencies were supposed to observe legal guarantees to Indians protecting Indian land and other resources, the question of how much of each resource belongs to Indians remained open to legal and political struggle among agencies fighting for jurisdiction over resources to manage.

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[67]According to Aaron Wildavsky, the OMB tends to favor agencies with high political standing in Congress over agencies which lack such standing. Aaron Wildavsky, The Politics of the Budgetary Process, 4th ed. (Boston: Little, Brown and Co., 1979), p. 42.

The Secretary of Interior, in deciding among these conflicting interests, traditionally relied on the advice of the Assistant Secretary for Public Land Management and the Solicitor, the department's legal advisor (the Assistant Secretary for Public Land Management, until 1977, directly supervised the BIA, the Bureau of Land Management, Bureau of Outdoor Recreation, and Office of Territories; the Solicitor's Office handles the legal work for all Interior agencies). However, because both of these officials must listen to the concerns of other Interior agencies as well as the Indian Bureau, they have viewed their role as that of referee, rather than Indian advocate. According to law professor Reid Chambers, the solicitor for the Interior Department, on several occasions during the 1950s and 1960s, abrogated his responsibility to advocate Indian resource rights in favor of claims by other Interior agencies.[68]

Since the 1950s, the internal organization of the BIA has been faulted for not fostering responsiveness to tribal concerns. Until the administration of Commissioner Myer, the Bureau's organizational structure consisted of a central office in Washington--which included the commissioner and his chief advisors, the deputy commissioner, and the heads of the various policy divisions, such as education and economic development and numerous agency offices in the various reservations.

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[68]U.S., Congress, Senate, Committee on Judiciary, Subcommittee on Administrative Practices and Procedure, A Study of Administrative Conflict of Interest in the Protection of Indian Natural Resources, by Reid Chambers, Committee Print (Washington, DC: Government Printing Office, 1971).

In 1950, Myer added an intermediate layer of twelve area offices, each containing program specialists and administrators which corresponded to the central office structure and possessing line authority over dozens of reservation agencies. The addition of area offices was justified in terms of relieving the central office of a heavy administrative load and bringing Bureau decision-makers closer to the tribes.

However, many Indians charged that the real purpose of Myer's realignment was to insert administrators who would promote termination. Furthermore, critics asserted that the reorganization, rather than bringing the BIA closer to the tribes, further isolated the agency. Authority over major decisions was taken away from reservation agents, who have daily contact with the tribes, and shifted to distant area officers who were less familiar with the concerns of a tribe and must balance competing requests from a number of them. Tribes had little chance of overturning area office decisions, since the central office regularly deferred to the area officials, who were civil service employees and did not owe their jobs to the commissioner. Nevertheless, rather than fight the area officers, tribal governments chose to accommodate them in order to receive favorable decisions regarding Bureau programs and services.[69]

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[69]See Cohen, "The Erosion of Indian Rights"; Alvin M. Josephy, ed., Red Power (New York: McGraw-Hill, 1971), pp. 114-123; Bee, Politics of Indian Policy, pp. 105-108.

Congressional Committees, Non-Indian Interests, and the Policy Process

Ultimately, the recipients of complaints by Indians, non-Indians, and federal agencies about Bureau policies are the members of Congress who serve on the House and Senate Interior and Insular Affairs committees and Indian affairs subcommittees, and the House and Senate appropriations subcommittees in the Interior Department. As was described, these committees were the leading proponents of terminating federal protection of tribes in the 1940s and 1950s. This is not to say, however, that the members of these committees were anti-Indian, for their relationship to Indians and Indian policy questions was more complex.

According to Richard Fenno's study of congressional committees in the 1955-66 period, members of the Interior committees sought membership in order to satisfy constituency interests and therefore gain reelection.[70] These committees were dominated by western members, for whom the subject matter within the committees' jurisdiction--national parks, irrigation and reclamation projects, mines, Indians, public lands--provided them with ample opportunities to address the concerns of their western constituents. According to Fenno, during the 1955-66 period, Westerners made up 50 percent of the House Interior Committee and 87 percent of the Senate Interior Committee. Members served constituency interests by sponsoring district-specific "projects" and

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[70]Richard F. Fenno, Jr., Congressmen in Committees (Boston: Little, Brown, and Co., 1973), pp. 5-9.

and did so without needing much interest-group prodding. In Fenno's words, Interior Committee members were policy entrepreneurs when it came to generating "pork-barrel" legislation.[71]

The Interior committees were not highly-rated by House and Senate members as "prestige" committees. More members sought to transfer from the Interior committees than wanted to transfer to them. Three-fourths of the appointments to the Interior committees in the 1955-66 period went to freshmen members of Congress.[72] Senators, who get to serve on more committees than do House members, tended to concentrate their efforts on more prestigious committees and policy areas. According to Fenno, those members who were active on the Interior committees, especially in the House, had generally high morale. There was a tradition of nonpartisanship on the committees, committee leaders recognized the need of all members to get special bills for their districts passed, and most bills reported out of committee were passed by the respective chambers without roll-call votes.[73]

Given the overriding concern of Interior Committee members for pleasing constituents and winning elections, it is not surprising that the members paid little attention to Indian affairs. If anything, the prevailing attitude toward Indians among members of Congress was one of indifference. Membership on the Indian affairs subcommittees was the least sought-after assignment within the Interior committees.

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[71]Ibid., pp. 57-64.

[72]Ibid., p. 150.

[73]Ibid., pp. 118-24.

First-term members were overrepresented, attendance by most members was infrequent, and turnover was high.[74]

Beyond this, western members of Congress recognized that championing Indian interests on some issues may jeopardize reelection chances. Fenno described the dominant policy-orientation of western representatives on the Interior committees as that of favoring commercial use rather than the preservation of natural resources, following constituents' preferences for jobs.[75] Though much of Indian-held land is without substantial commercial value beyond subsistence farming, some Indian reservations have vast mineral reserves. For example, twenty-three tribes control 80 percent of U.S. uranium reserves, 33 percent of strippable low-sulfur coal, and 3 to 10 percent of petroleum and gas reserves.[76] Demands by energy companies, state and local officials and citizens to terminate federal protection and "open up" Indian lands for present development were thus coincidental with the western members' pro-development orientation.

Other issues involving Indian resources also posed dangerous political problems for western members of Congress. Court decisions guaranteeing Indian tribes access to as much water as they need conflicted with the demands for water by growing Sunbelt communities.[77] Treaties

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[74]Nicholas C. Peroff, Menominee Drums (Norman: University of Oklahoma Press, 1982), pp. 60-62.

[75]Fenno, Congressmen in Committees, pp. 256-76.

[76]Bee, Politics of Indian Policy, p. 27.

[77]For an account of water rights conflicts between Indian tribes

granting Indian fishermen unlimited access to fish were viewed as threatening to commercial fishermen, sportsmen, and state fish and game agencies trying to cope with a decreasing fish population.[78] Confrontation between Indians and local citizens and officials led to demands that states extend criminal jurisdiction over the reservations.[79] If demands by state and local officials, private businesses, and non-Indian citizens were widespread and intense, the members of Congress had little choice but to oppose the Indian position.

Easterners on the Interior committees also were susceptible to arguments for termination, but for different reasons. For one thing, as Fenno notes, those members from the east were less sympathetic with the views of commercial users of natural resources than were western members.[80] Though few eastern legislators had Indians in their district, many shared the romantic image of the Indian as a "noble savage," a proud people who were deceived by greedy land-grabbers and government agents and who were now "locked up" on federal reservations, segregated from modern society and "held back" by paternalistic bureaucrats. Numerous religious, welfare, and civil rights groups from the east expressed an interest in Indian affairs on occasion and traditionally held the view that assimilation into modern society

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and their western neighbors, see Josephy, Now That the Buffalo's Gone, pp. 151-76.

[78]See ibid., pp. 177-212.

[79]See Burnette and Koster, Road to Wounded Knee, pp. 125-39.

[80]Fenno, Congressmen in Committees, pp. 256-76.

was the key to Indian progress.[81] Just as integration was viewed by civil rights groups in the 1950s as an important instrument for achieving equality for blacks, integrating the Indian with white America through termination was supported as a means to "emancipate" the Indian.[82]

Western members also shared the view of their eastern colleagues that federal protection of reservations prevented Indian progress toward "first-class" citizenship. Senator Watkins, the architect of congressional termination policy, expressed this view most forcefully:

> We do not want to take anything away from you (he told a Klamath Indian) . . . . We want to take off the shackles and make you free men, free to make a mistake or two if you want to, if that is the way it has to be done. That is the way most of us learned, by making a few mistakes. That is what we are trying to do for you, take the shackles off. We pay you a great compliment when we say we are sure you can do a good job. In fact, we think you will do a better job than we have for 135 years.

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[81]Among the non-Indian interest groups that attempt to support Indian positions on issues are the American Association on Indian Affairs, the NAACP Legal Defense Fund, and the American Civil Liberties Union.

[82]An example provided by some observers of Indian policy of how eastern congressmen can, despite their best intentions, work against Indian interests is the Indian Civil Rights Act of 1968. Sponsored by Senator Sam Ervin, Jr. (D-N.C.), the act responded to Indian demands by forbidding states from further assuming criminal jurisdiction over Indian reservations under Public Law 280. But, the act further provided that Indian tribes exercising powers of self-government shall be subject to many of the same restraints imposed on federal, state, and local governments by the Bill of Rights and the 14th Amendment "due process" clause. This latter provision has been criticized by Indian groups as an intrusion upon tribal sovereignty. Donald L. Burnett, Jr., "An Historical Analysis of the 1968 Civil Rights Act," Harvard Journal of Legislation, 9 (1972):577-625; AIPRC Final Report, pp. 112-19, 194-215. See p. 110 below.

> I cannot be a party, personally, to seeing the United States go on and deprive the people, the citizens, who are able to take care of themselves, of the right to make their own decisions, and have the United States go on and make those decisions for them. That is a right you are entitled to have.[83]

Thus, the role of ideology in congressional policy considerations toward Indians should not be overlooked.

And yet, members of the Interior committees were not so indifferent or callous as to ignore the plight of the Indians. For western members, Indian constituents were a small minority, but they were still constituents. When non-Indian interests were not at stake, western congressmen sponsored special legislation for Indian tribes. For liberal congressmen, Indians were a deprived and disadvantaged minority who needed federal support programs in education, income assistance, housing, and economic development. Representatives on the Interior committees were sensitive to complaints by Indians and reports by the news media about incidents of mistreatment of Indians, especially by the BIA. Making the BIA a whipping boy for Indian problems was a favorite pastime of Congress. The result, says Deloria, was that the BIA became not so much paternalistic toward Indians but "fear-ridden." If a senator heard about Indians starving on the reservation, according to Deloria:

> The next time an Indian bill is heard before the Interior Committee the Senator makes sure the Commissioner hears about the starving Indians. In turn, when the Commissioner gets back to his office, field personnel find out rather

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[83]Quoted in Orfield, A Study of the Termination Policy, Chapter I, p. 14.

> quickly about the treatment of the Commissioner before the committee.
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> Thus fear in massive quantities is injected into the field operations of the bureau. Subsequent dealings with tribes begin to reveal a real lack of enthusiasm for taking chances. The possibility of backfire is a real consideration. Decisions are made according to the book in case any fracas results.
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> The tribe eventually gets furious at the attitude of the bureau and comes into Washington to complain to their Senator and the cycle begins again.[84]

Out of this pattern can be derived another reason for congressional support of termination during this period. Ending federal protection for tribes provided a way for congressmen to register their displeasure with the BIA on behalf of Indians who had been victimized by alleged Bureau misconduct or incompetence.

The Indian Affairs Subsystem and the Political Environment

The image of subsystems as "iron triangles" implies that a subsystem possesses a great deal of internal cohesion among its members. Executive agencies, congressional committees, and interest groups share common interests in promoting a policy or program that is mutually beneficial. They band together to protect the policy or program from potentially hostile elements in the executive branch, Congress, and the public. The water resources and agricultural policy areas are frequently mentioned as examples of subsystems where cooperation is the norm.[85]

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[84]Deloria, Custer Died, p. 135.

[85]Arthur Maass, Muddy Waters: The Army's Engineers and the

However, not all subsystems have that kind of unity. Subsystem autonomy from system-wide actors such as the President may occur out of simple indifference by system-wide actors rather than the unity or political clout of the subsystem. While national policymakers turn their attention to matters of wider public concern, the actors in a subsystem may be frequently at odds with one another.[86]

The Indian affairs subsystem can certainly be characterized as conflict-ridden. Conflict, rather than cooperation, was the rule in relationships between the BIA and congressional committees during the 1920-58 period. Indian clients complained bitterly about their treatment by both the Bureau and Congress. Congressional committees in the 1940s and 1950s attempted to phase out the BIA and terminate U.S.-Indian relations. In effect, members of Congress wanted to destroy the subsystem while the Indians and the BIA wanted to preserve it.

It can be argued that conflict-ridden subsystems are more susceptible to general system intervention, especially if the clientele are too politically weak to defend themselves from attack.[87] Changes in administrations and the mood of the country are occasions when such

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Nation's Rivers (Cambridge, MA: Harvard University Press, 1951); Theodore Lowi, The End of Liberalism, 2nd ed. (New York: W. W. Norton, 1979).

[86]Emmette Redford, Democracy in the Administrative State (New York: Oxford University Press, 1969), pp. 96-106.

[87]This appeared to be the case with the Reagan administration's proposed cuts in federal domestic spending in 1981. The administration was more successful in cutting those programs with politically weak clienteles such as Food Stamps, than those programs with powerful

subsystems are most vulnerable. In addition, because members of the subsystem disagree with one another, those who are particularly weakest at any point may appeal for outside intervention on their behalf.[88]

Policy development in Indian affairs during the 1920-58 period provides several illustrations of the general system-subsystem relationship. Major changes in Indian policy coincided with changes in administrations. Conditions of "party government" existed in the early 1930s under Roosevelt and in the early 1950s under Eisenhower. The first years of both administrations were when policy changes were most likely to be made. New leadership in the Indian Bureau and congressional committees took advantage of the political climate to achieve policy changes. For example, Commissioner Collier obtained letters of support from President Roosevelt at a key moment in the consideration of the Indian Reorganization Act. In the 1950s Commissioner Myer and Senator Watkins claimed the conservative "mood of the country" called for cutbacks in federal services.

Another change of party control in 1961 presented new opportunities for policy change in Indian affairs. However, any administration wanting to change Indian policy would have to confront the unity among members of Congress serving on the Interior committees that termination would "free" the Indian people from the shackles of federal bureaucracy

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clienteles such as the Export-Import Bank. Randall Ripley and Grace Franklin, Congress, the Bureaucracy and Public Policy, 3rd ed. (Homewood, IL: Dorsey Press, 1984), pp. 102-3.

[88]See Freeman, The Political Process, p. 61.

and cultural backwardness. Most Republicans and Democrats, liberal and conservatives, Westerners and Easterners shared the same ideological perspective toward the "Indian problem." Whether this perspective reflected genuine concern for the welfare of Indians or served economic interests, the fact was that few policymakers outside the Indian community challenged the ideological consensus which shaped Indian policy in the 1950s. The BIA, threatened by appropriations cuts and efforts to transfer its responsibilities to states and other federal agencies, was reluctant to assume leadership. Although protests by Indian tribes forced the Eisenhower administration to temporarily stop termination efforts in 1958, Indians had no guarantee that termination efforts would not be resumed in the 1960s.

CHAPTER III

THE RISE OF INDIAN SELF-DETERMINATION: AGENDA BUILDING AND POLICY FORMULATION IN INDIAN AFFAIRS, 1958-70

Agenda-Building Streams, Subgovernments, and Indians: An Overview

The question of why some issues are acted upon by government officials and why other issues are ignored has intrigued observers of the political process for some time.[1] A related and equally important question is how items that have secured a place on the governmental agenda rise and fall in terms of prominence. Since most items that the Federal government deals with are old items, any one of which has the potential to become the next "hot" item, it is important to understand how this aspect of the agenda-setting process works.[2]

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[1]Roger W. Cobb and Charles D. Elder, Participation in American Politics: The Dynamics of Agenda-Building, 2nd ed. (Baltimore: Johns Hopkins University Press, 1983); Robert Eyestone, From Social Issues to Public Policy (New York: John Wiley and Sons, 1978); James E. Anderson, Public Policy-Making, 3rd ed. (New York: Holt, Rinehart, and Winston, 1984), pp. 44-77; Charles O. Jones, An Introduction to the Study of Public Policy, 2nd ed. (North Scituate, MA: Duxbury Press, 1977), pp. 14-83; John Kingdon, Agendas, Alternatives, and Public Policies (Boston: Little, Brown and Co., 1984).

[2]How items rise and fall on the respective agendas of Presidents and members of Congress are described in the following: Paul Light, The President's Agenda (Baltimore: Johns Hopkins University Press, 1982); John Kingdon, Congressmen's Voting Decisions (New York: Harper and Row, 1973); Jack Walker, "Setting the Agenda for the U.S. Senate," British Journal of Political Science, (October 1977):432-45.

According to Roger Cobb and Charles Elder, once government recognizes a problem, defines it, and responds with a policy, a common pattern develops.[3] Subgovernments take charge of the issue area. Based on shared interests and expertise, common perspectives are forged on what is or is not problematic, how problems are defined, and what the available alternatives are to dealing with problems. Consequently, barring a crisis or major change in leadership, "subgovernments are likely to exercise fairly exclusive control over what appears on the institutional agenda in their issue area and to do so without arousing or needing to arouse much public concern."[4]

What concerns Cobb and Elder, as well as others, is that legitimate items of public concern may be ignored by the dominant forces in subgovernments. Outsiders who challenge the prevailing issue consensus face considerable problems overcoming the superior access and specialized knowledge of subgovernment participants. Entrenched interests benefit at the expense of the unorganized or underrepresented public. What government does becomes increasingly irrelevant to the concerns of the mass public.[5]

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[3]Cobb and Elder, Participation in American Politics, pp. 182-88. See also Eyestone, Social Issues, pp. 148-50.

[4]Ibid., p. 185.

[5]This argument parallels that of Theodore Lowi, who says that the prevailing "public philosophy" of delegating policy-making authority to interest groups, or "interest group liberalism," shuts out the unorganized public, puts underrepresented interests in weaker bargaining positions, and undermines government's authority to plan and bring about social justice. Theodore J. Lowi, The End of Liberalism, 2nd ed. (New York: W. W. Norton, 1979).

Of course, those who are the direct recipients of subgovernment policies may also be disenfranchised. An important example of how members of a subgovernment can be made to feel like outsiders is the case of federal policy toward American Indian tribes in the 1950s. Key members of Congress on the Interior committees and administrators in the Bureau of Indian Affairs (BIA) defined the "Indian problem" as the tribal way of life and its perpetuation by a paternalistic bureaucracy. To those who had the power to define the "problem," the "solution" was to terminate federal responsibility for the protection of Indian lands and resources and the provision of special services to the Indian people. Despite the concerns of most Indians that the termination policy would cause severe economic hardship and the destruction of tribal units, the Indian affairs subgovernment endorsed the policy in 1954 and proceeded to implement it on a tribe-by-tribe basis into the next decade.

In a sense, Indian tribes during the termination years were a classic example of Charles O. Jones's scenario of a group with established access to government but too weak politically to affect the governmental agenda, i.e. to prevent the subgovernment from self-destruction.[6] What strategies are available to groups in such a position? According to Jones, the group must develop the organizational capacity to identify problems, set priorities, and

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[6]Jones, Introduction to Public Policy, p. 42.

reach the immediate decision-makers. Assuming for a moment that this sizeable task can be accomplished, what if the dominant elements of the subgovernment are not responsive? Then, the only strategy available to the group, according to Cobb and Elder, is mobilization of public concern or what E. E. Schattschneider called "expanding the scope of conflict."[7] For groups with relatively low social status, economic resources, political organization, or internal cohesion--such as Indians--getting the general public, the attentive public, or other governmental officials to intervene on their behalf is a difficult undertaking. Such groups may be forced to use "protest as a political resource." However, according to Michael Lipsky, the use of confrontational tactics is extremely risky. For protest to be effective, group leaders must obtain favorable media coverage to reach sympathetic third parties, maintain the unity and solidarity of a hyperactivated following while dealing with authorities, and somehow resist the efforts of authorities to attack the group, coopt or discredit its leaders, or offer mere symbolic benefits to the group such as appointing a "study" committee.[8]

The problems of groups outside the dominant coalition of a subgovernment to have their demands recognized are further compounded

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[7]Cobb and Elder, Participation in American Politics; E. E. Schattschneider, The Semi-Sovereign People (New York: Holt, Rinehart, and Winston, 1960).

[8]Michael Lipsky, "Protest as a Political Resource," American Political Science Review, 62 (December, 1968):1144-58; also see Michael Parenti, "Power and Pluralism: A View from the Bottom," Journal of Politics, 32 (December, 1969):501-30.

when other aspects of agenda-building are examined. John Kingdon argues that interest group pressure is but one of many factors which determine which items will gain prominence on the governmental agenda.[9] According to Kingdon, agenda setting and policy formulation activities are complex transactions of participants operating in three separate "streams" or processes which: (1) bring problems to official attention (the "problem stream"); (2) generate policy alternatives to deal with problems (the "policy stream"); and (3) mobilize public and official support to recognize problems and narrow alternatives (the "political stream"). In the problem stream groups with perceived problems must have these conditions defined and recognized as problems by officials. Crises, "objective" indicators such as the unemployment rate, and feedback to officials about the operations of existing programs help bring problems to government's attention. In the policy stream, communities of specialists generate proposals for dealing with problems which vary in their cost, technical feasibility, and political acceptability. Proposals judged to be nonfeasible, especially on economic or political grounds, are not likely to survive. Finally, in the political stream, interest group activities may not be enough to gain official attention. Forces such as swings in the national mood and new administrations brought to town by elections may serve as an

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[9]Kingdon, Agendas, Alternatives, and Public Policies. Kingdon's description of agenda-setting and policy formulation is based on the "garbage can model of organizational choice" developed in Michael Cohen, James March, and John Olsen, "A Garbage Can Model of Organizational Choice," Administrative Science Quarterly, 17 (March 1972):1-25.

impetus or constraint to group agenda-setting activities.[10]

Performing in one, two, or all three streams, says Kingdon, are "policy entrepreneurs," motivated by pursuit of political support or historical fame, their personal policy beliefs, or the sheer pleasure of participation. They try to push their concerns about certain problems higher on the agenda and move pet proposals ahead of other alternatives. They are crucial in "coupling" or bringing the separate streams together when opportunities arise. Such opportunities or "policy windows" occur when new problems appear and there is need for potential solutions, or when a change in administrations necessitates a search for problems to solve and for proposals to solve problems. Policy entrepreneurs are ready with their programs and their concerns about problems when policy windows open. Whether or not all three streams will be joined, resulting in the rapid movement of packages of the three joined elements up the decision agenda, depends on whether the right entrepreneur appears at the right time.[11]

Therefore, if Kingdon's conceptualization is accurate, groups looking to get their concerns favorably acted upon at the highest levels of the political system need a combination of fortuitous circumstances: (1) what the group defines as a problem must be recognized and similarly

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[10]Kingdon, Agendas, Alternatives, and Public Policies, pp. 129-30.

[11]Walker argues that U.S. Senators, because of their greater visibility, presidential aspirations, and generalist perspective, are more likely to assume entrepreneurial roles. Walker, "Setting the Agenda."

defined as a problem by officials; (2) a national mood, an administration, and/or key members of Congress must permit the favorable hearing of the group's demands; (3) policy proposals must be generated and be judged economically and politically feasible; (4) policy entrepreneurs inside or outside the group must be available, ready, and able to push the group's concerns; and (5) opportunities where problems, politics, and proposals can be joined must appear and be capitalized upon--all in order to move an issue up the decision ladder.

For Indians seeking an end to the termination policy and federal recognition of tribal self-determination rights, all of the conditions identified by Kingdon as necessary for favorable government action were met during the 1960s. Utilizing Kingdon's framework, this chapter examines a decade of policy activity in which streams, entrepreneurs and windows eventually joined to produce legislative proposals by a President and prominent senators which advocated Indian self-determination without termination. With the problem of termination policy present throughout the 1960s, Indian tribes developed the political resources necessary to press their demands for the end of termination to the public and to federal officials inside and outside the Indian policy subsystem. With help from the War on Poverty, policy proposals to more fully develop tribal communities were generated. Though several U.S. senators played entrepreneurial roles throughout the decade, Nixon White House officials provided the right push for Indian interests at the right time.

The Problem Stream: Pressure for Termination Continues

Entering the 1960s, the leadership of the Senate Interior and Insular Affairs Committee changed, but the viewpoint of the committee remained the same. In 1959 freshman Senator Frank Church (D-Idaho) took over the chairmanship of the Indian subcommittee. The real leader of the committee, however, was Senator Clinton Anderson (D-N.M.), an active participant in subcommittee proceedings and the chairman of the parent Interior committee. Anderson's support of termination dated back to the authorization of the policy in the 82nd Congress.[12]

The attitudes of the senators toward termination were reflected in the 1960-61 hearings held by the Indian affairs subcommittee to consider requests of the Menominee tribe for additional time and federal assistance in working out a plan for self-sufficiency before the final

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[12]In 1957, the 85th Congress organized with Democratic majorities. Senate Interior Committee Chairman Malone, who had once proposed abolishing the Indian Bureau, was replaced by Senator Murray of Montana, a liberal who credited his election to Indian votes. No new bills for termination were acted upon during Murray's chairmanship. Senator Watkins was replaced as chairman of the Indian affairs subcommittee by Richard Neuberger, an Oregon liberal often at odds with the Interior Department. Neuberger was skeptical of the termination policy, having become aware of its effects upon the Klamath tribe in his state. Along with the vociferous protest of the Indians, Murray and Neuberger persuaded Secretary Fred A. Seaton to issue his announcement in 1958 that there would be a temporary halt in termination efforts.

In the midterm election of 1958, Senator Watkins was defeated for re-election, thus depriving termination forces of a major voice. However, Senator Anderson replaced Murray as Interior Committee chairman, while Senator Church took over the Indian affairs subcommittee. Anderson's pro-termination viewpoint was further strengthened by the addition of two new conservative members to the Committee, Senators Barry Goldwater (R-Ariz.) and Gordon Allott (R-Colo.).

withdrawal of federal supervision.[13] Senator Anderson was suspicious of the motives of tribal leaders. Speaking with Senators Church and Gordon Allott, Anderson remarked: "How long do you have to throw money away before you realize that maybe those people ought to be required to do something for themselves?"[14] Senator Church was more optimistic about the effects of becoming free from the federal bureaucracy, telling the Menominees:

> I would venture to predict that once this termination is completed and the Indian people . . . are thrown upon their own resources and on processes of self-government and look to these resources for the kind of further economic development that is required that you are going to be better off in the years to come . . .[15]

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[13]The original termination act of June 17, 1954 gave the Menominees four and a half years to prepare for termination. The magnitude and cost of the task led the tribe, through its local Congressman, Rep. Melvin Laird (R-Wis.), to ask Congress for an extension of the deadline plus federal financing of termination expenses. In 1956 Congress authorized full federal funding of the costs of termination, but shortened the termination deadline by one year to December 31, 1957. Another extension request followed, and on July 2, 1958, Congress granted the tribe a two and a half year extension but limited Federal reimbursement of the Menominees to 50 percent of the termination expenses. In 1960 Laird introduced a bill which provided for full federal payment of termination expenses and granted authority to the Secretary of Interior to set the deadline for termination. The bill was rejected by the Interior committees, which saw the proposal as an attempt to avoid termination altogether. Instead, a six-month extension was granted. Finally, Congress authorized in 1961 a loan program, grants for sewer construction, and a six-year program of providing health, welfare, and education services to the Menominees to help the tribe make the transition to self-sufficiency. See Gary Orfield, A Study of the Termination Policy (Denver: National Congress of American Indians, 1966).

[14]U.S. Congress, Senate, Committee on Interior and Insular Affairs, 1960 Amendments to the Menominee Act of 1954, Hearings before the Subcommittee on Indian Affairs, 86th Cong., 2nd sess. (1960), pp. 40-41.

[15]Ibid., pp. 59-60.

According to Orfield, the perspective of the Senate Indian affairs subcommittee was still limited by the perspective of Senator Watkins. Watkins had succeeded in enacting a basic policy innovation, and in committing the subcommittee to the new policy. The members were less willing to consider the fundamental issues of Indian policy. A challenge to the termination act had become a challenge to the prestige of the subcommittee.[16]

Around this time, one of the most bitter disputes between Indian tribes and the federal government approached its climax. On August 19, 1961, President Kennedy informed the President of the Seneca Nation of western New York that the government would proceed with the construction of the Kinzua Dam on the Allegheny River.[17] Though the dam would produce hydroelectric power for upstate New York and western Pennsylvania, control flooding and create new recreational opportunities, it would also flood 10,000 acres of the Seneca reservation (leaving them only 2,300 acres on which they could live). Authorization of the project by Congress in 1956 and the seizure of reservation land by the Army Corps of Engineers were fought by the Senecas and their allies as a violation of a 1794 treaty which guaranteed that the United States would never claim this land. Nevertheless, the government's exercise of the right of eminent domain was upheld by the courts and the appeal

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[16]Orfield, Study of the Termination Policy, Chapter II, p. 12.

[17]This description of the Kinzua Dam controversy is based on Alvin M. Josephy, Jr., Now That the Buffalo's Gone (New York: Alfred A. Knopf, 1982), pp. 127-50.

to President Kennedy to withhold funds appropriated for the project failed. As the dam approached completion in 1964, Congress authorized a payment of $15 million to the Senecas for reparations. Attached to the bill was an amendment, drafted by the Senate Interior Committee, that would require the Secretary of Interior to present to Congress a plan for the termination of the Senecas' relations with the federal government.

When Senator Anderson stepped down from the chairmanship of the Interior Committee in 1964 in favor of Senator Henry Jackson (D-Wash.), his influence on Indian policy did not diminish. In addition to Anderson's continuing participation on the Indian affairs subcommittee, his appointee to the staff of the Interior Committee, James Gamble, worked with Jackson to extend the termination policy.[18] For example, the Colville tribe of eastern Washington in the mid-1960s asked for the return of lands on their reservation which were opened for homesteading purposes and remained unused. Following an approach used by Watkins, the Senate Interior Committee responded by reporting a

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[18]Gamble's reputation as a terminationist was so well known that even Ralph Nader called him ". . . the Chief Congressional worker for termination of Indian reservations and assimilation of the Indians into the mainstream of American life. The intensity of his animosity toward what he considers the privileged position of Indians and the BIA, which he says has a vested interest in this position, is almost startling." Ralph Nader, "Lo, The Poor Indian," The New Republic, (March 30, 1968):15. Vine Deloria, Jr. stated in 1969 that "So powerful is Gamble that Jackson might be characterized as his front man. But Jackson is busy with his work on the Foreign Relations and other important committees and so he accepts Gamble's recommendations without much consideration or alternatives." Vine Deloria, Jr., Custer Died for Your Sins (New York: Avon Books, 1969), p. 78.

bill which would grant the return of the unused lands if the tribe, by a majority of adults voting in a referendum, accepted termination. The bill passed the Senate, but was held in the House Interior Committee for the duration of the 89th Congress.[19]

In the face of congressional pressure to continue termination, the Interior Department and the BIA during the Kennedy and early Johnson administrations wavered. The Commissioner of Indian Affairs from 1961 to 1966, Philleo Nash, was widely praised by Indian tribes for his commitment not to recommend termination without tribal consent and for his attempts to improve economic conditions on the reservation. Under his administration, the Bureau launched efforts to formulate overall economic development plans for the tribes, attract private industry to reservation areas, expand adult vocational training programs, and accelerate public works projects on the reservation. However, Nash's opposition to the termination of the Seneca and Colville tribes put him at odds with the Interior committees and high

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[19]On the House side, the major force in determining Interior Committee policy was Rep. Wayne Aspinall (D-Colo.), chairman of the committee from 1959 to 1972. Known for his strong control over committee and subcommittee proceedings [see Richard F. Fenno, Jr., Congressmen in Committees (Boston: Little, Brown and Co., 1973), pp. 118-23], Aspinall was less enthusiastic about termination than his Senate counterparts. Nevertheless, his main stance toward Indian matters was one of neglect. Under his command, the House committee concentrated almost entirely on issues involving Indian lands and resources and Indian monetary judgments. His indifference to Indian social and economic problems gave the Senate Interior Committee the opportunity to continue making termination proposals. See Edgar S. Cahn and David W. Hearne, eds., Our Brother's Keeper: The Indian in White America (New York: New American Library, 1969), pp. 163-73.

and high officials in the Interior Department. He resigned in the fall of 1966.[20]

Although Nash's successor, Robert Bennett, was the first Indian to be named Indian commissioner since the 1870s, he was unsuccessful in allaying the tribes' fears about termination. At a 1967 Senate hearing he had the following dialogue with Senator Mark Hatfield (R-Ore.):

> Senator Hatfield: . . . What is the basic philosophy of the Bureau of Indian Affairs at this time?
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> Mr. Bennett: The basic philosophy is that the government has made commitments to the Indian people . . . and the government should carry out these commitments. . . . When the government has carried out these commitments . . . in the way of their educational level, health level and so forth, then I feel, as Commissioner of Indian Affairs, I have a responsibility to report this to the Congress, and that the Congress, as the policymaking body, will then determine whether or not our services shall be withdrawn and terminated or whether for reasons that the Congress may decide they shall be continued . . .
>
> Senator Hatfield: In other words, termination is the basic philosophy that we are moving toward as each group is brought to a place where they are considered to be self-supporting and self-sufficient; is that correct?
>
> Mr. Bennett: Yes sir. Then the tribal leaders have said when Congress gets through and has carried out their commitments, then they will all have to face this question.[21]

But while federal officials argued over whether and how

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[20]Robert M. Kvasnicka and Herman J. Viola, eds., The Commissioners of Indian Affairs, 1827-1977 (Lincoln: University of Nebraska Press, 1979), pp. 311-23.

[21]Quoted in Cahn and Hearne, Our Brother's Keeper, pp. 20-21; see also Kvasnicka and Viola, The Commissioners of Indian Affairs, p. 327.

termination should be continued,[22] a political movement demanding Indian self-determination emerged. In contrast to the reform period of the 1920s and early 1930s, it was the traditional "outsiders" of the Indian affairs subgovernment, the Indians themselves, who provided the impetus for policy change.

The Political Stream: The "Red Power" Movement

Indian "Protest as a Political Resource"

Influenced by the threat of termination, the civil rights movement, and the rise of nationalism in the Third World, Indians in the 1960s forged a consensus on what would be the goal of government policy.[23] One of the most important events which marked the emergence of tribal

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[22]Also in the early 1960s, it appeared that even the U.S. Supreme Court had joined the termination movement. In Organized Village of Kake v. Egan, 369 U.S. 60(1962), the Court held that the Secretary of Interior had no authority to authorize fishing by Tlinget Indians, for whom no reservation had been set aside, in a manner contrary to state law. Also, a divided court held in Federal Power Commission v. Tuscarora Indian Nation, 362 U.S. 99 (1960) that reservation lands held in fee by an Indian tribe, in contrast to those reservation lands where title was in the United States, were subject to the general domain authority of the Federal Power Act. The decision upheld the taking of nearly a quarter of the Tuscarora reservation by the FPC. Daniel H. Israel, "The Reemergence of Tribal Nationalism and its Impact on Reservation Resource Development," University of Colorado Law Review, 47 (1976):617-52.

[23]Sources consulted in the description of the emergence of the "Red Power" movement include: Stuart Levine and Nancy O. Lurie, eds., The American Indian Today (Baltimore: Penguin Books, 1968); Stan Steiner, The New Indians (New York: Harper and Row, 1968); Deloria, Custer Died; Broken Treaties; Vine Deloria, Jr., We Talk, You Listen (New York: Dell, 1970); Murray Wax, Indian Americans: Unity and Diversity (Englewood Cliffs, NJ: Prentice-Hall, 1971), pp. 135-56; D'Arcy McNickle, Native American Tribalism (London: Oxford University Press, 1973); Howard M. Bahr, Bruce A. Chadwick, and Robert C. Day, eds.,

nationalism was the American Indian Chicago Conference in June 1961. Despite gloomy predictions that the conference would fail because of factionalism, Indians of all orientations--traditional and assimilated, reservation and urban, old and young--reached a public consensus on a "Declaration of Indian Purpose" after a week of discussion. The tone of the document was set by the opening resolution:

> In order to give due recognition to certain basic philosophies by which the Indian people and all other people endeavor to live, we, the Indian people must be governed by high principles and laws in a democratic manner, with a right to choose our own way of life. Since our Indian culture is slowly being absorbed by the American society, we believe we have the responsibility of preserving our precious heritage, recognizing that certain changes are inevitable. We believe that the Indians should provide the adjustment and thus freely advance with dignity to a better life educationally, economically, and spiritually.[24]

The body of the declaration condemned federal efforts toward Indian assimilation, expressing the desire of the tribes to "participate in developing their own programs with help and guidance as needed and requested, from a local decentralized technical and administrative staff, preferably located conveniently to the people it serves."[24]

Conspicuous among the conference participants was a young adult Indian group, which injected a spirit of militancy into the discussions.

Native Americans Today: Sociological Perspectives (New York: Harper and Row, 1972); Josephy, Now That the Buffalo's Gone; Alvin Josephy, Jr., ed., Red Power (New York: McGraw-Hill, 1971); Theodore W. Taylor, American Indian Policy (Mt. Airy, MD: Lomond Publications, 1983); and Cahn and Hearne, Our Brother's Keeper.

[24]Accounts of the origin and proceedings of the AICC are found in Steiner, New Indians, pp. 28-38; McNickle, Native American Tribalism,

Composed mostly of college students, the group had formed a National Indian Youth Council (NIYC) a year earlier. NIYC became an effective rallying force for young dissidents throughout the 1960s, taking direct action to secure legal rights and continue federal government support for tribal enterprises.[25]

Indians, and Indian youth in particular, were profoundly influenced by, but apart from, the civil rights movement. Although there was pressure on Indians to join the movement, very few of them participated. The reason, according to Vine Deloria, Jr., was that the goals of civil rights activists were incompatible with the goals of Indians. Whereas "equality" in a black-white context meant that the black man should have the same legal rights and economic opportunities in his individual capacity as the white man, "equality" in an Indian-white context meant that tribal groups should be recognized as sovereign entities with powers of self-government comparable to that of any nation. To the Indian, the struggle of blacks for civil rights encompassed the same

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pp. 116-18; Josephy, Red Power, pp. 37-40; Levine and Lurie, pp. 16-18.

[25]Also in September 1961, the NCAI elected a new slate of officers, mostly from the ranks of AICC progressives, and the organization took on a more progressive outlook. It chose the repeal of Public Law 280 as its immediate target. Shirley Hill Witt, "Nationalistic Trends Among American Indians," in Levine and Lurie, American Indians Today, pp. 93-127. Relations between the NIYC and the NCAI were uneasy. NIYC leaders viewed NCAI as dominated by the leaders of the Five Civilized Tribes of eastern Oklahoma, who were able but conservative. The NCAI, prior to its takeover by younger Indians, denounced the tactics of the civil rights movement. This position frustrated young Indians, who saw protest as an essential tool for disadvantaged groups. Wax, Indian Americans, pp. 169-95.

radical individualism that had been used to justify allotment and termination.

Indians could not totally ignore the impact of the civil rights movement. For one thing, there developed a sense of competition among Indians with the black community during the days of the civil rights movement. Indians resisted being "defined as a subcategory of the black" since the goals of the two minority groups were not the same. At the same time, however, Indians sought to capitalize on the success of their black neighbors in securing legislation. Prior to 1964, Indians usually had not been included as beneficiaries of legislation intended for the general population, since it was the belief of many members of Congress that the BIA budget sufficiently answered Indian demands. But when the Economic Opportunity Act was in its formative stage, Indians organized under the Council on Indian Affairs, a federation of church groups and Indian organizations, and convinced Washington officials that they should be included in the provisions of the Act.[27]

Adopting the vocabulary and techniques of blacks to get serious media consideration of their grievances, Indians employed protest tactics. Strict conservation laws adopted by Washington, Idaho, and Oregon to regulate the supply of fish in northwest streams and rivers

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[26]Deloria, Custer Died, pp. 169-95.

[27]Josephy, Red Power, pp. 53-7. Deloria and Lytle state that the first shift away from termination may have occurred in 1961 when Congress made Indian tribes eligible for aid under the Area Redevelopment Administration Act. Vine Deloria, Jr., and Clifford M. Lytle, American Indians, American Justice (Austin: University of Texas Press, 1983), pp. 18-19.

conflicted with treaty rights which granted unlimited hunting and fishing privileges to Indian tribes of the Northwest. To dramatize the issue, leaders of NIYC arranged confrontations between Indian fishermen and state game wardens with the news media on hand. After a series of arrests of Indian fishermen, the "fish-ins" triggered a general Indian resistance in the Northwest against any further state intrusion upon treaty fishing rights.[28]

Then, according to Deloria, the increased militancy of Indians began to spread across the country as people heard about the fishing rights issue. Local groups of Indians began to organize themselves and demand changes in their conditions. Among these groups was the American Indian Movement (AIM), formed in Minneapolis in 1968 to combat local discrimination. According to Deloria, relations between tribal governments and the federal government were affected deeply:

> With the development of protest groups, the tribal leaders had a chance to play off the government against the expanding activist organizations. The government officials knew that if they were unreasonable or did not make concessions to the tribal officials, they would be confronted

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[28]Accounts of the Northwest "fish-ins" are found in Steiner, New Indians, pp. 48-64; Bahr, Chadwick, and Day, Native Americans Today, pp. 507-9; Deloria, Broken Treaties, pp. 25-7; Now That the Buffalo's Gone, pp. 177-212. The fishing rights demonstrations attracted nationwide attention as well for the participation of Marlon Brando and Dick Gregory. Indians also participated in the Poor People's Campaign of 1968 but in few numbers. According to Deloria, the goal of the campaign, to fight poverty among all groups, was "too generalized" for Indians concerned about tribal existance within the homeland reservation. Deloria, Custer Died, pp. 182-3.

> by activists who sought even more radical change than did the tribal councils.[29]

The first real test of this situation in the context of national Indian politics occurred in Santa Fe, New Mexico in 1966. Secretary of the Interior Stewart Udall had just fired Philleo Nash, Commissioner of Indian Affairs since 1961, because of Nash's outspoken position against the termination of the Colville tribe in eastern Washington state. Udall had called a meeting of the highest officials in the BIA to plan a new program for Indians. Before the meeting took place, the National Congress of American Indians (NCAI) leadership discovered that part of the program was to disqualify the tribes as sponsoring agencies in the War on Poverty and turn the community action funds over to the BIA for programming. At the call of NCAI, representatives from sixty tribes arrived in Santa Fe to oppose the projected goals of the Interior meeting.

On the second day of the Interior meetings, tribal elders planned to march to the Episcopal Church, where the BIA was meeting, and hold a silent vigil in protest against the Bureau's refusal to allow Indian observers to attend the meeting. When plans for the march were relayed to Udall, he agreed to meet with the Indian officers of NCAI.

According to Deloria, who as executive director of the NCAI was present at the meeting, Udall acknowledged that he was under pressure

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[29]Deloria, Broken Treaties, p. 28.

[30]For descriptions of the Santa Fe meeting, see Steiner, The New Indians, pp. 250-89; Deloria, Broken Treaties, pp. 27-32; and Robert Day, "The Emergence of Indian Activism," in Bahr, Chadwick, and Day, Native Americans Today, pp. 519-30.

from certain senators on the Interior Committee to support a full termination program. His proposal to the NCAI was that if it would not object to the termination of the Agua Caliente tribe of California, he could buy five years of peace for the tribes. During that time, said Udall, he could work to stop the termination policy altogether, including the attempt to terminate the Colville tribe. Stunned by this proposal, the NCAI told Udall that it would not support any portion of the administration's new program for Indians until Udall dropped his plans for termination. Furthermore, the NCAI leaders informed the Secretary they would publicly announce the Agua Caliente termination proposal and work with the elderly tribesmen and NIYC activists to protest.

Finding this unexpected resistance from tribal elders and the NCAI leadership, and perhaps realizing the political gains the NIYC could make from this proposal, Udall decided not to support termination of the Agua Caliente. As the meeting in Santa Fe ended, Udall promised to create an "Omnibus Bill" which would incorporate all the problems of the Indians into one major piece of legislation and which he vowed to support personally. A "tenuous promise" was extracted by the NCAI that they would be consulted on the content of the legislation as it was being developed.[31]

However, as the summer of 1966 began, Interior Department officials were already drafting the Omnibus Bill without prior consultation

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[31]Deloria, Broken Treaties, p. 28.

with the tribes. Somehow the NCAI got hold of the bill before new BIA Commissioner Robert Bennett was to begin his tour of western states to obtain advice from Indian tribes on what kind of legislation they wanted.

The bill itself contained many favorable provisions, according to Deloria, but did not contain an administration commitment to repudiate termination. Copies of the bill were distributed to the tribes in advance of Bennett's consultation sessions, and the tribes made known their opposition.[32]

The drafting process continued, however, and on February 2, 1967, a large group of Indians was called together in Washington, DC to give their approval to the Omnibus Bill. Instead, they voiced their opposition in a letter to President Johnson, calling for a "Foreign Aid Program" for American Indians of half a billion dollars. The group proposed that the federal government recognize and deal with the tribal communities in the same way it was treating the newly emerging independent nations of the Third World.[33]

Though the Johnson administration rejected the Indian demands, Indian opposition to the Omnibus Bill killed its chances in the Congress. In retrospect, the twin victories of the NCAI over Interior proposals were a significant step along the road of asserting influence over policies that would affect Indians. It also illustrated the added

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[32]Ibid., pp. 31-2.

[33]Ibid.; also Josephy, Red Power, pp. 67-77.

leverage that Indian protest tactics could give to established leadership.

Furthermore, the "Black Power" movement which emerged in 1966 began to affect Indian political orientations.[34] "Red Power" became a rallying cry, and the definition of Indian power took on a historic dimension with appeals to the past glories of great warriors such as Crazy Horse and Geronimo. Young Indians who had lived in urban areas for some time became the leaders of this movement. Rather than demand concessions from the government to change present conditions, the Indian activists called for a restoration of tribal lands which were taken away illegally during the last century. Thus, the theory of independent tribal sovereignty, which was a reality before the "white man" came, was revived among young Indians and became known as the "treaty ideology."

It remained for the right incident to catalyze the various strands of Indian political opinion. The opportunity struck at Alcatraz Island, California on November 19, 1969, where three hundred Indians calling themselves Indians of All Tribes, most of them urban dwellers, landed on the abandoned prison site and demanded that the

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[34]Indians were more sympathetic to the demands of the "Black Power" activists than the integrationist demands of the early civil rights movement. Approving of demands for black separatism and cultural and economic self-sufficiency, one Indian exclaimed, "Now they're getting smart. They're proud of who they are." Nancy O. Lurie, "An American Indian Renascence?," in Levine and Lurie, American Indians Today, p. 304; also Deloria, We Talk, You Listen, pp. 104-18.

federal government give them title to it.[35]

This claim was ideologically based on treaty relationships between the government and the Indian tribes. Alcatraz became the focal point of Indian protest and the inspiration of Indians everywhere. To young Indians, the capture of Alcatraz marked the beginning of a new movement to recapture the continent and assert tribal independence from the United States. To the elderly, more traditional, "full-blood" Indians, the demand that past treaty commitments be honored by the federal government struck a responsive chord. For decades these holistic carriers of ancient Indian ceremonies had rejected any federal interference in the affairs of tribes, counseled complete isolation from white society, and repudiated existing tribal leaders under the Indian Reorganization Act (IRA) as puppets of the federal government. Thus, an "alliance of the heart" was built between the culturally conservative elderly and the politically militant young who sought refuge from city life in the practice of ancient tribal customs.[36] In support of tribal elders, urban Indians advocated the abolition of reservation political structures under the IRA and the re-creation of ancient, traditional forms of tribal governance. In return, after Alcatraz the tribal elders began to take the militants seriously when they discussed the issue of treaty reform and gave substantial support to their efforts.

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[35]The acount of the Alcatraz occupation is derived from Deloria, Broken Treaties, pp. 37-41; Josephy, Red Power, pp. 185-90; and Day, "Emergence of Indian Activism," pp. 526-28.

[36]Deloria, Broken Treaties, pp. 40-41.

Of course, not all Indians supported the use of protest tactics or agreed with the demand for the abolition of the IRA. Some tribal leaders publicly expressed their disapproval of the illegal invasion of government property at Alcatraz. Tribal chairmen defended existing governmental structures and stated that more could be done for Indians by "working within the system." However, according to Deloria, the failure of some established tribal leaders to exploit the land and treaty issues raised by the Alcatraz incident served only to isolate them from the vast majority of Indians who were becoming increasingly more impatient with the lack of governmental responsiveness to Indian demands.[37]

Further Indian Political Development

As Indian protest demonstrations became more numerous and imaginative by the late 1960s, Indians became more aggressive and sophisticated in utilizing conventional political tactics. The NCAI continued monitoring national policy developments. Stimulated by the increased availability of federal grant programs, tribal governments developed extensive contacts with federal agencies.[38] Tribes in various states or regions banded together in organizations to help each other and increase their bargaining position with the private sector, states, and the federal government. Among such organizations

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[37]Ibid., p. 38.

[38]For a recent analysis of Indian tribes and "the Washington Connection," see Robert L. Bee, The Politics of American Indian Policy (Cambridge, MA: Schenkman, 1982).

were the Alaska Federation of Natives, Affiliated Tribes of Northwest Indians (twenty tribes), All Indian Pueblo Council (eighteen Pueblos), United Sioux Tribes of South Dakota (eleven tribes), and the United South and Eastern Tribes (ten tribes).[39]

Publicity was used effectively to exploit the sympathy (or guilt) of Americans toward "the first Americans." One of the leading Indian spokesmen, Vine Deloria, Jr., became widely known for his books and articles. The American Indian Press Association, based in Washington, provided a national Indian news service. Indian publications were established, including the quarterly journal, The Indian Historian, and Akwasnesne Notes, a newspaper published on the Mohawk reservation with a nationwide circulation of 50,000.

Indians also became more conscious of utilizing the ballot box as a political weapon. Though Indians are scattered across the nation and their access to voting has been restricted by statutes, poverty, and ignorance, Indian bloc voting has made the difference in many state and local elections in Western states. Voter education and registration drives among Indians were organized in the mid-1960s. By 1966, fifteen Indians were serving in six Western state legislatures. The United Sioux tribes of South Dakota organized a petition drive in 1963 to place the issue of repealing the state law assuming criminal jurisdiction over Indian reservations before voters in a state-wide referendum.

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[39]Other inter-tribal groups are listed in Taylor, American Indian Policy, p. 141.

The repeal effort was successful, as the state jurisdiction law was defeated in the general election by a margin of five to one.[40]

Following the path of civil rights organizations, Indians stepped up litigation activity to gain judicial recognition of their demands. First spurred by the passage of the Indian Claims Commission Act of 1946, Indian tribes hired lawyers to file suits for recovering monetary damages caused by treaty violations.[41] When Congress enacted legislation in 1966 to give tribes the right of access to federal courts in cases where the U.S. attorney declines to bring an action, tribal legal activity increased dramatically. According to Daniel Israel, this legislation "granted the tribes tremendous leverage to push, cajole, and pressure the United States to take action on behalf of Indian tribes where it might not have done so before."[42] Moreover, the Native American Rights Fund became in 1970 the first nationwide legal action group to help Indians with cases involving major national issues of Indian law.

The Policy Stream: Indian Self-Determination Experiments

Another significant development during the 1960s that contributed to demands for Indian self-determination was the establishment of Indian

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[40]Steiner, New Indians, pp. 233-49.

[41]Henry F. Dobyns, "Therapeutic Experience of Responsible Democracy," in Levine and Lurie, American Indians Today, pp. 268-94.

[42]Israel, "Reemergence of Tribal Nationalism," pp. 624-25.

Community Action Programs (ICAP) under the Economic Opportunity Act of 1964.[43] Under community action, Indians were asked to prepare and submit plans for local projects. Once a plan was approved, the Office of Economic Opportunity (OEO) contracted with the tribal organization to Indians who administered the program themselves. This transfer of authority and responsibility for decision-making to the local community was an administrative device which the BIA had failed to employ after over one hundred years of stewardship. Although the Vietnam War and the national controversy over the concept of ICAPs resulted in appropriations cutbacks and increased governmental management control,[44] Indian experiences with ICAPs were generally positive. By the end of the decade the leaders of Indian reservations in seventeen states, with technical assistance from outside advisors, had established sixty ICAPs.

One of the most important impacts of the ICAP experiments was its influence on Indian education.[45] In the Rough Rock community on

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[43]U.S., Congress, American Indian Policy Review Commission, Final Report, Committee Print (Washington, DC: Government Printing Office, 1977), pp. 78-80 (hereafter cited as AIPRC Final Report); Josephy, Red Power, p. 59.

[44]See Daniel Patrick Moynihan, Maximum Feasible Misunderstanding (New York: Free Press, 1969). On some reservations, elected tribal leaders saw ICAPs as a way for reservation opponents to build a power base. Thus, to some extent, the ICAPs exacerbated tensions between tribal governments and the younger Indians who tended to be the administrators of the ICAPs. This conflict parallels the city hall-neighborhood disputes that occurred throughout the country over the administration of the War on Poverty programs.

[45]McNickle, Native American Tribalism, pp. 119-22; Margaret Szasz, Education and the American Indian: The Road to Self-Determination, 2nd

the Navajo reservation in Arizona, a new school plant had just been completed by the BIA when OEO proposed that the Navajo community assume control of the school through a school board to be appointed by the community. The OEO agreed to provide developmental funds, if the BIA would make available to the community the operating funds which it had budgeted already for that purpose.

The significance of the Rough Rock school was that for the first time an Indian community, not the professional people recruited from the outside, became responsible for the success or failure of a school. According to the final report of the American Indian Policy Review Commission in 1977, the transfer of authority and the shift in educational goals and methods which resulted from community control of Indian schools had an "explosive" effect all through the Indian country:

> As a consequence of the shift in control, the school could contribute to the development of the community by providing learning opportunities for adults as well as children. Because it was now part of the community, the school became involved in the normal process by which children are integrated into the adult world; it was no longer an alien institution depriving the adult world of a natural increment of functioning members. By teaching English as a second language, the child could acquire a basic competency in his native language before venturing into a foreign mode of speech, and the school became less threatening.[46]

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ed. (Albuquerque: University of New Mexico Press, 1977), pp. 156-80.

[46]AIPRC Final Report, p. 79. Indian participation in education was also encouraged by the OEO Headstart program for pre-school children. The Kennedy Task Force, Fund for the Republic Report, the OEO, and the U.S. Office of Education all recommended increased Indian participation in education programs. Bilingual education and Indian community control of schools were stressed. In 1969 Navajo Community College,

These experiments in Indian self-determination were an important step in the process of policy change. The perceived success of Indian-controlled programs gave Indian policy activists a positive base from which to advocate greater Indian control. Subsequent policy formulators in Washington were given a concrete idea of what Indian self-determination meant as opposed to termination or greater bureaucratic paternalism. The OEO experiments led to the generation of numerous proposals for increased Indian control, from which policy formulators would eventually draw.

Political Leadership and Indian Self-Determination

Federal Program Expansion and Entrepreneurial Activity in Congress

Indian demands for major policy change began to find U.S. senators willing to invest personal and political resources in the Indian cause. Responding to the success of the OEO's approach to reservation program administration, Senator George McGovern (D-S.D.), member and, from 1967 to 1972, chairman of the Indian affairs subcommittee, introduced a resolution in the Senate on October 13, 1966, which called for a revised national Indian policy.[47] The measure would have made available

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the first Indian-controlled college in the U.S., was established. Indian interest groups in education formed, the first of which was the National Indian Education Association in 1969. In 1971 the Council of Indian Controlled School Boards was created to provide technical assistance to Indian school boards.

[47]Josephy, Red Power, pp. 59-66. There was irony in the introduction of this proposal and in the ICAPs, according to Deloria and Lytle, because these efforts were first proposed by John Collier in the original Indian Reorganization Act. Congress struck the proposal from

to the tribes the services of other federal agencies, whose operating relations with the Indians would involve the tribes in the policy-making, control, and management of their programs. Though the resolution failed to get out of the Interior Committee, it was the first sign that Congress was reconsidering the termination policy.

McGovern's proposal was also the first visible indication of a split among members of the Interior Committee on the termination issue. As the leadership of the committee continued to adhere to the policy through the Johnson years, junior members of the committee such as McGovern, Lee Metcalf (D-Mont.), Frank Moss (D-Utah), and Paul Fannin (R-Ariz.) became more critical of past congressional action on Indian issues. When McGovern assumed the chairmanship of the Indian affairs subcommittee in 1967, hopes were raised that the subcommittee would become an Indian advocate. However, McGovern's record on Indian issues was somewhat mixed. Though he personally opposed termination, McGovern did not challenge the Interior Committee leadership on the issue. In part, this was because the committee was still under the strong influence of Anderson and his staff member Gamble. Moreover, like many other members of Congress, McGovern was diverted from being an active chairman by matters of greater concern to a broader public and to his political future. He was active on the Senate Foreign Relations Committee as a leader of the anti-war caucus. A strong supporter of

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the Act. Thirty years later, Congress returned to the original Collier proposal in the form of McGovern's bill. Deloria and Lytle, American Indians, American Justice, pp. 253-57.

Senator Robert Kennedy's presidential candidacy, McGovern became a stand-in presidential candidate at the 1968 Chicago convention after Kennedy's assassination. From then on, he became active in national party politics as the cochairman of the commission to reform delegate selection procedures for the 1972 national convention and, of course, as a presidential candidate in 1972.

Senator Fannin, McGovern's colleague on the Indian affairs subcommittee, worked in a different way to achieve Indian policy reform. Especially interested in Indian education, Fannin attempted to establish a special subcommittee of the Interior Committee. After his request was rejected, Fannin wrote in June 1967 to Senator Wayne Morse (D-Ore.), chairman of the Labor and Public Welfare Committee, of which Fannin was also a member, to suggest the establishment of such a subcommittee. Morse's response was favorable, and the Special Subcommittee on Indian Education was authorized on August 31, 1967.[48]

Labor and Public Welfare was the logical committee to investigate Indian education, since the federal role in Indian education had increased tremendously. Before 1950, Indian education was the responsibility of the BIA, which provided education services directly through boarding schools and reservation day schools (Snyder Act of 1921) and indirectly through grants to local school districts near reservations which served Indian children (Johnson-O'Malley Act of 1934). However, beginning in 1950 numerous federal programs which served Indians as part of a larger population came into being. Impact aid, P.L. 815 (school

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[48]Szasz, Education and the American Indian, pp. 149-51, 223.

construction), the Elementary and Secondary Education Act of 1965 (especially Title I, aid to school districts with disadvantaged children, and Title VII, bilingual education), and OEO-Head Start were each having an effect on Indian education. The Department of Health, Education, and Welfare (HEW) and OEO were now involved in what previously had been the responsibility of the Interior Department. This meant, of course, that the committees with oversight over federal education programs (Labor and Public Welfare, House Education and Labor) were developing an interest in how these programs were affecting Indian children. Liberal Representatives and Senators, mostly responsible for the creation of these programs, were especially interested.

The chairman of the special subcommittee was Senator Robert Kennedy (D-N.Y.), who had a special regard for the subcommittee's work. As Kingdon states, policy entrepreneurs have multiple personal, policy, and political motives for taking up an issue as their own, and Kennedy was no exception.[49] His personal interests in the problems of disadvantaged groups and in solutions that favored greater citizen participation were matched by the problems of Indian education policy and the call by Indians and education policy experts for greater Indian involvement. Politically, his image as a champion of the underdog would be enhanced in a policy area where the Johnson administration could boast few accomplishments.

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[49]Kingdon, Agendas, Alternatives, and Public Policies, pp. 129-30. Policy entrepreneurship can promote personal interests, such as protecting bureaucratic turf or gaining electoral benefits. Or, advocating proposals can enable a leader to promote his values or affect the shape of public participation in politics, being part of the action.

After Kennedy's tragic death in June 1968, his brother Edward Kennedy (D-Mass.) became chairman of the subcommittee. Having similar policy and political interests as Robert, as well as a deep personal interest in wanting to finish the work his brother started, Kennedy was an active chairman of the special subcommittee during its two-year life span. He became a champion of Indian causes on the Senate floor and in the Labor and Public Welfare and Judiciary committees.

Next to the Kennedys and Fannin, the most active member of the subcommittee was Senator Walter Mondale (D-Minn.). A protege of probably the most prolific policy entrepreneur in modern Senate history, Hubert Humphrey, Mondale was publicly critical of the Interior Committee's neglect of Indian problems. "Congress continually places a higher priority on land and resource policies," said Mondale, "than it does on the human need programs of Indians."[50] Mondale joined with Kennedy to produce a final report of the special subcommittee in November 1969 that was highly critical of federal, state, and local efforts to provide adequate educational opportunities to Indian children.[51]

The reluctance of the Interior committees of Congress to deal with problems on Indian reservations helped produce one other, albeit

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[50]Szasz, Education and the American Indian, p. 149.

[51]U.S., Congress, Senate, Committee on Labor and Public Welfare, Special Subcommittee on Indian Education, Indian Education: A National Tragedy--A National Challenge, S. Rept. 91-501, 91st Cong., 2nd sess., 1969.

unlikely, Indian advocate in the Senate. Senator Sam J. Ervin (D-N.C.) conducted hearings of his Subcommittee on Constitutional Rights of the Committee on the Judiciary from 1961 to 1968 on the problems Indians encountered when asserting their constitutional rights in their relations with federal, state, local, and tribal governments.[52] Ervin's interest in this subject stemmed from a number of factors, among them being his long-standing concern for the protection of constitutional rights and a large Indian constituency in his home state. Also, advocacy of Indian rights provided Ervin with "occasional opportunities to embarrass his northern liberal colleagues, who were allegedly less interested in the first Americans than in the politically powerful black constituency."[53]

The subcommittee discovered widespread abuse of the individual rights of Indians both on and off the reservation. Furthermore, the subcommittee recognized that the assumption by sixteen states under Public Law 280 of criminal jurisdiction over cases arising in Indian country severely eroded the authority of tribal governments. The work of Senator Ervin resulted in the passage of the Indian Civil Rights Act of 1968, hastily inserted as Title II of the Civil Rights Act of 1968. Contained in the act were provisions preventing states from assuming any further jurisdiction in Indian country without tribal

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[52]See Donald L. Burnett, Jr., "An Historical Analysis of the 1968 'Indian Civil Rights' Act," Harvard Journal of Legislation, 9 (May 1972):557-626.

[53]Ibid., p. 576.

consent and permitting states to retrocede any jurisdiction asserted under Public Law 280. In addition, an Indian Bill of Rights was enumerated. It subjected tribal governments to many of the same limitations imposed on federal, state, and local governments by the U.S. Constitution.[54]

Thus, the deadlock in the Indian policy subsystem over termination and the changed political climate, caused partly by Indian political activism and partly by a national mood sympathetic to the plight of minorities, helped set the stage for the emergence of political leadership in the U.S. Senate on Indian policy. Federal program expansion already had sensitized some members of Congress to the plight of Indians

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[54]Indians have praised and condemned the law, as it has been implemented. On the one hand, some experts on Indian law argue that the law severely erodes tribal sovereignty. Some tribes have protested that they have been drawn into costly and burdensome litigation initiated by tribal members. Furthermore, the federal courts have been inconsistent in their interpretation of the law, sometimes assuming jurisdiction over a limitless range of complaints involving election disputes and membership rights. Some courts have applied strict limitations on the power of tribal governments similar to those applicable to state and federal governments, while other courts have been more flexible, taking into account the context of tribal practices. Some Indians argue that the law represents how well-intentioned legislators unfamiliar with conditions on the reservations construct laws which work against Indian interests in the long run. Though Senator Ervin has a sizable number of Indians in his state, his contacts have mostly been with one of the most fully assimilated tribes in the United States, the Cherokees in western North Carolina.

On the other hand, some experts view the law as a recognition by Congress that Indian tribes were exercising ever broader governmental powers and that increased tribal government powers could only be maintained if restrictions on the exercise of that power could be imposed. Thus, in granting tribal members the right of redress against arbitrary tribal government action, Congress formally acknowledged and strengthened the role of legitimate tribal governments. Ibid. See also Israel, "The Reemergence of Tribal Nationalism," pp. 625-26, and AIPRC Final Report, pp. 210-14.

and to the failure of the Interior Committee to do something about it. There were limits to the extent of senatorial leadership, since nationally-oriented senators such as McGovern and Kennedy could only give a limited amount of time to Indian matters. Nevertheless, a vacuum in political leadership advocating Indian interests caused by the neglect of the Interior committees and the inaction of the Kennedy and Johnson administrations began to be filled. Late in the 1960s, however, the White House began to assume a more active role in Indian affairs.

The President's Agenda: An Overview

Of all actors in the political system, no one has the capability enjoyed by Presidents to set the policy agenda for the government and the nation. Formal prerogatives, political support in Congress and the public, and the ability to command public attention all contribute to the President's power in the agenda-setting process. It is no surprise, therefore, that getting on the President's agenda is a major goal for those with concerns about public problems and proposals to deal with those problems.

How is the President's agenda determined? According to Paul Light's study of presidential domestic policy from Kennedy to Carter, Presidents are forced to make choices from among items competing for attention.[55] The choices each President makes are based upon the resources he possesses and the goals he has for his administration. Presidential resources--which include such things as his political and policy

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[55]Light, The President's Agenda.

expertise, the information-gathering capacity of his office, party support in Congress, and the support of the general publiic--set limits on the timing and size of the President's program.[56] Presidential goals--which can be categorized as reelection, historical achievement, and good public policy--determine the issues the President selects.[57] Presidents will choose those issues that will help most to achieve those goals. The selection process is hardly formal or comprehensive, and sometimes issues are not selected but are thrust upon the President. Nevertheless, the President and his staff engage in an ongoing search for issues and alternatives that will provide the greatest benefits in terms of goals, and the least costs in terms of resources to the presidency. Such issues and alternatives may come from any source, for Presidents are not ashamed to borrow ideas.[58]

In light of this framework, it generally can be said that problems and issues affecting Indian tribes are unlikely to stir presidential interest in normal circumstances. If a President is concerned with reelection and/or the history books, there are numerous other issues affecting a far larger public to consider. Moreover, when comparing the benefits of focusing on Indian concerns to the costs, a President may be taking a considerable risk. Strengthening Indian sovereignty

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[56]Ibid., pp. 13-34. Light identifies the President's internal resources as time, information and expertise. External resources are measures of a President's political capital, which include party support in Congress, public prestige, electoral margin, and professional reputation.

[57]Ibid., pp. 62-80.

[58]Ibid., pp. 82-83.

over people, lands, and resources may provoke opposition from voters, organized interests, and politicians, particularly in the West. Members of Congress, particularly those on the Interior committees whose vote may be needed on a crucial issue, may be angered. Providing for the human needs of Indians would require large budgetary outlays. Relations with other minorities and disadvantaged groups, who covet and compete for the President's attention, may be adversely affected.

Thus, Presidents in the modern era usually have left the formulation and administration of Indian policy to the BIA, the Interior Department, and the Office of Management and Budget (OMB) in the executive branch, and to Congress. At most, Presidents set a general tone which indirectly affects what lower-level policymakers do.[59] The President's general direction, as well as the perceived mood of the public, sets broad opportunities and constraints on the actions of legislators and administrators. For example, the encouragement of governmental experimentation and intervention to help the disadvantaged, which was the mark of the FDR administration, provided a favorable climate for the formation of the Indian New Deal policy by BIA Commissioner John Collier and Indian reformers.

Nevertheless, there are circumstances under which Presidents and their staff will become directly involved in any low-level policy issue, including Indian affairs. Crises such as natural disasters or violent disturbances may force presidential action. Political pressures resulting from deadlock in policy subsystems or groups attempting to

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[59]See Robert R. Sullivan, "The Role of the Presidency in Shaping Low-Level Policy Processes," Polity, 3 (Winter 1970):201-21.

expand the scope of conflict may require presidential attention. Changes in the public mood or the availability of new ideas and technologies may give a policy area of relatively low public concern new political attractiveness. Presidents themselves or ranking White House members may have personal interests or expertise in a low-level policy problem and direct that action be taken.[60]

In the late 1960s, such atypical circumstances arose to cause Presidents Johnson and Nixon to place Indian affairs on their domestic policy agendas. How Indian problems came to the attention of each President and how each President dealt with Indian problems provide an interesting contrast.

Kennedy, Johnson, and Indian Policy

The practice of putting together a presidential legislative program and forwarding it to the Congress began with Franklin Roosevelt and became institutionalized under Truman and Eisenhower. Under Eisenhower, departments and agencies were called upon to submit legislative items to the Bureau of the Budget for legislative clearance. The cleared

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[60]White House intervention in low-level policy processes ranges from direct presidential intervention to continuous intervention by White House aides. The extent of intervention depends upon: (1) the degree of environmental turbulence, particularly the level of conflict in a subsystem; (2) the degree of policy compatibility between policies passed at the subsystem level and presidential-level policy directives; and (3) the strength of administrative leadership, referring in particular to the degree of unity or teamwork among the various levels of executive leadership from the Cabinet and sub-Cabinet to the agency level. E. Fletcher McClellan, "Presidential Intervention and Policy Change in Subsystem Politics: The Dynamics of Federal Policy toward American Indians," paper presented at the annual meeting of the Midwest Political Science Association, Chicago, Illinois, April 25, 1980.

items became the President's program and were sent on to Congress.[61]

Desiring large-scale, innovative, legislative programs, but distrusting the bureaucracy to come up with new ideas, Presidents Kennedy and Johnson relied upon the device of forming presidential task forces to generate legislative proposals in numerous issue areas.[62] Kennedy's task forces operated during the transition period and first year of his presidency across a wide range of issues. Johnson's task forces were established throughout his term of office. In fact, by 1966 the task force device became a regularized means of generating policy proposals across most policy areas. Some task forces were composed mainly of outside experts and leaders, from which the most far-reaching proposals for policy change would be expected, while other task forces were composed of departmental and agency experts, which generally offered proposals which produced small changes. Of course, task force reports in areas which would produce the greatest benefits in terms of political gain, historical achievement, or good public policy would receive attention from the President and his aides for inclusion on the presidential agenda. Reports in other areas would

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[61]Richard E. Neustadt, "Presidency and Legislation: Planning the President's Program," American Political Science Review, 49 (December 1955):900-1021. For the continued development of White House program planning capacity, see also Stephen J. Wayne, The Legislative Presidency (New York: Harper and Row, 1978); Thomas E. Cronin and Sanford D. Greenberg, eds., The Presidential Advisory System (New York: Harper and Row, 1969); and Richard Pious, The American Presidency (New York: Basic Books, 1979), pp. 147-75.

[62]Wayne, Legislative Presidency, pp. 103-7.

be forwarded to the departments and agencies for their consideration.

Both Kennedy and Johnson appointed task forces to deal with Indian policy.[63] Until 1968, however, the task force reports did not receive presidential attention. Of greatest concern to Kennedy and Johnson was the completion of the New Deal and Fair Deal programs offered by their Democratic predecessors. Thus, both Presidents pushed civil rights, Medicare, and federal aid for education. The development of anti-poverty programs was each administration's means of extending the New Deal and making their own "mark" on history. The Democratic landslide election of 1964 gave Johnson the political resources necessary to push nearly the entire domestic reform package through Congress in 1965-66.

As a result, the report of the Kennedy task force on Indian affairs, which "disparaged without clearly disavowing termination as an objective and urged a program of 'maximum development of reservation resources,'" was referred to the Interior Department for action.[64] Indian impatience with the department's caution and the Interior committees' opposition

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[63]Another study, coming from the private sector, criticized termination without Indian consent. The Fund for the Republic report recommended that federal programs recognize the value of Indian culture and that Indians should ultimately be allowed to initiate their own programs and manage their own affairs. In the meantime, according to the study, Indians should assume responsibility "for different functions on a piecemeal basis." Commission on the Rights, Liberties, and Responsibilities of the American Indian, The Indian: America's Unfinished Business (Norman: University of Oklahoma Press, 1966).

[64]Josephy, Red Power, pp. 106-7; Subcommittee on Indian Education Report, pp. 170-3.

or indifference to Indian demands led the Johnson White House to appoint another Presidential Task Force in 1966. This task force, which was composed of outside experts and young Indian progressives, issued a report in January 1967 which was highly critical of the BIA and recommended drastic reorganization.[65] Besides proposing substantial increases in federal funding for Indian programs, the task force called for the transfer of the BIA to the Department of Health, Education, and Welfare in order to reflect a shift in priorities from developing natural resources to developing human resources. This report, however, never became a basis for any action, presidential or otherwise. The BIA transfer proposal became a lightning rod for criticism. The Interior committees interpreted the proposed shift as an attempt to remove Indian affairs from their jurisdiction and blocked action on the recommendation. In a move that surprised the Johnson administration, the NCAI, in its executive committee and its annual convention, opposed the transfer. The detachment of the Bureau from the Department of the Interior, the NCAI convention resolved, "could lead to restatement of policy and principles . . . but on a wider and more devastating scale in reference to treaty and other fundamental rights." Both the perceived lack of knowledge and experience of HEW officials in defending Indian land and resource rights and the progress made by many reservation communities under OEO programs contributed to the tribes' rejection of the proposed BIA shift.

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[65]Josephy, Red Power, pp. 108-11; Subcommittee on Indian Education Report, pp. 183-86.

The remainder of the task force report was largely ignored by the administration as it set out to draft the Omnibus Bill. After the bill was withdrawn in early 1967, the President commissioned another task force report. The Inter-Agency Task Force of 1967, consisting of representatives of the Interior Department, Bureau of the Budget, and the Office of Economic Opportunity, recommended in early 1968 that the President explicitly recognize the demands of the Indian movement and call for an end to termination and for increased tribal control of programs along the model of the ICAPs. Reflecting the budgetary strains caused by the Vietnam War, the task force did not propose any new spending programs. No drastic changes in administrative organization were proposed, but the task force suggested that a presidential-level advisory group be formed.[66]

The Johnson White House realized that seven years of study commissions, false starts, and political deadlock had created great frustration within the Indian community. Presidential involvement was necessary to assure the Indian movement that the administration took Indian problems seriously. Therefore, the recommendations of the Inter-Agency Task Force report were incorporated in a special presidential message on Indian affairs sent to Congress on March 6, 1968.

In the message President Johnson employed the "self-determination" language of the Indian movement:

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[66] Subcommittee on Indian Education Report, pp. 186-7.

> I propose a new goal for our Indian programs: A goal that ends the old debate about "termination" of Indian programs and stresses self-determination; a goal that erases old attitudes of paternalism and promotes partnership and self-help. . . . We must affirm the right of the first Americans to remain Indian while exercising their rights as Americans. We must affirm their rights to freedom of choice and self-determination.[67]

Also, the President called for substantial Indian participation at the national and reservation levels for any new government program. Moreover, a National Council on Indian Opportunity (NCIO) was established in the Office of the Vice President by executive order.[68] Chaired by the Vice President, the Council consisted of six Indian members to be selected by the President, the Secretaries of Interior, Commerce, Labor, Agriculture, HEW, and Housing and Urban Development, and the director of the OEO. The concept of the group was that it would serve as an ombudsman in U.S.-Indian relations. Specifically, its functions were to see that Indians received the maximum benefits of programs of the different departments of the government; to encourage coordination and cooperation among the government agencies in their relations with the Indians; to appraise the impact and progress of federal programs used by Indians; and to suggest ways to improve such programs.

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[67]U.S. President, Public Papers of the Presidents of the United States, Lyndon B. Johnson, 1968-69 (Washington, DC: Government Printing Office, 1970), pp. 335-44. See also Subcommittee on Indian Education Report, pp. 186-89.

[68]The NCIO was given statutory authority in November 1968. In 1971 the Attorney General was added to the Council.

It was hoped that the NCIO would exercise leadership in devising a new set of legislative initiatives commensurate with the goal of Indian self-determination, under the leadership of Vice-President Hubert H. Humphrey, who was increasingly interested in Indian affairs. However, three weeks following the President's message on Indian affairs, Johnson announced that he would not run for reelection. As Humphrey made his unsuccessful bid for the presidency, the NCIO did not develop a legislative agenda.

The Kennedy and Johnson administrations bequeathed a mixed legacy to their Republican successor. On the one hand, funding for Indian programs rose substantially over the 1961-69 period.[69] In addition to BIA assistance, Indian tribes became eligible for a host of federal programs, including small business loans, public housing subsidies, and community action projects. By the end of the decade, one-half of the total federal budget for Indian programs came from non-BIA agencies. Moreover, OEO anti-poverty programs indicated that Indian tribes were ready to assume greater control over their collective destinies.

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[69]Josephy, Red Power, pp. 107-8; also Sar A. Levitan and William B. Johnston, Indian Giving: Federal Programs for Native Americans (Baltimore: Johns Hopkins University Press, 1975). In the Department of Health, Education, and Welfare programs under the Indian Health Service, ESEA Title I, impact aid, and public assistance benefited Indians. Also involved in Indian matters were the Department of Labor (manpower training), Commerce (area development aid), Agriculture (rural electrification), Housing and Urban Development (subsidized public housing), the Small Business Administration, the Veterans Administration, and the Office of Economic Opportunity (community action programs, Headstart).

On the other hand, no basic change in federal policy toward Indians occurred. Termination of federal responsibility and eventual assimilation of Indians into the cultural mainstream were actively pursued by leading members of Congress on the Interior committees.[70] Belated recognition of Indian demands for self-determination came from a lame-duck administration. With the Republicans returning to power and the memories of termination policy of the Eisenhower administration still fresh in the Indians' minds, the Democrats' failure to formally repudiate termination during the 1961-69 period perpetuated fear and uncertainty among tribal communities.

Nixon and Indian Self-Determination

Nixon and Domestic Policy. Richard Nixon entered office in 1969 with a different set of resources and goals than his predecessor. Politically, Nixon lacked substantial political capital. He gained the presidency in a narrow election victory with only 43 percent of the popular vote. His party was in the minority in both houses of Congress. Personally, Nixon was less interested in domestic policy

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[70] One significant Supreme Court decision in 1968 loaned support to the opponents of termination. In Menominee Tribe v. United States 391 U.S. 404, the court in a six-to-two decision stated that the passage of the Menominee Termination Act and Public Law 280 did not nullify hunting and fishing rights afforded the tribe by treaty. According to Deloria, "This decision is the first major stepping stone to a complete overthrow of the termination legislation and to the reversal of federal termination policy. For, if nothing else, this case means that an Indian Tribe cannot be destroyed by an arbitrary act of Congress." Vine Deloria, Jr., Of Utmost Good Faith (San Francisco: Straight Arrow Books, 1971), pp. 78-80.

than Johnson. His major area of expertise was foreign affairs, where he spent most of his time as President. Moreover, Nixon lacked a domestic policy program at the outset of his administration. The Republicans in Congress had spent the previous few years fighting the Great Society programs and developed few policy proposals of their own.[71]

One result was that Nixon's domestic policy agenda was much smaller and developed much more slowly than that of Kennedy and Johnson. Major reversals of domestic policy were impossible to achieve, given the lack of party support in Congress. Some accommodation with Congress and the Democrats was necessary for any kind of legislative program to succeed. Yet Nixon realized some sort of domestic program had to be put together as an alternative to the policies of the Democratic party. Moreover, perhaps more than other Presidents, he wanted historic accomplishments for his administration in domestic as well as foreign policy. It did not matter to him, at least in his first term, whether his domestic initiatives would be consistent with orthodox conservative ideology, as long as they captured the public's imagination.

The major domestic initiatives of the first-term Nixon administration reflected the contradictions of Nixon's personal and political position. For example, welfare reform and revenue sharing were ideas which came from experts and advisors with Democratic ties. As proposed,

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[71]This discussion of the development of President Nixon's domestic program is based on Light, The President's Agenda, and Richard Nathan, The Administrative Presidency (New York: John Wiley and Sons, 1983) formerly entitled The Plot That Failed: Nixon and the Administrative Presidency).

both were major innovations which were not easily placed on the ideological spectrum. Domestic initiatives in other areas such as health and the environment also defied classification, as did the dramatic shifts in the President's economic policy.

In contrast to the Kennedy and Johnson task force approach, domestic programs were developed within the Nixon White House in "working groups" composed of White House staff and departmental experts. The in-house "working-group" approach would become formalized as the modus operendi of the Domestic Council, established in 1970 under the direction of John Ehrlichman. Throughout most of 1969 White House domestic advisors were working on welfare reform and New Federalism proposals.[72]

Indian policy formulation in the Nixon administration. Although Nixon promised Indians in the 1968 campaign that he opposed forced termination, there was no indication that Indian affairs would occupy a spot on the President's agenda.[73] During the transition period, Nixon aides commissioned Alvin Josephy, Jr., a noted historian of Indian affairs, to write a report on the history and current status of U.S.-Indian relations and prepare a set of policy recommendations for the administration. In his report, issued February 11, 1969, Josephy reviewed the events of the 1961-69 period and reminded the President of Indian apprehensions concerning the course of Indian policy.

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[72]Nathan, Administrative Presidency, pp. 34-38; also Wayne, Legislative Presidency, pp. 114-22.

[73]Alvin M. Josephy, Jr., "The American Indian and the Bureau of Indian Affairs--1969: A Study, with Recommendations," in Josephy, Red Power, pp. 93-129. On September 27, 1968, during the presidential campaign, the President's campaign organization released a statement

The first action of the new administration, said Josephy, should be the re-enunciaton of the President's campaign pledge on termination. Noting the rise of the "Red Power" movement and the ICAP experiments in Indian administration, Josephy concluded that "the time has come to make Indian self-determination a reality but that certain great obstacles stand in the way." Among these obstacles, Josephy stated, were the Interior committees in Congress; the Budget Bureau; the lowly status of the BIA in the Interior Department; and the unwieldy structure of the BIA. To overcome these obstacles, the report proposed: (1) transfer of the BIA to the Executive Office of the President (where the OEO was housed); (2) if (1) could not be accomplished, the position of the Commissioner of BIA should be elevated to Assistant Secretary status in Interior to gain direct access to the Secretary; (3) reorganize of the BIA and shift the mission of the agency from management to technical assistance; and (4) shift responsibility for the initiation, planning, and implementation of Indian programs (adequately funded) from the executive branch to the Indian tribes.[74]

But despite the Josephy report's insistence that the Nixon administration take immediate and forceful steps to improve Indian relations,

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to the NCAI annual convention that stated that "termination of tribal recognition will not be a policy objective, and in no case will it be imposed without tribal consent." Josephy, Red Power, p. 94.

[74]Though Indians generally supported the recommendations of the Josephy Report, once again they insisted on keeping the BIA in the Interior Department. The Executive Committee of the NCAI called for legislation to make the Bureau an independent executive agency, but the annual convention of the NCAI in October 1969 voted against any shift out of Interior.

little was done in the first few months. Having experienced long and difficult confirmation hearings of his own, Walter Hickel, the new Secretary of Interior, had difficulty getting approval for his choices to assume the top BIA positions. Hickel and Harrison Loesch, the Assistant Secretary for Public Land Management (with line authority over the BIA), had convinced five Indian leaders to take over the Bureau. None was Republican but, as Hickel noted, after the Eisenhower termination years it was next to impossible to find a Republican Indian. The Secretary gained support from Peter Flanigan of the White House staff, in charge of political clearance of executive appointments, but had to withdraw the nominations at the insistence of Senator Gordon Allott (R-Colo.), the ranking minority member of the Interior Committee, that the BIA positions be filled with Republicans.[75]

It was not until October 1969 that Hickel found Louis R. Bruce to head the BIA. The Bruce appointment angered NCAI and NIYC, for the nominee had "all the stereotypes of an 'Uncle Tomahawk' (i.e. affluent, urban, Republican, a New York City-dweller, with no recent activism in his record)."[76] Bruce issued statements rejecting the termination policy and lack of consideration of Indian views during the 1950s, but a number of Hickel's decisions and remarks led Indians to view the Secretary as an exploitive terminationist and they were forceful in their response. Representatives of forty-six tribes

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[75]Walter J. Hickel, Who Owns America? (Englewood Cliffs, NJ: Prentice-Hall, 1971), pp. 167-69.

[76]Day, "The Emergence of Indian Activism," p. 525.

attending the Traditional Indian Unity Convention on the Onondaga Reservation issued a statement calling for Hickel's immediate removal, because he had "destroyed the faith of all Indians toward the U.S. Department of the Interior by his high-handed, inconsiderate, and illegal theft of native Alaskan, Eskimo, and Indian tribal lands, rivers, hunting and fishing rights, timber, oil, gas, and mineral resources."[77]

In a speech to 1,500 members of NCAI convening in Albuquerque, New Mexico, in early October 1969, Secretary Hickel was loudly and repeatedly jeered with calls of "shut up" and "go home, white honky." He could not have finished his speech if President Wendell Chino had not repeatedly called for order. The Albuquerque convention was significant not only because it signaled Indian frustrations with the Nixon administration, but also because of the vocal presence of young Indian leaders in the NCAI. According to Robert Day, "The Albuquerque meeting marked the first occasion in which the emergent trend toward expressive, direct action had exploded in open public rejection of a top white government official at a major Indian convention or conference."[78] As if to underscore the depths of Indian demands for policy change, the occupation of Alcatraz Island occurred a month later.

As Hickel and Bruce struggled to fill the top policy-making slots in the BIA, leadership for formulating Indian policy proposals in the Nixon administration passed to the Executive Office of the President (EOP). The Indian members of the NCIO consulted with tribal leaders throughout the country. Field hearings on the problems of urban Indians

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[77]Ibid., p. 526.

[78]Ibid.

were held in fall 1968 and spring 1969 by the urban Indian subcommittee of the Council, chaired by La Donna Harris, a Comanche Indian and wife of Senator Fred Harris (D-Okla.). Another hearing on federal-state relations in Indian affairs was held at Lake Tahoe, Nevada, in August 1969. As chairman of the NCIO, Vice-President Agnew spoke at the October 1969 NCAI convention. In contrast to the fracas surrounding the address by Secretary Hickel, the delegates warmly applauded Agnew's speech, which stressed Indian leadership and fewer words, less tokenism, and more action.[79]

Joining the activities of the NCIO were Special Assistant to the President Leonard Garment and Special Presidential Consultant Bradley Patterson.[80] Together they formed within the EOP a de facto office for minority relations. Among the tasks their office undertook were the development of the administration's policy on school desegregation and the inter-governmental coordination of civil rights efforts. Originally, Garment and Patterson were not assigned responsibility for coordinating U.S.-Indian policy, since that task was to be performed by the NCIO. However, in the fall of 1969 their job assignments changed.

On October 1, 1969, the Citizens Advocate Center, a liberal Washington-based non-profit organization, released a report entitled Our Brother's Keeper: The Indian in White America. The report was

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[79] Ibid.

[80] Sources on the involvement of the Executive Office of the President in the formation of Nixon Indian policy include Josephy, Red Power; James Wagner and Richard Corrigan, "BIA Brings Indians to Cities, But Has Few Urban Services," National Journal (July 11, 1970):

highly critical of federal policy toward Indians during the 1950s and 1960s. Prior to the publication of the report, Edgar Cahn, a Washington lawyer who initiated and co-edited the report, won endorsement for the study's findings from a group of Indian leaders who then served as an Indian Editorial Board which sponsored the book when it was issued. Following the release of the report, the Indian Editorial Board turned itself into a so-called American Indian Task Force and expanded to forty-two members. The roster of the task force contained some of the best-known Indian leaders in the country, including Earl Old Person, President of NCAI, Dennis Banks, Director of AIM, D'Arcy McNickle, a noted Indian anthropologist, and Peter MacDonald, Chairman of the Navajo tribe.

Cahn called Garment and asked if he had read Our Brother's Keeper and whether he and Patterson would like to meet the Indian leaders who helped prepare it. A meeting was arranged on November 10, 1969 between the Indian task force and Garment, Patterson, Vice-President Agnew, and the NCIO. Also present were Bobbie J. Kilberg and Wilbert O. Sneed, two White House fellows assigned to the staff of John Ehrlichman, a major presidential domestic policy advisor. Garment and Patterson worked under Ehrlichman. The task force presented a statement which reviewed the findings of Our Brother's Keeper and called for a "process of consultation" between the members of the group and NCIO toward the development of policy initiatives.[81]

1493-1507; Interview with Bradley Patterson, Jr., former Special Consultant to the President, Washington, DC, June 1980.

[81]Josephy, Red Power, pp. 133-41; Patterson interview.

The meeting stimulated efforts within the Nixon administration to formulate a new Indian policy in consultation with Indian leaders. In a series of visits to Indian centers in cities and reservations, discussions were initiated by the NCIO staff under the leadership of Robert Robertson, Executive Director of the NCIO, Dale Wing, Program Planning Director of NCIO, and C. D. Ward, Assistant to the Vice-President.[82] After urging from Kilberg and Sneed, Ehrlichman and his deputy, Kenneth Cole, concluded that there ought to be presidential involvement as well. The two White House fellows, Garment and Patterson, collaborated with the NCIO in putting together a presidential message to Congress on Indian affairs and a package of legislative proposals.

The decision to commit the White House to a new Indian policy was a result of both programmatic and idealistic concerns. Accused of "benign neglect" of the problems of blacks, the Nixon administration was sensitive to the charge that it was unconcerned with the problems of minorities and the poor. The innovative Family Assistance Plan proposed by Nixon in August 1969 was one way of responding. Still, the idea of helping Indians was intriguing, politically. Proposals developed with Indian support would not only demonstrate that Nixon was concerned about minorities, but also could embarrass the Democrats with their less-than-exemplary record in Indian affairs.

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[82]Wagner and Corrigan, "Indians to Cities," p. 1494.

In addition, Nixon officials realized that here was a window, an opportunity in history to make a major policy change on behalf of the "underdogs" of American history. No one could be faulted for wanting to help the "first Americans."[83] The last major attempt to help Indians, the termination policy, was clearly a disaster. The tribes had compiled a record of success in running their own programs

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[83]It is also possible that Nixon had a personal interest in Indians derived from personal experiences. In his memoirs he says that his happiest days as an undergraduate student involved sports:

> College football at Whittier gave me a chance to get to know the coach, Wallace "Chief" Newman. I think that I admired him more and learned more from him than from any man I have ever known aside from my father.
>
> Newman was an American Indian, and tremendously proud of his heritage. Tall and ramrod-straight, with sharp features and copper skin, from his youngest days he was nicknamed Chief. He inspired in us the idea that if we worked hard enough and played hard enough, we could beat anybody. He had no tolerance for the view that how you play the game counts more than whether you win or lose. He believed in always playing cleanly, but he also believed that there is a great difference between winning and losing. He used to say, "Show me a good loser, and I'll show you a loser." He also said, "When you lose, get mad--but get mad at yourself, not at your opponent."
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> There is no way I can adequately describe Chief Newman's influence on us. He drilled into me a competitive spirit and the determination to come back after you have been knocked down or after you lose. He also gave me an acute understanding that what really matters is not a man's background, his color, his race, or his religion, but only his character.

Richard Nixon, RN: The Memoirs of Richard Nixon (New York: Grosset and Dunlap, 1978), pp. 19-20. According to Bradley Patterson, whether or not Nixon's past experience had anything to do with White House policy, it is a fact that in each of the few occasions that Nixon had an opportunity to decide a question of Indian policy, he took the pro-Indian position. Patterson interview.

under the OEO. Even though the War on Poverty Programs were not favorites of the Nixon administration, this was apparently a special case where they worked. Defined in terms of the ICAP experiment, Indian self-determination was a good idea whose time had come.

Finally, the task of putting together a legislative package could be accomplished without diverting substantial institutional resources from the major priorities of the Nixon administration. No high-level "working group" needed to be formed. Garment, Patterson, and the White House fellows were not part of the "inner circle" around the Oval Office. The NCIO was in place to gather information from departments, agencies, and Indian groups. The Office of the Vice-President seemed to be a logical place to develop Indian policy initiatives. It was high enough in the executive office to indicate the Nixon administration's position that Indian affairs was too important a matter to be left to routine channels, but distant enough for the White House to avoid clogging the domestic advisory apparatus and damaging the President's reputation if things should go wrong.[84]

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[84]John Ehrlichman did not think that Vice-President Agnew contributed much to the formation of Indian policy, but that may have been from his interest in elevating the importance of the White House Staff. Nevertheless, he says that Indian affairs initiatives did serve a useful purpose for Nixon in his dealings with the Vice-President. According to Ehrlichman, Nixon's relations with Agnew were unproductive. From his contacts with governors and interest groups Agnew would bring back to Nixon their complaints with the administration rather than sell Nixon's policies to the groups. By mid-1970 Nixon felt that Agnew had become too outspoken in his assignments and could hurt Republicans at the polls in the 1970 mid-term elections. Some Republican candidates, such as Sen. Robert Taft (R-Ohio), sent word that Agnew would not be

White House cooperation in policy formulation efforts from departmental and agency officials was secured. Kilberg visited Secretary Hickel, who was "impressed by her commitment and her willingness to stick her neck out."[85] Morris Thompson, Hickel's special assistant for Indian affairs, and BIA officials traveled to Indian country to gather suggestions from the tribes. Indian affairs specialists in departments and agencies which did business with Indian tribes became directly involved. These officials included Lewis H. Butler, Assistant Secretary for Program Planning and Evaluation of HEW, Reaves Nahwooksy, Indian affairs specialist with the Deparment of Housing and Urban Development (HUD), and Forest Gerard, director of the HEW Department Office of Indian Affairs.[86]

Indian input came to the administration through a variety of channels, conventional and otherwise. The least conventional mode

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.welcome in their districts or states. Then, said Ehrlichman:

> We had inaugurated some praiseworthy Indian policies--self-determination being our central theme--and we were gaining some recognition, thanks to Bobbie Greene Kilberg, Len Garment, Brad Patterson and the other White House staff people who urged Nixon at the right times and in the right directions. Nixon decided that if Taft and the others wouldn't have Agnew, our new Native brothers might. Maybe the Native American vote could be won if pursued. "Let's put Agnew on at least six Indian reservations between now and November," Nixon ordered. "Let's tie him to Indians. And," he said, as if determined to solve all of his problems at once, "Pat [Nixon] should also do Indians."

John Ehrlichman, Witness to Power: The Nixon Years (New York: Pocket Books, 1982), p. 103.

[85]Hickel, Who Owns America?, pp. 170-71.

[86]Wagner and Corrigan, "Indians to Cities," p. 1494.

of expression was an increase in the number of confrontations between Indian activists and authorities. The most provocative and publicized of these incidents was the Alcatraz occupation, an event which, if unwisely handled, could have threatened relations between the Nixon administration and Indians. The response to the incident brought about a direct conflict between the General Services Administration (GSA), landlord of the island, and the White House. GSA officials wanted to throw the Indians off, using whatever police power was necessary. The White House, however, saw this differently--a protest by the underdogs of American history, an act of symbolism more than of law. At stake was Indian support of the President's Indian policy initiatives, according to Patterson:

> Force would surely have meant bloodshed and nothing would have been more counter-productive than Indian blood spilled just as the President was working toward a new statement of Indian rights and self-determination. The answer was restraint and negotiation, under close White House staff monitorship. This took a year and a half, however, and left the Administrator of GSA muttering private imprecations.[87]

Formal and informal discussions were held with Indian leaders. Patterson developed a friendship with William Veeder, BIA water rights expert and a "classic whistle-blower." The two talked together frequently during the formulation process about the importance and the problems of protecting Indian lands and resources. Eventually, this

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[87]Bradley H. Patterson, Jr., The President's Cabinet: Issues and Questions (Washington, DC: American Society for Public Administration, 1976), pp. 52-3.

conversations led to White House support for a bill to establish an independent Indian Trust Counsel Authority which would advocate Indian legal rights in matters involving federal trust responsibilities.[88]

On at least one occasion, other White House domestic policy initiatives appeared to conflict with the emerging Indian policy. One of the growing number of regional inter-tribal organizations, the United South and Eastern tribes, warned the Nixon administration that its New Federalism proposals, which were based on the idea that state and local governments should assume greater decision-making responsibility, were "potentially threatening to the well-being of Indian people." Indian dealings with state and local governments, the group stated, have "almost without exception" failed to provide adequate services to the tribes. The South and Eastern tribes urged the administration to expand federal funding and Indian control of programs for the tribes.[89]

Among the most important statements of Indian concern were those presented by the six Indian members of the NCIO at the first meeting of the entire Council on January 26, 1970. With the domestic Cabinet and the Vice-President present, the Indians set forth, in moving and eloquent fashion, their view of the needs of the tribes and proposed solutions. Their recommendations included: (1) establishment of an Assistant Secretary of the Interior for Indian Affairs, special assistants for Indian affairs to each Cabinet secretary, and Indian desks at the program

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[88]Patterson interview.

[89]Josephy, Red Power, pp. 143-54.

level of each department; (2) enactment of a Comprehensive Indian Education Act, which would pull together all Indian education programs and provide for Indian community control of education at the reservation, state, and local level (to coincide with the phaseout of BIA boarding schools); (3) review of the structure, staff, and policies of the BIA, with an eye toward increasing and guaranteeing the upward mobility of its Indian employees; (4) increased funding for Indian health, housing, and welfare programs, as well as enactment of the President's proposed Family Assistance Plan; (5) increased cooperation between governmental agencies, private groups, and tribal governments in promoting economic development on the reservation, and increased funding for Indian business loans and road construction; (6) establishment of an independent Indian legal agency to represent the tribes in all legal services required in connection with Indian land, water, and resource rights; and (7) abolition of the BIA's relocation policy and the development of new programs for urban Indians. The Vice-President directed the Cabinet officers of the Council to respond to the Indian members' recommendations within thirty days. Departmental responses were available for consideration during the preparation of the President's message.[90]

The process of formulating the Nixon Indian initiatives took six months. An Interior official reported that at least six drafts of the President's message were sent to concerned departments for comment.

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[90]See ibid., pp. 191-210.

The presentation of the message was originally scheduled for early May 1970, but was rescheduled for July 1970 due to the public uproar over the President's decision to invade Cambodia.[91]

The President's message: self-determination without termination. On July 8, 1970, President Richard M. Nixon delivered to Congress a special message on Indian affairs.[92] The message declared a fundamental change in federal policy toward the American Indian.

In the past, the President said, the relationship between the federal government and Indian communities had "oscillated between two equally harsh and unacceptable extremes." On the one hand, it had been the stated policy objective of the executive and legislative branches in the 1950s to terminate the federal trustee relationship with the Indians, an objective which violated an understanding established in treaty, statutory, and informal agreements that obliged the federal government to protect reservation lands and resources and provide services to the Indian people. On the other hand, the fear of termination, said the President, had often worked to produce the opposite extreme of excessive dependence on the federal government, thereby inhibiting Indian initiative and responsibility.

"Only by clearly rejecting both of these extremes," the President stated in his address, "can we achieve a policy which truly serves

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[91]Wagner and Corrigan, "Indians to Cities," p. 1495.

[92]U.S. President, Public Papers of the Presidents of the United States, Richard M. Nixon, 1970 (Washington, DC: Government Printing Office, 1971), pp. 564-76.

the best interests of the Indian people." The goal of the new policy, which Nixon characterized as "self-determination without termination," would be to steer a "steady course" between the opposite poles of termination and paternalism:

> . . . to strengthen the Indian's sense of autonomy without threatening his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support . . .[93]

To carry out this policy, the President requested the passage of seven pieces of legislation which he would introduce. The President requested that the Congress:

(1) Reject Termination. Formally reject the termination policy as expressed in House Concurrent Resolution 108 of the 83rd Congress in favor of an affirmation that the federal government would respect the integrity of tribal sovereignty, continue to carry out its trust responsibility and guarantee continued federal assistance if tribes wish to assume more responsibility.

(2) Indian Self-Determination. Enable tribes to voluntarily take over the control or operation of federal programs in Interior and HEW upon tribal request, ensure that the tribe could give the program back to the federal government if it decided to do so, and provide technical assistance and financial accountability procedures to aid tribal self-government efforts.

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[93]Ibid., pp. 566-67.

(3) Restore Land. Restore 48,000 acres of land near Blue Lake in New Mexico, which were taken by the federal government from the Taos Pueblo Indians, to the rightful ownership of the tribe.

(4) Aid to Indian Education. Authorize the Secretary of Interior to channel federal aid to Indian education under the Johnson-O'Malley Act, which presently goes to off-reservation school districts with high concentrations of Indian students, directly to Indian tribes and communities, in order to increase Indian influence over the way in which the money is spent.

(5) Indian Economic Development. Encourage Indian economic development by increasing the existing Indian Revolving Loan Fund, which loans money for Indian economic development projects, from $25 million to $75 million, and by providing incentives in the form of loan guarantees and loan insurance to encourage private lenders to loan more money for Indian economic projects.

(6) Indian Trust Counsel. Establish an Indian Trust Counsel Authority, independent of the Departments of Interior and Justice, to assure independent legal representation for the Indians' land and resource rights.

(7) Assistant Secretary for Indians and Territorial Affairs. Promote the Commissioner of Indian Affairs to Assistant Secretary status in the Interior Department, to assure direct BIA and Indian access to the Interior Secretary.

In regard to continuing programs for Indians, the President requested that Congress increase funding levels for the Indian Health

Service, the BIA, and specific Indian programs in the Economic Development Administration and the Office of Economic Opportunity. The President did not, however, advocate that BIA assistance go to urban Indians, only that federal government agencies step up efforts to locate and identify urban Indians who may qualify for non-BIA federal assistance.

The President, in his address, reported that his Indian policy was developed in consultation with the Indian people, and that in the future, "it is essential that the Indian people continue to lead the way by participating in policy development to the greatest possible degree."[94] In order to facilitate participation, the President directed the NCIO to conduct field hearings throughout the nation with the Indian community.

Finally, the President stated in his message that while it is clear that Indians need federal assistance, it is also true "that the federal government needs Indian energies and Indian leadership if its assistance is to be effective in improving the conditions of Indian life."[95]

The President's message was a moderate response to the demands of the Indian movement. On the one hand, termination was formally repudiated. Changes in administrative practices and organization would encourage greater tribal control of programs, increase protection of Indian natural resources, and enhance Indian access to high-level

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[94]Ibid., p. 575.

[95]Ibid., p. 576.

policymakers. This, together with increases in funding for existing programs, pleased mainstream Indian opinion, especially reservation leaders.

On the other hand, the address was a disappointment to urban Indians and adherents to the "treaty ideology." No radical change in the structure of U.S.-Indian relations was proposed. Tribal governments established under the Indian Reorganization Act would remain. The Bureau of Indian Affairs would stay in the Interior Department and would have the primary responsibility for administering the new policy. Urban Indians would receive no special federal aid. In fact, no new spending programs were announced. Aside from the symbolic gesture of endorsing the return of land to the Taos Pueblo, there would be no major additions to the Indian land base nor any reconsideration of treaty matters.

Indian Policy Formulation in Congress

Congress was not consulted by the Nixon administration in the formulation of the President's message. This is not surprising, considering that the Democrats controlled Congress and that the policies pursued by the Interior committees, under Democratic leadership, were attacked.

There was, however, Indian policy formulation activity underway in Congress at the same time the administration was assembling its program. After two years of investigation and 4,000 pages of testimony, the final report of the Special Subcommittee on Indian Education chaired

by Senator Edward Kennedy was issued on November 1, 1969.[96] The report recommended enactment of a comprehensive Indian education statute based on the Indian self-determination principle. The subcommittee's findings were shocking and highly critical of past and present federal policy. Among the findings of the subcommittee were the following:

(1) Lack of coordination among providers of education services to Indian children. There was little communication among the BIA, the U.S. Office of Education, and state and local education agencies in planning, administration, and evaluation of Indian education programs.

(2) Multiple and overlapping sources of funding. In addition to their own revenue sources, public schools serving Indian children receive federal impact aid for general support (P.L. 81-874) and school construction (P.L. 81-815) if a school district is on or near non-taxable reservation land. They received additional federal aid if the state has contracted with the BIA through the Johnson-O'Malley Act of 1934, to provide education service to Indian children. Also, both public schools and BIA schools were eligible for federal aid to educate disadvantaged children through Title I and other provisions of the Elementary and Secondary Education Act of 1965. As a result, problems of accountability and unequal allocation of educational resources among schools serving Indian children had arisen.

(3) Lack of responsiveness to concerns of Indian parents and communities. The BIA boarding school program, which took Indian children away from

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[96] Subcommittee on Indian Education Report.

parents and the communities in which they lived, was found to be educationally unsound as well as destructive to Indian culture. Few BIA day schools were governed by elected Indian school boards. Public schools failed to consult Indian parents on how funds for educating Indian children should be spent. In both the federal and public school systems, school administrators and teachers had little knowledge or understanding of the native language and culture of the Indian people which they served.

(4) Use of federal aid by public schools for general budget support rather than special education programs for Indian children. Contrary to the subcommittee's understanding of congressional intent, public schools serving Indian children used not only federal impact aid but also Johnson-O'Malley aid for general support in lieu of taxes. The BIA was criticized for not insisting that aid to states with which it contracted to educate Indian children be used for compensatory programs.

(5) Lack of financial support for public schools serving Indian children who live off the reservation. Once again, the BIA was faulted for narrowly interpreting the Johnson-O'Malley Act to mean that federal subsidies could go only to school districts serving Indian children on or near the reservation. This meant that public schools in urban areas with large concentration of Indian children were ruled ineligible for BIA assistance.

(6) Inadequate funding for Indian education programs. The report criticized Congress and recent administrations for not providing enough funding authority and appropriations for educating Indian children.

In all, the Kennedy subcommittee made sixty recommendations, of which all but one were unanimously endorsed.[97] The bipartisan support for the report's findings and recommendations stemmed largely from the efforts of Senator Fannin, ranking minority member of the subcommittee during the 90th Congress.

After the special subcommittee disbanded, its recommendations were forwarded to the Subcommittee on Education of the Senate Committee on Labor and Public Welfare. Because the subcommittee was in the middle of developing major revisions in the basic federal education statute, the Elementary and Secondary Education Act, the Indian education issue moved to the back burner. In addition, the subcommittee waited for the Nixon administration to present its Indian education proposals in the President's July 1970 message. Finally, after months of delay and negotiation with Indian leaders, Kennedy and Mondale in February 1971 introduced a bill which proposed more sweeping changes in Indian education than did the Nixon administration.[98] The measure recommended the transfer of all BIA education programs to an independent National

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[97]At the time of its report, the subcommittee's members were Kennedy, Ralph Yarborough (D-Tex.), Harrison Williams (D-N.J.), Mondale, Harold Hughes (D-Ia.), Peter Dominick,(R-Colo.), Henry Bellmon (R-Okla.), George Murphy (R-Cal.), and William Saxbe (R-Ohio). Fannin was on the subcommittee during the 90th Congress. The minority members of the panel took exception to the recommendation that there be established a Senate Select Committee on the Human Needs of the American Indian, saying that another committee and study were unnecessary.

[98]U.S., Congress, Senate, Committee on Labor and Public Welfare, Education Amendments of 1971--Part 4, Hearings before the Subcommittee on Education on S. 659, 92nd Cong., 1st sess., 1971, pp. 1712-62.

Board of Indian Education. This proposal contrasted with the administration's reliance on existing administrative structures, and encountered immediate opposition from the Interior Department and the Interior committees. Furthermore, the administration's refusal to create new spending programs for Indians in general and urban Indians in particular was challenged by Kennedy-Mondale's proposals to establish project grant programs and expand the impact aid funding formula to schools which serve Indian children but are not near reservations. The urban Indian emphasis perhaps reflected the orientation of the eastern Senators who tend to serve on the Labor and Public Welfare Committee and have urban Indian constituencies. It was also an attempt to address a large segment of the Indian community that the President's message had largely ignored. In that sense, the Kennedy-Mondale bill created the potential for partisan conflict and conflict between reservation and urban Indians.

Both the Nixon and the Kennedy-Mondale proposals signaled that self-determination demands would become the dominant focus of U.S.-Indian policymaking activity in the years to come. As will be described in Chapter IV, at about the same time in 1971 that Kennedy and Mondale presented their Indian education reform bill, Senator Henry Jackson, the chairman of the Senate Interior Committee, was in the process of reversing his position on termination. The reasons for Jackson's shift are still unclear--they included his presidential ambitions, or the fact that he and his committee were targets of criticism inside and outside Congress, or that he genuinely doubted that termination was an effective policy. Regardless, beginning in the spring of 1971, Jackson became

a leading advocate of Indian self-determination. Jackson hired an Indian to serve on the staff of the Interior Committee, introduced a series of Indian reform measures, and led the successful effort to have the Senate formally reject termination and reiterate its support for federal protection of tribal entities. Jackson's change-of-heart ensured that the Indian affairs subgovernment would finally give serious consideration to the concerns of its Indian clientele.

Explaining the Rise of Indian Self-Determination

Numerous theories of public policymaking are available to explain the rise of Indian self-determination demands on the governmental agenda in the 1960s and early 1970s. Yet some theoretical models seem less plausible as explanations than others. For example, rational decision-making theorists could argue that underlying policy formation activities in Indian affairs was a conscious determination by top executives and legislative officials to change the goal of federal policy from forced assimilation of Indians toward greater autonomy for Indian tribes. But such an argument ignores the Indians' tremendous struggle to convince federal officials to abandon termination, and that different officials at different times and for different reasons chose to recognize the Indian movement. The rational model also assumes more consensus on the goal of Indian policy than was actually the case, for it never was clear how much autonomy federal officials were willing to give Indian tribes or, indeed, given the clash of Indian moderates and radicals, how much autonomy Indians wanted for themselves.

Incremental theorists could focus on how the expansion of federal programs gradually channeled more aid and placed more responsibility on tribal governments, making termination increasingly more difficult to accomplish. Deloria and Lytle argue that as the tribes were made eligible for federal programs, beginning with federal impact aid in the 1950s and then the New Frontier and Great Society programs of the 1960s, tribal self-determination made a back-door entry into federal policy.[99] By the late 1960s the federal commitment to tribal governments through the grant-in-aid system was so extensive that formal abandonment of termination was simply a matter of time.

However, the "creeping self-determination" argument overlooks the increasing divergence of views between the dominant coalition in the Indian affairs subgovernment, which attempted to continue the tribe-by-tribe termination policy, and those inside and outside the subgovernment who wanted fundamental policy change. President Nixon's special Indian message to Congress, which repudiated the policy of the administration for which he had served as vice-president, and Senator Jackson's shift in his position in Indian affairs represented a major policy reversal, not a marginal change in business-as-usual.

Greater weight should be given to the perspective of group or conflict theorists such as Cobb and Elder on agenda-setting activity.

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[99]Deloria and Lytle, American Indians, American Justice, pp. 19-22. For the classic description of the incremental decision-making model, see Charles E. Lindblom, "The Science of 'Muddling Through,'" Public Administration Review, 19 (Spring 1959):79-88.

Certainly the coalescence of Indians into a political movement and the use of conventional and unconventional techniques of influence to successfully expand the scope of conflict were major factors behind the effective access to government that Indians achieved. And yet, even this view is an incomplete explanation. The success of the Indian political movement was highly dependent on the receptivity of government officials and their willingness to invest political capital in an ordinarily risky political issue. The length of time it took to convince officials that the termination policy was a failure increased the chances that shifts in the public mood or election outcomes might lead politicians to think otherwise. Public officials also had considerable discretion over the choice of alternatives to termination, which ranged from giving tribal governments increased administrative responsibilities to restoring full sovereignty to Indian tribes. The process of policy formation in Indian affairs appeared more complex and problematic than what simple or more elaborate pressure models describe.

Rather, this chapter utilized Kingdon's model of agenda-building and alternative specification, which is based on Cohen, March, and Olsen's "garbage can model of organizational choice." Looking at the federal government as an "organized anarchy," with separate, largely unrelated streams of activity running through the organization, Kingdon emphasizes the role of leadership in bringing the streams together when decision opportunities arise to bring about agenda and policy change. Thus, according to Kingdon's framework, the political activities of the Indian movement presented just one facet (the "political stream")

of the agenda-building process. In order for Indian demands to be recognized, officials had to be convinced (in the "problem stream") that termination, not the tribal way of life, was the real "Indian problem." Furthermore, the presence of an economically and politically viable alternative to termination, a solution which fell short of the demand for Indian radicals for the U.S. government to fully honor its past treaty commitments to the tribes, was necessary. The Indian community action programs launched by the War on Poverty (in the "policy stream") provided political leaders with the exemplar they needed.

Indian political pressure, the receptive mood of the public and the administration, and the availability of policy alternatives encouraged political leaders inside and outside the subsystem to advocate Indian self-determination proposals. Disgruntled members of the Senate Interior Committee openly advocated major policy change. Federal program expansion in human resources created new interest and involvement in Indian matters by members of Congress and committees outside the Indian policy subsystem. Senators on the Labor and Public Welfare and Judiciary Committees developed new policy proposals in selected aspects of Indian life. Finally, the Johnson White House was pressed into action by the political deadlock at the subsystem level and the activities of potential rivals in the U.S. Senate. Its endorsement of Indian self-determination efforts came too late in the presidential term, however, to have substantial policy impact.

Kingdon discusses the concept of "policy windows," which are opportunities for action on given initiatives. They are moments when

the three streams of activity--problems, policies, and politics--come together. These windows last for only a short period, however. If participants in the policy process do not take advantage of these opportunities, they must wait until another chance comes along. In the early months of the Nixon administration, such a "window" opened in Indian affairs. A new administration searched for program proposals which would enable it to make a mark on domestic policy distinctive from the Democratic New Deal-Great Society programs and the Republican policies of the past. The failure of the previous Democratic administration and Congress to achieve Indian policy reform presented a political opportunity to the Nixon White House. The opposition party could be embarrassed and the Nixon administration could build a record of compassion toward minorities and the poor. The political and policy streams joined to provide the administration with numerous self-determination proposals from Indians, the Congress, the OEO, and three presidential-level task forces of the 1960s. Together with the desire to accomplish something of positive value to the Indian people, the Nixon White House decided to act while the window remained open.

With President Nixon's strong intervention, the conditions for agenda and policy change set by Kingdon--the "coupling" of the three streams by political leaders--were met, and met with a vengeance. A phenomenon which Charles O. Jones, in his study of anti-pollution policy in the late 1960s, called "policy escalation" had struck Indian

affairs.[100] Four major political figures with presidential ambitions--Nixon, Kennedy, Mondale, and Jackson--attempted to outbid each other for the support of Indians and for public recognition.

It is important to remember, however, that the success of the Indian political movement at agenda-building rested on a fragile combination of circumstances, much of which are beyond the ability of Indians to control. Furthermore, as the succeeding chapters will show, influence over the policy agenda is no guarantee of influence over the formulation of policy proposals nor the adoption of policy. And it remained to be seen whether the self-determination policy, defined as greater Indian control over administration of federal programs, would actually realize the lofty goals its first supporters had in mind.

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[100]Charles O. Jones, "Speculative Augmentation in Federal Air Pollution Policy-Making," Journal of Politics, 36 (May 1974):438-64. Jones, among others, notes that policy formulation can take place in different parts of the government without any interaction or coordination among the participants, and result in proposals which conflict with or complement each other or both. See Jones, Introduction to Public Policy, pp. 48-83; also see Anderson, Public Policy-Making, pp. 53-60. The use of the OEO Community Action Program approach to Indian administration as the basis for the administration's bill to turn over control of programs to tribal governments seems to be an example of what Jones calls analogous formulation. Jones, Introduction to Public Policy, p. 56.

CHAPTER IV

LEGISLATING INDIAN SELF-DETERMINATION: POLICY ADOPTION IN INDIAN AFFAIRS, 1970-75

From Agenda-Building to Policy Adoption: The Obstacles to Enacting Indian Self-Determination

The "self-determination without termination" message, delivered by President Nixon to Congress on July 8, 1970, marked a turning point in the Indian policy process. Advocates of Indian self-determination had taken advantage of a "policy window"--a new administration's desire to create a distinctive legislative program--and succeeded in gaining an important spot on the President's policy agenda. After the President's message received favorable response from Congress and Indian leaders, it appeared in late 1970 that Indian self-determination was an idea whose time had come.

However, as the policy process moves beyond agenda-building, Congress is not the only area where policy change may take place. If the issue area is one where public policies have operated for some time, policy change can occur by administrative as well as legislative action. In the early 1970s advocates of Indian self-determination simultaneously pursued policy changes in Congress and the BIA. The focus of this chapter is on how Indian self-determination policy was adopted through the legislative process. The employment of an administrative approach to Indian policy change is described in Chapter V.

If policy change is to be accomplished by the enactment of

legislation, the decentralized nature of the legislative process may frustrate demands for change. As numerous observers of Congress have noted, there are many decision points through which legislation must pass.[1] Committees and subcommittees play the important role of "gatekeeper" in the legislative process, deciding which bills will or will not proceed to the floor for consideration. They are especially influential in policy areas which are of concern only to a limited segment of society. According to the subgovernment literature, it is likely that bills reported by committees in a low-level issue area will be approved by the respective houses of Congress with little change. Sometimes it is the case that a strong committee or subcommittee chairman, working with agency leaders and lobbyists, can dominate policymaking activity in a selected field. For example, Gary Orfield credits Senator Arthur Watkins, chairman of the Senate Indian affairs subcommittee, with being almost single-handedly responsible for the passage of termination legislation in the 1950s.[2]

Despite President Nixon's advocacy of Indian self-determination, his legislative proposals needed the approval of the legislative component

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[1]Case studies of the legislative process include: Eugene Eidenberg and Roy D. Morey, An Act of Congress (New York: W. W. Norton, 1969); Erwin L. Levine and Elizabeth M. Wexler, PL 94-142: An Act of Congress (New York: Macmillan, 1981); Paul Light, Artful Work: The Politics of Social Security Reform (New York: Random House, 1985). For an overview, see Charles O. Jones, An Introduction to the Study of Public Policy, 3rd ed. (Monterey, CA: Brooks/Cole, 1984), pp. 110-39.

[2]Gary Orfield, A Study of the Termination Policy (Denver: National Congress of American Indians, 1966). See generally, J. Leiper Freeman, Jr., The Political Process, rev. ed. (New York: Random House, 1965); Randall Ripley and Grace Franklin, Congress, the Bureaucracy and Public Policy, 3rd ed. (Homewood, IL: Dorsey Press, 1984).

of the Indian affairs subgovernment, the House and Senate Interior Committees. The chairmen of those committees, Senator Henry Jackson (D-Wash.) and Representative Wayne Aspinall (D-Col.) were powerful figures in Congress. Aspinall, in particular, was a classic committee "baron" who exercised near-absolute control over the Interior Committee agenda. During the 1960s, as demands for Indian self-determination grew, both he and Jackson focused their committees' attention on other matters. After President Nixon submitted his Indian reform message to Congress in July 1970, neither chairman indicated that they would reconsider their opposition to major policy change in Indian affairs.

However, even the most powerful chairman recognizes that his/her control of the committee agenda is subject to external and internal constraints.[3] External forces which can impinge upon congressional committees include members of the parent chamber, clientele groups, the executive branch, and political parties. To the degree that one or more of these elements bring pressure to bear on a committee to act on an issue, raising the "public salience" of the issue or "expanding the scope of conflict," committee leaders may be forced to respond.

As was described in Chapter III, the environment of the Interior Committees with respect to Indian affairs was becoming more turbulent. Riding the momentum of the civil rights movement, Indian political

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[3]David Price, "Congressional Committees in the Policy Process," in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., Congress Reconsidered, 2nd ed. (Washington, DC: Congressional Quarterly Press, 1981), pp. 127-53.

activists successfully gained access to executive and legislative leaders of both parties. Presidents Johnson and Nixon called for an end to the termination policy. Rival committees, such as Senate Labor and Public Welfare, challenged the Interior Committee's jurisdiction over Indian policy.

Changes in the internal life of committees may also affect the behavior of committee chairmen. The individual goals and pursuits of committee members, the role and influence of staff, and the style and intentions of chairmen themselves shape committee performance. Within the Interior committees, which traditionally were oriented toward the passage of constituency-centered public works bills, displays of dissatisfaction with committee policies and priorities were more frequent. Liberals on the committees wanted more attention paid to environmental protection. Junior members of the House committee complained of Aspinall's autocratic tactics. Jackson's critics claimed that his attention was too often diverted by issues of wider national concern, such as foreign policy and defense, and that as a consequence he delegated too much authority to committee staff.

Several Senate Interior committee members openly criticized the inaction or active opposition of the chairmen to Indian concerns. Some advocates of Indian self-determination, such as Senator George McGovern (D-S.D.), turned their attention to other matters when it appeared that Jackson and his staff would not act on proposals to establish a new Indian policy. Other Interior committee members, such as Senator Paul Fannin (R-Ariz.), took their proposals to other

committees. The Labor and Public Welfare Committee's favorable response to Fannin's concern about the deplorable state of Indian education was a reflection upon the Interior committee's lack of leadership on this issue. On the House side, the problem was not Aspinall's views on Indian policy--he was not an aggressive terminationist--but his single-minded focus on the economic development of natural resources. Added to his high-handed control of the committee, Aspinall's indifference to Indian concerns led members to question his leadership.

Of the two chairmen, Jackson was most mindful of criticism of his position on Indian affairs. In his home state of Washington, where there were numerous conflicts between Indians and the white community on such matters as hunting and fishing rights, advocacy of termination was popular. However, as a man who had earned the respect of his Senate colleagues as a bright and able legislator, and who had gained a sizable following as an expert on defense matters, Jackson was a figure of considerable stature in national politics. By 1971, he actively considered running for President. Although Indian affairs is hardly an issue which, by itself, can make or break a presidential contender, it is one of a cluster of issues that tests the Democratic Party's commitment to social justice. While Jackson was a New Deal liberal in domestic policy, his opposition to Indian self-determination raised potential doubts about his liberal credentials. Therefore, Jackson's aspirations to national leadership created an opportunity for advocates of Indian self-determination. If his vulnerability on Indian issues could be exposed, perhaps Jackson could be forced to reconsider his position.

Building Legislative Support for Indian Self-Determination, 1970-72

Taos-Blue Lake: The Senate Interior Committee Tastes Defeat

Ironically, the first major conflict between proponents of Indian self-determination and Jackson following President Nixon's Indian address arose over a land claims dispute that began long before the rise of the tribal self-determination movement. The day after the President delivered his message on Indian affairs, the Senate Interior subcommittee on Indian affairs held hearings on a bill which would return illegally-seized land surrounding Blue Lake, New Mexico to the Taos Pueblo tribe. Though the Taos bill was not directly related to self-determination policy, the White House, at the request of the National Council on Indian Opportunity's (NCIO) Indian members, decided to add its support for the Pueblo land claim as a symbolic gesture of good will toward the Indians.[4] From the thirteenth century, the tribe used the area around Blue Lake (approximately 130,000 acres) for religious purposes. In 1906 the United States government appropriated these lands for the creation of a national forest. According to the Indian Claims Commission, which examined the controversy, the government "took said lands from petitioners without compensation." The Commission in 1965 awarded the Pueblo nearly $300,000 as compensation. The tribe

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[4]James R. Wagner and Richard Corrigan, "BIA Brings Indians to Cities, But Has Few Indian Services," National Journal (July 11, 1970): 1494; Interview with Bradley Patterson, Washington, DC, June 16, 1980. Other sources consulted in reference to the Taos Indian-Blue Lake issue include Congressional Quarterly Almanac, 1970, p. 83, and U.S., Congress, Senate, Committee on Interior and Insular Affairs, Taos Indians-Blue Lake Amendments, Hearings before the Subcommittee on Indian Affairs on S. 750 and H.R. 471, 91st Cong., 2nd sess., 1970 (hereafter cited as Taos Indian Hearings).

turned down the money and asked instead for the return of the land which had religious significance to them.

The Nixon administration backed a bill, already passed by the House, which granted title to the 48,000 acres around Blue Lake to the Taos Pueblo. The major obstacle to passage of the measure was the Senate Interior Committee, which had blocked a similar bill in the previous Congress. Senator Clinton Anderson, a Democrat in whose state the disputed land was located and who was an ardent defender of the U.S. Forest Service, introduced a substitute bill which retained the acreage as part of a national forest but directed the Secretary of Agriculture to administer the area for the exclusive use and benefit of the tribe. During the July 9, 1970 hearings, at which Interior Secretary Walter Hickel testified in favor of the House bill, Anderson repeatedly argued that the return of Blue Lake to the Taos Pueblo for religious reasons would set a dangerous precedent, permitting other tribes to make land claims on similar grounds.[5] Jackson and the full Interior Committee supported Anderson and reported the substitute bill to the Senate floor.

Perceiving the action of the Senate Interior Committee as an indirect challenge to the President's "self-determination without

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[5]Senator Anderson suspected that jurisdictional rivalry was behind the administration's support of the Taos Indians. In effect, the House-passed bill would have transferred control of Blue Lake lands from the Department of Agriculture, in which the Forest Service was located, to the Interior Department, which would hold the lands in trust for the tribe. Thus, Anderson detected bureaucratic self-interest behind Secretary Hickel's testimony in favor of the bill. Taos Indian Hearings, p. 37.

termination" policy, the White House staff and NCIO, working with Senators Fred Harris (D-Okla.), Barry Goldwater (R-Ariz.), and minority whip Robert Griffin (R-Mich.), mobilized support for the House bill.[6] In a stunning setback for the Interior Committee, on December 2, 1970 the Senate defeated the Anderson substitute on a 21-56 roll call vote. Then, by a 70-12 vote the Senate passed the bill returning control of the Blue Lake lands to the Pueblo.

The victory won by supporters of the Taos-Blue Lake bill had tremendous political significance for the Indian self-determination movement. Senate passage of the bill was viewed as a signal of support for the President's Indian policy. A bipartisan coalition formed in the Senate to reject the recommendation of the Interior Committee. With the Labor and Public Welfare Committee about to propose a major Indian education bill, the Taos defeat meant that the Interior Committee was in danger of losing control of Indian policy. This fact was not lost on Chairman Jackson, for whom the negative vote on the Interior Committee substitute was a blow to his reputation as a legislative leader. In regard to Jackson's presidential hopes, the Taos vote

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[6]Interview with Bradley Patterson, Washington, DC, June 16, 1980. The Blue Lake issue had received national attention in the previous several years. A National Committee for the Restoration of Blue Lake Lands to the Taos Indians had formed, with former Interior Secretary Stewart Udall as one of its members. Also supporting the Taos Indian claims were the Wilderness Society, American Civil Liberties Union, National Council of Churches, and the Religious Society of Friends, in addition to numerous Indian tribes and organizations. Opposing the House bill were the American Forestry Association, the Izaak Walton League, and the National Wildlife Federation. Taos Indian Hearings.

dramatized the unpopularity of his support for termination within his party and in the national arena.

Alaska Native Claims: Senator Jackson Changes His Mind

Whether or not the Taos-Blue Lake bill was the last straw, it was not long after its passage that Jackson began reversing his stance on Indian issues. In February 1971 Jackson removed James Gamble from his position as Indian policy specialist on the Interior Committee staff. Gamble had achieved notoriety as a proponent of termination. Jackson replaced Gamble with Forest Gerard, the first Indian ever to serve on the Interior Committee staff. The effects of this personnel change first became apparent when Jackson changed his position in another long-running land claims dispute--the century-old claim of Alaskan natives for compensation from the U.S. government after the purchase of Alaska from Russia.[7] The issue had languished in Congress for decades, until the discovery of huge oil reserves in 1969 around Prudhoe Bay on Alaska's far northern shore. With private development of the oil fields about to commence, it was necessary to resolve the native land claims problem. As a result, the issue moved quickly to the top of the Indian legislative agenda, ahead of the President's legislative package.

Bills for settling native claims began to appear in Congress in 1970. At one extreme was a bill supported by the Alaskan Federation

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[7]The overview of the Alaska Native claims issue is taken from Congressional Quarterly Almanac, 1970, pp. 707-68; Congressional Quarterly Almanac, 1971, pp. 828-34; Steve Nickeson, "Alaska Natives

of Natives (AFN), the major native lobby group, which called for a grant of 60 million acres to be allotted to villages, individuals, and native corporations, a $500 million cash settlement from the federal government plus perpetual 2 percent royalty on the sale of leasible minerals, and subsistence use rights on some state and federal lands for up to 100 years. At the other extreme was the bill sponsored by Aspinall which gave the natives clear title to only their village sites, subsistence use rights but no title to 40 million acres, and a $1 billion cash settlement.

Between the two extremes was the bill supported by Jackson and the Senate Interior Committee, which authorized the payment of $1 billion and the grant of 10 million acres to the natives. Speaking for the administration, officials from the Interior Department and the Office of Management and Budget (OMB) also endorsed a 10 million acre land grant to the natives but only a $500 million settlement. The Senate Interior Committee bill cleared the Senate on July 15, 1970 by a 76-8 vote, but was not acted upon by the House in the remainder of the 91st Congress.

The Interior Department's position on the Alaska claims bill was unpopular with the Indian community. As with the Blue Lake issue most Indians believed that a resolution of the dispute in a manner favorable to the Alaskan natives was necessary for the establishment of a positive atmosphere surrounding U.S.-Indian relations. When the newly-appointed Secretary of the Interior, Rogers C. B. Morton, declared in February

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Criticize Bill," Race Relations Reporter, (December 10, 1971):7-10; also see Theodore W. Taylor, American Indian Policy (Mt. Airy, MD: Lomond Publications, 1983), pp. 15-25.

1971 that the administration proposal submitted to the previous Congress represented "a just settlement of the native claims issue," Indian groups threatened to withdraw support for the President's Indian policy initiatives.[8]

As opposition to the Interior Department's native claims bill mounted among Indian groups, officials close to the President's Indian policy became directly involved. Within the NCIO, Indian members of the Council and staff drafted proposals for increasing the land and monetary amount to be given to the natives. Eventually, the Council, working together with presidential aides Leonard Garment and Bradley Patterson, formulated a bill granting the natives 40 million acres and $1 billion in cash and mineral royalties. Though the proposed measure did not meet the AFN's demands for 60 million acres and perpetual royalties on leasible minerals, the AFN endorsed the bill as the best it could get under the political circumstances.

However, the NCIO bill faced opposition from Interior officials, who thought it gave away too much land, and OMB, which believed the settlement was too costly. To break the deadlock, Garment and Patterson enlisted the support of the President's chief domestic policy advisor, John Ehrlichman, and his deputy, Kenneth Cole. In addition to the support of major Indian groups, the native claims bill also had time and economic pressures on its side. Continued congressional inactivity on Alaskan native claims delayed development of the Alaskan oil fields.

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[8]Nickeson, "Alaska Natives Criticize Bill," p. 8.

Additional delays on a possible trans-Alaska oil pipeline loomed ahead, as environmentalists expressed concern about potential damage to the Alaskan wilderness. In late April 1971, the issue was taken directly to the President, who supported the NCIO bill. In a subsequent communication with Congress, the President added that he would veto any native claims bill that did not meet with the approval of AFN.[9]

The President's support for the Alaskan natives set the stage for a potential showdown with the Interior committees. To everyone's surprise, however, Jackson announced his support for the President's proposal. Stunned by the announcement, the House Interior Committee and the remaining members of the Senate committee followed suit. On December 14, 1971 Congress approved a compromise bill which granted the natives title to 40 million acres of land and $962.5 million ($462.5 million in federal funds, to be disbursed over an eleven-year period, and $500 million in mineral royalties). The native assets would be administered by twelve regional native corporations.

The Senate Interior Committee as Indian Advocate

The change in Senator Jackson's position on the Alaskan native claims bill was part of a larger effort to turn the Senate Interior Committee into a center for the advocacy of Indian interests. Within three months of the addition of Gerard to the Interior Committee staff, the committee began to act on the President's Indian legislative program.[10]

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[9]Interview with Bradley Patterson, Washington, DC, June 16, 1980.

[10]One participant in the Indian policymaking process identified the appointment of Gerard as a major turning point in the federal

On May 14, 1971, Jackson introduced his own version of the bill to repudiate termination. Following hearings on the measure, at which only Indian representatives were invited to testify, the Senate passed the resolution (S.Con. Res. 26) by voice vote on December 11, 1971.[11] Thus, the Senate formally rejected the termination policy it had initiated in 1953. Another part of the President's legislative package, the bill to elevate the Commissioner of Indian Affairs to the status of Assistant Secretary of the Interior for Indian Affairs, was endorsed by the Interior Committee and passed by the Senate. Hearings were also held the same year on the administration's bill to establish an independent Indian trust counsel authority. Due to Indian opposition, however, progress on the bill was blocked.[12]

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government's recognition of Indian demands for self-determination. Interview with Franklin Duchineaux, staff member, House Interior and Insular Affairs, Washington, DC, June 17, 1980. Duchineaux was legislative consultant to the National Congress of American Indians.

[11] Congressional Quarterly Almanac, 1971, p. 800; U.S., Congress, Senate, Committee on Interior and Insular Affairs, American Indian and Alaska Natives Policy, Hearings before the Subcommittee on Indian Affairs on S.Con. Res. 26, 92nd Cong., 1st sess., 1971. Testifying in support of the resolution were the NCAI, National Tribal Chairmen's Association, and representatives of the California Tribes and the Menominee Tribes, both of which were terminated by Congress in the 1950s. Of the Senators present at the hearing [Burdick, Allott, Jackson (briefly), Hansen, Stevens, Gravel, Anderson], only Anderson appeared to be cool to the idea of repealing termination. Anderson wondered why the Navajo Tribe, with its immense natural resources on the reservation and vigorous leadership, had not requested the Congress to terminate the federal trusteeship, p. 30.

[12] Though Indian representatives supported the idea of enhancing governmental advocacy of Indian land and water rights, they were divided on the questions of how members of the proposed agency would be appointed and what the authority's relationship would be with the Interior and Justice Departments. Some Indian spokesmen expressed concern that the existence of the new agency would relieve the two departments of

At the time that Jackson became a supporter of Indian self-determination, the reasons for his policy reversal were unclear. Speculation on this question remains strong a decade and a half later. Many observers point to Jackson's presidential ambitions and potential rivals such as Senators Kennedy and McGovern, who were on the other side of the Indian issue. Others believe that the Taos-Blue Lake vote forced Jackson to abandon termination to preserve legislative influence for himself and his committee.[13] It is also possible that, independent of outside pressure, he concluded that termination was a failed policy and that something else needed to be tried. Another factor that often is overlooked is the skill and timing of the Nixon administration's legislative leadership. By selecting Blue Lake as the first issue on which to establish support for the President's Indian policy, the White House chose a cause which had already accumulated considerable public and congressional support. By forging a bipartisan coalition to enact the Taos-Blue Lake bill and by convicing the President

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their trust responsibility and may not be a match for adversaries retaining private law firms or for state and federal legal divisions. Hopes were also raised at the time of the hearings that more aggressive action by the Interior and Justice Departments on behalf of Indian land and water interests would make the proposed Indian Trust Counsel Authority unnecessary. In October 1971, Secretary of the Interior Rogers C. B. Morton announced the establishment of an Indian Water Rights Office in the Office of the Secretary with an initial budget of $2 million. See p. 298 below. U.S., Congress, Senate, Committee on Interior and Insular Affairs, Indian Trust Counsel, Hearings before the Subcommittee On Indian Affairs on S. 2035, 92nd Cong., 1st sess., 1971 (hereafter referred to as Trust Counsel Hearings).

[13]Adrian Parmeter, "A Personal View of the Indian Affairs Reform Movement--the Alaska Native Land Claims," Indian Legal Information Development Service Legislative Review (April 1972):41.

to issue his veto threat on the Alaska claims bill, the President's advisors on Indian policy placed Jackson in the position of being an obstructionist to Indian progress. Whatever the reasons, a major obstacle to policy change was removed.

The Indian Education act of 1972: Senate Committee Rivalry Develops

Another reason why Jackson reversed his stand on Indian policy may have been the Senate Labor and Public Welfare Committee's proposed reforms in Indian education. Introduced by Senators Edward Kennedy and Walter Mondale, the measure recommended the transfer of all Bureau of Indian Affairs (BIA) education programs to an independent National Board of Indian Education.[14] In effect, this proposal was a direct challenge to the jurisdiction of the Interior Committee over all BIA programs and Indian policy in general. In addition, the Kennedy-Mondale bill proposed new project grant programs and a revised impact aid formula which would benefit Indian children living in urban areas. From the viewpoint of western senators on the Interior Committee, these proposals had the potential to shift the balance of federal aid away from reservation Indians who were part of their constituency to urban Indians. As a result, an intense, jurisdictional battle developed between the two committees, fueled by personal rivalry between Jackson and Kennedy and between their staffs.

Responding to the Kennedy-Mondale proposal, Jackson submitted his own Indian education reform bill, cosponsored by most of the members

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[14]U.S., Congress, Senate, Committee on Labor and Public Welfare, Education Amendments of 1971--Part 4, Hearings before the Subcommittee on Education on S. 659, 92nd Cong., 1st sess., 1971.

of the Interior Committee.[15] Not surprisingly, the measure left the administration of federal Indian schools to the BIA but established within the agency a National Board of Regents for Indian education, the membership and duties of which would be similar to the board proposed by Kennedy-Mondale. Jackson's proposal was supported by many tribes and Indian groups representing reservation Indians, who feared that a transfer of education programs out of the BIA could lead to a dismantling of the agency and a fragmented Indian voice within the federal executive branch.

Also involved in the struggle for control of Indian education policy was the Nixon administration. Although the goal of the Kennedy-Mondale bill--increased Indian control of education--echoed the concerns of the President in his Indian message, Nixon administration officials opposed the measure. Rather than create new administrative structures and spending programs, Nixon officials argued for reform of the existing system. Speaking at hearings on the Kennedy-Mondale bill in late April 1971, U.S. Commissioner of Education Sidney P. Marland and BIA Commissioner Louis Bruce raised several objections to

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[15]U.S., Congress, Senate, Committee on Interior and Insular Affairs, Comprehensive Indian Education Act, Hearings before the Subcommittee on Indian Affairs on S. 2416, 92nd Cong., 2nd sess., 1972. The Board, of which a majority of members would be Indians, would be charged with devising a national Indian education program and taking over all educational activities of the BIA. Other titles of Jackson's bill authorized the Commissioner of Education to make grants to and contracts with colleges for the preparation of future educators of Indian children and amended the Johnson-O'Malley Act to authorize the Secretary of Interior to contract with state and local education agencies for school construction in nonfederal school districts in or near Indian reservations.

the proposal.[16] First, the proposal to establish a new entitlement program for Indian education was too costly and duplicative of existing federal aid programs to state and local education agencies. Second, new regulations were being drafted to insure that Johnson-O'Malley funds would be used for special Indian education programs and that Indian control of these funds would be increased. Third, the BIA had taken steps toward formulating a national Indian education policy which included the phaseout of BIA boarding schools and increased Indian control of federal schools. This new emphasis of the BIA, together with coordination efforts with the U.S. Office of Education (USOE), made the proposed establishment of an independent National Board of Indian Education unnecessary, officials said.

Caught in the middle of the struggle were Indian groups. Although both reservation and urban Indians rejected the Nixon administration's position that no new spending programs for Indian education were needed, Indians disagreed on who should be the primary beneficiaries of expanded federal aid. Urban Indians supported a proposal under Kennedy-Mondale to change the eligibility requirements for federal impact aid to public schools serving Indian children from the proximity of a school district to reservation land to the number of Indian children that the school district served.[17] However, the National Congress of American Indians (NCAI) and National Tribal Chairman's Association (NTCA), groups with

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[16]U.S., Congress, Senate, Committee on Labor and Public Welfare, Education Amendments of 1971--Part 4, Hearings before the Subcommittee on Education on S. 659, 92nd Cong., 1st sess., 1971, pp. 1712-62.

[17]Among the Indian groups supporting funding for schools serving nonreservation Indians were the American Indian Movement, National

reservation Indian constituencies, viewed the proposal as a transfer of federal resources from reservation schools to nonreservation schools. In particular, the NTCA expressed the concern that this measure could lead to a dilution of the federal government's commitment to upgrading reservation life and to renewed efforts to relocate Indian youth in urban areas. In addition, reservation Indians stated that some rural school districts were too resource-poor to spend impact aid funds for the sole purpose of educating Indians and that, therefore, impact aid should not be converted into a categorical grant program.

As a result of the opposition from the Interior Committee, the Nixon administration, and reservation Indian groups, the education subcommittee of Labor and Public Welfare dropped the plan to transfer Indian education programs out of the BIA. Instead, the subcommittee retained the proposal to establish a Bureau of Indian Education within USOE to administer non-BIA education programs for Indian children and added a National Advisory Council on Indian Education, composed of Indian leaders nominated by the President, to advise the Secretary of Health Education, and Welfare (HEW) on Indian education matters.

However, despite the opposition of reservation Indians and the Interior Committee to the Kennedy-Mondale proposal on impact aid, the provision remained in the amended bill reported by the Labor and Public

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Indian Youth Council, Americans for Indian Opportunity, and United Native Americans, Inc. Other groups such as the National Indian Education Association supported federal aid to nonreservation schools so long as there were guarantees that funds for reservation schools would not be cut.

Welfare Committee to the Senate floor on August 6, 1971 as a title in the Education Amendments of 1971.[18] Members of the Interior Committee objected that they had been bypassed in the development of the bill and that the interests of reservation Indians were not fully considered. Senator Lee Metcalf (D-Mont.), an Interior Committee member, proposed an amendment which exempted local school districts located on or near an Indian reservation from the proposed changes in requirements for receiving impact aid.[19] In effect, this amendment, which was supported by the NCAI and NTCA, created two systems of grants-in-aid under P.L. 81-874. School districts located away from the reservation that served ten or more Indian children would have to set up special education programs for those children. Also, school districts on or near reservations that served less than ten Indian children could still be eligible for federal impact aid.

Due to the objections of the Interior Committee, the Kennedy-Mondale title was deleted from the bill by unanimous consent at the request of the Senate leadership and was jointly referred to the Interior and Labor and Public Welfare Committees. Subsequently, the Interior Committee held a one-day hearing limited to spokesmen of Indian groups on September 20, 1971.[20] At the insistence of NCAI and NTCA, the Metcalf amendment

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[18]U.S., Congress, Senate, S.659 (Title IV), 92nd Cong., 1st sess., 6 August 1971, Congressional Record 117:30486-89.

[19]Ibid., p. 30487.

[20]U.S., Congress, Senate, Committee on Interior and Insular Affairs, Indian Education Act of 1971, Hearings before the Subcommittee on Indian Affairs on S. 2482, 92nd Cong., 1st sess., 1971.

was attached to the bill. In addition, a section of the bill that excluded Indian children attending BIA schools from being eligible for aid from Title I and other provisions of ESEA was deleted. With these changes, both committees unanimously reported the bill to the Senate floor on October 8, 1971, where it passed by a vote of 57-0.[21]

In contrast to the Senate, no jurisdictional or political conflict among committees occurred in the House. The amended Kennedy-Mondale bill, as passed in the Senate, was referred to the education subcommittee of the House Committee on Education and Labor, where hearings on the bill were held in January and early March of 1972.[22] The hearings were noteworthy for the emergence of Representative Lloyd Meeds (D-Wash.) as a leader in promoting Indian self-determination. Meeds, a junior member of the education subcommittee and the Indian affairs subcommittee of the Interior Committee, had introduced an Indian education bill of his own in June 1971. More limited in its scope and content than the Kennedy-Mondale bill, the legislation proposed by Meeds concerned itself solely with programs administered by USOE and avoided the controversy over whether the eligibility requirements and administration of the impact aid program to school districts serving Indian children should be changed. Indian representatives praised the Meeds bill at the hearings held in the winter of 1972, but preferred the more

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[21]U.S., Congress, Senate, 92nd Cong., 1st sess., 8 October 1971, Congressional Record, 117:35638-58.

[22]U.S., Congress, House, Committee on Education and Labor, Indian Education Act of 1972, Hearings before the General Subcommittee on Education on H.R. 8937 and S. 2482, 92nd Cong., 2nd sess., 1972.

ambitious Kennedy-Mondale bill, as amended by the Senate Interior Committee and passed by the Senate.

Recognizing the widespread Indian support and the favorable opportunities for Congressional passage, Meeds abandoned his efforts to amend the Senate bill and helped speed the legislation through the committee and to the House floor, where the bill passed with no opposition. From there the Kennedy-Mondale bill, titled the Indian Education Act of 1972, was included in the provisions of the Education Amendments of 1972, passed by Congress on June 23, 1972 and signed by the President.[23]

Describing the struggle over Indian education policy in the 1969-72 period is important for understanding the substance of the policy debate and the process by which the Indian Self-Determination and Education Assistance Act of 1975 would be considered. With respect to policy, the Indian Education Act of 1972 was an incremental step toward recognizing Indian demands for self-determination. As enacted, the legislation established a program of impact aid funding for public schools serving Indian children not located on or near the reservation, created new grant programs for all public schools serving Indian children and adults, increased Indian control of these new programs and enhanced Indian access within the Department of HEW. The original intent of the Kennedy-Mondale bill was to provide comprehensive reform of Indian education. However, due to the intervention of the Senate Interior

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[23]U.S., Congress, House, 92nd Cong., 2nd sess., 23 June 1972, Congressional Record, 117:50732-52.

Committee and the opposition of reservation Indians, the bill was modified to deal with public schools which served Indians. Reform and restructuring of Indian education programs administered by the BIA, including the Johnson-O'Malley program, would be the focus of the proposed Indian Self-Determination and Education Assistance Act to be considered in the next Congress.

Several features of the process by which the Indian Self-Determination and Education Assistance Act would be considered were revealed by the debate over the Indian Education Act. The conflict between the Labor and Public Welfare and Interior Committees and between Jackson and Kennedy for control of Indian education policy would resurface. The only difference was that the roles would be reversed: Jackson would attempt to take the lead in promoting Indian education reform, while Kennedy would play the spoiler. Similarly, Indian groups would be forced to choose sides, while the Nixon administration watched the Senate debate from the sidelines. The other major development in the Indian policy process was the emergence of Meeds as a leader of Indian self-determination in the House. As the following section describes, the new enthusiasm displayed by the Senate Interior Committee for Indian self-determination was not matched by its House counterpart.

House Interior Committee Inaction

In contrast to the flurry of Indian policy activity in the Senate in the 92nd Congress, the House Interior Committee had not begun to consider any of the President's new legislative proposals or the Senate bills sponsored by Jackson until mid-1972. The two Indian

issues which received the bulk of committee attention in the 1969-72 period were the Taos-Blue Lake and Alaska Native Claims disputes. The fact that these two issues rose to the top of the committee's Indian agenda was predictable, given the Interior Committee leadership's dominant orientation toward processing land-development bills for the benefit of the committee's membership. Concerning the committee's neglect of the human needs of Indians, Congressman Meeds observed in February 1972 that, "There is not the present impetus (in the House Interior Committee) to take the leadership in reform that should be there."[24]

Meeds was one of a number of junior committee members who were dissatisfied with Aspinall's tight grip on committee proceedings. In early 1971, a coalition of environmentalist members of the committee engineered a committee "revolt" against Aspinall's strong leadership.[25] Changes in committee rules were made to increase subcommittee independence in scheduling hearings, holding meetings, drawing up a budget and hiring a staff. Liberals hoped that the impact of the rules changes would be to increase committee support of environmental issues. Despite the rules changes, however, there was no apparent effect in 1971-72 on committee decisions. Aspinall "rode with the punch and is as much the committee's leader as he ever was."[26] Policy-oriented members

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[24]Margaret Szasz, Education and the American Indian: The Road to Self-Determination, 2nd ed. (Albuquerque: University of New Mexico Press, 1977), p. 149.

[25]Richard Fenno, Congressmen in Committees (Boston: Little, Brown and Co., 1973), pp. 285-87.

[26]Ibid., p. 286.

of the committee were too preoccupied with work on other committees to know the subject matter and take an interest. Constituency-oriented legislators, mainly from the West, took a greater interest in the committee's work and backed the chairman.

To Aspinall, Indian legislation did not advance the reelection interests of Interior Committee members as much as public works projects. Therefore, the self-determination proposals of President Nixon and Senator Jackson remained off the committee's agenda. Indian affairs subcommittee chairman Representative James Haley (D-Fla.) was slow to exercise whatever increased independence from the chairman he now possessed. Only in mid-1972 did his subcommittee consider one of the President's Indian proposals, the bill which reorganized and provided increased appropriations for the revolving loan fund established for Indian tribal enterprises in the 1930s. Approval of the bill by the House on October 13, 1972 came too late in the second session for any further congressional action.[27]

Consequently, aside from the resolution of the Taos-Blue Lake and Alaska Native Claims issues, no major Indian bills were enacted in the Congress at the recommendation of the Interior Committees. The passage of the Indian Education Act came as a result of the initiative of the House and Senate committees dealing with education. With President Nixon's legislative program stalled in Congress, attempts were made to bring about Indian self-determination by administrative

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[27] Congressional Quarterly Almanac (1972), pp. 695-6.

means. As it turned out, these efforts only served to emphasize the need for self-determination legislation.

The Failure to Pass the Indian Self-Determination Act, 1970-72

The President's Self-Determination Bills

One of the key elements of the President's legislative program was the proposal to permit Indian tribes to take over administrative control of federal programs managed by the BIA and the Indian Health Service (IHS). This initiative was the cornerstone of the President's "self-determination without termination" policy. Indeed, the Nixon administration gave its proposal the title, the "Indian Self-Determination Act."[28]

Under the legislation proposed by the President, if a tribe or group of tribes voted to take over a federal program, it would not be necessary for the federal agency administering the program to approve the transfer of responsibility. The President further stated:

> It is my hope and expectation that most such transfers of power would still take place consensually as a result of negotiations between the local community and the Federal government. But in those cases in which an impasse arises

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[28]Actually, the administration sent three bills to Congress: S. 1340, which would permit federal employees to retain federal benefits if they decided to work for Indian tribal organizations; S. 1342, which amended the Johnson-O'Malley Act to authorize the Secretary of Interior to channel funds directly to Indian tribes or communities who run their own educational institutions (thus adding to the present authority to contract with state and local institutions) and amended the act establishing the Indian Health Service to authorize the Secretary of Health, Education, and Welfare to contract with Indian tribes or communities for provision of Indian health services; and S. 1343, which would enable any Indian tribe to request and assume control of any

between the two parties, the final determination should rest with the Indian community.[29]

In the proposed legislation, Indian groups were authorized to select a program or specific portion of a program and submit a plan for carrying out the service or program.[30] The Secretary of the appropriate department was required to turn over to that tribe or community, within 120 days after the request or such other period as might be agreed to, the control and operation of such program or service. The "right of retrocession" was also guaranteed. If the local community elected to administer a program and later decided to give it back to the federal government it could always do so.[31]

In addition, the Secretary was required to supply technical or other assistance, other than financial assistance, to any Indian tribal organization that requested it during the period preceding or immediately following a transfer.[32] An assurance was given to an Indian group that the service or program assumed by them was given the same consideration in the allocation of budget funds as that program or service would have received if it had continued under the control of the federal government. The Secretary, upon the request of an Indian tribe, was authorized to detail any Civil Service employee for

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program or service extended to it by the Department of Interior or HEW. 92nd Cong., 1st sess., 1971.

[29]U.S., President, Public Papers of the Presidents of the United States, Richard M. Nixon, 1970 (Washington, DC: Government Printing Office, 1971), p. 570.

[30]S. 1343, 92nd Cong., 1st sess., 1971, sec. 2.

[31]Ibid., sec. 2 (f).

[32]Ibid., sec. 3.

a period of up to 180 days to assist the Indian group in its operation of a program. In a separate bill submitted by the President, if the tribe chose to hire a federal employee who had formerly administered the program, this employee was still entitled to federal employee benefit programs.[33]

Tribes desiring to operate federal programs were subject to several conditions under the administration's proposal.[34] First, the tribe was required each fiscal year to prepare a report to the Secretary to include an accounting of the amounts and purposes for which federal funds were spent. Second, reports and records of the Indian tribal organization maintained in connection with such a program were subject to an audit by the Secretary and the Comptroller General. Third, if the Secretary determined that any program assumed by an Indian tribe was being implemented in a manner which would violate the rights or endanger the health, safety, or welfare of individual Indians served by such program or service, or that there was gross negligence or mismanagement in the use of federal funds, the Secretary might reassume control of the program after providing notice and hearing to the Indian organization involved. The Secretary was authorized to retain the program until he is satisfied the problems causing him to reassume the service were corrected.

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[33]S. 1340, 92nd Cong., 1st sess., 1971.

[34]S. 1343, 92nd Cong., 1st sess., 1971, 2(c).

Indian Objections to the President's Bills

During the latter part of 1970 and early 1971, NCIO staff and BIA officials met with tribal leaders at ten regional conferences to discuss, among other things, the proposed "self-determination" legislation.[35] Though Indian representatives approved the underlying philosophy of the bill, they were skeptical of several provisions. Many tribes criticized the bill for not giving financial assistance to tribes which assumed a program or service; moreover, the kind of technical assistance to Indian groups was unspecified in the legislation. Doubts were raised about the basic approach of the legislation, the turnover of full control of programs and services to the tribes. Tribal spokesmen argued that the approach allowed the federal government to wash its hands of responsibility for programs if funds were cut or promises not kept. Furthermore, the tribes asked whether the requirements for reporting, auditing, and reassumption did not, in fact, necessitate more federal intervention in tribal affairs than before.

In short, Indian leaders wondered whether the "self-determination" policy, with which they agreed in principle, would become a policy of "self-termination" in practice. The "right of retrocession" offered by the administration as a guarantee against termination or abdication of federal responsibility failed to reassure the tribes. Charles

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[35]Washington, DC, National Archives, Records of the National Council on Indian Opportunity, Record Group 220, 1971.

Trimble, executive director of the NCAI, observed that because it is so difficult to prove at what point a budget becomes inadequate to maintain a social service properly, the BIA and the Interior Department could force tribes into retrocession through budget cuts and then make it appear to Congress that Indian incompetence was the real cause of failure. Trimble spoke of the skepticism which Indians felt concerning the BIA's commitment to the new policy: ". . . failure and retrocession pleases paternalistic bureaucrats who feel threatened by tribal self-determination . . . [and] who love to tell the tribes 'I told you so,' when the tribes have failed because they've never had a decent chance for success."[36]

Interior's Contracting Policy: Putting Policy Implementation Before Policy Adoption

Faced with objections from Indian leaders, the Nixon administration withheld the reintroduction of the self-determination bill in the first session of the 92nd Congress. Rather than wait for a consensus to form between the administration and Indian leaders on a revised bill, BIA and Interior officials attempted to achieve the purposes of the takeover legislation through administrative action. The approach the Interior Department took was unorthodox and controversial. According to Secretary of the Interior Walter Hickel, more effective results

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[36]U.S., Congress, House, Committee on Interior and Insular Affairs, Indian Self-Determination and Education Assistance Act, Hearings before the Subcommittee on Indian Affairs on S. 1017, 93rd Cong., 2nd sess., 1974, pp. 59-60.

can be achieved if administrators "dust off--and use--the laws you've already got on the books, rather than wasting your time trying to ballyhoo unnecessary new laws through Congress."[37]

For example, prior to the release of the President's message on Indian affairs, the BIA signed a contract with the Zuni tribe of New Mexico on May 2, 1970 to authorize the tribal takeover of all services provided by the BIA. The contract was negotiated under the authority of an 1834 law, a section of which stated:

> Where any of the tribes are in the opinion of the Secretary . . . competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged with them, the direction of such persons may be given to the proper authority of the tribe.[38]

The Zunis were given the responsibility for directing all Bureau activities and employees. Federal employees were given the option to stay on the Zuni reservation and work for the tribe, but with the understanding that at the same time, each would be training a Zuni replacement. The Zuni contract also provided the right of retrocession to the tribe.

President Nixon, in his message of July 8, 1970, commented favorably on the transfer of authority to the Zunis:

> Many Federal officials, including the Agency Superintendent, have been replaced by elected tribal officers of tribal

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[37]Walter J. Hickel, Who Owns America? (Englewood Cliffs, NJ: Prentice Hall, 1972), p. 170.

[38]U.S. Code, vol. 25, sec. 48 (1968).

> employees. The time has now come to build on these experiences and to extend local Indian control--at a rate and to the degree that the Indians themselves establish.[39]

Although these remarks were intended to convince Congress to adopt self-determination legislation, Hickel and Commissioner Louis Bruce interpreted the President's comments as an endorsement of their administrative approach to self-determination.[40] Encouraged by Hickel and bolstered by the favorable Indian response to the President's Indian message, Bruce used the contracting policy as one of several tools to bring about Indian self-determination by executive action. The following chapter on policy implementation will examine these activities in greater detail, but a brief description of the controversy over contracting efforts during the 1970-71 period is necessary to understand its impact on legislative activity.

For several months following the President's message, Bruce and his "new team" of young Indians appointed to top positions in the BIA used the 1834 statute and other laws to negotiate numerous contracts with the tribes for the operation of governmental services. Although the "new team" justified its actions in the name of Indian self-determination, opposition to the contracting policy mounted within

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[39] Public Papers of the Presidents of the United States Richard M. Nixon, 1970 (Washington, DC: Governmenting Printing Office, 1971), p. 571.

[40] Interview with Louis Bruce, Washington, DC, June 18, 1980. In an interview with Richard LaCourse, correspondent with the American Indian Press Association, Bruce described his first (and only) meeting with President Nixon at a White House reception in 1969. According to Bruce, the President told Mrs. Bruce, "I expect him to clean up the Indian problem in two years." American Indian Press Association, news release, Washington, DC, October 1972 (hereafter cited as AIPA News Release).

the Indian affairs subsystem. The most serious questions came from congressional leaders on the Interior committees, who believed that the BIA exceeded its statutory authority. According to Haley, "Old statutes enacted for different purposes and under different circumstances, should not be stretched and distorted to support a new policy which Congress has never considered."[41]

At the request of Haley and Aspinall, the Interior Department changed its contracting policy in April 1971. Any further contracting activities with Indian tribes were to take place within the confines of standard federal procurement regulations. According to Interior Department officials, these regulations were repeatedly violated by the "new team's" contracting activities.[42] One of the major violations was the practice by the BIA central office of supplying advance money to Indian contractors to insure that the contractor would provide adequate services to the government. This procedure violated a federal policy requiring U.S. government agencies to maintain an "arms-length" relationship with potential contractors. The effect of the Interior Department's decision to require BIA officials to adhere to standard federal procurement regulations was that no new tribal takeover contracts were signed for the remainder of 1971 and all of 1972.

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[41]Letter, James A. Haley to Harrison Loesch, 6 April 1971 (mimeographed copy in another's personal possession).

[41]New York Times, 11 August 1971, p. A15; 16 August 1971, p. A12.

Jackson's Self-Determination Bill: The Legislative Consequences of Administrative Self-Determination

The remarkable decision by Secretary Hickel and Commissioner Bruce to put policy implementation ahead of policy adoption had a significant effect upon congressional consideration of the President's proposed legislation to turn over the control of government services to Indian tribes. On the one hand, many Indians preferred the contracting approach used by the Bruce administration to the takeover approach proposed by the President. On the other hand, the experience with contracting services to tribes during this period revealed that existing federal contracting procedures were not flexible enough to account for the special problems of tribes.[43]

Defenders of the "new team's" contracting policy criticized the Interior Department's decision to revert to standard procurement regulations as a severe limitation upon tribal efforts to take over BIA services. Many tribes which wanted to administer governmental services, according to these critics, were too poor to put up the funds necessary to initiate and support the provision of services until the federal government made payment, and that without advance funding from the U.S. Government, it was impossible for the tribes to negotiate a contract. Furthermore, the critics stated that it was meaningless to require an "arms-length" relationship between the federal government

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[43]See U.S., Congress, Senate, Committee on Interior and Insular Affairs, Indian Self-Determination, Hearings before the Subcommittee on Indian Affairs on S. 3157, 92nd Cong., 2nd sess., 1972, pp. 67-79 (hereafter cited as 1972 Senate Hearings).

and the tribes when there is only one party bidding to provide the service with whom the BIA had numerous dealings--the tribal government or group sanctioned by the tribal government.

However, it was equally clear that any changes in federal contracting policy in Indian affairs must come from Congress. Increasingly, Indian groups looked to Congress to provide the statutory authority necessary to overcome the perceived "sabotage" of the Nixon self-determination policy by Interior officials and BIA career bureaucrats. Until Congress formally ratified Indian self-determination legislation, said the Indian spokesmen, the BIA and the Interior Department would be reluctant to carry out the policy in a meaningful way.

The Nixon administration realized as well that it would not be good politics to ask Congress to adopt legislation to authorize the tribal takeover of federal programs, while at the same time utilizing existing authority to accomplish the same goal. Thus, two weeks after Haley and Aspinall had succeeded in getting the Interior Department to halt the "new team's" contracting efforts, the administration reintroduced its self-determination bill. However, the resuscitated Nixon takeover bill was the same measure to which Indian tribes had objected as "self-termination" in disguise. Without any visible support from Indian or congressional leaders, the administration bill was introduced "by request."

Again, as with most of the other pieces of the Nixon legislative package, the Senate Interior Committee was the first to respond with self-determination legislation of its own. On February 9, 1972 Senators

Jackson and Allott introduced S. 3157, a bill to authorize the Secretary of Interior and the Secretary of HEW, at the discretion of each or upon the request of an Indian tribe, to enter into contracts with Indian tribes to plan, coordinate, and administer federal programs.[44] The Secretaries under the bill were authorized to waive federal procurement regulations requiring the federal government to maintain an "arms-length" relationship with a potential contractor.[45]

In contrast to the administration bill, the Jackson-Allott proposal also authorized the Secretaries to make grants to tribes for planning, training, evaluation, and other activities and make the payments of such grants or contracts in advance or by way of reimbursement to the tribes, in order to help tribes meet the start-up costs for program or service delivery.[46] Consistent with the administration's proposed legislation, the Interior Committee bill authorized, upon tribal request, the detail of civil service personnel for a period of up to 180 days (and, upon a showing of need, an additional 90 days for the purpose of assisting the tribal organization) in the planning, conduct, or administration of programs under contracts.[47] However, no provision was made in the committee measure

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[44]S. 3157, 92nd Cong., 2nd sess., 1972, secs. 102 and 103.

[45]Ibid., sec. 106.

[46]Ibid., sec. 104.

[47]Ibid., sec. 105.

to allow civil service personnel to retain federal benefits if the tribe decided to hire them.

Another contrasting feature of the Jackson-Allott bill was the absence of any requirements under which the tribes would have to account to the Secretary of Interior, HEW, or the General Accounting Office (GAO), or relinquish control of programs to the Secretary of Interior or HEW upon a finding of a violation of individual rights or gross mismanagement by the tribal organization. The lack of such provisions in the committee bill was in response to Indian concerns about federal interference in tribal government.

At hearings of the Senate Indian affairs subcommittee conducted by Senator Fannin on May 8, 1972, witnesses for the Nixon administration characterized the Jackson-Allott bill as only an interim measure toward Indian self-determination.[48] Under the contracting approach adopted by the bill, said the administration spokesmen, the federal government principally determined in contract negotiations the extent of Indian involvement in the administration of programs. It was not possible for a tribe to obtain full control of a program under the Jackson-Allott bill, whereas under the administration's proposal Indians could obtain full control of any program for their benefit upon their request. Two other desirable features of the administration's bills

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[48] 1972 Senate Hearings, see testimony of Harrison Loesch, Assistant Secretary of the Interior for Public Land Management, and Dr. Laurence Lynn, Assistant Secretary of Health, Education, and Welfare for Planning and Evaluation, pp. 8-67.

which were omitted from the Jackson-Allott bill, said administration officials, were the guarantee of the right of retrocession and the stipulation that once a program is turned over to a tribe, funding for the program could continue at the same level as they were if operated by the federal government.

Indian representatives appearing at the hearings praised the features of the Jackson-Allott bill which authorized grants to the tribes for technical assistance and advance payment of grants or contracts to the tribes.[49] According to Franklin Duchineaux, legislative consultant to NCAI, the takeover approach of the Nixon bills "may be the wave of the future (but) the bills are very complex and complicated and have not received substantial support from the Indian people."[50] The tribes supported the contract approach, according to Duchineaux, because it obligated the federal government to honor agreements made with the tribes and continue its trust responsibility.

After making only one addition to the bill, the Interior Committee unanimously reported the Jackson-Allott bill to the floor on July 27, 1972.[51] The Senate adopted the bill by

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[49]Ibid., pp. 68-79.

[50]Ibid., p. 69. Francis Paul Prucha asserts that Indian support for the contract approach indicates the reluctance of the tribes to renounce governmental paternalism. See pp. 339-40 below. Prucha, The Great Father (Lincoln: University of Nebraska Press, 1984), pp. 1157-62.

[51]U.S., Congress, Senate, Committee on Interior and Insular Affairs, Indian Self-Determination Act of 1972. S. Rept. 92-1001 to accompany S. 3157, 92nd Cong., 2nd sess., 1972. The addition was an amendment permitting the federal government to enter into contracts with tribal organizations for repair of roads, buildings, sidewalks, etc., by negotiation, without advertising.

voice vote on August 2, 1972.[52]

Indian Self-Determination Dies in the House

As previously mentioned, the House Interior Committee failed to take action on the President's or the Senate's self-determination bill. Its activity on Indian self-determination was limited to blocking the Interior Department's attempt to bring about the tribal takeover of federal programs by administrative means. It is not clear whether the House committee would have taken favorable action on the Senate bill if there had been sufficient time remaining in the 92nd Congress. Nor was there any indication that the bill would be a high priority item in the next Congress. Nevertheless, in the context of their failure to move quickly on the President's Indian bills, the House Interior Committee's leadership did not seem to be in any hurry.

The lack of a sense of urgency in Congress, especially on the House side, to deal with Indian legislation during President Nixon's first term was frustrating to Indians, whose expectations of favorable action were raised by the President's message on Indian affairs. Increasingly, Indian leaders felt that direct political action was necessary to force governmental action on their demands for self-determination. However, the emergence of differences among Indian groups on what constituted self-determination and how to achieve it jeopardized the success of their renewed political activism.

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[52]Congressional Quarterly Almanac (1972), pp. 695-6.

Reopening the Policy Window: The Escalation of Indian Protest, 1969-72

The Obstacles Remain to Enacting Indian Self-Determination

In his study of the agenda-setting process, John Kingdon states that policy windows--opportunities for advocates to push their pet problems or solutions--can close as quickly as they open.[53] Just as events such as a crisis or change in administration may create a favorable climate for governmental action on particular issues, events can also stifle efforts at policy change. The events that promote certain issues may pass--a crisis situation is resolved or a new administration's honeymoon ends--or new events may divert attention to other issues. Turnover in key governmental personnel, such as a committee chair, may foreclose as well as generate opportunities for action. According to Kingdon, windows may close when policymakers feel they have addressed the problem through decision or legislation. Or, conversely, when officials fail to get action on a certain issue they may conclude that support is not there to warrant the investment of further time and resources.

As the 1972 national elections approached, two years after the delivery of President Nixon's message on Indian affairs, the window of opportunity for congressional passage of Indian self-determination legislation was in danger of closing. To be sure, considerable

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[53]John W. Kingdon, Agendas, Alternatives, and Public Policies (Boston: Little, Brown and Co., 1984), pp. 176-79.

progress had occurred during the previous two years. Three important pieces of Indian legislation--Taos-Blue Lake, Alaska claims, and Indian education--were enacted. The Senate Interior Committee and its chairman, at one time opponents of self-determination, became Indian advocates. However, the 92nd Congress failed to pass the legislation with the highest priority of the Indian community. Proposals to turn over administrative control of federal programs to Indian tribes, formally reject the termination policy and strengthen federal protection of Indian lands and resources were yet to be approved. The biggest obstacle to further policy change remained the House Interior Committee.

A threat to Indian policy reform, equally as serious as the inaction of the House Interior Committee, was the increasing political fragmentation of the Indian community. The longer the policy debate over Indian self-determination continued, the more divided Indians appeared to be over what kind of self-determination they wanted. To all but the most reactionary or fully assimilated Indians, "Indian self-determination" meant a rejection of termination in favor of greater Indian control over their destiny. But what kind of control and by what means? Tribal chairmen, elected under the authority of the Indian Reorganization Act (IRA) and represented by the National Tribal Chairman's Association (NTCA), defined self-determination as increased administrative authority and federal financial support for tribal governments. These "conservatives," as we shall call them, were least critical of the BIA. Other Indian leaders sought more extensive policy change within the framework of the IRA. The "reformers," which included the

leadership of the largest Indian organization, the National Congress of American Indians (NCAI), called for greater tribal independence from Congress and a thoroughly-revamped BIA, but also greater democratization of tribal governments. As the debate over the Indian Education Act of 1972 showed, both groups, which consisted mainly of reservation Indians, opposed special federal aid to urban Indians.

At odds with the more moderate elements of the Indian community were a coalition of young Indians who lived in urban areas and the older, culturally traditional Indians on the reservation. To these "radicals," the most militant of whom were represented by the American Indian Movement (AIM), true Indian self-determination meant the restoration of complete Indian sovereignty through governing arrangements chosen by the Indians themselves on a vastly-expanded land base granted under prior treaties with the U.S. Government. Short of achieving these demands, urban Indians sought federal recognition of the rights to self-government of Indians living off the reservation.

Most Indians were unhappy with the hesitant congressional response to the President's Indian bills. Of the various Indian factions, however, the radicals were most dissatisfied. From their point of view, policymakers in Washington failed to address their concerns. In President Nixon's message on Indian affairs, there was no recognition of the rights of urban Indians to self-government, nor were any special programs to aid urban Indians proposed. Neither the President nor Congress responded to the emotional issues of treaty rights and land returns. To the radicals, the returns of land to the Taos Pueblos

and Alaskan natives were token measures which ignored long-standing claims of Indians for millions of acres of land seized by the United States Government in violation of treaty obligations. Furthermore, just as the federal government refused to reopen the issue of treaty rights, it ignored the demands of Indians dissatisfied with tribal government under the Indian Reorganization Act. Rather than change what Indian radicals regarded as an artificial contrivance imposed on the Indian people without their consent, the President and Congress reaffirmed the existing structure of tribal government.

The Escalation of Indian Protest

Frustration with Washington's inaction or rejection of their demands led Indian activists to increase their protest activity. Beginning with the dramatic occupation of Alcatraz in 1969, Indian militancy continued to rise. Over the 1969-72 period the number of incidents involving Indian militants and authorities and the number of violent confrontations increased each year.[54] Indian militancy became another issue which divided the Indian community, with conservative Indians denouncing the radicals and moderate Indians condemning violence but supporting the broader objectives of stimulating more rapid and substantive federal policy change.

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[54]Richard LaCourse, "Turning Point in Indian Protest," Race Relations Reporter (May 16, 1972):28-31; Vine Deloria, Jr., Behind the Trail of Broken Treaties (New York: Delta Books, 1974), pp. 45-47.

However, as legislative reform efforts stalled in Congress and administrative attempts to promote Indian self-determination through contracting and other measures were blocked, Indians of all political orientations joined together to express their concerns. On September 21-22, 1971 leaders of all the major Indian organizations--NTCA, NCAI, the National Indian Youth Council (NIYC), and AIM--gathered in Washington to meet with members of Congress and Nixon administration officials.[55] Although congressional passage of major Indian bills was a major demand, the more immediate concern of Indian leaders was the policy direction of the Interior Department and the BIA. After the controversial contracting activities of the Indian "new team" in the BIA were suspended in the spring of 1971, Interior Department officials continued their efforts to curtail administrative self-determination. Following the meetings with Indian leaders, Nixon administration officials made several concessions. This did little, however, to prevent further protest activities.

The Trail of Broken Treaties and the Occupation of BIA Headquarters

A year later, another Indian "assault" on Washington occurred, a protest demonstration which created much greater controversy and achieved national and international notoriety. This was the "Trail of Broken Treaties" (TBT) caravan of approximately 2,000 Indians, who began their march in several western cities in late summer of 1972

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[55] New York Times, 22 September 1971, p. 20. See pp. 295-96 below.

and arrived in Washington during the final weekend of the national election campaign.[56] The impetus for the march was a series of Indian killings across the western states during the spring and summer of 1972. Concern about the lack of justice in Indian country led Indian leaders to organize the TBT. One of the originators of the march, Robert Burnett, chairman of the Rosebud Sioux tribe of South Dakota, envisioned a nonviolent demonstration similar to the March on Washington for civil rights in 1963.[57]

However, the protest turned into a state of siege between Indian demonstrators occupying the BIA headquarters in Washington and federal officials seeking their eviction. Without recounting all of the events which led to this tragedy, it is important to note several factors which contributed to the confrontation. First, although newspaper reports indicate that a broad cross-section of the Indian community participated in the march, it also was apparent that leaders of radical Indian groups, including AIM, played a major role in organizing the demonstration. In early October the caravan stopped for several days

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[56]Discussion of the Trail of Broken Treaties march and the seizure of the BIA headquarters is derived from: Robert Burnette and John Koster, The Road to Wounded Knee (New York: Bantam Books, 1974), pp. 195-220; Deloria, Broken Treaties, pp. 43-62; U.S., Congress, House, Committee on Interior and Insular Affairs, Seizure of Bureau of Indian Affairs Headquarters, Hearings before the Subcommittee on Indian Affairs, 92nd Cong., 2nd sess., 1972 (hereafter referred to as 1972 House Seizure Hearings); the New York Times; and AIPA News Releases.

[57]Burnette and Koster, Road to Wounded Knee, p. 198.

in St. Paul, Minnesota, home base of the AIM leadership, where some of the TBT leaders drafted a list of twenty points which they felt summarized a reform program for the government which would receive strong support from the Indians.[58] The goal was to present the Twenty Points to the Nixon administration, which could put the program into effect following what was expected to be a landslide electoral victory. Among the demands contained in the Twenty Points were:

1. Restoration of treaty-making authority to Indian tribes.

2. Formal government review of past treaty commitments and violations.

3. Establishment of relations between Indian tribes and the U.S. Government under treaties, which would be newly negotiated and signed.

4. Restoration of a 110-million acre land base to the Indians, and a consolidation of Indian land, water, and resource rights.

5. Termination of leases in Indian land which give title to non-Indians.

6. Reinstatement of federally-recognized status to terminated Indian tribes and a formal denunciation of the termination policy.

7. Abolition of the BIA and the establishment of a new Indian agency in the Executive Office of the President.

8. Acceleration of efforts to aid tribes in regard to economic development, education, health, housing, and employment.[59]

It is not clear whether radical Indian leaders sought a violent confrontation as a way of dramatizing their demands. It is true,

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[58]Deloria, Broken Treaties, pp. 47-53.

[59]The complete statement of the "Twenty Points" is found in 1972 House Seizure Hearings, pp. 162-71.

however, that many moderate Indian leaders praised the Twenty Points and wished the caravan success.

Second, some Interior officials, most notably Assistant Secretary Harrison Loesch, saw the caravan as a militant operation organized by AIM and consistently refused to offer any assistance to the demonstrators.[60] It was Loesch who, when the TBT marchers occupied the BIA auditorium after they learned that prior arrangements for housing had fallen through, ordered the forcible eviction of the demonstrators the Thursday after election day and again on Monday, November 6, election eve.[61] Loesch's response was part of a broader Interior Department policy to get tough with Indian militants following the September 1971 demonstrations in Washington.

Third, White House officials sought to avoid a violent confrontation with Indian protestors. Presidential assistants Garment and

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[60]However, BIA and Interior officials met with Burnette and TBT leaders to discuss details of the march and issuance of permits. The conferees generally agreed that the caravan was intended to be a peaceful demonstration staged to dramatize Indian concerns. The TBT leaders assured the government that housing for the members of the Caravan was secured with private organizations and churches in Washington, and all that was needed was a place to hold evening meetings in case of bad weather. The BIA auditorium was offered for this purpose.

But on October 27, just before the Caravan was to arrive, TBT officials were told that several churches counted on for housing had disassociated with the march. On Wednesday, November 1, the main body of Caravan members arrived. Registration and assignments to housing were made, but St. Stephen's Incarnation Church was the only gathering place for the arrivals. Unhappy with housing, Caravan members cancelled their initial plans and on the morning of Thursday, November 2, moved to the BIA auditorium to seek other quarters.

[61]New York Times, 6 November 1972, p. 19; 7 November 1972, p. 1. Also Burnette and Koster, Road to Wounded Knee, pp. 213-15.

Patterson, the architects of the President's Indian policy, were concerned about the impact of violence on the administration's relations with the Indian community and support for the President's policy. Those closest to the President, including domestic policy advisor Ehrlichman and his assistant Egil Krogh, wanted to avert a major political embarrassment to the President on the eve of the election. On both occasions when the Interior Department and the District of Columbia police were about to storm the BIA building, the White House overruled the use of force and instead pursued a policy of negotiations. On Wednesday, November 8, after a seven-day standoff, agreement was reached between White House negotiators and TBT leaders. The White House promised to give a formal response to the Twenty Points within sixty days and that no TBT members would be prosecuted for seizure and occupation of the BIA building. The government further authorized $66,000 from Office of Economic Opportunity funds as return travel money to Caravan members.[62]

The Effects of the Bureau Takeover: Conflict and Uncertainty

It was easier to discern the immediate effects of the BIA takeover on federal-Indian relations than the long-term impact. Most visible was the fact that the BIA was completely immobilized. As the election eve deadline for evacuation approached and confrontation with police expected, widespread destruction within the BIA building occurred. There was substantial damage to furniture, equipment, and the building

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[62] New York Times, 8 November 1972, p. 1; 9 November 1972, p. 52.

itself. Valuable Indian artifacts and art treasures were defaced. BIA files were raided and smuggled out of the building. Estimates of the total damages varied widely, from $750,000 to $2.5 million. One month after the seizure, Secretary Morton fired Loesch, BIA Commissioner Louis Bruce, who sympathized with the protestors, and Deputy BIA Commissioner John O. Crow, who favored a hard line against the demonstrators.[63] Morton gave temporary authority over BIA operations to Richard S. Bodman, Assistant Secretary of Interior for Management and Budget, who would preside as caretaker until a new commissioner was apointed. It was many months before BIA operations returned to normal.

Another consequence of the occupation was increased tension between the Nixon administration and the Indian community, which intensified divisions within the Indian community itself. The administration characterized the seizure of the BIA as an act of the leftist fringe of the Indian movement. According to Secretary Morton, "It is obvious to me that the seizure is a form of blackmail by a small group which seeks to achieve through violence objectives which are not supported by a majority of reservation Indians."[64] Agreeing with Morton that the TBT was an AIM-sponsored operation were leaders of the conservative NTCA, who toured the ransacked headquarters with the Secretary. This led Charles Trimble, executive director of the moderate NCAI, to charge

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[63] New York Times, 3 December 1972, p. 1.

[64] New York Times, 10 November 1972, p. 17.

that the Nixon administration was deliberately trying to divide the Indian community, isolating itself from all but the most conservative Indian leaders.[65]

Deepening the chasm which separated the Nixon administration and the Indian community was the negative response issued by the White House to the Twenty Points submitted by the TBT. The administration rejected each of the demands on grounds that they were not in the best interests of Indian people, that they were of questionable legality, or that they had been proposed by President Nixon in the past but ignored by Congress. Some of the responses by the White House to the TBT demands stated:

> 1. It is impossible for the U.S. government to restore treaty-making authority and relationships with the tribes. The government stopped making treaties with the Indians in 1871 and in 1924 all Indians became citizens of the U.S. and the states where they live. The Indian Claims Commission (ICC) is empowered to settle questions on the moral and legal obligation of the U.S. government toward Indians.
> 2. It is needless to restore 110 million acres of land as a land base for Indians. The Federal government holds in trust about 40 million acres of commonly owned tribal land plus about 10 million more in individually owned tribal land, in addition to the 40 million acres which will be held in trust for the next 20 years for Alaskan Natives. This leaves only 20 million acres of unidentified and unlocated land; much of this might be part of the land involved in the 250 land cases now pending before the ICC.
> 3. It is impossible to terminate leases on Indian land, since Indian tribes and individuals should have the right to lease their land to whomever they choose and the BIA is there to protect their interests in such matters.
> 4. It is impractical to abolish the BIA and replace it with a new agency. This would replace one bureaucracy with another

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[65] New York Times, 11 November 1972, p. 14.

that would have even less administrative and financial accountability.[66]

The categorical rejection of the Twenty Points by the White House disappointed not only radical Indians, but also more moderate Indian leaders who felt that the platform articulated the boldest and deepest desires of the Indian people, and deserved a fairer hearing.

A final short-term effect of the BIA seizure was greater antagonism between the Nixon administration and congressional leaders on the immediate issue of how the protest should have been handled and the broader question of why the protest occurred. With respect to the occupation, members of Congress criticized the role played by the White House in the negotiations with TBT leaders. In hearings held by the House subcommittee on Indian affairs, committee members favored a tougher policy against the demonstrators and disapproved of the granting of $66,000 in federal funds to the departing protestors.[67] Summons to White House aides Garment, Patterson, Ehrlichman, and White House counsel John Dean to testify before the subcommittee were dismissed by the White House, which asserted executive privilege.

The Nixon administration's reply to congressional criticism of its role in the TBT affair was that the demonstration would not have occurred in the first place if Congress had acted on the President's legislative program for Indians. The bills to repudiate termination,

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[66]For the complete text of the White House response to the Twenty Points, see 1972 House Seizure Hearings, pp. 169-71.

[67]See, generally, 1972 House Seizure Hearings.

create an Indian Trust Counsel Authority, turn over BIA and HEW services to tribal control, extend credit to Indian tribal enterprises, and raise the status of the BIA Commissioner to assistant secretary would meet the demands of Indians for self-determination, the administration claimed. In essence, much of the responsibility for retarding Indian progress, the White House stated, rested with Congress:

> The Congress had been addressed two and one-half years ago when the President sent the Congress a special message on July 8, 1970 dealing exclusively with American Indian matters. Indian advice about those program proposals was sought and obtained at that time in a series of meetings held throughout Indian country. With two exceptions (the Taos Pueblo and Alaskan Native land returns), none of the President's legislative proposals made in that Message have been enacted by the Congress. Some have not even been given hearings.
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> What is needed is not more addresses and messages; the President will again submit in 1973 legislative proposals to implement his progressive policy for Indians. What is needed is Congressional action.[68]

Responding to the White House, Congressman Haley of the House Interior Committee said the blame for the failure of Congress to enact the President's Indian bills rested with the administration.[69] After the Alaska Native Claims bill, said Haley, the White House never pushed hard for the rest of its program. Some bills reached Congress too late in the session, while consideration of others was delayed because of irregularities in the administration of Indian programs.

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[68] Ibid., p. 72.

[69] Congressional Quarterly Weekly Report, 27 January 1973, p. 134.

Haley blamed turbulence within the Interior Department for contributing to Indian frustrations.

Still, in spite of the finger-pointing between Congress and the Nixon administration, it is not clear whether the occupation of the BIA headquarters was an event which reopened or closed the window for enactment of Indian self-determination legislation. At the end of 1972 there were many reasons for Indian advocates to be concerned. The split widened between Indian conservatives, reformers, and radicals on the meaning of Indian self-determination and the means to achieve it. The effect of Indian militancy appeared to drive the Nixon administration closer to Indian leaders it could more effectively influence, such as tribal chairmen dependent on federal support. Relations with Indian reformers, who sympathized with the aims of the militants but not their tactics, deteriorated. Furthermore, there was no telling what Indian radicals would do next, in light of the administration's total rejection of their policy agenda. If there was an escalation of Indian protest, how would the Nixon administration and Congress respond? Might the issue of Indian militancy cause government officials to withdraw their support of Indian self-determination? Much depended on the public's reaction to events such as the BIA takeover. Would public sympathy for Indian demands continue, or would there be a backlash? This concern, together with the possibility that the Indian community would be unable to unite behind a legislative program, increased the uncertainty about the chances for passage of Indian self-determination legislation as the Nixon administration entered its second term.

Indian Self-Determination and the Politics of Legislative Uncertainty, 1973-74

In his book, The Politics of Medicare, Theodore R. Marmor says that the turning point of the conflict over national health insurance for the elderly was the election of 1964.[70] Whereas a conservative coalition of Republicans and Southern Democrats had blocked Medicare legislation in previous Congresses, the 1964 election removed this obstacle. The Democrats gained a more than two-to-one ratio of seats in both houses of Congress, and President Johnson, who campaigned in support of Medicare, was overwhelmingly elected. The election results guaranteed the votes for the measure in committee and on the floor. As a result, states Marmor, the politics of Medicare shifted from the politics of legislative possibility to the politics of "legislative certainty." In 1965, "The only question remaining was the precise form the health insurance legislation would take."[71]

In a manner quite unlike the Medicare issue, the politics of Indian self-determination made a similar shift from the politics of legislative possibility to the politics of legislative certainty. The doubts which surrounded Indian policy reform following the occupation of the BIA central office did not last very long. In late 1972 and early 1973 a series of events occurred which virtually guaranteed congressional

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[70]Theodore R. Marmor, The Politics of Medicare (Chicago: Aldine-Atherton, 1973).

[71]Ibid., p. 60.

passage of self-determination legislation. New leadership in the Congress, the abdication of Indian policy leadership by the executive branch, and the occupation of Wounded Knee combined to create a consensus on the direction of federal policy. Indian self-determination legislation would be enacted in the 93rd Congress--the only question remaining, to paraphrase Marmor, was what precise form the legislation would take.

New Leadership in the 93rd Congress

How did the "politics of legislative certainty" come to Indian affairs? As was stated earlier, one cannot underestimate the importance of committee and subcommittee chairmen in policy areas which are of concern to a small segment of the public. Senator Jackson's change of position on Indian policy was a major breakthrough for advocates of Indian self-determination. In the November 1972 election, the other obstacle to legislative reform was removed. Representative Aspinall, Chairman of the House Interior Committee since 1959, was defeated for reelection. Aspinall's defeat led to a series of important leadership changes in the 93rd Congress.

Replacing Aspinall was Representative Haley, the former chairman of the Indian affairs subcommittee. Haley had not distinguished himself as an active supporter of Indian concerns during his tenure as subcommittee chairman, but he was familiar with Indian issues and aware of the need for action. Significantly, in contrast to Aspinall's tight rein on committee activity, Haley gave his subcommittee great latitude

to develop legislation.[72] This procedure enabled Haley's successor as chairman of the Indian affairs subcommittee, Representative Meeds, to turn his subcommittee into an Indian advocate. Meeds had already distinguished himself as an able supporter of Indian self-determination by his work on the Indian Education Act of 1972 in the House Education and Labor Committee. One of his first actions as chairman was to hire an Indian to serve as majority counsel to his subcommittee. He selected Franklin Duchineaux, who was the legislative counsel to the NCAI. With the support and participation of Republican members of the subcommittee, committee, particularly Representatives Don Young (Alaska), Manuel Lujan, Jr. (N.M.), and David Towell (Nev.). Meeds commenced hearings on the large backlog of items on the Indian policy agenda.

On the Senate side, Jackson remained chairman of the Interior Committee, but significant changes occurred on the Indian affairs subcommittee. Senator McGovern resigned his chairmanship in favor of his South Dakota colleague, newly-elected Senator James Abourezk. Abourezk, 42, had grown up in a community near the Rosebud Sioux reservation. In contrast to the typical reluctance of members of Congress to be assigned to Indian affairs, Abourezk actively sought the chairmanship of the subcommittee. Moreover, he came to be regarded as a Senate "maverick," unconcerned with party loyalty or even fidelity to constituency interests. He was unafraid to take issue positions

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[72] Congressional Quarterly Weekly Report, 27 January 1973, p. 134.

too liberal for his constituency or unpopular with his party (such as his advocacy of the Palestinian cause). As a freshman senator anxious to make an impact, Abourezk devoted much more time to the work of his subcommittee than his predecessor. He was the first unqualified advocate of Indian interests in modern times to serve as chairman of a congressional committee dealing with Indian tribes. In addition, he was supported in his efforts by the ranking minority member of the subcommittee, Senator Dewey Bartlett (R-Okla.), and Senator Fannin.

The Rise and Fall of the "Administrative Presidency" and Indian Affairs

With new leadership on the Interior committees, Congress was ready to assume policy leadership in Indian affairs. Given the support of the Nixon administration for Indian self-determination, it appeared that the foundation for cooperation was laid between the legislative and executive branches towards Indian policy reform. However, the hostile atmosphere of executive-legislative relations which preceded the 1972 elections threatened for a time to destroy that foundation.

Following his landslide reelection victory over Senator McGovern, President Nixon announced that domestic policy would take a more conservative direction in his second term of office.[73] In contrast to the emphasis on solving domestic problems in his first inaugural address, Nixon's second address had a decidedly negative tone. Stated

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[73]Garnett D. Horner, "Nixon Looks Ahead: 'A New Feeling of Responsibility . . . of Self-Discipline,'" Washington Star-News, 9 November 1972, in Richard Nathan, The Administrative Presidency (New York: John Wiley and Sons, 1983), p. 147.

the President: "I offer no solutions, no promise of a purely governmental solution for every problem. We have lived too long with that false hope."[74]

However, the President realized that his domestic goals would face opposition from the Democratic-controlled Congress and career bureaucrats in the domestic departments.[75] Rather than the conciliatory approach to governing of his first term, Nixon chose a strategy of confrontation to carry out his mandate.[76] Referred to as the "administrative presidency" approach, the strategy was to accomplish domestic policy change through administrative initiatives. In his proposed fiscal year 1974 budget, the President proposed cuts in the human resource and community development sectors. He asserted broad impoundment authority to reduce levels of domestic spending and, in some instances, completely eliminate domestic programs. He appointed political loyalists to cabinet and subcabinet positions, who in turn used their powers of command to enforce presidential priorities. For example, Howard Phillips, a young conservative assigned by Nixon to head the Office of Economic Opportunity (OEO), attempted to reorganize

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[74]Public Papers of the Presidents of the United States, Richard M. Nixon, 1973, (Washington, DC: Government Printing Office, 1975), p.14.

[75]See Joel Aberbach and Bert Rockman, "Clashing Beliefs Within the Executive Branch," American Political Science Review, 70 (June 1976):456-68, for evidence that career bureaucrats in the domestic departments were opposed to Nixon's New Federalism goals.

[76]This section relies upon Nathan, Administrative Presidency, pp. 43-56

OEO out of existence by devolving its functions to other agencies.[77]

The President's new direction in his second term directly affected the Indian policy subsystem. Nixon reiterated his support for the legislative proposals contained in his message on Indian affairs, but cautioned against any new spending items. In contrast to his first four years in office, when spending for Indian programs more than doubled, Nixon proposed a freeze in appropriations for Indians in his fiscal year 1974 budget.[78] In addition, he impounded the $18 million

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[77]Phillips' actions, taken while he was Acting Director of the OEO. were declared null and void by a federal district court on June 11, 1973, on the grounds that he had not been confirmed by the Senate to the post of Director. Phillips subsequently resigned. See Chapter V, page 311. Another aspect of the "administrative presidency" which concerned Indians was the President's proposed "super-secretary" structure. In January 1973 Nixon announced that four Cabinet members would be given special roles as "counsellors to the president" in addition to heading up their own agencies. George Shultz, Secretary of the Treasury, would be responsible for economic affairs. James Lynn, HUD Secretary, would advise the President on community development. Secretary of Agriculture Earl Butz would have jurisdiction over natural resources policies, while Caspar Weinberger, Secretary of HEW, would oversee human resource activities. Under this arrangement, which paralleled the President's proposal in 1971 to consolidate seven departments and numerous agencies into four new departments, Secretary of the Interior Morton would not have direct access to the President but instead would report to Secretary Butz. Indians were concerned that Morton's "demotion" would result in neglect of Indian problems. However, after the Watergate scandal erupted in the spring of 1973, Nixon abandoned the "super-secretary" arrangement. Nathan, Administrative Presidency, pp. 51-53.

[78]Pressure to cut the BIA/IHS budget began in July 1972, after President Nixon signed a bill raising individual social security benefits by 20 percent. Until his dismissal in December 1972, BIA Commissioner Bruce publicly resisted orders from the Interior Department to propose cuts in the BIA's fiscal year 1974 budget request. AIPA News Releases, July-October 1972. For information on the administration's FY 1974 budget request, see Congressional Quarterly Almanac (1973):123-8. Through the first four years of his administration, Nixon had requested

appropriated by Congress in fiscal year 1973 for the Indian Education Act of 1972. No funding was requested the next fiscal year for the program, which the administration had opposed as too costly and duplicative of other Indian education programs.[79]

Predictably, the shift in domestic priorities and the confrontational approach adopted by the President stirred a great deal of partisan and ideological conflict on Capitol Hill. Indian groups were critical of the administrative actions taken by the President and appealed to Congress to reject the new initiatives. In this highly-charged atmosphere, the Democratic leaders of the Interior committees denounced the administration for retreating from its commitment to social justice for Indians.

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and obtained modest increases in federal spending for Indian programs. From fiscal years 1969 to 1973, the budget for the BIA rose from $230.35 million to $518.199 million ($468 million if the $50 million payment to Alaskan native as the first installment of the claims settlement is excluded). Similar rates of increase occurred in the budget of the Indian Health Service. However, for fiscal year 1974 the President proposed a BIA budget of $520.967 million, nearly the same as the amount spent in FY 1973. Moreover, the 1974 budget included a $70 million payment to the Alaskan natives, an increase of $20 million over FY 1973. Taken together with the rise in the cost of living, the administration proposed real cuts in BIA services for the 1974 fiscal year.

[79] New York Times, 6 May 1973, p. 12; Steve Nickeson, "Indian Groups Sue President, BIA," Race Relations Reporter (April 16, 1973):5-8. Nixon's use of impoundment authority was challenged in federal district court in a suit brought by the Coalition of Indian-Controlled School Boards, school boards, and other Indian organizations. In addition, no funding was requested for the Indian Education Act in fiscal year 1974, and the President refused to appoint anyone to serve on the National Advisory Council on Indian Education, which was established by the Act to advise the head of the Bureau of Indian Education in HEW. Also, Indians were concerned about the impending demise of OEO, in so far as the OEO administered Indian Community Action Programs and was the only source of federal aid for urban Indians.

To be sure, the turmoil in the BIA and the controversy over the Indian budget exacerbated tensions between the Nixon administration and Congress, and divided the Indian community. However, it should be pointed out that the high level of conflict engendered by the application of the "administrative presidency" approach to Indian affairs did not prevent cooperation on legislative matters. The Nixon administration still pursued its Indian legislative agenda and worked with the Interior committees on several bills, including the self-determination act. In fact, as the Watergate scandal engulfed the White House and brought a premature end to the "administrative presidency," the Nixon administration moved toward a more conciliatory approach on the entire domestic policy front.[80]

Still, the decline in prestige of the Nixon presidency with the public and the Indian community, together with the rise of new leadership on the Interior committees, meant that legislative initiative in Indian affairs had shifted to Congress. With the executive branch paralyzed by scandal and administrative turbulence, congressional leaders had a golden opportunity to forge a legislative record of Indian policy

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[80]In this context, the Nixon administration yielded on the Indian budget and other matters. In May 1973, the administration released the $18 million for the Indian Education Act which it had impounded. The President appointed the fifteen members of the National Advisory Council on Indian Education. A more generous budget request was submitted for fiscal year 1975. For fiscal year 1975 the President proposed a 20 percent increase for the BIA and IHS budget over the final appropriations figures for FY 1974 (30 percent over its proposed FY 1974 budget).

reform. But before description of how the opportunity was seized in in the 93rd Congress, one more factor should be mentioned which contributed to the "politics of legislative certainty." At Wounded Knee, South Dakota, Indian militants succeeded once again in focusing public attention on Indian demands for self-determination.

The Wounded Knee Occupation

On February 27, 1973, armed members of the American Indian Movement and the Oglala Sioux Civil Rights Organization, holding eleven hostages, occupied the tiny hamlet on the Pine Ridge reservation.[81] The militants demanded that the Senate Foreign Relations Committee hold hearings on 371 treaties between the Indian tribes and the U.S. government and that the Senate conduct a full-scale investigation of the government's treatment of the Indians.[82] Furthermore, they called for the removal

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[81]The description of the Wounded Knee occupation is drawn from the following sources: U.S., Congress, Senate, Committee on Interior and Insular Affairs, Occupation of Wounded Knee, Hearings before the Subcommittee on Indian Affairs, 93rd Cong., 1st sess., 1973 (hereafter cited as Wounded Knee Hearings); Alvin M. Josephy, Now That the Buffalo's Gone (New York: Alfred A. Knopf, 1982), pp. 215-64; Deloria, Behind the Trail of Broken Treaties, pp. 220-54; Peter Mathiessen, In The Spirit of Crazy Horse (New York: Viking Press, 1983), pp. 60-83; also numerous New York Times articles.

[82]In particular, the militants demanded an investigation of violations of the Fort Laramie Treaty of 1868, which guaranteed the Sioux Indians absolute control over the Great Sioux reservation. The reservation covered much of what is now South Dakota, and included the Black Hills. Within a decade of the signing of the treaty, the Black Hills were overrun with settlers and prospectors. The Battle of Little Big Horn was in large part a response to what the Indians felt was the illegal and forcible seizure of the Black Hills. Shortly after Custer's defeat, the U.S. government declared the Fort Laramie Treaty null and void. Mathiessen, Spirit of Crazy Horse, pp. 1-3.

of the tribal chairman of the Oglala Sioux, Richard Wilson, and the dissolution of the tribal governmental structure established under the Indian Reorganization Act of 1936. The militants vowed they would stay in Wounded Knee until they got answers from the federal government and pledged that no harm would come to the hostages. In response, 200 FBI agents, U.S. marshals, and BIA law enforcement personnel laid siege to the garrison while negotiations got underway.

The uprising became an international news event. The symbolism of the conflict was obvious: Indians with war paint and rifles vowed to fight U.S. government agents to the death on the site of the infamous Wounded Knee massacre of 1890.

Though the scene reminded the world of the sad history of U.S.-Indian relations, the issues and events which precipitated the conflict were more immediate and parochial in nature. Elected in 1972, Wilson was a controversial tribal chairman who represented the largely assimilated, mixed-blooded Indian faction on the Pine Ridge reservation. His opponents, who were full-blooded, more traditional Indians, accused Wilson of attempting to consolidate his power by misusing tribal funds, placing relatives on the government payroll, and creating a 45-man "goon squad" to harass his political enemies. At the same time, relations between the Oglala Sioux and the neighboring white community were worsening. The killing of an elderly Indian near the reservation in the spring of 1972 led the traditionals to call in members of AIM to dramatize their demands for justice. During that time Wilson's men clashed with AIM members. Several months later in early 1973,

another Indian was killed in nearby Custer, South Dakota, and AIM was called in again to protest the white authorities' handling of the case. Wilson, who condemned AIM's role in the TBT occupation of the BIA headquarters, attempted to ban AIM members from setting foot on the reservation. An effort by the traditionalist faction to impeach Wilson failed, and the occupation of Wounded Knee began the following week.

Federal officials were divided on how to deal with the takeover. Interior Department officials favored negotiating with the garrison leaders, but not at the cost of undermining the basic structure and authority of tribal governments set up under the IRA. U.S. marshals and other Justice Department officials strongly endorsed the use of force to end the conflict. On March 7, Wayne Colburn, the chief U.S. Marshal, ordered AIM and the Oglalas to vacate Wounded Knee by sundown, March 8, and moved Army gunners into position. This widely-publicized move led to a large public outcry. Hundreds of telegrams were sent to the White House, urging the President to show restraint. Before the deadline for evacuation of the militants passed, White House aides Garment and Patterson, upon directives from Ehrlichman and Ken Cole of the Domestic Council, ordered the Justice Department to call off the assaults. While the siege continued, secret negotiations between White House officials and the militants were conducted, with Indian activist Hank Adams serving as a conduit.[83]

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[83]Jack Anderson, "Ehrlichman Gives Inside Account of Wounded Knee," Johnson City (Tenn.) Press-Chronicle, 6 October 1975, p. 12. According to Ehrlichman, President Nixon was not involved in any government decisions concerning Wounded Knee; also see New York Times, 9 June 1973, p. 15.

Two months later, on May 7, with two Indians killed and one federal officer severely wounded during sporadic exchanges of gunfire, the seventy-one day occupation came to an end. In exchange for the surrender and arrest of those charged with criminal conduct during the occupation, the U.S. government agreed to investigate the finances of the tribal government and protect the legal rights of individual Indians against unlawful actions by tribal government authorities. With respect to the protestors' demands for the establishment of a presidential treaty commission and a referendum to establish a new tribal government structure, White House officials replied that only Congress has the power to deal with treaty matters and change the basic framework of U.S.-Indian relations under the IRA.[84]

The terms of the settlement were part of the Nixon administration's strategy to portray the occupation as the work of a "violent, revolutionary Indian element" and to shift the blame to Congress.[85] John

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[84] Wounded Knee Hearings, pp. 301-10.

[85] LaCourse, "Indian Politics in Changing Times," Race Relations Reporter (June 23, 1973):8. In fact, after the Trail of Broken Treaties March, the FBI put Indian militants on its list of targets for its counter-intelligence program (COINTELPRO). According to Mathiessen, the neutralization of AIM and other militant Indian organizations was the number one priority of the FBI after U.S. involvement in Vietnam had ended in January 1973. A series of trials in federal and state courts of the Wounded Knee leaders began in January 1974. In May 1974 Federal District Judge Frederick Nichol dismissed the U.S. government's case against the Wounded Knee leaders because of substantial evidence of government misconduct, including the use of paid informants, coaching witnesses to give false testimony, and illegal wiretapping. Trials of AIM leaders for various alleged violations continued throughout the 1970s. It was not until January 1982 that the original AIM leaders were able to reunite and begin national operations again. Mathiessen, Spirit of Crazy Horse.

Whitaker, Undersecretary of the Interior, said on March 11 that "maybe lawlessness would have been avoided" if Congress had acted on the President's legislative proposals.[86] After the settlement of the crisis, White House assistant Patterson called upon Indian moderates to urge an end to militancy before the patience of the public and administration ran out. According to Patterson:

> There is something called backlash. I'd rather not see it in the Indian business. Three times we've been tested--Alcatraz, the Trail of Broken Treaties, and Wounded Knee--and each time our answer has been restraint. Next time Patterson and Garment will be told, "Go out and settle things down before we'll do anything."[87]

Within the Indian policy community, the reactions to Wounded Knee were mixed. Once again, differences among Indians on the meaning of self-determination were displayed.[88] Conservative Indians agreed with the Nixon administration's tough rhetoric on militancy, but many Indians believed that the protest raised legitimate issues of treaty

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[86]According to Haley, the fault for Indian unrest lay with the Nixon administration, which delayed in sending its legislative program to Congress and didn't lobby hard for the bills. He stated that the administration's decisions not to press charges against the leaders of the BIA takeover in November 1972 and give $66,500 to those who stayed in the building for travel expenses encouraged the Wounded Knee militants to believe they could get away with further violence. New York Times, 17 March 1973, p. 14.

[87]New York Times, 12 April 1973, p. 65.

[88]See, generally, Wounded Knee Hearings.

reform and abuse of power by tribal governments. According to Indian author Vine Deloria, the administration shared part of the blame for militant incidents because of its policy of excluding Indians who disagreed with its policies from its policy-making councils. Senator Abourezk, among others, criticized the White House for trying to make a partisan issue out of Indian militancy and for its recent actions on the budget of Indian programs.

Underlying the partisan and institutional conflict during and after the Wounded Knee occupation was a struggle for public opinion. Contrary to Patterson's prediction that a public "backlash" was emerging in response to Indian protest, public opinion polls indicated that the BIA takeover and Wounded Knee heightened public sympathy for Indians. A Harris Poll taken during the occupation revealed that a large majority of the public believed that the U.S. government had not treated Indians fairly and that Indian demands for social justice deserved recognition.[89] In blaming the "U.S. government," the public did not appear to be taking sides on who was most to blame, a Democratic Congress or the Nixon administration. The lesson which both sides drew from the public's reaction to Wounded Knee was that the public wanted action, and it did not care who got the credit.

Legislative Activism in the 93rd Congress

Under the conditions of legislative certainty--committee leadership dedicated to reform, executive branch cooperation (despite conflict

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[89] Washington Post, 17 March 1973, p. 19.

with the broader political system), and the high public salience of the issue--the stage was set for the enactment of Indian self-determination legislation. Indeed, the 93rd Congress became the most productive legislative gathering dealing with Indian policy since the Indian New Deal, forty years earlier. Among the first and most important of the Indian bills passed during this session was the Menominee Restoration Act of 1973.[90] The bill returned the Menominee Tribe of Wisconsin, which was one of the tribes most adversely affected by termination, to the status of a federally recognized tribe with its lands held in trust by the U.S. government.

The Menominee Restoration Act was important for several reasons. First, the act was viewed as a symbolic repudiation of the termination policy, since it was the first time Congress had restored federal recognition to a terminated tribe. Second, supporters of the legislation put together a winning coalition which appeared on subsequent Indian reform bills--Indian political activism, enthusiastic support from the leadership of the Interior committees, and the endorsement of the White House. Third, the Menominee issue helped unite the Indian community behind legislative reform. Indian reformers saw the enactment of the bill as a response to militancy. Testifying before the House Indian affairs subcommittee, Deloria expressed his hope that Congress "will look upon the Menominee bill as the first

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[90]Nicholas C. Peroff, Menominee Drums: Tribal Termination and Restoration, 1954-74 (Norman: University of Oklahoma Press, 1982).

really concrete proof to the American Indians that the American system works. . . ."[91]

Congress's most direct response to the demands of Indian militants was the creation of the American Indian Policy Review Commission in 1974.[92] This bill was a pet project of Senator Abourezk, who introduced the measure shortly after the end of the Wounded Knee occupation. It was his hope, shared by Indian leaders of all political persuasions, that the commission would furnish a thorough review of past federal policies, including treaties, demanded by Indian activists. Under the legislation, the commission had two years and $2 million to conduct its review and submit recommendations for new legislation to Congress.

Other Indian bills moved quickly through the legislative process. One of President Nixon's proposals, the Indian Financing Act, was enacted in April 1974.[93] The measure established an Indian revolving loan fund to make direct loans to Indian tribes to promote their economic

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[91]U.S., Congress, House, Committee on Interior and Insular Affairs, Menominee Restoration Act, Hearings before the Subcommittee on Indian Affairs on H.R. 7421, 93rd Cong., 1st sess., 1973, p. 321.

[92]U.S., Congress, Senate, Committee on Interior and Insular Affairs, Establishment of the American Indian Policy Review Commission, Hearings before the Subcommittee on Indian Affairs on S.J. Res. 133, 93rd Cong., 1st sess., 1973; Congressional Quarterly Almanac (1974):673-74.

[93]See U.S., Congress, House, Committee on Interior and Insular Affairs, Financing the Economic Development of Indians and Indian Organizations, Hearings before the Subcommittee on Indian Affairs on S. 1341, 93 Cong., 1st sess., 1973.

development, an Indian loan insurance program to encourage commercial lending institutions to participate, and an Indian business development program to provide seed money for Indian entrepreneurs. Also, groundwork was paved for the enactment of a bill to reform and expand the Indian Health Service in the next Congress.[94]

In the midst of this outburst of legislative activity was the consideration of the Indian Self-Determination and Education Assistance Act. As with the bills described above, the measure was developed with the knowledge that enactment was likely. Moreover, the prospects for passage were enhanced by the fact that the Senate had passed a version of the bill in the previous Congress, and that both congressional and executive branch leaders assigned a high priority ranking to the measure. Still, the adoption of the bill was not automatic. The account which follows illustrates that nothing is certain in the legislative process.

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[94] Congressional Quarterly Almanac (1974):673. Controversy over a nongermane amendment blocked final action on the Assistant Secretary for Indian Affairs bill. House and Senate conferees agreed to add a provision to establish a regional corporation for nonresident native Alaskans to administer grants and other revenue made available by the Alaska Native Claims Settlement Act. When the conference report came to the House floor on December 20, 1974 the chair sustained a point of order against the conference report because of its nongermane provisions. The proponents of the bill failed to get enough votes to override the chair's decision under suspension of the rules. The post was not established until 1977.

The Adoption of the Indian Self-Determination and Education Assistance Act of 1975

Policy Adoption in Indian Affairs as a Bargaining Game

To understand the politics of legislative certainty, according to Marmor, it is appropriate to think of the legislative process as a bargaining game. Using Graham Allison's model of bureaucratic politics, Marmor describes the Medicare legislation which became law in 1965 as a result of bargaining among key actors in Congress, the executive branch, and the public.[95] Each actor had different conceptions of the problem at hand, different stakes in the outcome, and different terms on which each was willing to compromise. The measure's contents could not be interpreted as the product of a single actor's intent; rather, it was the outcome of a long, complex struggle shaped by the relative power and skill of the participants.

Thus, when Marmor described the key question of Medicare politics in 1965 as not whether Medicare would pass, but what precise form the legislation would take, he was not saying that the issue was settled. Instead, the conditions of legislative certainty changed the politics of Medicare from one level of analysis, involving institutions and organizations, to another level, involving individual actors. Indeed, as the politics of policy-making is transferred into a bargaining game,

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[95]Marmor, Politics of Medicare, pp. 103-6. See Graham T. Allison, Essence of Decision: Explaining the Cuban Missile Crisis (Boston: Little, Brown and Co., 1971).

in which confusion and misunderstanding of players' intentions is common, outcomes become less predictable.

Similarly, the broader forces which created the conditions of legislative certainty recede in importance as explanations of how the Indian Self-Determination and Education Assistance Act became law. Instead, the politics of Indian self-determination in 1973-74 can be viewed as a bargaining game among individual actors of unequal power, none of whom having sufficient power to control the outcome. The key players were members of the Indian policy subgovernment--committee chairmen, career bureaucrats, and lobbyists, each with different perspectives and priorities. Although the enactment of a self-determination bill seemed a foregone conclusion as the 93rd Congress convened, what was not so predictable was what the content of the legislation would be and how it would be shaped.

The First Move: Jackson Adds Indian Education Reform to Self-Determination

At the outset of the 93rd Congress, the Indian Self-Determination Act as proposed by Senator Jackson and passed by the Senate in 1972 seemed certain to become law. Not only was the Senate again ready to endorse the bill, which permitted tribes to contract for the responsibility to administer BIA and IHS services, but the new leaders of the House Interior Committee were receptive to the proposal.

Rather than reintroduce the measure, however, Senator Jackson and the Interior Committee staff added a new title which reformed the funding and administration of the Johnson-O'Malley Act of 1934

(JOM). Administered by the BIA, JOM provides federal aid to states and local school districts which serve Indian children. The BIA contracts with state departments of education, which in turn contract with local school boards for JOM programs. The JOM budget for fiscal year 1973 was $27 million.

Why did Jackson decide to add education reform to the Indian Self-Determination Act? First, several studies of the administration of JOM indicated the existence of serious problems.[96] Although JOM aid was intended to be used for special services (either to provide instructional services or defray parental costs of education such as school lunches), many states and districts used the money for general budget support. The report of the Kennedy subcommittee on Indian education characterized JOM as a general budget-balancing device for local school districts, which added JOM money to the overall budget after revenues from local taxes, state aid, and impact aid had been received.[97] The BIA, occupied with administering its own education programs to reservation Indians, essentially delegated administrative responsibility for JOM to the states. No detailed plan on how JOM money would be used to meet the needs of Indian children was required of the states. No participation of Indian parents, tribes, or communities in the planning

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[96] NAACP Legal Defense and Educational Fund, An Even Chance (1971); U.S., Congress, Senate, Committee on Labor and Public Welfare, Indian Education: A National Tragedy-A National Challenge, S. Rept. 91-501, 91st Cong., 2nd sess., 1969 (hereafter cited as Kennedy Subcommittee Report); U.S. General Accounting Office, Administration of Program for Aid to Public School Education of Indian Children Being Improved, Pubn. No. B-161468 (1970).

[97] Kennedy Subcommittee Report, pp. 38-47.

and execution of JOM programs was required. Once JOM money was sent to the states, there was no requirement that the states provide a strict account of the expenditure of JOM funds, nor an evaluation of the effectiveness of JOM programs.

In addition, the BIA narrowly interpreted the law to limit eligibility for JOM funding to those school districts with "large blocks of nontaxable, Indian-owned property and relatively large numbers of Indian children which local funds are inadequate to meet." Because of this policy, which limited JOM programs to federally-recognized Indians living on or near reservations, only one-third of the estimated 177,000 Indian children in public schools were targeted for assistance. Moreover, both the Kennedy subcommittee report and a study by the NAACP Legal Defense Fund noted the absence of any uniform criteria used by the BIA to determine the financial need of school districts. Such factors as the local tax base, extent of state aid, and eligibility for federal impact aid were included in BAI calculations, but the NAACP Legal Defense Fund study asserted that "Johnson-O'Malley allocations to states are arbitrary and bear no relationship to financial need."[98] Tremendous inequities in JOM funding among states existed.

The second reason why Jackson added Indian education to the self-determination bill was that reform of Johnson-O'Malley was considered by many Indian education experts as the next logical step in efforts to change federal education policy toward Indians. The Indian Education

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[98]NAACP Legal Defense Fund, An Even Chance, p. 12.

Act of 1972 created a series of grant programs to local education agencies for supplemental education programs for Indians regardless of the agency's proximity to an Indian reservation. No education programs administered by the Interior Department were affected by the Act.

However, the experts disagreed on what ought to be done with JOM. Some felt that all that was needed to solve JOM's problems was tighter and more assertive administration by the BIA. This was the view of the Senate subcommittee on Indian education and the Nixon administration. Following the recommendations of the Kennedy subcommittee report, the only statutory change proposed by the Nixon administration was the addition of Indian tribes and communities as eligible contractors for JOM funds.[99] Within the BIA during the Bruce administration, efforts were made to promote JOM contracting with Indian tribes and organizations under existing authority. In addition, in various states, a number of Indian legal and political action groups, including the Native American Rights Fund (NARF), Coalition of Indian-Controlled School Boards (CICSB), and Americans for Indian Opportunity (AIO) attempted to convince state authorities to use all JOM monies for supplemental

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[99] Kennedy Subcommittee Report, pp. 133-34; see U.S., Congress, Senate, A Bill to Amend Acts Entitled "An Act Authorizing the Secretary of Interior to Arrange with States and Territories for the Education, Medical Attention, Relief of Distress, and Social Welfare of Indians, and for Other Purposes . . . . ," S. 1342, 93rd Cong., 1st sess., 1973.

education programs. By the end of 1973 seven states had acceded to Indian demands.[100]

Nevertheless, Jackson and the Interior Committee believed that legislative changes in JOM were the best way to accomplish the objectives of Indian education reform. Too much discretion in the hands of BIA administrators left the implementation of JOM exposed to political pressures from state and local officials and members of Congress. Moreover, the committee was interested in substantially increasing JOM funding, especially since successive presidents had called for reductions in impact aid appropriations. The senators on the committee were divided, however, on how much JOM aid should go to supplemental programs for Indians rather than to general budget support. Jackson advocated full JOM funding of supplemental programs. On the other hand, Fannin and Abourezk, who were also active supporters of JOM reform, represented states which used over 75 percent of JOM funds for general support. By contrast, states such as New Mexico and Oklahoma spent over 70 percent of their JOM allocations for special services for Indians. A compromise was therefore necessary between

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[100]According to Myron Jones, Director of Indian Education Training, Inc., North Dakota, South Dakota, Nebraska, Michigan, Minnesota, New Mexico, and Alaska contracted with tribal or intertribal groups who in turn subcontracted JOM funds to school districts on the condition that the money be used for supplemental programs. In addition, California, Wisconsin, Nevada, and Oklahoma placed tighter restrictions on school districts using JOM funds. U.S. Congress, House, Committee on Interior and Insular Affairs, Indian Self-Determination and Education Assistance Act, Hearings before the Subcommittee on Indian Affairs on S. 1017, 93rd Cong., 2nd sess., 1974, pp. 89-92 (hereafter cited as 1974 House Hearings).

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the advocates of supplemental aid for Indians and basic support for school districts.

The fact that the Jackson approach to JOM reform was different than the one preferred by many in the Indian education community leads to a third set of reasons why Indian education was tacked onto self-determination. Politically speaking, the issue of JOM reform gave Jackson and the Interior Committee an opportunity to take a leadership role in the field of Indian education, a role which to that point had been assumed by Kennedy, Mondale, and the Labor and Public Welfare Committee. In this sense, the idea that legislative, not administrative, changes were needed in JOM was born of political necessity. However, since this solution was controversial, some way had to be found to attract support for the proposal. Attaching JOM reform to a popular and important measure such as the Indian Self-Determination Act was a tactic which could gain Indian support and help Jackson and his committee seize the initiative from their rivals.

S. 1017, Title II: The Indian Education Reform Act

Out of these concerns the Interior Committee staff developed the Indian Education Reform Act, introduced by Jackson and Abourezk as Title II of S.1017.[101] (Title I was the Indian Self-Determination Act.) The proposed reforms of the Johnson-O'Malley Act were contained

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[101]See U.S., Congress, Senate, Committee on Interior and Insular Affairs, Indian Self-Determination and Education Program, Hearings before the Subcommittee on Indian Affairs on S. 1017, 93rd Cong., 1st sess., 1973, pp. 12-29 (hereafter cited as 1973 Senate Hearings).

in Part A. In essence, JOM would be replaced by a new program which required contractors--states, local school districts, and, for the future, Indian tribes and agencies--to certify to the Secretary of the Interior that public schools educating Indian students are funded at the same levels as comparable schools which do not have substantial Indian enrollment.[102] School districts applying for Part A funds were to set property taxes at rates equal to the average property tax rate in the five most comparable school districts in the same state which were not eligible for assistance. Similarly, state aid to local school districts applying for Part A funds must not be less than the average of such payments made to five comparable school districts without substantial Indian enrollments.[103]

In other words, Part A was designed to provide incentive to states and local school districts to maintain adequate levels of support for public schools educating Indian children. Indian-affected school districts which provide adequate financial support then were eligible to receive Part A funds. The funds were allocated on the basis of a formula which would bring the level of per pupil spending on Indian-affected school districts, including revenues derived from property taxes, state aid, and federal impact aid, up to the level of the average per pupil expenditure of the five comparable school

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[102] S.1017, 93rd Cong., 1st sess., 1973, secs. 102, 202.

[103] Ibid., sec. 203a.

districts not eligible for assistance. According to various estimates, the new formula substantially increased federal funding for Indian education. The National Education Association (NEA) estimated that $42 million was required to fund the first year of Part A, compared to $27 million under the old JOM program.[104] The Interior Committee staff estimated that the first year of Part A funding required $60 million.

The purposes for which Part A funds could be spent by school districts reflected the Interior Committee's preference for general support. The funds first must be used for general operating expenses, then "additional funds" could be utilized by contractors to provide special programs for Indian children, such as counseling, teacher training, bilingual teaching materials, and supplemental meal programs. General requirements were established for Indian participation in decisions concerning the use of Part A funds. Local school boards with white majorities must establish an Indian advisory panel composed of parents of Indian students, while state education agencies must establish Indian advisory councils representative of all tribes in the state.[105]

To sweeten the pot further, the remainder of Title II (Parts B-F) proposed several new spending programs for Indian education. The most extensive proposal amended existing legislation to enable the Interior Secretary to award contracts with state education agencies

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[104] 1973 Senate Hearings, p. 151.

[105] S.1017, sec. 203b.

for school construction in school districts on or near Indian reservations.[106] Other proposals included programs to train educators who teach Indian children, establish an Indian youth intern program for the summer months, promote university research in Indian education, and assess the Indian need for adult, vocational, and early childhood education. The proposed total cost of these programs would be $53 million in the first year, and $63 million in each of the next two years, with school construction accounting for about half of the total expenditure. In subsequent congressional hearings, Indian groups testified in favor of the new programs, while the Nixon administration consistently opposed them for being costly and duplicative of existing programs.

Senate Subcommittee Hearings on S.1017

The proposal to replace the Johnson-O'Malley Act with a new program generated the most controversy at the Senate Indian affairs subcommittee hearings on S.1017. Several Indian witnesses questioned the need to replace JOM with an entirely new statute. According to Charles Trimble, executive director of the NCAI, "We have just gotten the feel of the

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[106] School construction under P.L.815 is under the control of the secretary of HEW. Requests from school districts for P.L.815 assistance are put into a priority list by the secretary. It was estimated that of the $30 million obligated under the program in fiscal year 1973, $4.8 million was spent for school construction in Indian districts. According to the testimony of HEW officials there was a backlog of $55 million of requests by school districts on or near Indian reservations for P.L.815 assistance. 1973 Senate Hearings, pp. 69-70. The proposed program was introduced originally by Senator Clinton Anderson (D-N.M.) and passed by the Senate in 1967.

Johnson-O'Malley Act where we can somewhat control it despite its inadequacies."[107] Valentine Cordova of the All Indian Pueblo Council (AIPC) told the committee how New Mexico tribes were able to put pressure on the state department of education and local school boards to make JOM more responsive to Indian needs.[108] A state official from Washington, a state praised by Indian groups for its efforts to convert JOM into an entirely supplemental aid program, opposed major changes in a program that was just beginning to work for Indians.[109] The AIPC and the Coalition of Indian-Controlled School Boards testified that it was their belief that JOM aid should go entirely toward supplemental educational programs for Indians. According to both groups, Part A would be a step backward, in that it gave first priority to states and local school districts to use federal dollars for general support before using "additional funds" for supplemental programs.[110]

Another important concern expressed at the hearing was directed toward Part A's requirement that states and local school districts provide sufficient tax effort in order to be eligible for Part A funds. Both NCAI and NTCA witnesses voiced the fear that many local school districts might simply decide not to raise taxes in order to receive federal funds for educating Indians. As a result, there might be less

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[107] Ibid., p. 163.

[108] Ibid., pp. 107-8.

[109] Ibid., pp. 165-99 (testimony of Emmett S. Oliver, superintendent of Indian Education, Department of Public Instruction, state of Washington).

[110] Ibid., pp. 107-8, 124.

federal support for Indian education under Part A reforms than under the old JOM act.[111]

Perhaps surprisingly, the Nixon administration generally supported Part A, even though the measure went far beyond the administration's modest legislative proposal to enable Indian tribes to contract for JOM funds. Whether the BIA did or did not believe Part A would significantly increase spending for Indian education, the Bureau's witnesses welcomed the effort by Congress to provide more uniform criteria for the allocation of contract funds to public schools. James Hawkins, the head of the BIA's education division, admitted that no uniform criteria currently existed for the allocation of JOM funds.[112] Allotments varied among states and districts, depending upon Bureau judgments as to the adequacy of the basic program, degree of tax effort, amount of state aid, and the quality of supplemental programs that are being proposed. He also acknowledged that in the past, JOM monies had been used primarily for basic support of education and not for special programs. However, Hawkins told the committee that the BIA was developing new regulations that he hoped would require JOM aid to be spent for special programs for Indian children, and that the

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[111] Ibid., pp. 134, 162-3.

[112] Ibid., pp. 86-89. Hawkins' support for Part A can perhaps be explained by the fact that the Interior Department was in turmoil over JOM reform. The process of revising JOM regulations had begun 18 months earlier with no resolution in sight. Apparently several drafts of new JOM regulations formulated by the Bruce administration permitting greater Indian control of the program had been rejected by superiors in the Interior Department (it was not until August 1974 that new regulations were agreed upon). Thus, Hawkins was anxious to have Congress resolve the conflict by legislation.

current statute gave his agency sufficient flexibility to accomplish this goal. If Congress wanted to legislate more restrictive language in the use of JOM funds, that was no problem.

With respect to Title I, the Indian Self-Determination Act, testimony at the subcommittee hearings was generally favorable. Nixon administration officials preferred enactment of the bills submitted in the previous Congress which permitted tribes to take over, by grant rather than by contract, services provided by the BIA and IHS.[113] Interior and HEW representatives did not object to the contracting approach of Title I, saying that flexible contracting authority and grants to assist tribes in operating services were consistent with self-determination principles, but characterized the provisions as interim measures which stopped short of full Indian control of programs.

Indian witnesses at the hearings continued their support for the contracting approach in the Jackson bill, as opposed to the takeover approach in the Nixon bills, and for the provisions in Title I which made tribes eligible for grants for technical assistance to enable them to assume responsibility for services. Both representatives of the AIPC and CICSB testified that the language of Title I did not go far enough toward requiring Interior and HEW to contract. Both groups had misgivings about leaving contracting decisions to the discretion of the Secretary of Interior, especially given the apparent resurgence

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[113]For the Interior Department's formal testimony on S.1017, see 1973 Senate Hearings, pp. 30-35.

of area directors in the BIA hierarchy.[114] Both the NCAI and NTCA, as well as AIPC and CICSB, wanted additional language requiring Interior and HEW to consult with Indian tribes during the process of writing regulations.[115] Most Indians were fearful that well-intentioned legislation such as Title I could be sabotaged by federal bureaucrats.

Senate Interior Committee Changes in S.1017

In response mainly to the comments made by Indian tribes and organizations, the Senate Interior Committee and staff made changes in both titles of S.1017.[116] Changes in Title I attempted to make the contracting process more responsive to tribal needs. Rather than permit the Secretary of Interior and HEW at their discretion to contract with Indian tribes for administration, the committee amended Title I to direct both secretaries to contract upon the request of any Indian tribe.[117] However, both Secretaries were given authority to decline to enter a contract if it was felt that the tribe could not provide services in a satisfactory manner or assure the adequate protection

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[114] 1973 Senate Hearings, p. 107 (testimony of Valentino Cordova, chairman, AIPC) and pp. 119-22 (testimony of Bergil Kills Straight, president, CICSB). See pp. 306-14 below.

[115] 1973 Senate Hearings, pp. 33-37 (testimony of Joseph Upicksoun, NTCA) and pp. 161-64 (testimony of Charles Trimble, executive director, NCAI).

[116] See U.S. Congress, Senate, Committee on Interior and Insular Affairs, Indian Self-Determination and Educational Reform Act, S.Rept. 93-682 to Accompany S.1017, 93rd Cong., 2nd sess., 1974, p. 3, hereafter cited as 8 February 1984 Senate Interior Committee Report).

[117] Ibid., sec. 102a, 103a.

of trust resources.[118] If the appropriate Secretary refused to contract with a tribe, he was required within sixty days to state his written objections to the tribe, provide assistance to the tribe to overcome the objections, and give the tribe a hearing and opportunities for appeal.[119] The bill authorized $3 million to the Interior Department and $2 million to HEW in each of the next three years for the purpose of funding grants made to tribal organizations to prepare them to enter into contracts with the federal government.[120]

At the same time, the Senate committee inserted additional administrative requirements to alleviate the fears of federal officials about possible problems in the tribes' performance of contract obligations.[121] Contracts between the federal government and the tribes would be limited to a term of one year unless the appropriate Secretary determined that a longer period was advisable.[122] Tribes were required to carry adequate liability insurance to protect the public against torts committed by tribal employees.[123] Tribes were also required to provide services to Indians in a fair and uniform manner.[124] Moreover, tribes under contract were to submit a report to the appropriate Secretary which included an accounting of the amounts and purposes

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[118]Ibid., p. 15. The authority given the respective Secretaries to waive procurement regulations is stated on p. 4, sec. 106a. Tribes were also given the right to retrocede control of contracted programs. See p. 5., 106d.

[119]Ibid., p. 3, sec. 102b, 103b [120]Ibid., p. 6, sec. 109.

[121]Ibid., pp. 4-5, sec. 106. [122]Ibid., p. 4, sec. 106c.

[123]Ibid., p. 3, sec. 102c, 103c. [124]Ibid., p. 5, sec. 106g.

for which federal funds were expended. Any reports or records of the tribal organization with respect to contracts were subject to audit by the appropriate department and by the General Accounting Office.[125]

Requirements for detailing federal civil service personnel to the tribes to help them carry out the terms of a contract, without loss of civil service benefits, were broadened at the request of Indian organizations.[126] The committee proposed to amend the Intergovernmental Personnel Act to bring tribal governments within the definition for "local governments" for the purpose of making tribes eligible for the Act's civil service provisions. Federal civil service personnel could be assigned to work for tribal organizations for up to two years in the fulfillment of self-determination contracts. These assignments could be extended for an additional two years without loss of benefits to the federal personnel. In addition, tribal government employees could be assigned to federal agencies to acquire management experience necessary for the contracts. These changes in Title I were a significant improvement for the tribes over the original section of the bill, which limited civil service details to tribal organizations to 270 days (180 days plus an additional 90 days if tribes showed a need).

As for the most-criticized portion of S.1017, Title II-Part A, the committee left intact the basic structure of its proposed new

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[125]Ibid., p. 5, sec. 108. Two additional sections sought to guarantee Indian tribes that their sovereign immunity from suit would not be affected nor would the termination of any existing trust responsibility of the U.S. be authorized. Secs. 110, 111.

[126]Ibid., p. 4, sec. 105.

funding formula for public schools serving Indian children.[127] Not everybody on the committee was happy with the formula. Fannin, in particular, objected to the provision requiring local school districts to meet financial preconditions concerning tax effort in order to qualify for federal funds. In Fannin's view, "The costs of educating reservation Indian children in the public schools should be assumed entirely by the federal government."[128] Nevertheless, Fannin supported Part A because of its primary emphasis on general budget support for local school districts and its potential to increase substantially federal funding for public schools involved in Indian education. Based on more recent NEA estimates, the bill authorized $60 million for each of the next seven years. Part A and the new spending programs for Indian education proposed in the other parts of Title II, which were left largely unchanged, brought the total authorization of the education portion of S.1017 to $380 million over the next three years, and $620 million in seven years.

Despite criticism from several Indian groups, the Interior Committee continued to insist that Part A funds be used primarily for general

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[127]Ibid., pp. 6-8, sec. 203. It is interesting that the example provided in the committee report of how the Part A formula would work was different from the one provided in the 1973 Senate hearings. In the report to the Senate, the example indicated that the federal government would provide $50 for each Indian child in the hypothetical school district. Ibid., pp. 23-24. In the Senate hearings, largely attended by Indian groups, the example provided $350 per Indian child. 1973 Senate Hearings, pp. 228-29.

[128]8 February 1974 Senate Interior Committee Report, p. 14.

support. To address Indian concerns that federal funds would not be used for special programs for Indian children, the committee proposed funding for an additional program which would be used entirely for special programs.[129] However, funding of this supplemental aid program was subject to available appropriations. Furthermore, despite strengthened language which required Indian advisory committees to "fully participate in the development and approval" of Part A programs, school boards could still use, if they chose, all funds supplied by the primary Part A formula for general operating expenses.[130]

S.1017, as amended, was reported favorably to the Senate by a unanimous vote of the full Interior Committee on January 28, 1974. The committee report, issued February 7, 1974, stated that the bill was "an effort to provide tribes with the means to implement tribal self-governing power by providing finances, and procedures to achieve progressive development of tribal resources and institutions." The report stated that more flexible authority permitting federal agencies to contract with tribal groups was needed "to give substance and credibility to the concept of Indian self-determination." In addition, major reform in federal financial aid to public school districts which educate Indian children was a response to "widespread discontent with the administration of the Johnson-O'Malley Act" and the desires of the Indian people to have more involvement in Indian education. On

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[129]Ibid., p. 7, sec. 203a (4).

[130]Ibid., p. 8, sec. 203a (6).

February 8, 1974, S.1017 was placed on the Senate consent calendar, where it was approved without objection.

The Response: Kennedy Opposes Title II

The Senate Interior Committee's revision of Title II-Part A of S.1017 and the promise of more federal aid for Indian education made the bill more acceptable to the larger, reservation-oriented Indian organizations such as NCAI and NTCA. However, Indian groups specifically involved in Indian education reform were not placated. These groups, which included the National Indian Education Association (NIEA), CICSB, and Indian Education Training, Inc. (IET), had formed in the late 1960s and early 1970s for the purpose of promoting Indian community control of education.[131] Philosophically, they were opposed to any proposed statute which directed federal subsidies to states and local political subdivisions instead of to Indian tribes for the purpose of educating Indians. They also opposed school districts using federal funds for general budget support rather than for supplemental education programs for Indian children. From their point of view Part A was fatally flawed, because it did not give Indian organizations priority over state and local school boards in contracting, nor did it require that any revenue from the primary formula be used for supplemental aid.

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[131]This discussion of the Indian education coalition is drawn from Szasz, Education and the American Indian, pp. 156-68.

To the Indian education reform groups, Part A represented a reversal of what they and national Indian groups such as the Native American Rights Fund (NARF), the Institute for the Development of Indian Law (IDIL), and Americans for Indian Opportunity (AIO) had been fighting for through legal action, lobbying, and community organization. As a coalition, they had worked to achieve the passage of the Indian Education Act of 1972 and reform of JOM in various states. Moreover, they were pleased that Morris Thompson, the Commissioner of Indian Affairs who took over the leadership of the BIA in December 1973, appeared to be receptive to a major revision of JOM regulations in the direction of greater Indian control. As the Senate passed S.1017 in early February 1974, the Indian education coalition was attempting to persuade Commissioner Thompson to adopt in place of the old JOM regulations a set of regulations drafted by coalition leaders. Called the "Red Regs" by observers of Indian politics, the coalition's proposed regulations gave priority to Indian tribes and organizations seeking JOM contracts and mandated that state and local authorities use JOM funds entirely for supplemental educational programs for Indian children. Now, just as coalition leaders felt they were on the verge of a great breakthrough in JOM reform, they viewed Part A as an effort to turn back the clock.[132]

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[132]See U.S., Congress, Senate, 93rd Cong., 2nd sess., 8 March 1974 Congressional Record 120:5930-33, 3183 for the comments of CICSB and NARF on the "Red Regs" movement and possibility of administrative reform of JOM. According to CICSB, the Red Regs were the result of a joint effort among CICSB (William Roberts and Gerald Clifford), IET (Myron Jones), NARF (Charles Wilkinson), and AIO (LaDonna Harris). See pp. 317-18 below.

Indian education reform groups had natural allies in Kennedy, his staff, and the Labor and Public Welfare Committee. Kennedy's special subcommittee on Indian education had called in 1969 for a complete change in the direction of JOM from federal subsidization of state and local education budgets to direct federal contracts with Indian community groups, who would in turn decide who would spend JOM funds--states, local school districts or Indian-controlled schools--and for what purposes. Kennedy and his staff specialists in Indian education, Thomas Sussman and Adrian Parmeter, shared the view of the Indian education coalition that the approach of Part A went in the opposite direction.[133]

Of course, there were also political incentives for the involvement of the Labor and Public Welfare Committee. The committee was the major force behind the enactment of the Indian Education Act of 1972. Members of the committee recalled how Jackson and the Interior Committee had forced the Senate to vacate passage of the Act by claiming that the bill's sponsors had bypassed the Interior Committee, which had jurisdiction over Indian affairs legislation, and ignored the views of prominent Indian groups. The Act was recommitted to Jackson's committee,

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[133]Parmeter was formerly staff director of the Kennedy subcommittee on Indian education, and at the time of the debates on S.1017 was a consultant to the National Advisory Council on Indian Education, established under the Indian Education Act of 1972. According to him, the only change needed in JOM was to contract all JOM monies directly to Indian tribes and organizations "and this requires only a policy decision, not new law." See U.S., Congress, Senate, 93rd Cong., 2nd sess., 13 March 1974, Congressional Record 120:6685-92.

which amended the bill and sent it on its way to the Senate floor and eventual enactment.

Now, the roles were reversed. It was Jackson and the Interior Committee who apparently had won Senate passage of a major Indian education reform bill. It also was apparent that the views of many Indian groups were not sufficiently taken into account. And, it was Kennedy and the Labor and Public Welfare Committee who saw an opportunity to reassert political leadership in the area of Indian education and at the same time settle an old score. On February 12, four days after S.1017 had cleared the Senate consent calendar, Kennedy staffer Sussman said: "I predict Title I of S.1017 will be enacted by Congress by spring; I predict Title II will never get out of Congress."[134]

The Bargaining Game Gets Into Full Swing: The Senate Modifies Title II.

Since Kennedy could not make the same jurisdictional argument that Jackson had made in 1971, his primary tactic was to try to delay passage of S.1017 until sufficient political opposition to Part A could be generated. Kennedy's staff, with the help of CICSB, NARF, IDIL, AIO, and NIEA, attempted to persuade the Indian community of the unworkability and undesirability of Part A. As their arguments circulated throughout Indian country, individual tribes attempted to

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[134]Quoted in Karen Duchineaux, AIPA News Release, March 1974. In an interview with the author, Forest Gerard, the Interior Committee staff member who was one of the main authors of Part A, seemed to indicate that personal and not policy differences were what motivated the Kennedy staff. When asked what these differences were, he replied, "They were silly." Interview with Forest Gerard, Washington, DC, 17 June 1980.

calculate the actual effect of Part A on their respective situations.[135]

With tribal organizations such as the All Indian Pueblo Council of New Mexico, the Nevada Intertribal Council, the United South and Eastern Tribes, and the Bering Strait Native American Alliance joining the Indian education coalition against Part A, Kennedy and his staff had the support they needed to force Jackson and the Interior Committee to reconsider S.1017. Seeking to avoid a floor fight, Jackson, Abourezk, and Fannin agreed to have the February 8 Senate passage of S.1017 vacated on February 18. In the meantime, Sussman and Harold M. Gross of Kennedy's staff met with Forest Gerard of Jackson's staff and Sherwin Brodhead of Abourezk's staff to put together a compromise version of Part A.

Despite sometimes acrimonious exchanges, the two sides reached a tentative settlement in late February.[136] To provide funds for districts with and without tax-exempt reservation land, two funding formulas in Part A were established. For districts containing reservation land, funds were generated through an equalization formula

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[135]On March 8 and March 13, 1974 Senator Kennedy placed memoranda and letters from his staff, CICSB, NARF, and IET, on the subject of S.1017 in the Congressional Record. Though these comments were published after the completion of most of the bargaining between Kennedy's staff and the Interior Committee's staff, they provide a useful summary of arguments used against Part A.

[136]Kennedy made the settlement public in debate on the Senate floor. U.S., Congress, Senate, 93rd Cong., 2nd sess., 8 March 1974, Congressional Record, 120:5923-33.

similar to the one proposed in the original Part A. Districts without such land would receive funds equal to at least 30 percent of average per pupil expenditures in the district multiplied by the number of Indian pupils. Only 25 percent of the funds for the former districts could be used for general support, while the latter districts were required to spend all of their Part A aid on the special or supplemental needs of Indian students. All programs using Part A funds required the participation and approval of local Indian community education committees. Enforcement provisions were also written into the bill, including authority for the Secretary of Interior to withhold Part A payments if contractors violated the terms of their agreement, and turn over control of Part A funds to Indian groups if local school districts were the violators.

At that point it appeared that Kennedy had changed his strategy from trying to kill Part A to amending it. According to Gerard, it was his side's understanding that Kennedy had agreed "in principle" to the compromise version.[137] However, perhaps by coincidence or perhaps not, a new weapon was handed from the BIA to the Kennedy staff before the compromise agreement was made public. According to Karen Duchineaux of the American Indian Press Association,

> a JOM program officer in the BIA had taken the Part A formula and made some preliminary estimates of what the different funding levels would be in existing JOM states if the Part

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[137] Gerard interview.

> A formula was substituted for the present system. This . . . data was leaked out of the BIA to the Kennedy staff.[138]

In turn, the BIA data were made public.

According to the BIA estimates, many states would get gigantic increases in Part A money over the present system but others would lose money. One of the lowers apparantly was South Dakota, the home state of Indian affairs subcommittee chairman Abourezk. Whereas South Dakota was getting $1.65 million in JOM monies, it would get only $769,650 under Part A.

Abourezk, backed by the United Sioux Tribes of South Dakota, broke ranks with Jackson, stating that he would move to strike Part A on the Senate floor with a promise to hold hearings on JOM and report legislation within a few weeks. The Kennedy staff backed out of the compromise settlement, reserving the right to go with Abourezk and move to strike all of Part A.

To add to the confusion, the Interior Department sent word to Jackson that the leaked data from the BIA were faulty. The BIA comparisons of JOM and Part A funding did not include the fact that Part A made more children eligible for funding. South Dakota, for example, would receive $2.4 million in Part A aid, a 50 percent increase over present JOM funding. John Kyl, Assistant Secretary for Legislation

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[138]Duchineaux, AIPA News Release, March 1974. The account of the events surrounding the collapse of the compromise settlement of Part A is drawn from this article.

and Congressional Affairs, wrote Jackson on February 27 that the BIA figures

> do not represent any cleared position of the BIA or the Department of the Interior. They are apparently from in-house working papers, not checked for accuracy or propriety of interpretation of the formula. . . . The BIA is continuing the process of developing accurate information and upon completion will be pleased to provide your committee with the validated information.[139]

By this time, however, the situation for Jackson had unraveled completely. In addition to the still-disgruntled Abourezk and Kennedy, senators who "had been bystanders to the whole struggle now felt that their states and Indian people were in jeopardy and they began to make noises of opposition to Part A."[140]

This led to a desperate attempt by Jackson and Gerard to try to salvage something from Part A. The Interior Committee staff drafted a new version on March 1 which amended the JOM program instead of abolishing it in favor of a new program.[141] There was no attempt to legislate the method of allocation of JOM funds to contractors. The committee staff proposed simply to triple the funding for the program to $65 million for each of the next seven years. Contractors could not spend more than 25 percent of JOM funds for the purpose of general school operation expenses. At least 75 percent of contracted funds

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[139] Ibid.

[140] Ibid.

[141] This version was also made public by Kennedy. See footnote 136, supra.

would go to special or supplemental programs. As in the compromise bill, local Indian community advisory committees would have veto power over decisions made concerning JOM funds. The provisions of the compromise bill strengthening federal enforcement powers over states and local school districts were removed.

Though this measure brought Abourezk and other Interior Committee members back into the fold and received a favorable endorsement from the Interior Department, Kennedy and the Indian education coalition groups dismissed the Interior staff draft.[142] According to Kennedy:

> This proposal would have little effect on the situation that exists with respect to abuse of JOM funds. In fact, it seems to be acknowledged that this amendment does not constitute meaningful reform of the Johnson-O'Malley Act. Thus, this latest amendment merely increases funding for a program that is being bungled and ultimately risks retarding the possibility of future JOM reform by allowing this provision to go on record as a result of the Senate's year long effort toward progress.[143]

The other parts of S.1017--Title I and Parts B-F of Title II--continued to receive widespread support in Congress and the Indian community. However, there was increasing concern that the continuing

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[142]U.S. Congress, Senate, Committee on Interior and Insular Affairs, Indian Self-Determination and Education Assistance Act, S. Rept. 93-762 to Accompany S.1017, 93rd Cong., 2nd sess., 1974, p. 48 (hereafter cited as 28 March 1974 Senate Interior Committee Report). According to John Kyl, Assistant Secretary for Legislative and Congressional Affairs, the new Part A "will be of assistance" to the BIA in implementing JOM. Concerned about Indian reaction to the new Part A, the committee asked whether the amendments to JOM would result in a reduction of funds to states currently receiving JOM contracts. The Interior Department replied that it would not.

[143]U.S., Congress, Senate, 93rd Cong., 2nd sess., 8 March 1974, Congressional Record, 120:5928.

controversy over Title II-Part A could jeopardize the entire bill. Faced with this possibility, Jackson agreed on March 7 to take the measure back to committee for ten days for revisions "to achieve the purpose . . . of getting a bill that will be representative certainly of the overwhelming majority of the Indian people."[144]

The Interior Committee, in its final revisions, agreed on March 20 to water down Part A still further.[145] Struck from the committee staff's draft were the provisions setting forth percentages on JOM funds that could be used for general and special education purposes and specifying the kinds of special programs eligible for JOM funding. What remained were three amendments to JOM.[146] One amendment made Indian tribes and organizations eligible for JOM contracts. The second change required that JOM contractors submit a plan which "adequately" addressed the educational needs of Indian students and assured that the contractor was capable of meeting the plan's objectives. The third amendment required school boards controlled by non-Indians to establish Indian advisory committees elected by Indian parents, and vested in the committees the power to participate in the development, approval or disapproval of JOM programs at the local level. The committee scaled back its recommended funding levels for JOM to $65 million in each of the next two years. Title I and the other parts of Title II were

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[144]7 U.S., Congress, Senate, 93rd Cong., 2nd sess., 7 March 1974, Congressional Record, 120:4872.

[145]28 March 1974 Senate Interior Committee Report, pp. 5-6, sec. 202.

[146]Ibid., p. 6, sec. 203.

unchanged. The committee unanimously reported the bill to the Senate floor on March 28, 1974.

On April 1, 1974 the Senate unanimously approved S.1017, as amended by the Interior Committee.[147] There was little debate on the measure. Abourezk and Jackson praised the self-determination provisions of Title I as "sorely needed to permit the tribes to remove the stifling effects of paternalism from their communities."[148] As for Title II, Jackson expressed disappointment that the amendment to the Johnson-O'Malley Act in Part A did not go far enough to solve the problems of inequitable funding and use of JOM funds for general support rather than special Indian needs. He defended the original Part A formula as "fair to the respective States and school districts." "Unfortunately," he added, "the formula became the issue rather than the more important matter of reforming a long-neglected program."[149]

Who Won and Who Lost: S.1017 and Bargaining in the Senate

Thus, Senate consideration of the Indian Self-Determination and Education Assistance Act in 1973-74 boiled down to a bargaining game between two powerful and highly skilled players, Senators Jackson and

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[147] U.S., Congress, Senate, 93rd Cong., 2nd sess., 1 April 1974, Congressional Record, 120:8962-72.

[148] Ibid., p. 8966.

[149] Ibid., p. 8967. Perhaps as a parting shot, Jackson inserted in the record a letter from the GAO, which analyzed S.1017 as reported February 8, 1974 by the Interior Committee. Though the GAO was critical of Part A's provisions for making federal aid available for general support, it stated that the Part A "formula will assist in correcting some of the problems set forth in our report and result in a more equitable distribution of federal Indian education funds to those states and school districts with the greatest needs." Ibid., pp. 8968-72.

Kennedy, with participation from other important actors, including Senators Abourezk, Fannin, committee staff members, and lobbyists for several Indian organizations. Each player had different perspectives, goals, and resources in the bargaining process. Personal and political rivalry between Jackson and Kennedy and the committees they led accounted for part of the conflict. Policy differences were another element, with Jackson and his allies defining the principal problem of Indian education policy as inadequate funding, while Kennedy and his supporters believed that the major difficulty was a lack of responsiveness to Indian concerns.

Each player attempted to mobilize support for his position. Jackson's approach satisfied those senators from states such as Arizona and South Dakota with extremely poor school districts on or near Indian reservations (with state foundation grants which did little to address interdistrict inequities), and Indian organizations such as NTCA and NCAI, which represented the reservation Indian community. The Kennedy position on Indian education appealed to Indian groups seeking to increase Indian community control of education, as well as tribes from states where reform efforts were most successful, urban Indians, and Indians from states without federal reservations. Indian opponents of Part A allied with the more liberal Labor and Public Welfare Committee members, who shared their belief that federal aid to education programs should be categorical in nature and whose Indian constituents were more likely to be non-reservation Indians. The success of both sides in gaining bipartisan support for their positions prevented Nixon administration officials from entering the game.

Both sides utilized bargaining ploys and tactics to influence the outcome. Jackson surrounded his controversial Indian education plan with popular measures such as the self-determination title and new spending programs for Indian education. Kennedy and his staff raised doubts among Indian tribes about the desirability of Part A, and successfully used the leaked BIA memo to center attention on how the Part A formulas would apply to individual states and congressional districts. As the leaked BIA memo also illustrates, chance and confusion also entered into the process. Both sides resorted to negotiations and compromise when it suited them, competition when it did not.

In the end, it was Kennedy who played the game better. Focusing attention on the impact of the Part A formula led important supporters of Jackson, such as Abourezk, to break ranks. Time also worked to Kennedy's advantage. With the House yet to consider the bill, the longer it took the Senate to reach agreement on the self-determination bill, the less likely the chances for passage. Under conditions of legislative certainty, all parties recognized the need to act quickly on Indian legislation while the window of opportunity remained open. Thus far, two of the major actors in the Indian affairs policy network had attempted to leave their mark on the legislative outcome. Two other sets of actors, leaders of the House Interior Committee and the Bureau of Indian Affairs, were yet to have their say.

The House Joins the Game: House Subcommittee Action on S.1017

The controversy in the Senate over reform of Johnson-O'Malley was the climactic point of the process by which the Indian Self-

Determination and Education Assistance Act was considered. Nearing the midway point of the second session of the 93rd Congress, the leadership of the House subcommittee on Indian affairs sought to avoid any lengthy controversy which could prevent passage of the bill. Representative Meeds, chairman of the subcommittee, supported the measure but was concerned that conservative members would balk at the cost of the education programs contained in Title II. Subcommittee staff member Franklin Duchineaux warned Meeds in a memo written prior to the subcommittee hearings that the authorization total for Title II over four fiscal years was almost $400 million. He told the subcommittee chairman, "This price tag will undoubtedly throw a scare into some of our more conservative members. You might even think it to be too high."[150] Duchineaux's assessment was confirmed by the opening remarks of the ranking Republican member of the subcommittee, Representative Ralph Regula (Ohio). Regula stated that though he agreed with the general purposes of S.1017, "its particulars . . . present important questions concerning Indian policy priorities and the expenditure of large sums of taxpayers' dollars."[151]

In this context the arguments of Nixon administration officials were more persuasive than they were before the Senate. In testimony before the House subcommittee on May 20, 1974, the administration argued

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[150]Franklin Duchineaux to Lloyd Meeds, 17 May 1974 (located in the files of the House subcommittee on Indian affairs).

[151]1974 House Committee Hearings, p. 3.

that the $130 million two-year spending authorization for JOM and the new spending programs for teacher training, school construction, youth internships, and research and development of Indian education contained in Title II were costly and duplicative of existing authority.[152] According to Interior and HEW officials, these programs could be established under the Snyder Act of 1921, which is the basic authorization statute for all BIA programs and services, or Public Law 815, which gives HEW authority to build schools for Indians in school districts impacted by tax-exempt Indian land.

Although Meeds and Indian groups criticized Nixon officials for not using existing authority to request sufficient funds for Indian needs, they agreed with the administration that sufficient authority already existed to accomplish the purposes of Title II spending proposals. This argument, together with the concerns of the administration and conservative congressmen about cost, led the subcommittee to strike all of the new spending authorizations of the bill except for school construction.[153] According to the subcommittee report, the section of Title II authorizing the Secretary of Interior to provide construction assistance to public schools serving Indian children, in addition to the authority granted to the Secretary of HEW under Public Law 815,

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[152]Ibid., pp. 15-66, contains the formal testimony of the Interior and HEW departments on S.1017.

[153]Subcommittee amendment no. 4 (information on subcommittee action in the files of the subcommittee on Indian affairs).

was retained because of the increasing backlog of requests for federal construction aid.

The House subcommittee refrained from undertaking any new approaches to Indian self-determination or Indian education. With respect to Title I, Meeds wondered aloud whether a block grant giving Indian tribes greater control over approach was preferable to the contracting approach in giving tribes greater control over their affairs. According to Meeds, it was a "paradox" that "Indian people are asking for more authority to run their own affairs, but at the same time they are asking for a relationship which would be just a little bit less than that."[154] Compared to contracting for administration of services, which imposes all sorts of restrictions on tribal performance, providing block grants for Indian tribes gives tribes greater discretion to spend and deliver services as they wish, Meeds said.

Still, due to time constraints and support of the Indian people for Title I, the subcommittee did not alter the basic thrust of the measure. Instead, technical amendments to the bill, most of them suggested by the Nixon administration, were added. Extracted from the language of the self-determination bills originally proposed by the President, the amendments provided grant funds for strengthening tribal government management functions, enabled federal civil service personnel to transfer tribal employment without losing civil service benefits,[155]

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[154] 1974 House Committee Hearings, p. 150.

[155] These proposals from S.1340, sec. 2 (H.R. 6853).

and imposed more accountability requirements on tribal contractors.[156]

Similarly, no further effort to provide a legislative solution to the problems of the Johnson-O'Malley program was undertaken by the House. Though chairman Meeds and Indian groups agreed that JOM was in need of reform, the controversy surrounding Senator Jackson's proposal illustrated the complexity of the issue. Representatives from Indian education reform groups such as IET and CICSB argued that impending administrative changes in JOM made a legislative remedy unnecessary.[157] At the time of the House subcommittee hearings, these groups were still negotiating with BIA Commissioner Thompson to convince him to adopt the "Red Regs." Congressman Meeds acceded to the coalition's request,

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[156]These proposals were taken from S.1343, sec. 2c,e (H.R. 6372). The amendments: (1) required tribes to keep detailed records for accounting purposes and make those records subject to public inspection and audit by the Interior Department and the GAO; (2) gave the Secretary of the Interior the power to revoke contracts with tribes within ten days if he determines that the performance of the contractor presents an immediate threat to the health, welfare, or safety of any persons or involves gross negligence or mismanagement of program funds; and (3) provided for criminal penalties for embezzlement or fraud in handling of grants and contracts. The administration also proposed applying the Davis-Bacon act to all construction activities affected by contracts. This required tribal contractors and subcontractors to pay wage rates prevailing in the locality.

[157]Ibid., p. 163 (letter from Charles F. Wilkinson, NARF), p. 165 (letter from LaDonna Harris, president. AIO), and p. 91 (testimony of Myron Jones, IET). In addition to pressure from Indian groups, the BIA was also under orders from a federal district in New Mexico to redraft and vigorously enforce JOM regulations. In Natonabah v. School Board of Gallup-McKinley School District [355 F. Supp. 716 D.N.M. (1973)] the court found substantial abuses of JOM funds by local school officials.

and no changes in the amendments to JOM contained in Title II were made.[158]

Last Minute Changes: House Interior Committee Action on S.1017

On December 5, 1974 the full House Interior Committee approved S.1017 as amended and reported by the Indian affairs subcommittee, with two changes.[159] One relatively minor change was the insertion of an amendment, made at the request of Senator Fannin, which legitimated the practice of JOM program administrators of carrying over unspent or unobligated JOM funds from one fiscal year to the next so that the

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[158]Ibid., pp. 39-44. William Benham, BIA acting director of education, replied that the Red Regs were being taken "very, very seriously." Throughout the hearings Representative Meeds queried witnesses on the possibility of broadening the definition of "Indian" for purposes of eligibility for JOM aid. Groups with reservation constituencies, such as the NTCA and NCAI, and BIA officials favored the narrow interpretation of JOM. The only amendment attached to Part A by the subcommittee was Meeds' proposal that money expended under JOM contracts be prorated to cover only the costs of special and supplemental programs attributable to Indian children. This amendment has been criticized by attorney Daniel Rosenfelt as a "serious error" which contradicts the thrust of Title II and the Red Regs. According to Rosenfelt, the Meeds amendment enabled school districts to set up kindergarten programs with JOM funds, supplanting the money which local school districts would provide. Furthermore, separate funding for students participating in a particular program violates the "equal protection" argument that just as educational services provided to non-Indians should be extended to Indians on an equal basis, so should services provided to Indians be extended to non-Indians on an equal basis. Daniel N. Rosenfelt, "Toward a More Coherent Policy for Funding Indian Education," Law and Contemporary Problems, 40 (Winter 1976):190-244.

[159]See U.S. Congress, House Committee on Interior and Insular Affairs, Indian Self-Determination and Education Assistance Act, H. Rept. 93-1600 to Accompany S.1017, 93rd Cong., 2nd sess., 1974, p. 5, sec. 104b (hereafter cited as 1974 House Interior Committee Report).

full appropriation was expended.[160] The other change reversed the only major initiative taken by the subcommittee with respect to Title I. In response to a recent Supreme Court decision (Mancari v. Morton) upholding the policy of Indian preference in hiring and promotion at the BIA and IHS,[161] the subcommittee proposed that non-Indian employees with at least twenty years of service at BIA or IHS become eligible for early retirement.[162] According to the subcommittee, an early retirement option would release non-Indian employees from the difficult position of being locked into their present positions without prospect of promotion or of having their position abolished as a result of contracting. However, the full committee struck the proposal at the request of Congressman Thaddeus J. Dulski, chairman of the House Post Office and Civil Service Committee. Dulski argued that his committee had been bypassed, and that hearings were needed on the proposal.[163]

The Game Ends: Final Passage of S.1017 and Presidential Action

The bill as reported by the Interior Committee was placed on the

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[160] Ibid., pp. 6-7, sec. 105. Rick Lavis to Forest Gerard, 23 October 1974; Forest Gerard to Frank Duchineaux, 1 November 1974; Sen. Paul Fannin to Rep. Sam Steiger, 26 November 1974 (letters in files of House subcommittee on Indian affairs).

[161] 417 U.S. 535 (1974). According to the unanimous decision of the Court, Indian preference employment laws (which date at least as far back as 1834) do "not constitute invidious racial discrimination" against non-Indians and do not violate the Equal Employment Opportunity Act of 1971 or the "due process" clause of the Fifth Amendment. The suit arose from the Bruce administration's decision to extend Indian preference to promotion as well as hiring.

[162] Ibid., p. 3, secs. 5 and 6; p. 9, sec. 109.

[163] Rep. Thaddeus J. Dulski to Rep. James A. Haley, 2 December 1974.

consent calendar of the House on December 19, 1974, where it was passed without debate. Because of the last-minute rush of legislative business and the impending end of the 93rd Congress, the Senate agreed to the House amendments on the same day.

On January 4, 1975, President Gerald Ford signed into law the Indian Self-Determination and Education Assistance Act (Public Law 93-638). Without mentioning the efforts of his predecessor, Ford stated that his administration "is committed to furthering the self-determination of Indian communities without terminating the special relationships between the federal government and the Indian people." He congratulated the Congress for its passage of S.1017, which "will enhance our efforts to implement this policy of Indian self-determination."[164]

Indian Self-Determination and the Legislative Process

The introduction to this chapter noted the important role that congressional committees play in the legislative process, especially in issue areas that concern a small segment of the public. In these issue areas, which typically involve distributive or pork barrel legislation, committee and subcommittee chairmen, working with ranking members, staff, lobbyists, and agency leaders, hammer out the substance of legislation. Normally, intervention by outsiders, such as the

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[164]U.S., President, Public Papers of the Presidents of the United States, Gerald R. Ford, 1975 (Washington, DC: Government Printing Office, 1976), pp. 10-11. See Appendix for the text of P.L. 93-638.

President, White House staff, or congressional party leaders, in committee decision making is rare. The bills recommended by these committees usually are adopted by the respective parent chamber with little modification.

Prior to the 1970s, legislative activity in Indian affairs conformed to the subgovernment pattern.[165] Strong committee or subcommittee chairmen dominated the process by which the Indian New Deal of the 1930s and termination legislation in the 1950s were enacted. From the 1950s to 1971, the chairmen of the Interior committees had steadfastly opposed Indian self-determination. However, by the end of 1974, these committees helped produce an impressive record of legislative reform in the areas of Indian education, tribal economic development, and tribal self-government.

What accounted for this remarkable turnaround in the Indian affairs legislative process? As mentioned earlier, although congressional committees are primarily responsible for shaping the content of legislation, they do not operate in a vacuum. The role and influence of congressional committees, observes David Price, is the product of a complex and dynamic relationship with the larger political system.[166] According to Price, committee performance is subject to external and internal constraints. External forces which influence committee activity

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[165]Orfield, A Study of the Termination Policy; Freeman, The Political Process.

[166]Price, "Congressional Committees in the Policy Process."

include interest groups, the President and the administration, elections and the public mood, political parties, and the parent chambers of Congress. Internal factors include the goals and pursuits of individual committee members, the influence of staff, and the operating style and policy orientation of chairmen. During the early 1970s, both external and internal forces pointed the Interior committees toward increased legislative activity in Indian affairs.

Among the most important outside factors during this period were the increased number and sophistication of Indian political organizations. Some Indian groups, such as the nationally-based NCAI and NTCA, expressed their concerns in all major pieces of Indian legislation. Other groups were very influential in legislative efforts on issues of particular concern, such as the Alaskan Federation of Natives and the Alaska native claims issue, and the various Indian education organizations. For the most part, these groups utilized conventional lobbying and coalition-building tactics. However, grass roots organizing and direct action techniques, performed in conjunction with the efforts of activist Indian groups such as AIM and NIYC, were employed during the 1971-72 period when little progress was apparent. Although Indian militancy did not have a direct effect upon legislative activity, it was successful in arousing public sympathy for Indian concerns and creating a climate for legislative activism. At least through the occupation of Wounded Knee, the public did not appear to be impatient with Indian protest efforts.

Another external factor which was absent in previous periods of legislative activism in Indian affairs was the involvement of the White House staff. Their efforts in solidifying support for President Nixon's Indian program within the administration and building a bipartisan coalition in Congress on the Taos-Blue Lake and Alaskan native claims issues helped generate momentum for legislative reform. After these initial successes, the presidential advisors turned their attention to other matters and left administration lobbying efforts to the Interior Department and the BIA. However, the White House took advantage of crisis moments in Indian policy, such as the BIA seizure and Wounded Knee, to urge Congress to pass self-determination legislation. Moreover, presidential aides continued to cooperate with Congress in Indian policy, even during periods of extreme tension in executive-legislative relations. The best example of this was the White House's support for the Menominee Restoration Act in the fall of 1973, which occurred at about the same time as the infamous "Saturday Night Massacre."

Perhaps the strongest sign to a committee of a need for change is when a parent chamber of Congress rejects legislation that the committee has reported favorably. This may be particularly true of committees such as Interior, for which legislative success was a source of pride. Thus, the Senate defeat of the Interior Committee's substitute bill on the Taos-Blue Like issue sent a strong message to the committee that change was in the air. The rise of rival committees is another indication of congressional dissatisfaction with committee performance. The strong challenge of the Senate Labor and Public Welfare Committee

for policy leadership in Indian education stimulated the Interior Committee to play a more active role.

Combining with changes in the environment of the Interior committees to promote Indian legislative action were changes in the internal composition and character of the committees. The mixture of external and internal considerations was most evident in the conversion of Senate Interior Committee Chairman Henry Jackson to the cause of Indian self-determination. The Taos defeat on the Senate floor, the challenge of Senator Kennedy and the Labor and Welfare Committee, and the pressure from the Nixon administration, his party, and Indian groups to abandon termination came at the same time that Jackson harbored presidential ambitions.

A different combination of internal and external forces led to a change in the leadership of the House Interior Committee. As a precursor to the reforms adopted by the House Democratic Caucus in 1975 which limited the powers of committee chairmen, junior members of the committee in early 1971 revolted against Interior Committee Chairman Wayne Aspinall's baronial style of leadership. Following the election of 1972, in which voters of Colorado removed Aspinall from office, the incoming chairman, James Haley, recognized the committee's desire for greater democracy. Haley granted his successor as chairman of the Indian affairs subcommittee, Lloyd Meeds, sufficient autonomy to move a package of Indian legislative reforms.

In Meeds and Abourezk, the Indian affairs subcommittees had two vigorous advocates of Indian self-determination as chairmen. Also

for the first time, the Interior committees hired Indians to serve as staff specialists in Indian policy. The greater autonomy granted staff members in the Senate gave Forest Gerard, Jackson's Indian staff member, an opportunity to play a major role in the effort to add reform of the Johnson-O'Malley program to the Indian Self-Determination Act. Together with the support of ranking minority members, particularly Senator Paul Fannin in the field of Indian education, the new leadership of the Interior committees made the best use of the window of opportunity for Indian policy change. Their success in enacting reform legislation stood in stark contrast to the turmoil surrounding efforts to promote Indian self-determination by administrative action, as the next chapter explains.

CHAPTER V

PREPARING FOR INDIAN SELF-DETERMINATION: POLICY IMPLEMENTATION IN INDIAN AFFAIRS, 1969-75

Pursuing Policy Change Through Administrative Action

In Chapter IV it was noted how administrative activity can affect the legislative process. Cited as an example was the attempt by administrators in the Bureau of Indian Affairs in 1970-71 to bring about Indian self-determination by negotiating contracts with tribes to assume control of federal programs. Due to the objections of congressmen on the Interior committees that new legislation was needed to authorize such activities, the Interior Department stopped the contracting policy in April 1971. However, the contracting approach utilized by the BIA won support from numerous tribal officials, and eventually it became the model for Title I of Public Law 93-638.

The dispute over the contracting policy of the BIA also illustrates how policy change can occur through administrative as well as legislative action. In essence, in issue areas where public policies have operated for some time, advocates of policy change may have a choice of strategies. They can try to change policy by convincing the legislature to adopt new laws. Or, they can prevail upon administrators to change policy through the exercise of discretion allowed in the implementation of existing programs.[1]

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[1]The notion of "administrative strategy" is introduced in Richard

Generally speaking, both the legislative and administrative strategies have advantages and disadvantages. If successful, a legislative strategy can produce lasting change, in that the enactment of a new law sets new boundaries of permissible behavior and establishes the framework for administrative action. On the other hand, it may take a long time, if ever, for a bill to clear the legislative process. The contents of the bill at final passage may be considerably different than what was introduced. Moreover, as students of the implementation process know, the actual effect of legislation depends in large part upon how the bureaucracy interprets and applies the law.

Similarly, the virtues of an administrative strategy are summarized in the dictum, "operations is policy." Through the interpretation of statutes and the development and operation of programs, executive agencies convert legislative intent into direct action. Decisions made by agency officials in performance of administrative functions, such as regulation writing, grant approval, and budget allocation, can modify or even supplant legislative policy. However, the implementation of policy may vary with different sets of administrators in charge. And, as the BIA contracting controversy indicated, administrators do not have unlimited discretion to change policy. The language of the law and the understandings of legislators, constituency groups, chief executives, and others as to the law's

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Nathan, The Administrative Presidency (New York: John Wiley and Sons, 1983).

substance and intent set indeterminate but nonetheless real limits on executive action.

Of course, it is fair to say that the matter of adopting legislative and administrative strategies is not so much an either-or choice but a question of emphasis. Chapters III and IV noted that the Kennedy and Johnson administration tended to focus on legislative initiatives, while the Nixon administration moved toward an administrative approach to policy change at the beginning of the second term. According to Richard Nathan, much depends on the policy goals of the administration and the receptivity of the political environment. As Nathan explains, the idea of a choice between a legislative and administrative strategy was not obvious to the Nixon administration when it came to office. At first, the Nixon White House concentrated on developing new legislation and, following tradition, delegated administrative responsibility to Cabinet secretaries, most of whom "were not close to Nixon personally nor in some cases politically."[2] The problem with this approach was that the President's overarching policy goal--to transfer responsibility for domestic policy in some areas from the federal government to state and local governments and the private sector, was fundamentally at odds with the priorities of a Democratic Congress and career bureaucrats.[3] Even within his own administration, composed of "independent-thinking"

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[2]Ibid., p. 8.

[3]See Joel A. Aberbach and Bert A. Rockman, "Clashing Beliefs Within the Executive Branch: The Nixon Administration Bureaucracy, "American Political Science Review, 70 (June 1976):456-68.

cabinet members, Nixon could not muster the political support necessary to bring about substantial policy change.

Frustrated with the opposition of the Washington community to his policies, President Nixon gradually moved toward an administrative strategy.[4] Cabinet members with prominent political reputations, such as Walter Hickel at Interior, were replaced by Nixon loyalists. Greater attention was paid to selecting presidential agents to serve in sub-cabinet positions with direct control over administrative policies. By late 1972, the President was ready for direct confrontation. Claiming a popular mandate to reduce the size and power of the federal bureaucracy, the President aggressively utilized reorganization, personnel, budget, impoundment, and managerial authority. The constitutional and statutory limits to Nixon's "administrative presidency" were only beginning to be addressed when the Watergate scandal exploded in the spring of 1973, forcing the President to abandon the approach.

Ironically, the attempt by the Indian "new team" at the Bureau of Indian Affairs to promote Indian self-determination occurred during the "Cabinet government" phase of the Nixon presidency, before the "administrative presidency" approach emerged. How and why such an attempt was made will be explored in this chapter, which examines implementation activity in Indian affairs prior to the enactment of the Indian Self-Determination and Education Assistance Act of 1975. Among the reasons for the development of the administrative self

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[4]Nathan, Administrative Presidency, pp. 43-56.

determination policy from 1969 to 1970 which this chapter describes were the climate for Indian policy reform created partly by the Indian political movement and partly by the Nixon White House, the latitude given Secretary Hickel to pursue reform, and the selection of activist, Indian "outsiders" to key positions in the BIA. Moreover, attention will be given to the question of the extent to which policy change can be achieved by administrative initiatives in advance of the adoption of legislative reforms. Although the initiatives launched during Hickel's administration came to a halt several months after his departure from Interior, they represented the beginning of a long struggle for control of the BIA. The conflict, which involved those who wanted to turn the BIA into an instrument of social change and those who questioned the desirability or achievability of such a move, continued up to the passage of self-determination legislation by the 93rd Congress.

Policy Implementation in Indian Affairs, 1958-1969

Controversy over the administration of Indian policy did not begin in the Nixon years. As the Indian self-determination movement emerged in the late 1950s and 1960s, federal administrators were caught in the difficult position of balancing demands from their clientele to stop the termination policy and the desire of key members of the Interior committees to hasten the termination process. At times, this predicament led to considerable conflict within the Indian policy subsystem. Toward the end of the Eisenhower administration, in response to intense pressure from Indians and some members of Congress, Secretary of the Interior

Fred A. Seaton ordered a halt to administrative efforts to terminate federal protection of Indian tribes. This policy continued through the Kennedy and Johnson years, despite accusations from congressional supporters of termination that the executive branch was subverting the intent of termination legislation. As Chapter III described, the constant pressure from the Interior committees and high Interior Department officials to continue termination led to the resignation in 1966 of Philleo Nash, the Commissioner of Indian Affairs since 1961.[5]

At the same time, there was cooperation between administrators and Congress in other areas of Indian policy. Through the 1960s Congress supported efforts by the BIA to promote economic development on the reservations. Indian tribes became eligible for many federal grant-in-aid programs established under the Johnson administration's policy of "creative federalism."[6] Numerous federal departments and agencies, along with congressional oversight committees, became involved in tribal development. As Vine Deloria and Clifford Lytle point out, tribal development activities conflicted with efforts to continue termination. The more that Indian tribes became integrated in the web of federal programs, the more difficult it became to terminate them.[7]

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[5]See pp. 87-88, supra.

[6]Sar A. Levitan and William B. Johnston, Indiean Giving: Federal Programs for Native Americans (Baltimore: Johns Hopkins University Press, 1975).

[7]Vine Deloria, Jr., and Clifford Lytle, American Indians, American Justice (Austin: University of Texas Press, 1983), pp. 19-22.

By the time that President Nixon took office, the pressure upon federal administrators to revive termination had diminished. But new questions faced those involved in implementing Indian policy. If "self-determination without termination" is to become new federal policy, what would be the administrative component? How active a role should federal agencies play in promoting tribal self-determination? Should administrative self-determination efforts begin immediately, or should they wait until Congress approved the Nixon administration's legislative program? Accompanying these questions about what Indian policies should be implemented and when was another important question: who will be given primary responsibility for implementing Indian self-determination policy?

Administrative Self-Determination: Policy Implementation Before Policy Adoption, 1969-72

Organizing Indian Self-Determination: The BIA and Administrative Renaissance

According to Charles O. Jones, three activities are significant in the process of policy implementation, which he defines generally as "that set of activities directed toward putting a program into effect."[8] The three activities are: (1) organization, or "the establishment or rearrangement of resources, units, and methods for

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[8]Charles O. Jones, An Introduction to the Study of Public Policy, 3rd ed. (Monterey, CA: Books/Cole, 1984), p. 166.

putting a program into effect";[9] (2) Interpretation, which involves the translation of statutory language or other authoritative directives into acceptable and feasible plans; and (3) application, or the "routine provision of services, payments, or other agreed-upon program objectives or instruments."[10] With respect to organization, Jones notes that promoters of a particular program have several options in determining who will have responsibility for implementation. Each option has important implications for how a program is implemented. For example, if a new program is assigned to an old-line agency known to be unsympathetic to the program, the chances are that the program will have little impact on the problem to be addressed. Knowing this, promoters of a new program may seek to get the program located in a sympathetic agency or to create a new agency. Other options include upgrading the status of an old agency, such as establishing the U.S. Department of Education, or reorganizing an existing agency.[11]

As Jones and a leading scholar on executive branch organization, Harold Seidman, note, organizational arrangements shape and reflect policy priorities and the distribution of political power in society. According to Seidman, "Organization is one way of expressing national commitment, influencing program direction, and ordering priorities."[12]

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[9]Ibid. [10]Ibid. [11]Ibid., pp. 170-74.

[12]Harold Seidman and Robert Gilmour, Politics, Position, and Power, 4th ed. (New York: Oxford University Press, 1985), p. 15.

Furthermore, "organization arrangements tend to give some interests and perspectives more effective access to those with decision-making authority, whether they be in the Congress or in the executive branch."[13] Thus, proposals for reorganization are evaluated as much for their political effects as for their relation to management principles.

During the 1960s several ideas for reorganizing the administration of Indian affairs were proposed and rejected on both managerial and political grounds. A 1967 presidential task force recommended the transfer of the BIA from the Interior Department to the Department of Health, Educationm and Welfare (HEW) on the ground that priorities in Indian affairs had shifted from the management of natural resources to the development of human resources. Indian groups and members of the Interior committees publicly opposed the transfer, as Chapter III describes, out of principle--they questioned the commitment and skill of HEW officials in defending Indian treaty rights.[14] Underlying their concern, however, was the fear that the transfer would redistribute access and influence over Indian policy. In particular, the Interior committees viewed the transfer proposal as an attempt to circumvent their jurisdiction over Indian policy. As a result, the idea never got off the drawing board. As we saw in Chapter IV, a more limited proposal to transfer the BIA's education division to an independent Indian education agency, offered by the Senate subcommittee on Indian education in 1969, was also rejected by Indians and members

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[13]Ibid.

[14]See p. 117, supra.

of the Interior committees.[15] Besides concerns over jurisdiction and access, Indians were concerned that removing the largest area of responsibility, in terms of budget and employees, from the BIA would lead to the eventual dismemberment and abolition of the agency.

In addition to the proposals to transfer all or part of the BIA to HEW, the Nixon White House considered other ideas for reorganizing Indian administration. In early 1969 historian Alvin Josephy recommended in a study conducted for the Nixon transition team that the BIA be shifted to the Executive Office of the President (EOP). This proposal, which was similar in concept to the Johnson administration's placement of the Office of Economic Opportunity in the EOP, would symbolize the high priority that the Nixon administration should give to Indian affairs, according to Josephy, as well as neutralize opponents of Indian self-determination in the Interior Department and the Office of Management and Budget. Recognizing that the administration might think this transfer proposal to be too bold, Josephy also presented alternative recommendations to upgrade the status of the BIA within the Interior Department by making the Commissioner of Indian Affairs an Assistant Secretary with direct access to the Secretary of Interior, and to reorganize the BIA thoroughly.[16]

In the end, the President's aides chose to upgrade and reorganize the BIA within the Interior Department. In his Message to Congress on Indian Affairs, Nixon recommended that legislation be enacted to

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[15]See pp. 165-68, supra.

[16]See pp. 123-4 supra.

establish the new position of Assistant Secretary for Indian and Territorial Affairs in the Department of Interior. In part, the decision not to transfer the BIA out of Interior was based on the desire to avoid arousing Indian and congressional fears about the potential redistribution of access. Upgrading the status of the Commissioner of Indian Affairs was the option most likely to gain widespread support from the Indian policy subsystem. Furthermore, Nixon's advisors hoped that the infusion of new Indian leadership in the BIA, backed by Secretary Hickel and the White House, could revitalize the agency.

In essence, the organization strategy that the Nixon administration adopted was what Francis Rourke calls "administrative renaissance"--giving an old agency new life through administrative reorganization, the influx of new personnel, and/or a significant change in the scope of its activities.[17] Rourke cites the example of the U.S. Office of Education (USOE), which was reenergized in the mid-1960s after the passage of the Elementary and Secondary Education Act of 1965 (ESEA).[18] New leadership installed in the agency engineered a dramatic, if not brutal, reorganization, which resulted in the resignation or dismissal of numerous career officials and a change in patterns of access of outside groups to the agency.

Before proceeding to the efforts to give the BIA new life through the strategy of administrative renaissance, it is important to note

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[17]Francis E. Rourke, Bureaucracy, Politics, and Public Policy, 3rd ed. (Boston: Little, Brown and Co., 1984), pp. 179-80.

[18]Stephen K. Bailey and Edith K. Mosher, ESEA: The Office of

a similarity and a difference between the cases of the USOE and the BIA. First, although the restructuring of USOE occurred in relatively swift order, it took many years for the agency to change its mission from a benign service unit to a promoter of education reform. Similarly, the Nixon administration's ultimate goal was a change in the mission of the BIA from paternalistic manager of Indian programs to a technical assistance agency which would promote tribal self-sufficiency. There was no reason to believe that this goal would be accomplished quickly.

Second, an important difference between the USOE and BIA restructuring periods is that the reorganization of USOE occurred after the passage of major reform legislation, not before. Waiting for Congress to enact ESEA enabled administrators to justify their initiatives as the fulfillment of a mandate from Congress to make significant changes in education policy, and to tap the support of the education reform coalition which enacted the law. In contrast, by pursuing administrative self-determination initiatives before congressional action on Indian legislative proposals, Hickel and the Indian "new team" started on an uncertain base of political support.

The Decision to Pursue Indian Self-Determination by Administration

The decision to implement Indian self-determination in advance of congressional passage of the Nixon administration's legislative program had its roots in Secretary Hickel's desire to accomplish policy

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Education Administers a Law (Syracuse: Syracuse University Press, 1969).

change through broad interpretation and application of statutes. Undoubtedly the intense pressure that Hickel received from the Indian political movement during the first year of his tenure was a major reason for taking such an approach.[19] Under pressure to act quickly, Hickel felt he had to adopt unusual measures. According to Hickel, political executives in Washington cannot waste time waiting for Congress to act or for the bureaucracy to respond to presidential directives. Administrators are constrained by the political calendar, the size and complexity of the federal bureaucracy, the magnitude of the problems with which they deal, and the level of support from Congress, hierarchical superiors, constituency groups, and employees. Given these limitations, political executives have to use whatever legal prerogatives they can find to make an impact.[20]

Although there is no evidence that he personally knew or approved of Hickel's plans for Indian administration, President Nixon contributed to their execution in three ways. First, his management style for the first eighteen months of his presidency, which consisted of delegating administrative authority to his Cabinet officers, gave Hickel the latitude to initiate administrative changes. Second, the process by which the President's Indian policy was formulated helped create a climate which encouraged policy innovation and activism on behalf of Indians. Recognizing that the "self-determination without

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[19]See pp. 125-6, supra.

[20]Walter J. Hickel, Who Owns America? (Englewood Cliffs, NJ: Prentice-Hall, 1973).

termination" message was developed with the participation of Indian leaders. Hickel believed that appointing activist Indian leaders to run the BIA was consistent with the President's approach. Third, the President specifically endorsed one of Hickel's initiatives--the contracting policy--in his message to Congress.[21] Therefore, to Hickel and Commissioner Bruce, their policy initiatives were in accord with the President's goal of Indian self-determination.

Administrative Self-Determination Initiatives: Commissioner Bruce and the "New Team"

While Nixon and Hickel provided the backdrop for administrative reform in Indian affairs, it was Commissioner Bruce and his "new team" of administrators who supplied the reform program. Appointed in October 1969, Bruce was under tremendous pressure to act. As a person who was relatively unknown to the Indian policy community, he was anxious to prove himself as an advocate of self-determination. He shared Hickel's impatience with bureaucratic routines and his desire to produce results quickly. Bruce spent his first year selecting his management team and formulating the administrative self-detemination policy. On October 23, 1970 Hickel announced the appointment of the "new team" to run the BIA.[22] Bruce had created twenty-two new positions in the

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[21]See p. 180, supra.

[22]The description of the BIA's "new team" is taken from various sources: Interviews with Richard La Course and Karen Duchineaux, American Indian Press Association, Washington, DC, August 18-19, 1974; Peter Collier, "The New Indian Wars," Ramparts (June 11, 1973):25-29; Frye Gaillard, "BIA Old-Liners Appear Victorious," Race Relations Reporter (October 1, 1971):7-12.

central office of the BIA and filled fifteen of these positions with Indians. Most of the "new team" members were between the ages of 25 and 45. Many of them had acquired administrative experience working in Indian Community Action Programs on the reservations, and several had served as leaders of the National Indian Youth Council, one of the activist Indian groups.[23]

Most of the "new team" were genuine "outsiders" who were critical of the established authorities in the Indian policy subsystem--elected tribal officials, career bureaucrats in the BIA and Interior Department, and senior congressmen on the Interior committees. As part of the younger generation of Indian leaders who emerged in the 1960s, the "new team" objected to the nepotism and cronyism which existed in many tribal governments. For some, the distrust of established tribal leadership came from their experiences in the ICAPs, where they frequently came into conflict with the policies of elected tribal chairmen and council members.

Furthermore, the "new team" was skeptical of BIA personnel and procedures. Only three of them had previously served in the BIA. The vast array of bureaucratic regulations that had accumulated over the lifespan of one of the oldest agencies in the federal service seemed unnecessary to the young administrators, accustomed to the less conventional activities of community organization. Not only did the "new

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[23]See U.S., Congress, Senate, Committee on Interior and Insular Affairs, Policy Changes in the Bureau of Indiean Affairs, Hearings before the Subcommittee on Indian Affairs, 91st Cong., 2nd sess., 1970, pp. 82-95, for biographical sketches of each of Bruce's aides.

team" not identify closely with career bureaucrats, they did not fit the mold of the political executives recruited by the Nixon administration. Other than Commissioner Bruce, few were Republicans. Their loyalty was to the cause they served, not to Richard Nixon.

Together, the "new team" gave Hickel and Bruce the identity they sought for their administration, that of a regime which would lead, rather than resist, the Indian drive for self-determination. They shared Hickel and Bruce's desire that changes in organizational structure, personnel, and policy be carried out swiftly without waiting for new authorization from Congress. The chilly response of the Interior committees in 1970 and early 1971 to the President's legislative proposals reinforced the Hickel-Bruce administration's attitude that nothing would be gained by being patient.

Bruce and his team gradually developed a set of administrative self-determination efforts. Existing statutes were reinterpreted to expand opportunities for Indian organizations and individuals. As Chapter IV mentioned, Bureau officials began a policy of contracting with Indian tribes for the provision of federal programs and services.[24] Also, based on an analysis of a section of the Indian Reorganization Act of 1934, Bureau administrators announced that BIA hiring and promotion would be guided by Indian preference. Funds targeted for relocation of Indian youth to urban areas for employment were reprogrammed into a college scholarship fund and various reservation projects.

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[24]See pp. 179-82, supra.

Encountering resistance to their initiatives from area office administrators and reservation agents, Bruce's management directors prepared a major reorganization plan for the BIA. In one of his last acts as Secretary of the Interior, Hickel issued the reorganization order on November 26, 1970.[25] The goal of the reorganization plan, according to Bruce, was to facilitate the change of the Bureau's mission from program management to technical assistance. The plan consisted of three major features. First, line authority was withdrawn from the eleven area directors to shorten communication links between the central office and the reservations. The area offices would be converted to technical assistance centers. Second, all of the 63 reservation agency superintendents would be rotated every two to five years, and each reservation agency would be inspected and evaluated by mid-1971. Third, based on new interpretations of old laws, the policy of contracting BIA services with tribal organizations would be accelerated.

In addition to the managerial objectives expressed in support of the reorganization, Bruce asserted that the plan was consistent with the President's policy of Indian self-determination. Still, as with all agency reorganization efforts, there also were political objectives. One aim of reorganization was to reduce the influence of field personnel who could obstruct efforts by the central office

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[25] New York Times, 26 November 1970, p. 23. This reorganization plan was preceded by a reorganization of the BIA's central office, issued January 9, 1970. This order replaced the offices of Deputy Commissioner and six assistant commissioners with two associate commissioners (one for support services, the other for education and programs) and five staff directors.

to give Indians greater control over government programs. Moreover, the plan provided a means by which central office administrators could bypass established tribal governments, some of which were allied with BIA field personnel, in favor of "grassroots" Indian leaders who desired more rapid changes.

However, a major break in the chain of command which orchestrated the administrative self-determination initiatives soon occurred. Shortly after he issued the reorganization order for the BIA that day, Secretary Hickel was fired by President Nixon. In response to questions about the status of the order after Hickel's departure, Commissioner Bruce insisted that the reorganization plan would go forward. As Commissioner of Indian Affairs, he said he was obligated to carry out the President's policy of self-determination without termination.[26]

Administrative Self-Determination, Hierarchy, and the Need for Political Support

Commissioner Bruce's claim that his responsibility to carry out the President's policy of Indian self-determination was sufficient justification for his initiative raises a question which political executives from presidents to bureau chiefs face constantly. Does the assertion and exercise of formal prerogatives or hierarchical authority guarantee political executives sufficient control over the bureaucracy and direction of administrative policy? Within the

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[26]Ibid.

community of political scientists, two competing views on this question have emerged.

The more prevalent position holds that the formal powers of political executives are limited and do not assure bureaucratic responsiveness to hierarchical directives.[27] Under the Constitution, formal controls over executive agencies are divided and shared among the presidency, Congress, and the courts. For example, senatorial confirmation is needed for presidential appointments of the principal officers of government. Moreover, the courts have upheld the power of Congress to establish independent agencies and the civil service system, which places the vast majority of federal employees beyond the control of the President. In addition to constitutional and legal limits on executive power there are also political constraints. Because of the decentralized nature of political parties, cabinet and sub-cabinet officials cannot be certain that they will have adequate political support if they are loyal to the President's policies. As Norton Long and others have said, political executives need to cultivate political support from any available source--Congress, the White House, the Office of Management and Budget (OMB), clientele groups, public opinion, agency employees, etc.--to acquire the power necessary to direct departments and agencies.[28]

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[27]Richard E. Neustadt, Presidential Power (New York: John Wiley and Sons, 1960); Peter Woll, American Bureaucracy (New York: W. W. Norton, 1963); Rourke, Bureaucracy, Politics, and Public Policy; Hugh Heclo, A Government of Strangers: Executive Politics in Washington (Washington, DC: Brookings, 1977); and generally, the subgovernment literature.

[28]Norton E. Long, "Power and Administration," Public Administration Review, 9 (Autumn 1949):257-64.

On the other hand, there is the view that political executives have a considerable array of constitutional and legal prerogatives and that their influence over bureaucratic agencies is underestimated.[29] Presidents have an impressive array of prerogative powers in foreign and military policy. In times of domestic or international crisis, the President's powers of command expand greatly. With respect to domestic departments and agencies, the formalists argue that, taken as a whole, the arsenal of powers over personnel, organization, budget, and administrative policy gives political executives the potential to manage the bureaucracy. One of the tragedies of Watergate, suggests Nathan, was that it prevented the nation from seeing whether the "administrative presidency" could succeed.[30]

Although these two views on executive power are presented as opposites, they are in fact complements. Assertions of hierarchical authority rest ultimately on acceptance of legitimacy by others in the political system. Even if the legitimacy of formal powers is acknowledged, their exercise may be so controversial, from a political or policy standpoint, that other authoritative bodies may attempt to block or limit them. By the same token, if political executives mobilize political support for their actions, it may be difficult for the other

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[29]Richard M. Pious, The American Presidency (New York: Basic Books, 1979); Nathan, Administrative Presidency; Ronald Randall, "Presidential Power Versus Bureaucratic Intransigence: The Influence of the Nixon Administration on Welfare Policy," American Political Science Review, 73 (September 1979):795-810.

[30]Nathan, Administrative Presidency, pp. 87-88.

branches of government to check the assertion of executive power, even if its legitimacy is questionable.[31]

Given that many of Commissioner Bruce's policy initiatives were based on disputed interpretations of congressional statutes, it was imperative that he mobilize a favorable balance of political support from the BIA's constituency for him to prevail.[32] After the issuance of the reorganization plan, Bruce obtained the endorsement of the National Congress of American Indians (NCAI) and tribes which did not have good relationships with area directors and agency superintendents. However, opposition to the plan arose quickly within the BIA and among other Indian tribes. Area directors felt that they had been arbitrarily selected for removal.
Superintendents felt that rotation was unnecessary. Many tribal chairmen and councils supported the superintendents, on the grounds that the reorganization plan jeopardized the many years of efforts that the tribe had spent cultivating favorable relations with the agency heads. Also underlying the opposition of some tribal leaders was the fear that reorganization would open the door for younger Indians to challenge them for leadership of the tribes.

For the first time during the Nixon administration, problems arose because of failure to consult Indian tribal leadership before making important decisions. In congressional hearings before both the House

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[31]See Pious, American Presidency, especially Chapters One and Two.

[32]The concept of agency constituency is discussed in Matthew Holden, "'Imperialism' in Bureaucracy," American Political Science Review, 60 (December 1966):943-51.

and Senate Interior committees, Bruce replied that he had talked to every tribe and Indian group in the nation in the last six months.[33] His assurances were questioned, however, by members of Congress whose districts included tribes which did not want their agency superintendent or area director transferred. In response, the Commissioner pledged that though he planned to proceed with the reorganization plan, no future decisions of major importance would take effect without prior notice to the tribes.[34]

Following the hearings, Bruce proceeded to implement the reorganization plan. The "new team" launched an aggressive contracting program. For the legal authority to conduct the program, they relied on an 1834 statute (see Chapter IV) and the Johnson-O'Malley Act of 1934, which was interpreted to include Indian tribes and communities as eligible

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[33]U.S., Congress, Senate, Committee on Interior and Insular Affairs, Policy Changes in the Bureau of Indian Affairs, Hearings before the Subcommittee on Indian Affairs, 91st Cong., 2nd sess., 1970.

[34]Ibid., p. 14. Also discussed at the Senate hearings was the impact of the Bureau's organization, personnel, and policy changes upon the morale of BIA career personnel. The National Federation of Federal Employees (NFFE), the public employee union representing BIA employees, criticized a statement attributed to Commissioner Bruce that Indians will have first choice in job placement and promotion in the BIA. The NFFE charged that Indian preference subverted the merit principle in public employment and violated Title VII of the Civil Rights Act of 1964. Furthermore, the Commissioner's contracting policy threatened Indian tribes and Indian BIA employees, said the union. The NFFE urged that any new contracting efforts by the BIA central office be placed on hold until a full review of those efforts, with particular emphasis on giving employment protection to Indian BIA employees who became tribal employees under contract, was completed. Despite the urgings of the NFFE, no review of the BIA's contracting policy was commenced by the Interior committees. Rather, the members of Congress focused on the proposed rotation of field personnel and redelegation of authority at the area office level. Ibid., pp. 36-44.

contractors for the administration of Indian education programs. Also cited as authority for the first time was the "Buy Indian" Act of 1910. The act authorized the Secretary of the Interior to purchase by contract Indian-made products from Indian tribes. Until November 1970, the act had been interpreted to relate only to the purchase of Indian-made goods and whatever involvement of Indians the manufacture of Indian-made products entailed. To further the policy of self-determination, however, the "new team" first reinterpreted the act to authorize training and employment of Indians in manufacturing or making products. Then the act was reinterpreted more broadly to authorize Indian involvement in the administration of Indian programs.[35]

By March of 1971, several different negotiations were under way for Indian control and operation of governmental functions. Using "Buy Indian" authority the Navajo tribe signed a $360,000, three-year contract to build and run their own school at Ramah, New Mexico. Funds for the contract came from diverting monies earmarked for sending Indian children to BIA boarding schools. The United Tribes of North Dakota and the Nebraska Inter-Tribal Development Corporation obtained a contract specifying that they administer Johnson-O'Malley funds for Indian students attending public schools in those areas. The administration of the BIA Higher Education Assistance Program for Pueblo and and Navajo Indians was contracted to the All-Indian Pueblo Council

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[35] American Indian Press Association (AIPA), News Release (Washington, DC: March 1971.

and the Navajo Tribal Council, respectively.[36]

Although the "new team" justified its actions in the name of Indian self-determination, opposition mounted within the Indian affairs subsystem. Within the BIA, area directors complained of being left with all the responsibility of delivering services to the tribes but without control of the means necessary to effect the turnover.[37] Reservation agents accused the new team of diverting funds from their offices to finance contracting ventures. White Bureau employees feared that the new "Indian preference" policy in employment would foreclose any opportunities for further advancement in the agency.[38]

On the reservations, tribal chairmen charged that the "new team" used funds to equalize expenditures among tribes and to finance projects for urban Indians. By contracting with private Indian groups not sanctioned by tribal governments, according to the tribal chairmen, the central office undermined the authority and structure of tribal governments established under the Indian Reorganization Act.[39] Furthermore, the chairmen accused Bureau leaders of once again failing to consult the tribes before "arbitrarily" reassigning field personnel.

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[36]Ibid.

[37]Gaillard, "BIA Old-Liners Appear Victorious," p. 12.

[38]Steve Nickeson, "Protest at the BIA," Race Relations Reporter (August 20, 1971):7-10.

[39]New York Times, 20 February 1971, p. 17. See footnote 64 below.

Dissatisfaction among the tribal chairmen publicly surfaced in a "National Conference on Self-Determination," an event in early March 1971 sponsored by the administration to get the endorsement of Indian leaders for the President's legislative package.[40] At the meeting several tribal chairmen accused Commissioner Bruce of appointing to high-level positions Indians who lacked a reservation orientation and who were sympathetic to radical non-reservation fringe groups. An angry exchange then followed between the chairmen and young Indian militants, who characterized the tribal government spokesmen as "sell-out politicians" and "apples." Subsequently, a proposal for the creation of an association of tribal chairmen was narrowly defeated by the conference participants.

In order to preserve Indian support for his policies, Bruce attempted a strategy of cooptation. He promised that he would not reassign any reservation agent without first obtaining the affected tribe's consent. Then with the help of federal funds, Bruce established in April 1971 the National Tribal Chairmen's Association (NTCA), consisting of elected tribal chairman, and pledged to work closely with the group in developing administration policy. Though this move pleased tribal leaders, the "new team" feared that the administration was backing away from its promise to bring about a drastic restructuring of the BIA.[41]

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[40]Richard LaCourse, "Indian Politics in Changing Times," Race Relations Reporter (June 23, 1973):8-10.

[41]Ibid. The concept of cooptation is discussed in Philip Selznick, TVA and the Grass Roots (Berkeley: University of California Press, 1949). A discussion of tactics available to political executives for

Congress and Secretary Morton Respond

More serious than the controversy over reorganization, however, were the questions by congressional leaders and Interior Department officials that were raised over the "new team" contracting policy. The concerns centered around a proposed contract negotiated by the Bureau's central office and the Miccosukee Tribe of Florida, whose reservation was located in the congressional district served by Indian affairs subcommittee chairman Haley.[42] Using the "Buy Indian" Act as authorization, the contract was to turn over operation of the Miccosukee Indian Day School to a private corporation chartered by the tribe. In February 1971 the Solicitor's Office of the Interior Department tentatively approved the contract. However, before the agreement between the BIA and the tribe was signed, Interior officials insisted that the contract be sent to a new office in the department, the Office of Survey and Review. On April 1, 1971 the Assistant Secretary for Administration informed Commissioner Bruce that the Miccosukee contract had been disapproved and advised the Bureau not to negotiate any further contracts until either new legislation was passed or specific approval was obtained from the House and Senate Appropriation Committees.

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the mobilization of political support is found in Grover Starling, Managing the Public Sector, 3rd ed. (Chicago: Dorsey Press, 1986).

[42]See U.S., Congress, Senate, Committee on Interior and Insular Affairs, Indian Self-Determination, Hearings before the Subcommittee on Indian Affairs on S. 3157, 92nd Cong., 2nd sess., 1972, pp. 71-79.

Underlying the objection of the Interior Department toward the Bureau's contracting policy were letters sent by Haley and Aspinall to the Assistant Secretary for Public Land Management, Harrison Loesch. On April 6, 1971 Haley told Loesch that he agreed with the decision to terminate the Miccosukee contract.[43] Haley enclosed a letter to the tribe's attorney, who appealed to Haley to let the contract go through in order to continue President Nixon's Indian policy. In the letter Haley reminded the attorney and Loesch that Indian policy is determined by the Congress and criticized the uses of the "Buy-Indian" contracting method:

> I realize that you believe the Miccosukee contract could be executed under present law, without waiting for any new legislation. I do not wish to discuss the issue in detail, but I am advised that this conclusion is subject to substantial doubt. . . . Regardless of the legal issue, however, I believe that a new Indian policy of this magnitude and significance should be based upon new legislation enacted by Congress after careful consideration of all of the factors involved. Old statutes, enacted for different purposes and under different circumstances, should not be stretched or distorted to support a new policy which Congress has never considered . . .[44]

In a separate letter dated April 9, 1971, House Interior Committee Chairman Aspinall told the new Interior Secretary, Rogers Morton, that he also opposed the BIA's policy of reinterpreting existing statutes

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[43]James A. Haley to Harrison Loesch, 6 April 1971 (mimeographed copy in author's personal possession).

[44]Ibid.

to transfer administrative control of BIA functions to the tribes.[45] Aspinall questioned the validity of the Zuni contract, saying that he had introduced legislation to repeal the sentence in the 1834 act providing the authority for the transaction. He also questioned the use of the "Buy-Indian" Act and the Johnson-O'Malley Act to transfer governmental services to tribal control, and asked the Secretary to stop current BIA contracting efforts. Finally, Aspinall requested the General Accounting Office (GAO) to conduct an audit of all contracts negotiated under the Bruce administration.

The criticism of BIA policies from within the Indian affairs subsystem coincided with changes in the leadership and policy orientation of the Interior Department. In January 1971 Rogers C. B. Morton replaced Hickel as the Secretary of the Interior. A former Maryland congressman and national Republican Party chairman, Morton had little knowledge of the changes which had occurred in Indian policy under the Nixon administration. Moreover, Morton was anxious to avoid the political controversy which surrounded Hickel, and sought favorable relations with Congress and the White House.[46]

Morton's first reaction to the conflict which resulted from the policies of the "new team" was to appoint Wilma Victor, a personal friend, to the post of Assistant to the Secretary for Indian

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[45]Wayne N. Aspinall to Rogers C. B. Morton, 9 April 1971 (mimeographed copy in author's personal possession).

[46]Dan Rather and Gary Paul Gates, The Palace Guard (New York: Warner Books, 1974), p. 22.

Affairs.[47] The appointment was unpopular with several Indian leaders because of Victor's past record as the superintendent of the Intermountain Indian Boarding School in Utah. During her tenure the school was cited by the Senate Select Subcommittee on Indian Education for subjecting Indian children to physical and mental cruelty. Victor denied responsibility for those practices. Regardless, the effect of the appointment was to deny the "new team" direct access to the Secretary and to separate Morton from the policies of the BIA.

Moreover, in April 1971 the White House denied Bruce's request to give "political clearance" to his "new team" appointees. Clearance was necessary for Bruce's assistants to remain in their posts as "supergrade" appointees. The refusal to give clearance to the Bruce team apparently came at the request of Interior officials. Commenting on the rejection, Assistant Secretary Loesch stated that it was necessary to assign career employees to top BIA positions, because Bruce and his assistants "have gotten rid of everyone who knows how to make the system work."[48]

In early April 1971, following the Haley and Aspinall letters, Loesch ordered Bruce to take steps "to improve management." In particular, Bruce was directed to stop the contracting policy. Interior and OMB officials set up a "Management Assistance Team" to review charges of maladministration of funds within the Bureau. After a

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[47] AIPA News Release, April 1971.

[48] AIPA News Release, May 1971.

month-long review, the task force recommended that the post of Deputy Commissioner be established and the position filled with a person "experience in good management techniques."[49]

Following the report of the task force, Morton's assistants conducted a search to name a Deputy Commissioner. At the urging of Victor, Morton appointed John O. Crow, a thirty-year veteran of the BIA and a Deputy Commissioner in 1961, to the position.[50] In an extraordinary move, Morton issued an executive order on August 12, 1971 giving the Deputy Commissioner full power to delegate authority within the BIA. The reason for the order, according to the Secretary, was that it would free Commissioner Bruce for "creative efforts among Indians."[51] However, the effect of the order was to transfer authority from Bruce to Crow.

Within six days as de facto Commissioner, Crow suspended all of Bruce's administrative self-determination efforts.[52] He affirmed the termination of the contracting program. The "Indian preference" policy was suspended, pending the outcome of a suit filed in federal court. Several members of the "new team" were demoted in favor of BIA career employees. In particular, Crow removed Leon Cook, one of Bruce's

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[49] AIPA News Release, March 1971, July 1971; also Jack Anderson "Indian Bureau Chief is Outflanked," Washington Post, 14 December 1972, sec. K, p. 5.

[50] AIPA News Release, July 1971.

[51] Aipa News Release, August 1971; Anderson, "Indian Bureau Chief," New York Times, 11 August 1971, p. 15.

[52] New York Times, 11 August 1971, p. 15; 16 August 1971, p. 12.

appointees, from the post of chief water rights officer and gave the job to a white career official. Also, Crow ordered the transfer of William Veeder, a BIA "whistle-blower" who criticized Interior Department policy in water rights cases, from Washington to Phoenix (see pp. 294-95). His task completed, Crow returned to his position as Deputy Commissioner on August 18, 1971, when Secretary Morton restored full power to Commissioner Bruce.[53]

Crow's brief reign marked the end of the Hickel-Bruce effort to implement Indian self-determination without prior congressional approval. For the time being, Bruce failed to win the favorable balance of support necessary to sustain his initiatives. Although the activities of the "new team" stimulated support from grassroots Indian activists and gained favorable media attention, they also generated opposition from officials in the line of authority--tribal government leaders, reservation agents, and area directors--and eventually members of the Interior committees. When Secretary Hickel was fired, critics of the Bruce administration had an opportunity to gain access to the new Secretary, Rogers C. B. Morton, whose style of leadership differed considerably from that of his predecessor. Morton's withdrawal of support undermined the claim of the Commissioner that his policies reflected the President's thinking. The fact that those policies rested on a questionable legal basis gave his critics the ammunition they needed. Members of Congress and Interior Department officials were able to

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[53]New York Times, 18 August 1971, p. 15.

condemn Bruce's methods without criticizing the goal of Indian self-determination.

The Struggle to Save Administrative Self-Determination: The First Indian Assault on Washington

However, Secretary Morton was faced in the fall of 1971 with a political dilemma of his own. Unlike Bruce, there was no doubt about his legal authority to act. But, there was a question about the true motive for his action. Did Morton suspend Bruce's initiatives to "improve management," as he claimed, or to restore the BIA to its paternalistic ways? Moreover, the heavy-handedness of his tactics--installing veteran careerists to manage the agency--deepened suspicions among Indian policy reformers. Rather than restore order to the administration of Indian policy, Morton's decisions provoked more conflict. Like Bruce, he would need to develop an effective political strategy to supplement his exercise of hierarchical authority.

Of all the changes which Morton, through Crow, instituted, none was more controversial than the proposed transfer of Veeder, the BIA water rights specialist, to the Phoenix area office.[54] At the time of the transfer, the Interior Department was pushing ahead with plans to build the Colorado River water project, which would pump water to the major cities of the southwest. Veeder opposed the project, which he said would violate tribal water rights in the region. Nevertheless, Crow justified the transfer to Phoenix by saying that if Veeder were

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[54] New York Times, 11 August 1971, p. 15; 16 August 1971, p. 12; 18 August 1971, p. 15.

closer to the action, he would be a stronger advocate for Indian water rights.

Veeder publicly refused to leave Washington, even though one morning he found his desk cleared by BIA janitors and his things sent to Arizona. According to Veeder, the real reason for his transfer was that other agencies in the Interior Department, particularly the Bureau of Reclamation, felt his opposition to the Colorado River dam was delaying work on the project. Going to Phoenix to "supervise" the project, said Veeder, would give legitimacy to an undertaking which never should be completed. Veeder picked up support from Senator Jackson and major Indian groups. After a congressional hearing, he was allowed to stay in the central office.[55]

To show their concern over the policy and personnel changes in the Interior Department and the future of the self-determination policy, all of the major Indian political organizations--NCAI, NTCA, the National Indian Youth Council (NIYC), and AIM--gathered in Washington on September 21-22, 1971 to meet with Nixon administration officials.[56] While in the capitol, the tribal chairmen passed a resolution calling for the removal of the BIA from the Interior Department and its placement in "receivership" at the White House. Peter MacDonald, chairman of the Navajo Tribe and the chairman of the NTCA, demanded the firing of Crow and Victor, and called for an end to "bureaucratic subversion" of the Nixon policy. The

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[55] New York Times, 29 August 1971, p. 35.

[56] New York Times, 22 September 1971, p. 20; Nickeson, "Protest at the BIA,"; Gaillard, "BIA Old Liners."

executive director of the NCAI, Leo Vocu, denounced the actions of Crow and Victor and stated that "the old patterns of stagnation and paternalism have returned."[57]

While representatives of the NCAI and NTCA held private meetings with presidential assistants Leonard Garment and Bradley Patterson and other officials, the activist AIM and NIYC staged a demonstration in front of the BIA building on September 22. As the militants and the DC police clashed, several young Indians broke through the police lines, entered the building, and charged upstairs with the intention of making a citizen's arrest on John O. Crow. At the time, however, Crow was negotiating with Indian leaders in the Interior Department building across the street.[58]

The mass gathering produced an explicit fusion between the left and center of the Indian political spectrum. The demonstrators from AIM and NIYC specifically endorsed the negotiating efforts of the chairmen, and the chairmen, in turn, endorsed the militant actions of the young protestors. Commissioner Bruce met with AIM leader Russell Means, who told Bruce that the demonstration was held to show support for his policies. Bruce emerged from the meeting saying that he was sympathetic to the concerns of the militants.[59]

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[57] New York Times, 22 September 1971, p. 20.

[58] Ibid.

[59] Ibid.; also New York Times, 23 September 1971, p. 19.

Because of the remarkable unity among Indian leaders, the Nixon administration could not dismiss the demonstration as the work of radicals. Even in the eyes of conservative Indians critical of the Commissioner and his "new team," the effort to diminish Bruce's authority went too far. Secretary Morton realized that some visible concessions had to be made to the Indian political movement. At the same time, he wanted to preserve his authority--he could not allow political opponents to dictate policy, nor could he permit any further insubordination by officials in his department. His concerns were shared by presidential advisors, who were worried about growing militancy in the Indian movement.

Following meetings at the White House, Nixon administration officials formulated a two-pronged strategy. In the short term, concessions were offered to the activists. On October 3, 1971, Secretary Morton announced four new initiatives: (1) an Office of Indian Water Rights with direct access to Morton; (2) a "full training program" to educate BIA employees in all aspects of contracting to promote Indian self-determination; (3) an accelerated road-building program within the reservations; and (4) a fifteen-member Indian advisory board in the Interior Department [different from the National Council on Indian Opportunity (NCIO) in the Vice-President's office], composed of NTCA, NCAI, and other Indian organizations. Morton also pledged that he would meet with NTCA and NCAI representatives to review the BIA budget recommendation for fiscal year 1973 before making his final decisions.[60]

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[60]New York Times, 4 October 1971, p. 18. During the demonstrations

Not part of the administration's plans was a drive by Commissioner Bruce to capitalize on the show of support given him by the September demonstration. On November 17, 1971, he announced a new reorganization plan which restored the area offices to their former status and which also enabled Bruce and his staff to bypass Deputy Commissioner Crow.[61] Bruce also announced seventeen key appointments, all of them Indians and seven of them "new team" members, to policymaking positions in the central office. Due to Bruce's popularity among Indians, the Interior Department had no choice but to accept his actions. The commissioner went on to advocate major program changes in early 1972, among them the creation of a Reservation Acceleration Program (RAP). Tribes were encouraged to come up with comprehensive economic development plans to be funded on a package basis. Indian Action Teams, each consisting of eleven or twelve technical experts, would help tribes in designing and implementing RAP plans. Bruce also called for a reversal of the relocation program, transferring the monies earmarked for training Indian youth in urban centers to manpower programs on the reservations. According to the Commissioner, the $30 million road

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Morton was summoned twice to the White House. Nixon aides reportedly told Morton not to interfere with any of Bruce's reform efforts. President Nixon did not personally get involved in the matter, but the Times quoted Nixon as saying: "We should look at the whole bureaucracy with regard to the handling of Indian affairs and shake it up good." New York Times, 30 September 1971, p. 66. See also statement of Secretary Morton in Trust Counsel Hearings, p. 21.

[61] AIPA News Release, Washington, DC, December 1971; also see Gaillard, "BIA Old-Liners," pp. 10-12. Bruce's announcement came as a surprise to Interior officials. His decisions were still on his desk at the time of his announcement. See also Trust Counsel Hearings, pp. 21-23.

construction budget would be doubled, and the Indian Water Rights Office, with $500,000 in additional federal funds, would begin twelve new studies.[62]

The End of Administrative Self-Determination

Even as Bruce announced these changes, however, Interior Department and White House officials were implementing the second part of their strategy to deal with Indian political activism and take control of Indian policy. This plan contained two elements. One part was an administration-wide effort to co-opt conservative Indian leaders. While Bruce pledged to continue consultation with all elements of Indian political opinion, Secretary Morton decided to limit all future discussions about Indian policy to the leaders of the NTCA.[63] As the

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[62] New York Times, 9 January 1972, p. 1; 13 January 1972, p. 36.

[63] Secretary Morton may have decided to consult solely with the conservative tribal chairmen before he announced his concessions on October 3, 1971. At a congressional hearing on the November 1972 seizure of the Bureau of Indian Affairs headquarters, the minutes of a meeting between Morton, Assistant Secretary Loesch, and NTCA President William Youpee were made public:

> Assistant Secretary Loesch: Who speaks for the Indians? I hope NTCA will become the voice.
> Secretary Morton: Do you think the NTCA is capable of program development and design? Could you help us? (After Youpee's reply) Let's not get on the merry-go-round for six months. We need machinery or the NTCA, a water rights committee and an education committee. We might provide expense money to NTCA.
> Assistant Secretary Loesch: Consultant fees. I do not see why we cannot get the facts and put this together.
> Mr. Youpee: Mr. Secretary, we need several people full time to work as our staff.
> Secretary Morton: Yes, we should give them all the help we can.

U.S., Congress, House, Committee on Interior and Insular Affairs,

Indian leaders who were most dependent on federal programs and whose national organization was financed with federal funds, the tribal chairmen were expected to provide greater support than other Indian groups for administration policies. The administration took not only a harder line in denouncing Indian militants, but it also curtailed the access of the liberal NCAI. As a consequence, the national advisory board pledged by Morton was never established. Moreover, administration appointments to the NCIO, drawn from the tribal chairmen, cast a more conservative orientation on that group. According to Charles Trimble, executive director of the NCAI, the effect of the appointments was to transform the NCIO from a "trouble-shooter" on behalf of Indians to a "cheerleader for the administration, conducting search-and-destroy missions, identifying areas of criticism and neutralizing them instead of working on the problems."[64]

Seizure of Bureau of Indian Affairs Headquarters, Hearings before the Subcommittee on Indian Affairs, 92nd Cong., 2nd sess., 1972, p. 23. The NTCA subsequently received federal funds to set up its Washington office.

[64]Interview with Charles Trimble, Washington, DC, August 18, 1974. Trimble saw federal support of the NTCA as part of an overall strategy to divide the Indian community and coopt its more conservative leaders. See also LaCourse, "Indian Politics in Changing Times," p. 8. Another aspect of the administration's shift to the right was its tendency to define tribal self-determination in terms of support for tribal governments. This was reflected in the decision of the BIA in mid-1972 not to renew a contract with Oyate, Inc., a private non-profit education association which operated a bilingual education program in a BIA day school on the Oglala Sioux reservation in South Dakota. According to BIA deputy commissioner Crow, it was the new policy of the Bureau not to renew any contracts for program administration without the approval of the tribal government. In the Oyate case the tribal chairman of the Oglala Sioux, Richard Wilson, objected to the renewal of the contract in part because Oyate was controlled by one of his political

The other part of the administration's plan was to exert hierarchical controls, in order to undercut Commissioner Bruce's authority. Interior officials indicated that the new programs advocated by Bruce would be only temporary measures. In a meeting with BIA area directors, Assistant Secretary Loesch stated that the "new" BIA programs were "nothing but a political move in an election year."[65] An April 7, 1972 memo by Loesch strengthened the hand of area directors in personnel matters. The order lifted all central office controls over filling area office positions, thereby permitting area directors to appoint and promote staff people without clearance from Washington.[66] This order, in effect, stopped the implementation of the Reservation Acceleration Program. Finally, Loesch ordered Bruce to cut 10 percent from the BIA's budget requests for fiscal year 1974, a directive which Bruce publicly resisted throughout 1972.[67]

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opponents. Wilson convinced Interior officials to give the contract to a new organization funded by the tribal government, over the objections of Commissioner Bruce, who supported Oyate. The Oyate dispute was just one incident rising from the volatile politics of the Oglala Sioux reservation, on which the Wounded Knee occupation would occur in early 1973. According to Jerald Gross, an attorney for Oyate, the BIA was still reluctant to contract directly with private tribal organizations as of 1976. To Gross, the BIA's policy of dealing only with tribal governments retards Indian community development and thus is contrary to the idea of tribal self-determination. Jerald P. Gross, "Indian Self-Determination and Tribal Sovereignty: An Analysis of Recent Federal Indian Policy," Texas Law Review, 56 (1976):1195-1244. Also see Steve Nickeson, "Indian Groups Sue President, BIA," Race Relations Reporter (April 16, 1973):5-8.

[65] AIPA News Release, April 1972.

[66] Ibid.

[67] AIPA News Releases, July-October 1972.

The long-term strategy employed by Morton and the White House to gain control of administrative policy in Indian affairs foreshadowed the "administrative presidency" approach the Nixon administration would take after the 1972 election. The efforts by Interior Department officials, over Commissioner Bruce's objections, to curtail new spending programs and cut the BIA's budget request for fiscal year 1974 reflected the administration's shift toward a more conservative domestic policy. Despite the objections of Bruce and reformist Indian groups, it appeared in the fall of 1972 that Morton's approach would succeed. After what was certain to be a landslide reelection victory for President Nixon, it was likely that Morton would ask Bruce to leave the administration and install his own people to run the BIA.

Then came the Trail of Broken Treaties (TBT) caravan, and the occupation of BIA headquarters in the first week of November 1972. Undoubtedly the takeover was an embarrassment to, if not a repudiation of, the leadership of the Interior Department. As Chapter IV described, the underlying causes of the tragedy are difficult to sort out.[68] Probably the turmoil surrounding Indian administration during the Nixon years was a minor concern of the demonstrators, who sought a fundamental change in U.S. relations with Indian tribes. Nevertheless, the growing polarization between the Nixon administration and much of the Indian political movement contributed to Indian frustrations. With respect to the handling of the protest in Washington, the White House had to overrule the Interior Department officials, who advocated the use of

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[68]See pp. 193-97, supra.

force, to end the siege without bloodshed.

And yet, strangely enough, the seizure of the BIA strengthened the hand of Secretary Morton. The President's advisors and most members of Congress shared his view that a leftist fringe element of the Indian movement was responsible for the tragedy. Moreover, the irresponsibility of TBT leaders appeared to confirm Morton's policy of dealing only with "responsible" tribal chairmen. Most importantly, the crisis gave Morton the opportunity to impose changes unilaterally on the administration of Indian policy. With the BIA in ruins, there was widespread support in Washington for strong measures to restore order as quickly as possible. One year earlier, following the first Indian "assault" on Washington, Morton appeared in danger of losing control of Indian policy; however, after the second Indian uprising, he was in the strongest possible position.

The Aftermath of Administrative Self-Determination, 1973-75

Bringing the BIA Back to Life: The Bodman Reorganization

With a mandate to restructure the BIA, Secretary Morton assumed command of the agency.[69] In early December 1972 he fired Loesch, Bruce,

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[69]This section on post-November 1972 BIA turbulence is drawn from the following sources: U.S., Congress, Senate, Committee on Interior and Insular Affairs, Realignment of Bureau of Indian Affairs Central Office, Hearings before the Subcommittee on Indian Affairs, 93rd Cong., 1st sess., 1973 (hereafter cited as BIA Realignment Hearings); Steve Nickeson, "The Structure of the Bureau of Indian Affairs," Law and Contemporary Problems, 40 (Winter 1976):61-76; numerous AIPA News Releases, November 1972-May 1974; Interview with Charles Trimble, Washington, DC, 18 August 1974.

and Crow--because, he said, of their inability to work together after the BIA takeover (not mentioning their inability to work together before the BIA takeover).[70] Then Morton gave temporary authority over the BIA to Richard S. Bodman, Assistant Secretary of the Interior for Management and Budget. On January 18, 1973 Bodman unveiled a major reorganization of the Bureau. It had two major aspects.[71] First, all responsibility for Indian affairs was transferred from the Assistant Secretary for Public Land Management to the Commissioner of Indian Affairs, who reported directly to the Secretary of Interior. The position was to be abolished upon congressional approval of the administration's bill to establish an Assistant Secretary for Indian Affairs. Second, the size and power of the BIA central office was reduced greatly. According to the executive order, the reduction came in three phases: (1) the central office staff was reduced from 1,375 positions to 715; (2) daily operational activities presently performed in the central office were transferred to area and agency offices; and (3) the thirteen central office divisions were reduced to seven divisions (management and budget, legislative services, natural

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[70] New York Times, 3 December 1972, p. 1.

[71] "Steps Taken to Improve Operations of the Bureau of Indian Affairs," Department of the Interior News Release, 18 January 1973. Bodman also announced that the administration would submit legislation to make Indian tribes recipients of block grants for economic development. According to Bee, the objective of the block grant proposal was to abolish special EDA funding for Indian programs and replace it with grants directly to tribes from Interior (through BIA). The proposal failed to gain support from the 93rd Congress. Robert L. Bee, The Politics of American Indian Policy (Cambridge, MA: Schenkman, 1982), p. 231.

resource rights, trust responsibilities, economic development, education, and tribal services).

Interior officials denied that the reorganization plan was hastily conceived after the BIA takeover and that the primary purpose of decentralizing Bureau operations was to prevent the recurrence of future seizure attempts. Rather, according to Robert Gadjys, director of BIA's office of planning, the plan was "based on the philosophy of maximum delegation of authority at the agency level to strengthen tribal governments."[72]

Shortly after issuing the reorganization order, Bodman returned to his duties as Assistant Secretary for Management and Budget. In February 1973 Secretary Morton appointed Marvin L. Franklin, an Iowa Indian who was an executive with the Phillips Petroleum Company in Oklahoma, to the position of Assistant to the Secretary for Indian Affairs, with the intention of nominating him to become Commissioner of Indian Affairs. Franklin was given the task of implementing the Bodman realignment plan.

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[72] AIPA News Release, December 1972. To give some indication of the Interior Department's concern for security, three weeks following the BIA takeover, Interior officials ordered the separation of BIA offices into three facilities. Top administrators of the Bureau had their offices moved into the Interior Department building. Eight central office divisions remained in the BIA building, while the remaining employees were sent to McLean Gardens in northwest Washington. This arrangement continued until mid-1974, when a plan to reduce the number of BIA central office administrators was implemented. AIPA News Release, November 1972.

The Controversy Over Implementing the Bodman Plan

Just as electoral mandates given executive officials can quickly evaporate, so can mandates born out of crisis. Even though Secretary Morton was presented a window of opportunity to act, he could not ignore the political environment. In fact, since the Bureau takeover, the environment of the Interior Department had the potential to become more unfriendly than before. The seizure of the BIA and Wounded Knee placed the agency under intense public scrutiny. The new leadership of the Interior committees, particularly Senator Abourezk, indicated that oversight of the BIA would be a major priority. Thus, moderate and liberal Indian groups critical of the Nixon administration's cooptation approach had an opportunity to gain access to Congress. Finally, the partisan, ideological, and institutional antagonism created by the "administrative presidency" and Watergate made the Nixon administration generally more vulnerable to political attack.

It would take astute political leadership by Morton and Franklin to carry out their mandate. Unfortunately for them, Franklin's first decision as Commissioner-designate was a major political blunder. To accomplish the goal of decentralizing Bureau functions, Franklin proposed the establishment of a Field and Internal Operations Committee to advise him. The committee was composed of area directors. In addition, Franklin reduced the number of central office divisions from seven to six (consolidating the natural resource rights and trust responsibility divisions) and named six persons to become acting directors of each of the divisions. The six persons chosen were

formerly assistant area directors in the Bureau.[73]

The Franklin realignment, proposed in May 1973, unleashed a storm of protest in the Indian community. To Indian reformers, including the NCAI and supporters of the Bruce administration, the plan concentrated power in the area offices and relegated the central office to advisory status. Putting the area directors in charge, the reformers feared, would mean a return to the BIA of the 1950s, when the area offices were created to promote termination. Furthermore, the NCAI charged that the plan was an overreaction to the Trail of Broken Treaties caravan and the excesses of the "new team" of the Bruce administration. On the other hand, the conservative NTCA endorsed the reorganization proposal.[74]

There was also division within the administration on the proposed realignment. On one side were Franklin and the BIA area directors, supported by tribal chairmen, who called for swift implementation of the Bodman-Franklin realignment. On the other side, high-level Interior officials began to question the desirability of giving the area directors increased policymaking power. At the same time that Franklin issued his reorganization plan, an Interior Steering Committee on BIA Reorganization delayed implementation of the plan until a newly-created Interior "Implementation Working Group" could study the BIA organizational structure and make recommendations to the Steering Committee after "maximum"

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[73] BIA Realignment Hearings, pp. 3-16.

[74] Trimble interview, 18 August 1974. The split between NCAI and NTCA is described in LaCourse, "Indian Politics in Changing Times."

Indian consultation on all major decisions. Although Franklin was on the Steering Committee, he could not get the go-ahead on his proposed reorganization from the other members of the committee, who were Kent Frizzell, the Solicitor, James Clark, Assistant Secretary for Management, and Laurence Lynn, Assistant Secretary for Program Development and Budget. Lynn was the strongest opponent of Franklin's proposal to increase the power of BIA area directors. Serving on Lynn's staff were Robert Gajdys and Alexander McNabb, two former members of the "new team," both of whom were involved in Bruce's efforts to diminish the authority of the area directors.

While the "Implementation Working Group" set out during the summer of 1973 to develop recommendations for alternative delivery systems in the BIA, a new plan was formulated by Assistant Secretary Lynn and his staff. On July 2, 1973, John Seidl, Deputy Assistant Secretary for Program Development and Budget who served under Lynn, sent a memorandum to the Interior Undersecretary, John Whittaker, proposing that all area director positions in the BIA be eliminated and regional service centers be established.[75] The new regional structure of the BIA would ultimately be coordinated with the system of Federal Regional Councils created by the Nixon administration to decentralize federal administrative authority.[76] Earlier in May 1973, a plan to redraw area office

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[75]The discussion of regionalization proposals comes from AIPA News Releases, May-October 1973; also Nickeson, "Structure of the BIA." pp. 73-74.

[76]In 1969 the Nixon adminstration began the Federal Assistance Review (FAR) program, which created ten Federal Regional Councils to conduct federal business.

boundaries in the BIA and similar boundaries in the Indian Health Service (IHS) and require the BIA and IHS to coordinate all federal efforts for the reservations through the Federal Regional Councils was proposed by a special study group of the Office of Management and Budget. According to Seidl, "regionalization of the BIA would fit into the President's regionalization policy, remove the existing area directors in favor of new managers who would be more sensitive to Indian problems, and reduce administrative overhead in the delivery of Indian programs."[77]

As the rival plan to reorganize the BIA was being prepared by Assistant Secretary Lynn's office, the beleaguered Franklin came under fire from the Senate subcommittee on Indian affairs. On June 25, 1973 Abourezk criticized Franklin for failing to consult Indian tribes and organizations, especially the NCAI, in developing his realignment proposals.[78] Abourezk explained the fear of Indian reformers about placing too much power in the hands of area directors. The chairman asked Franklin to delay implementation of the plan until sufficient Indian input could be received.

Faced with opposition from all sides, Franklin decided to remove his name from consideration as Commissioner of Indian Affairs. In a confidential memo issued July 6, 1973 to Undersecretary John Whittaker, Franklin stated that reorganization had become a "thorn in my side" and that his authority to direct Indian policy was undermined by the

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[77] AIPA News Release, October 1973.

[78] BIA Realignment Hearings.

actions of the Interior Steering Committee. Perhaps referring to the influence of "new teamers" McNabb and Gajdys on Interior officials, Franklin said that "Interior has not purged itself sufficiently to overcome the fatal element of division from within."[79]

To add insult to injury, Franklin was recalled to the Senate Indian affairs subcommittee by Abourezk for another oversight hearing on BIA reorganization. At the July 10 hearing Abourezk revealed the contents of a legal opinion he had requested from the Legal Division of the Library of Congress concerning Franklin's authority to serve as de facto BIA commissioner. The opinion stated that Franklin was serving illegally in his position, in view of the fact that no nomination had been submitted to the Senate for the position of Commissioner of Indian Affairs. This opinion was based on a recent federal district court case which resulted in removal of Howard Phillips as Acting Director of the Office of Economic Opportunity since his name had not been submitted by President Nixon to the Senate for confirmation. Abourezk concluded that any further review of Franklin's realignment plan was "both irrelevant and unnecessary" and promptly adjourned the hearing. Shortly afterward, Franklin publicly resigned from his duties in the Interior Department, citing "personal reasons" for his withdrawal.[80]

In Franklin's defense, it is difficult to see how any person in his position could have avoided controversy. Reorganization proposals,

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[79] AIPA News Release, October 1973.

[80] BIA Realignment Hearings, pp. 237-40; Washington Post, 26 July 1973, p. A10.

as this study has pointed out, generate considerable conflict between those who feel their political access will be enhanced and those whose access will be diminished. No realignment plan could please both the conservatives and the reformers in and out of the Bureau. Moreover, the reorganization mandate that Franklin was handed seemed to be aimed more at removing the central office as a protest target than at enhancing Indian self-determination. Although decentralization of authority to the tribes was a laudable goal, it assumed that all tribes were capable of taking on more responsibility, not to mention the assumption that field employees would cooperate in the transfer of authority.

Nevertheless, it is also true that Franklin, perhaps under pressure from Morton's office, added unnecessarily to his problems by giving area directors such a prominent role in his administration. Their presence raised a red flag to Indian reformers everywhere, and immediately put Franklin on the defensive. By the time Franklin resigned, Secretary Morton's mandate had vanished.

Implementing the Bodman Plan: The Final Resolution

The reorganization controversy continued into the administration of the next commissioner, Morris Thompson. Appointed on December 3, 1973, Thompson, a former area director in Alaska and assistant to former Secretary Hickel, became the fifth person during the Nixon years to serve as commissioner or acting commissioner of Indian affairs.[81]

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[81]A sixth head of the BIA could be added if one counted the six-day tenure of John O. Crow as *de facto* commissioner in August 1971. Thompson

For the next six months Thompson would be preoccupied with the reorganization controversy.

Facing Thompson were three realignment proposals. One proposal, the idea to regionalize the BIA, was immediately rejected due to the united opposition of Indian leaders. Although the NCAI was sympathetic to the idea of removing all area directors from their posts and converting the area offices into regional technical assistance centers, it opposed regionalization because "the Federal Regional Councils are susceptible and vulnerable to state control (over Indians) which Indians have long opposed; because the unified power of the small Indian minority would be dispersed; and because Indians would have to deal with several 'central offices' rather than one."[82] The NTCA, which was generally at odds with the NCAI over Nixon administration policy, joined with the NCAI to denounce regionalization, which threatened the survival of the area directors.

Still under active consideration was the Bodman-Franklin realignment plan. However, on November 30, 1973 the "Implementation Working Group" created by the Interior Steering Committee to study BIA organization rejected the Bodman-Franklin reorganization and recommended an alternative organizational structure.[83] The group questioned the wisdom of

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also was deliberate in his choices of who would lead the various divisions. It was not until May 1974 that he announced his selections. AIPA News Release, May 1974.

[82] AIPA News Release, May 1973.

[83] This document was known as the Freeman Report, named for the project director of the working group, Sydney Freeman of the OMB. A

decentralizing BIA functions. According to the report, "This concept and approach is unacceptable to Indian people as well as managerially unsound because top management has no control over program operations and has shed executive accountability." The group also criticized the reduction of central office staff to 715 positions (431 of which were administrative services and 100 more were clerical) as "simply not adequate for management control and direction of a 13,000+ field organization of the scope of BIA. . . ." Finally, the group recommended abolition of the Field and Internal Operations Committee established by Franklin to serve as a "board of directors." This committee, the report argued, posed a serious handicap to a new commissioner attempting to provide new leadership to the BIA and has become a lightning rod for Indian criticism of realignment. Instead of the Bodman-Franklin plan, the working group proposed a return to the prerealignment structure of the BIA.

Commissioner Thompson's decision on realignment, issued May 20, 1974, was to adopt the Bodman-Franklin plan with modifications.[84] The central office structure was reduced from thirteen to five divisions (trust responsibilities, tribal resources development, Indian services, education, and administration). The reduction-in-force of 600 central office positions began May 30, 1974. The responsibilities, roles, and authorities of area directors were left unchanged. However, the

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mimeographed copy of the report is in the author's personal possession.

[84] AIPA News Release, May 1974.

Committee on Field and Internal Operations, the "board of directors" of which included area directors, was abolished. The latter modification to the Bodman-Franklin plan represented a compromise with Indian groups. The NCAI supported the Commissioner's decision to eliminate the Field and Internal Operations Committee, but wondered whether the power of area directors would increase nevertheless with the reduction of the size of the central office.

By the fall of 1974, the reorganization of the BIA was completed. In one sense, the restructuring of the agency was a victory for Secretary Morton. Reorganization was accomplished largely along the lines of the plan which he directed through Assistant Secretary Bodman. On the other hand, there were administrative and political costs. The administrative costs included the resignation of a top advisor, the emotional toll of a reduction-in-force, and the virtual immobilization of the Bureau for eighteen months.[85] Among the political costs were the alienation of moderate and reformist Indians from the administration,[86] and seizure of the policy initiative in Indian affairs by Democrats in Congress.

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[85]For example, see William Greider, "One Year Later, BIA Problems Largely Remain," Washington Post, 8 November 1973, p. A4. Even after Thompson's reorganization order, internal BIA problems continued. Indian employees of the BIA charged that their positions were being eliminated in violation of Indian preference laws. To an extent, this was an extension of the conflict between the area directors and former Bruce allies in the BIA. The conflict led Senator Abourezk to call an oversight hearing in August 1974.

[86]Another casualty of the battle between Indian moderates and conservatives was the National Council on Indian Opportunity. At the

The Limits of Administrative Self-Determination

Implementation activities in Indian affairs during the Nixon presidency illustrate the difficulty of accomplishing policy change through administrative action, especially in lieu of the enactment of reform legislation. Certainly, the attempt to fashion an "administrative renaissance" of the BIA points out some of the problems of such an undertaking. If extensive changes in agency and policy are desired, such as transforming the BIA into a catalyst for tribal self-determination, then restructuring efforts will encounter greater resistance.

The obstacles to administrative change involve more than just bureaucratic inertia or a natural aversion to change. Change may be slowed because of disagreement over what should be appropriate policy. In Indian administration, reformers found it difficult to agree on what measures would best promote tribal self-determination. Tribal chairmen believed that strengthening tribal government was the key. Reformers in the BIA and the Indian community felt that structural and political changes in tribal governments must be made first, if policy changes were to have a significant effect on reservation life.

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urging of the NCAI, Vice President Gerald Ford recommended terminating the NCIO on March 7, 1974. The Congress allowed NCIO's authority to expire June 30, 1974. Central to elimination of the NCIO was the NCAI's charge that the panel was stacked with conservative Indians and supporters of Nixon administration policies. No such panel has existed in the Executive Office of the President since that time. AIPA News Release, March 1974.

There was also disagreement over whether the BIA should attempt to extend services to Indians living off the reservation. Finally, one of the reasons why there was so much controversy over reorganization in the Bureau was that there was a fundamental dispute among management experts as to whether greater centralization or decentralization of BIA operations was more likely to enhance tribal self-sufficiency.

Resistance to administrative change was even more acute in Indian affairs because many BIA employees believed that greater tribal self-determination threatened their jobs and the existence of the agency. This belief rested on more than simple self-preservation. Literally and figuratively, the BIA of the 1970s was an agency under siege. There were repeated calls for dispersing its functions to other departments or replacing it with a new agency. The contracting policy was described as a means by which the BIA could "work its way out of a job." Its central office headquarters was ransacked by Indian militants, then partitioned by the Interior Department with major personnel reductions. Given that all these developments were justified in the name of Indian self-determination, one can easily understand why BIA employees were less than enthusiastic about policy change.

In addition to disagreements over the substance of policy, another barrier to administrative change is the involvement of outside actors in agency functions. Congressmen on oversight committees, constituency groups, and other executive agencies can exert influence to block proposed changes. As this chapter illustrates, the exercise of executive

authority in the face of political opposition is risky, especially if the asserted prerogatives stand on a questionable legal foundation. For hierarchical controls to work, an accommodation of some sort must be reached with relevant actors in the political environment.

Therefore, to secure the power necessary to bring about policy change, policy reformers in the BIA had to devise an effective political and legal strategy. In this vein, one might question the appointment of leaders of the Indian movement to top positions in the BIA in 1970. Although "outsiders" bring new ideas and energies into an old-line agency, they may also carry disdain for others in the political environment or a lack of political awareness. The task for Commissioner Bruce was to keep the creative energies of his "new team" under control, while at the same time convince agency constituents to support policy change. This formidable job was made more difficult by basing policy changes on insufficient legal authority, Moreover, the dismissal of Secretary Hickel deprived Bruce of a key supporter for his reform program, and left him without a favorable balance of political support for the remainder of his period in office. As a result, Bruce's opponents in the bureaucracy, the Indian community, and Congress were able to block his policy initiatives.

If the failure of the "new team" to bring about Indian self-determination through administrative initiatives demonstrates the limits of an administrative strategy, another example in Indian affairs presents the possibilities. As Chapter IV described, a coalition of Indian reform groups developed in the late 1960s to promote Indian community

control of education.[87] With patience and perseverance, the coalition gradually changed the administration of Indian education programs. By lobbying, lawsuits, and sometimes direct action, the coalition worked state by state to change the administration of the Johnson-O'Malley (JOM) program. At the same time, they attempted to change federal regulations governing JOM. Several years of often-frustrating negotiations followed. Proposed administrative changes by the Bruce administration were rejected by the Interior Department. Senator Jackson attempted to resolve the dispute by legislation, but the coalition opposed the proposed Title II-Part A of Jackson's bill for not going far enough to reform JOM. Instead, the Indian groups proposed a new set of regulations for JOM, called the "Red Regs." A settlement with BIA Commissioner Thompson was reached in August 1974 on a new set of JOM regulations which would strengthen Indian control of the program.[88]

If there is a lesson to be learned from all this, it is that meaningful policy change can be accomplished through the administrative process. However, as Lewis Gawthrop has argued, advocates of change

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[87] See pp. 254-55, supra.

[88] The regulations provided for greater restrictions on school districts using JOM funds, in terms of requiring sufficient tax effort and use for supplemental programs. A formula was established for allocation whereby JOM contractors would receive funds equal to the number of Indian children served times the state or national pupil spending average, whichever is higher. The Commissioner's decision to adopt a modified version of the "Red Regs" followed a meeting between Interior officials and representatives of thirty-eight Indian organizations on August 16, 1974. The regulations were left unchanged by new rules put forth in 1975 to implement P.L. 93-638. See 25 C.F.R., sec. 33 (1975).

must be prepared to live with the "rules of the game."[89] In a decentralized, pluralistic political structure, participants must learn patience, how to build coalitions, and how to take advantage of the multiple opportunities for access to the political system. Most importantly, participants must accept the fact that policy changes usually occur incrementally over time through bargaining and compromise. There are no short-cuts, except in most unusual circumstances.

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[89]Lewis C. Gawthrop, Administrative Politics and Social Change (New York: St. Martin's Press, 1971). Gawthrop supported the recruitment and training of "change-agents" to manage government agencies in a turbulent political and social environment.

CHAPTER VI

INDIAN SELF-DETERMINATION AND THE INDIAN POLICY NETWORK

The examination of the events surrounding the formulation and adoption of the Indian Self-Determination and Education Assistance Act of 1975, as well as efforts to implement Indian self-determination prior to the passage of the Act, has significance for the study of federal Indian policy, the Indian affairs policy process, and American public policy. Because it is a case study, this account cannot provide evidence to support or reject conclusively statements concerning the nature of public policies and processes. However, the preceding chapters can serve both as a testing ground for various theoretical frameworks and assertions and as a foundation from which further propositions regarding the how and why of Indian affairs policymaking and the American policymaking process can be developed.

Implications for the Study of U.S. Policy Toward Indian Tribes

Historically, federal Indian policy has alternated between the goals of assimilation and respect for tribal autonomy. The tribal restoration policy of the 1930s, based on the Indian Reorganization Act, attempted to reverse the disastrous effects of allotment. Following tribal restoration was the termination policy of the 1950s, which represented the latest federal attempt to force Indians to abandon

tribal ways. Most recently, self-determination policies sought to confirm the existence of tribal organizations and expand opportunities for tribal self-governance.

And yet, a casual glance at the history of U.S. policy toward Indians causes some observers to wonder how long the policy shift in favor of Indian self-determination will last. In this regard, it is significant to note that no basic changes in federal Indian policy have occurred since the mid-1970s. An attempt in Congress to reverse federal policy in 1977-78, in response to the emergence of a white backlash movement, failed. The backlash movement arose not so much as a result of congressional or executive branch action on behalf of Indians, but as a reaction to judicial decisions recognizing Indian demands for the return of illegally-seized lands and the enforcement of treaty rights.[1] In a series of cases brought by Indian legal advocacy groups in the early and mid-1970s, the lower federal courts expanded Indian water rights,[2] ordered state authorities to protect

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[1]The U.S. Supreme Court also handed down several decisions favoring Indian interests. The Court upheld the policy of Indian preference in the employment practices of the BIA. Mancari v. Morton 417 U.S. 535(1974). Also, the Court upheld the quasi-sovereign status of Indian tribes by striking down attempts by several states to extend their tax and regulatory authority to the reservation. McClanahan v. Arizona State Tax Commission 411 U.S. 164(1973) (struck down a state attempt to levy a personal income tax on a reservation Indian); U.S. v. Mazurie 419 U.S. 544(1975) (upheld tribal requirement of liquor license to sell liquor on reservation; turned down state claim that tribes were private, voluntary organizations); Bryan v. Itasca County 426 U.S. 373(1976) (struck down state attempt to levy property tax on reservation, based on Public Law 280).

[2]Much attention in this period was focused on the Pyramid Lake case, which involved the members of the Paiute Tribe of Nevada, whose

Indian hunting and fishing rights,[3] and opened the way for legal action

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livelihood as fishermen depended upon the clear and abundant waters of Pyramid Lake. However, because of congressional action early in this century which diverted water from the rivers which fed the lake to the Newlands Irrigation Project, Pyramid Lake was being drained. Moreover, in going to court as trustee for the tribe in the 1940s, the Interior Department (whose Bureau of Reclamation was responsible for the administration of the Newlands Project) failed to assert the tribe's right under the Winters doctrine to all the water necessary to fulfill treaty obligations [see Winters v. U.S. 207 U.S. 564(1908); also Arizona v. California 373 U.S. 546, 599-600(1963)] and settled instead for a court decision which granted the Paiutes a limited amount of water for the irrigation project. In 1970 the Paiutes, assisted by the Native American Rights Fund, filed suit against the Secretary of Interior to compel the Secretary to limit the amount of water going to the irrigation project, stabilize the lake, and go back to court to assert the tribe's Winters doctrine rights. In late 1972 a federal district judge ruled decisively for the Paiutes, ordering the Secretary to issue new regulations which would result in the Newlands Project's receipt of an amount of water "wholly consistent with the Secretary's fiduciary duty to the tribe." The decision helped spur dozens of tribes in the West to bring litigation which asserted water rights. See Pyramid Lake Paiute Tribe v. Morton 354 F. Supp. 252 (D.D.C.1972). For the historical background of the case, see Josephy, Now That the Buffalo's Gone, pp. 151-76. For additional legal analysis see Steve Nickeson, "The Indian Water Wars," Race Relations Reporter (May 1974): 12-17. In Nevada v. U.S., 463 U.S. 110(1983), the U.S. Supreme Court prevented the Paiutes and the U.S. from further litigating the tribe's claim to additional water rights to the Truckee River. Writing for a unanimous Court, Justice Rehnquist stated that the principle of res judicata prevents relitigation of this issue, where a final decree issued in 1944 had previously determined the river's water rights, the United States was a party to the original suit, and the tribe's interests were represented there by the United States. The decision did not prevent the Paiutes from seeking a remedy against the U.S. government for its poor representation of the tribe's interests.

[3]In the 1974 case of United States v. Washington 384 F. Supp. 312, federal district Judge George Boldt upheld the rights of Washington tribes to fish and manage fisheries in traditional fishing places on or off the reservation and to catch up to 50 percent of the harvestable fish each year. The Boldt decision, as it came to be known, forebade Washington authorities from regulating fishing rights off the reservation beyond what was necessary to conserve the resource. Thus, though non-Indians had to abide by state regulations strictly

action which could have led to the return of vast amounts of land to Indian tribes in the Northeast.[4] Together with concern about law

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limiting the time, manner, and volume of the fish catch, Indians were entitled by treaty to escape such restrictions. Similar cases in Oregon and Michigan in 1975 were also decided in favor of Indian hunting and fishing rights. For the historical and legal background, see Josephy, Now That the Buffalo's Gone, pp. 177-212; also U.S. Commission on Civil Rights, Indian Tribes: A Continuing Quest for Survival (Washington, DC: Government Printing Office, 1981), pp. 66-100. The Boldt decision was upheld by a federal appeals court. The Supreme Court declined to review the case, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086(1976). This did not end the legal controversy, however. State executive officials refused to enforce the Boldt ruling and their refusal was upheld by the Washington State Supreme Court in 1977. The state's defiance of a federal court order led the U.S. Departments of Justice and Interior to ask the Supreme Court to review the entire matter again. The Court acceded to the request, then upheld the Boldt decision almost in its entirety. State of Washington v. Washington State Commercial Passenger Fishing Vessel Association 443 U.S. 658 (1979).

[4]The cases involved the claims of several Eastern tribes that various states had violated the Nonintercourse Act of 1790 by taking Indian lands, either unilaterally or by negotiation with the tribe, without the approval of the federal government. In the leading case, Joint Tribal Council of the Passamaquoddy Tribe v. Morton 388 F. Supp. 649 (N.D. Me. 1975), the federal district court ordered the Interior Department to file suit on behalf of the Passamaquoddy Tribe's effort to regain 10 to 12.5 million acres of the State of Maine--a territory covering over one-half of the state and inhabited by over 350,000 non-Indians--which the tribe alleged was taken in violation of the Non-intercourse Act. The early success of the Passamaquoddy litigation led other Eastern tribes to pursue land claims in court. Suits were filed or legal action was contemplated by two tribes against Massachusetts, two tribes against Connecticut, three tribes against New York, and single tribes against Rhode Island and South Carolina for alleged violations of the Nonintercourse Act. The size of the claims ranged from 350 acres to over 140,000 acres of land. A 3,200 acre claim by the Narragansett Tribe against the State of Rhode Island was settled by the two parties without the help of a federal mediator. As ratified by Congress and signed into law in 1979, the agreement gave 1,800 acres to the tribe. For the historical and legal background see U.S. Commission on Civil Rights, Indian Tribes, pp. 102-35.

enforcement in the wake of continued Indian militancy, these court decisions stimulated the formation of anti-Indian groups throughout the country.[5] The potential political clout of this movement was demonstrated in the House elections of 1976, which included the near-defeat of House Indian affairs subcommittee chairman Lloyd Meeds by a coalition of sportsmen and commercial interests upset about a federal court ruling upholding Indian hunting and fishing rights in Washington. Subsequently, Meeds gave up his subcommittee chairmanship and became a proponent of backlash legislation.[6]

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[5]One of the first backlash groups was South Dakotans for Civil Liberties, which was composed of ranchers with grazing leases on the Pine Ridge Reservation who perceived a vacuum in law enforcement on the reservation in the aftermath of Wounded Knee and the 1975 killings of the FBI agents. This group was joined by commercial fishermen and sportsmen in Washington alarmed by the Boldt decision and other non-Indian groups to form the Interstate Congress for Equal Rights and Responsibilities (ICERR). The ICERR became known as the major backlash organization in the U.S., urging that "the constitutional rights of all Americans must supersede treaty rights of some Americans" and "guarantee equal rights for all people." State and local officials in areas affected by Indian rights claims adopted the "equal rights" vocabulary of the backlash organizations and joined the resistance to federal protection of Indian rights. State authorities in Washington refused to enforce the Boldt ruling, and the attorney general of South Dakota launched a series of prosecutions of Indian leaders on charges of violating state civil disturbance laws. A review of the development of the backlash movement is found in U.S. Civil Rights Commission, Indian Tribes, pp. 7-12.

[6]After the Boldt decision in 1974, Meeds was confronted by members of his largely blue-collar constituency who wanted congressional action to overturn Boldt. Meeds proposed a federal-state commission to deal with the fishing rights problem, a solution which The Almanac of American Politics said "satisfied people who don't care much about a problem, but can be profoundly unsatisfactory to those who do." [Michael Barone, Grant Ujifusa, and Douglas Matthews, The Almanac of American Politics 1978 (New York: E. P. Dutton, 1978), p. 893.] Faced in the election

In the 1977 session of the 95th Congress, numerous bills were introduced to severely restrict Indian treaty rights and the jurisdiction of tribal governments, and to extinguish Indian land claims.[7] However, none of these bills were enacted for several reasons. Indian lobbying organizations strongly opposed the backlash bills and gained the support of powerful figures in Congress in their efforts.[8] House Interior Committee Chairman Morris Udall (D-Ariz.), an advocate of Indian self-determination, kept many backlash proposals bottled up

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of 1976 by a Republican with the famous name of John Nance Garner (he was the grandnephew of FDR's first vice-president) who opposed the Boldt decision, Meeds won reelection by a narrow margin of 542 votes. He announced his retirement from Congress before the next election.

[7]Most of the backlash activity occurred in the House and was spearheaded by the Washington delegation. The most extreme proposal was the "American Indian Equal Opportunity Act of 1977," introduced by Representative John Cunningham (R-Wash.), which proposed abrogating all treaties between the United States and Indian tribes, terminating the U.S.-Indian relationship, and abolishing reservations. Congressman Meeds introduced bills to impose a settlement on the Washington fishing rights controversy by buying out the Washington tribes' treaty rights claim, limiting the jurisdiction of tribal governments, and curtailing Indian rights to future increases in water allocations. The congressional delegation from Maine introduced legislation to extinguish Indian land claims in the state and limit the tribal remedy to monetary damages. See U.S. Commission on Civil Rights, Indian Tribes, pp. 10-21; also Robert L. Bee, The Politics of American Indian Policy (Cambridge, MA: Schenkman, 1982), pp. 134-53.

[8]Not only did Indian organizations lobby Congress, Indians also organized a mass march on Washington in the spring of 1978, known as The Longest Walk. Two hundred demonstrators traveled across the country to educate non-Indians about the dangers of the backlash bills. The protest concluded in the nation's capitol in mid-July without incident. Bee, Politics of Indian Policy, pp. 145-9; also, S. Scott Rohrer, "Indians Hit the Road Over Backlash in Washington," National Journal, August 28, 1978):1353-55.

in his committee.[9] Senator Abourezk, chair of the Senate Select Committee on Indian Affairs established in 1977 to follow up the report of the American Indian Policy Review Commission (AIPRC), prevented the passage of backlash measures in the Senate.[10] Also, the Carter administration opposed the backlash bills and pushed a policy of negotiated settlement of state-tribal disputes over Indian land claims, fishing rights, and other matters. These mediation efforts helped diffuse demands for anti-Indian legislation.[11]

Although the backlash movement failed to secure congressional approval of its proposals, its emergence prevented the adoption of

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[9]With no congressman willing to chair the House Indian affairs subcommittee, Udall disbanded the subcommittee in 1977, and formed a new subcommittee on Indian affairs and public lands to be chaired by Representative Teno Roncalio (D-Wyo.), who also opposed the backlash bills. Udall assigned most of the backlash legislation to Roncalio's subcommittee, where it stayed. Bee, Politics of Indian Policy, p. 74. There is also some question about how serious congressmen introducing backlash bills were about enacting such legislation. Feeling pressure from backlash groups to "do something" about Indians but not wanting to push too hard against Indians for policy or political reasons, members of Congress may have found it expedient to introduce anti-Indian legislation with considerable fanfare, and then do nothing further. It is interesting to note that no hearings were held in House committees on any backlash bill in the 95th Congress. Ibid., pp. 149-53.

[10]Abourezk secured Senate passage in 1978 of a bill which called for negotiated settlements of jurisdictional disputes between states and Indian tribes. This bill was endorsed by Indian groups as an alternate to Meeds' bill which would have imposed state jurisdiction over Indian tribes. Ibid., pp. 136-41.

[11]In 1977 President Carter appointed a Federal Task Force on Washington State Fisheries to examine the effects of the Boldt decision and present a just settlement. He also appointed retiring Georgia Supreme Court Justice William B. Gunter to serve as a mediator in Maine land claims disputes. This set in motion a lengthy series of

more extensive reforms in Indian policy.[12] In its final report to Congress in May 1977, the AIPRC made many far-reaching recommendations, proposing that Congress establish a Cabinet-level Department of Indian Affairs, extend federal government services to urban Indians, restore federal recognition to all terminated tribes and establish criteria to extend recognition to over two hundred tribes not declared eligible for federal trust protection, permit any tribe to establish any governing arrangement it wants, limit the review and approval authority of the Secretary of Interior to only those tribal decisions dealing with trust assets (subject to override by the tribe), permit tribes to submit budgets directly to Congress based on an assessment of long-term needs, and require federal appropriations to go directly to the tribes by grant or contract.[13] Issued at the height of the backlash movement, the recommendations of the AIPRC were denounced by Meeds, the vice-

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negotiations among federal, state, and tribal officials which resulted in an agreement for the acquisition of 300,000 acres of land for the Maine tribes to be held in trust by the federal government and the establishment of a trust fund of $27 million to be administered for the benefit of the tribes. The settlement was ratified in Congress and signed into law October 11, 1980. U.S. Civil Rights Commission, Indian Tribes, pp. 75-78, 127-33.

[12]An important congressional action taken in 1976 was the termination of the Indian Claims Commission. The action was possibly influenced by the backlash movement. However, Congress had been attempting to kill the agency since 1967. When the agency formally closed its doors on September 30, 1978, it had decided over 500 claims and awarded over $800 million to Indian tribes. Sixty-eight claims remained unresolved, and were transferred to the U.S. Court of Claims. U.S., Indian Claims Commission, Final Report (Washington, DC: Government Printing Office, 1978).

[13]U.S., American Indian Policy Review Commission, Final Report, Committee Print (Washington, DC: Government Printing Office, 1977). Hereafter cited as AIPRC Final Report.

chairman of the commission, as a "one-sided" document which advocated full tribal sovereignty.[14] None of the report's proposals for fundamental changes in the U.S.-Indian relationship were given serious consideration in Congress.[15]

Despite some modest legislative successes for advocates of Indian self-determination,[16] the 1975-78 period marked the end of the Indian policy reform movement in Congress. Since then, observers of Congress have noted an increase in the number of tribal-specific constituency bills, but a corresponding decline of congressional interest in national

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[14]According to Meeds, tribes are federal creatures created for the purpose of administering federal Indian affairs and no longer possess any powers derived from their own sovereignty. The tribes are therefore subject to state as well as federal jurisdiction in matters of taxation, regulation, and criminal and civil justice and have no governmental powers over non-Indians except as expressly granted by Congress and the states. Meeds stated that "Doing justice by Indians does not require doing injustices by non-Indians" (p. 612). AIPRC Final Report, pp. 571-612. Meeds was the sole dissenter from the AIPRC which was composed of three House members, three senators, and five Indians.

[15]Although no action on the AIPRC report was taken in the House, the Senate Select Committee on Indian Affairs attempted to move on less controversial recommendations. The select committee conducted hearings on legislation which would extend federal trust responsibility to unrecognized tribes. This stimulated efforts in the BIA to develop regulations which would accomplish the same purpose. In the 1977-78 period, the select committee conducted forty-two hearings on legislation referred to it and nine oversight hearings. Bee, Politics of Indian Policy, pp. 136-41, U.S., Congress, Senate Select Committee on Indian Affairs, History, Jurisdiction and a Summary of Legislative Activities of the United States Senate Select Committee on Indian Affairs, 95th Cong., 2nd sess., 1979. Indian hopes for and disappointments with the AIPRC are expressed in Vine Deloria, Jr., "Legislation and Litigation Concerning American Indians," Annals of the American Academy of Political and Social Science, 436 (March 1978):86-96; also Vine Deloria, Jr., and Clifford Lytle, The Nations Within (New York: Pantheon, 1984), pp. 226-31.

[16]See Indian Health Care Improvement Act of 1976, Public Law

Indian policy.[17] After Abourezk's retirement from the Senate in 1979, no one has assumed the role of policy entrepreneur for Indian interests in Congress.[18] Although both the Carter and Reagan administrations affirmed their support for Indian self-determination, neither administration formulated a package of legislative proposals which would promote further progress toward the goal.[19] The authoritative statement of federal policy toward Indian tribes remains President Nixon's message on Indian affairs issued to Congress on July 8, 1970.

94-437; American Indian Religious Freedom Act of 1978, Public Law 95-341; Indian Child Welfare Act of 1978, Public Law 95-608.

[17]Jeanne Guillemin, "Federal Policies and Indian Politics," Society, 17 (May-June 1980):29-34.

[18]Abourezk's announcement that he would not seek a second Senate term in 1978 came in early 1977. He cited personal and family concerns as reasons for his retirement. Though he claimed that he did not quit because he thought he was going to lose (and The Almanac of American Politics said he was in "pretty strong political shape" at the time of his retirement), observers of South Dakota politics believed he was in some political difficulty. The Wounded Knee occupation had triggered white resentment in the western part of the state. His liberal colleague, Senator McGovern, narrowly won reelection in 1974 following his unsuccessful presidential bid, with the biggest drop in his vote totals coming from western South Dakota. Abourezk's aggressive leadership in Indian affairs made him vulnerable to backlash politics, and his liberal voting record in the Senate made him a target of conservative organizations. Minneapolis Tribune, 22 January 1977, p. 1A; Barone et al., Almanac of American Politics 1978, pp. 783-84.

[19]Indian leaders and, in particular, Abourezk were disappointed with the cautiousness of the Carter administration's Indian policy. Caught between its sympathies for the Indian people (Vice-President Mondale was a leading advocate for Indians when he was in the Senate) and the backlash movement (as well as its concerns for the political future of Democratic officials in Western states and New England), the administration attempted to position itself as mediator between the two sides.

Although President Reagan announced in January 1983 that his Indian policy "is to reaffirm dealing with Indian tribes on a government-to-

Given the history of U.S.-Indian relations, it would be irresponsible to state that federal attempts at forced assimilation of Indians are a thing of the past. Still, the continued support for the Indian legislation enacted in the 1970s by President Reagan, a conservative Republican from a western state, and a Republican Senate for most of the 1980s indicates that the policy of tribal self-determination without termination will continue for some time to come. However, the fact that a broad political consensus has formed around a policy labeled "Indian self-determination" does not necessarily mean that all political actors agree on what "Indian self-determination" means or that the policy has succeeded in bringing about self-determination. Important questions remain about the meaning and significance of the legislative reforms of the 1970s, particularly the Indian Self-Determination Act. How does Public Law 93-638 define "Indian self-determination?" How much autonomy does the Act grant Indian tribes? Does this measure promote genuine tribal self-determination or is it "self-termination" in disguise?

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government basis and to pursue the policy of self-government for Indian tribes without threatening termination," his administration has also encountered criticism from Indian groups. Federal programs for Indians have been subject to severe budget reductions, and the President vetoed several Indian bills, including the extension of the Indian Health Care Improvement Act. The report of his Presidential Commission on Indian Reservation Economies, issued November 30, 1984, recommended abolishing the BIA and transferring its programs to other federal departments while establishing an Indian Trust Counsel Authority to protect Indian land and resource rights. This recommendation was strongly opposed by Indian leaders. On the other hand, the Reagan administration defended Indian interests in federal court against assertions of state regulatory authority. New York Times, 13 January 1985, p. 1; Washington Post National Weekly Edition, 12 November 1984, p. 32.

As this study has shown, the policy goal of "Indian self-determination" has meant different things to different groups in the Indian policy community. At one extreme were the views of white terminationists and some fully-assimilated Indians that self-determination for the Indian would come when federal assistance and protection of tribal entities stops and Indian individuals and communities must "go it alone." At the other extreme were Indian radicals, mainly young Indians and traditional tribesmen, who defined self-determination as tribal sovereignty. To them, continued federal intervention in tribal governance through the Indian Reorganization Act (IRA) and the Bureau of Indian Affairs (BIA) meant the perpetuation of the policy of forced assimilation. What was needed from the federal government, argued the radicals, was nothing less than the observance of the terms of treaties with the Indian tribes. Genuine Indian self-determination meant a return of the millions of acres lost by Indians as a result of the allotment policy, the repeal of the IRA in favor of traditional modes of tribal self-rule, and the restoration of direct tribal dealings with Congress.

However, the Indian policy reforms of the late 1960s and early 1970s defined Indian self-determination differently, avoiding the two extremes. On the one hand, the policy pronouncements of five presidential administrations from Johnson to Reagan and the passage of the Menominee Restoration Act of 1973 signify the rejection of forced assimilation as a policy goal. On the other hand, measures which would restore full sovereignty to the tribes were not considered.

No federal government official has endorsed a return to U.S.-Indian relations before 1871 or before allotment. The broader issue of the extent and limits of "inherent tribal sovereignty," which Felix Cohen defined as all governmental powers except those expressly limited by Congress, have been left for the courts to clarify.[20] Except for the settlement of the long-standing claims of Alaskan natives, no legislation was enacted which returned land to the tribes on a massive scale. The basic framework of U.S.-Indian relations--the IRA, which gives the Secretary of Interior authority to recognize Indian tribes for federal protection and assistance, establish the structure of tribal governments, and review and approve tribal decisions--was maintained. Congressional committees continue to set budget priorities and the BIA and other federal agencies continue to allocate and monitor appropriations to the tribes.

Instead, federal policymakers have attempted to respect and expand tribal autonomy within boundaries set by Congress. As set forth in the Indian Self-Determination and Education Assistance Act of 1975, Indian self-determination is defined as tribal participation in program development and administration. Following the examples of the Indian Community Action Programs of the 1960s and the administrative self-determination efforts of the BIA in the early 1970s, the law enables tribes to assume control of the administration of Indian

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[20]For an analysis of how the federal courts have defined the sovereign powers of Indian tribes, see Charles F. Wilkinson, American Indians, Time and the Law (New Haven, CT: Yale University Press, 1987).

programs and services provided by the BIA and the Indian Health Service (IHS). It also provides financial and technical assistance to prepare tribes for contracting and managing federal programs. By fiscal year 1984, 305 tribes contracted for the operation of $245 million of federal programs under the Act, and $60.2 million has been paid to the tribes to cover the overhead costs of contracting.[21]

And yet, although Public Law 93-638 formalized the commitment of the federal government to give increased policymaking responsibility to tribal governments, it also placed considerable limits on tribal autonomy. Rather than employ a takeover or grants-in-aid approach to tribal administration of federal programs, which would give tribes greater discretion and flexibility, the law established contracting as the mechanism for the transfer of control. To be sure, the contracting approach was adopted at the request of Indian organizations to assure Indians that the federal government would not abandon its responsibilities as a trustee. However, the approach maintained the role of federal authorities as overseers of Indian administration. In addition to limiting the length of contracts to one-to-three years, Congress included provisions which would give the Secretary of Interior the power to deny tribal requests to contract or reassume control of a program or service if he finds the tribe to be seriously deficient in contract performance. The secretary also retained his "trust

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[21]U.S., Congress, House, Committee on Appropriations, Department of the Interior and Related Agencies Appropriations for 1985--Part II, 98th Cong., 2nd sess., 1984.

responsibilities," which gives him power to approve any transaction involving tribal lands and resources. Since management of natural resources is an important part of a tribe's economic development, it is questionable whether Indian tribes were given sufficient authority to make important decisions. As the General Accounting Office once noted, it is difficult for federal administrators to tell where their trust responsibilities end and Indian self-determination begins.

Further limits on tribal autonomy appeared in the process of implementing the Self-Determination Act.[22] Numerous studies of the implementation process point out that obstacles to successful implementation of any statute are to be expected, and Public Law 93-638 is no exception.[23] For instance, Mazmanian and Sabatier argue that successful implementation of a statute is more difficult when significant change in the behavior of target groups is desired.[24] The task of the

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[22]By 1978, three reports were published which analyzed the implementation of Title I of Public Law 93-638 during the first two years of existence. U.S., Congress, Senate, Select Committee on Indian Affairs, Indian Self-Determination and Education Assistance Act Implementation, 95th Cong., 1st sess., 1977 (hereafter cited as Implementation Hearings). U.S. General Accounting Office, "The Indian Self-Determination Act--Many Obstacles Remain," Rpt. HRD 078-59, 1 March 1978 (hereafter cited as GAO Report); AIPRC Final Report, pp. 221-24, 265, 280-81, 284. Title I was regarded by Indian policymakers as the more significant part of P.L. 93-638, and thus most oversight activity focused on Title I, rather than Title II.

[23]See Randall B. Ripley and Grace A. Franklin, Policy Implementation and Bureaucracy (Homewood, IL: Dorsey Press, 1982); Daniel A. Mazmanian and Paul A. Sabatier, Implementation and Public Policy (Glenview, IL: Scott, Foresman, and Co., 1983); Charles O. Jones, An Introduction to the Study of Public Policy, 2nd ed. (North Scituate, MA: Duxbury Press, 1977), pp. 137-71; James A. Anderson, Public Policy-Making, 3rd ed. (New York: Holt, Rinehart, and Winston, 1984), pp. 78-110.

[24]Mazmanian and Sabatier, Implementation and Public Policy, p. 28.

Self-Determination Act--developing the capacity of over two hundred tribes of varying levels of economic, political, and technical self-sufficiency to participate meaningfully in the development and administration of programs--is formidable indeed. The task is made even more difficult when the method chosen to accomplish it--contracts between federal agencies and tribal organizations--requires significant change in the attitudes and behavior of agencies who have heretofore been reluctant to relinquish program control to tribal groups. As Mazmanian and Sabatier state, a critical variable affecting the success of implementation efforts is the degree to which the agency responsible for administration is supportive of the aim of the statute.[25] Yet, as Chapter V described, the BIA was engulfed in internal and external turmoil which threatened the existence of the agency and the job security of its employees. It is reasonable to conclude that the agency was no more eager in the 1970s to implement a statute requiring it to contract away its authority than it would have been in previous decades.

Of course, even reluctant agencies may be constrained to implement threatening programs by a statute which limits their discretion.[26] However, studies of the first few years of implementing Title I of Public Law 93-638 indicated that the statute gave the BIA and IHS ample latitude to administer the act according to standards which they could

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[25]Ibid., p. 21.

[26]Ibid., pp. 27-8. Also see Theodore Lowi, The End of Liberalism, 2nd ed. (New York: W. W. Norton, 1979).

set.[27] In its regulations the BIA interpreted the concept of Indian self-determination to include not contracting as well as contracting. Both agencies did little to actively encourage tribes to contract, choosing instead to react to tribal initiatives.[28] Through the allocation of financial and technical resources, the agencies regulated the pace at which tribal capacity to contract was developed.[29] In addition to the several reasons stated in the law which agencies could use to decline approval of contract applications, the BIA and IHS also used the lack of available funds as an excuse not to contract. The amount of funds available for contracting was influenced by the agencies' own spending practices, which included withholding of substantial amounts

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[27]The GAO Report concluded that after two years of implementing P.L. 93-638, very little control of federal programs had shifted to the tribes. The share of appropriations spent on tribal contracts had not increased appreciably, only one contract out of fifty studied by the GAO resulted in a shift of services from the BIA to the tribes, and there was no reduction of federal employment. In addition, the GAO reported that tribal officials interviewed by the agency said that they did not plan to request contracts for takeover of existing BIA and IHS programs. Future contracting will be limited mostly to newly-funded services not previously provided, the officials said.

[28]According to BIA regulations, "It is the policy of the Bureau to leave to Indian tribes the initiative in making requests for contracts and to regard self-determination as including the decision of an Indian tribe not to contract." The GAO discovered that the seminars presented by the BIA to inform tribes on how to contract did not provide any list of the programs and services available for contracting, nor list the kinds of resources of expertise the tribes may need to assume control of a program. GAO Report, pp. 19-20, 25-26.

[29]The president of the Oglala Sioux tribe, Albert Trimble, reported one method of bureaucratic resistance when the tribe attempted to contract law enforcement services from the BIA. According to Trimble, the BIA attempted to discourage the tribe from contracting by permitting the local BIA agency office to overexpend program funds during the

of contract funds for payment of agency costs incidental to contracting.[30] Finally, in the formulation and administration of contracts, the agencies specified the standards of acceptable performance by tribal contractors, under the threat of retrocession, reassumption, or refusal to renew contracts.[31]

The legal discretion given the BIA and IHS to dominate the contracting process was augmented by the political leverage the agencies wielded on the tribes. BIA employees who were tribal members used their influence within the tribe to affect contracting decisions.[32]

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first part of the year and then offer the tribe a "patently inadequate amount" for the service to be contracted for the balance of the year. The tribe pursued the contract anyway, but the additional money the BIA had to come up with to enable the tribe to perform adequate services "undoubtedly cost services to some other tribe." Implementation Hearings, pp. 308-9.

[30]According to the Senate select committee, large percentages of contract funds (25 percent by the BIA's estimate, 40 percent according to the committee) earmarked for tribal programs were taken by the BIA and IHS for overhead costs such as severance pay for federal employees, payment of rent on facilities, office supplies, and employee insurance programs. In addition, Senator Abourezk's staff discovered that the BIA had no idea what the administrative costs for contracting were since there was no detailed accounting system. Implementation Hearings, pp. 22-26, 260, 266.

[31]According to Mel Tonasket, president of NCAI, BIA contracting policy was based on BIA's priorities, not the tribes. The Bureau permitted no negotiations with the tribes over funding, only the services that could be provided within predetermined funding levels. Joseph de la Cruz, the president of the NTCA, testified that the BIA rewarded tribes with favorable contract decisions when the tribes were willing to: (1) operate programs in a manner identical to BIA administration; (2) not displace BIA employees; (3) contract with BIA to run programs for them; and (4) not operate programs outside the categories in the line-item of agency budget at BIA-determined funding levels. Implementation Hearings, pp. 261-66.

[32]According to Oglala Sioux chairman Trimble, BIA administrators took actions which encouraged intertribal conflict, including the

Favorable or unfavorable decisions promulgated by BIA agency and area offices in a wide range of policies indirectly affected tribal contract performance. For example, tribes which failed to administer social services contracts in a manner dictated by agency administrators found that their budget requests in education were denied by the same official. Moreover, the tribes were also dependent upon favorable decisions from a highly decentralized BIA where clearances and agreements needed to be obtained from numerous officials up and down the chain of command.[33]

Thus, the Indian Self-Determination and Education Assistance Act contains a contradiction--it gives Indian tribes greater authority to run their own affairs yet maintains federal government control and supervision of tribal activities. The responsibility for this paradox lies not only with Congress and the bureaucracy, but also with Indians themselves. As Chapter IV explained, Indian political organizations preferred the contracting approach to Indian self-determination to

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announcement of reduction-in-force meetings among BIA employees on the reservation "with the basically simple explanation that the 'tribe' is contracting and your job is on the line." Implementation Hearings, pp. 308-9; see also GAO Report, pp. 15-17.

[33]Numerous examples of bureaucratic delay, in part because of the BIA's elaborate review process involving agency superintendents, area offices, and the central office, were given by Indian spokesmen. An official of the Puyallup Tribe told the GAO that BIA reviewers had repeatedly sent back the tribe's contract application for corrections of individual mistakes, instead of listing all of the application's deficiencies on a single sheet for the tribe to correct at one time. GAO Report, p. 16. Pressman and Wildavsky note that the greater the number of decision-points or "veto-points" in the implementation process, the more difficult it will be to achieve the political agreements necessary for effective implementation. Jeffrey Pressman and Aaron Wildavsky, Implementation (Berkeley, CA: University of California Press, 1973).

the less restrictive takeover approach of the Nixon bills. And, while the tribes have since then supported amendments to the Self-Determination Act which would limit the discretion of federal agencies and increase the tribal flexibility to develop and deliver programs, they have been reluctant to criticize the statute itself.[34] In addition, many tribal officials have refused to contract for fear that contracting was the first step toward termination.[35] In a recent lecture on federal

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[34]Most tribal leaders praised the Act as an important step toward the goal of Indian self-determination and blamed federal administrators for sabotaging the law. An exception was Peter MacDonald, chairman of the Navajo Tribe. According to MacDonald, Public Law 93-638 was not self-determination, but an Indian contracting law which allowed tribes to run programs which BIA and IHS failed to administer to the tribes' satisfaction. However, by entering into a contract, the tribe binds itself to perform to the standards of BIA and IHS (and tribal performance is sometimes monitored by the same people who did a poor job of running the program). The chairman said that the Navajos want to plan, design, and evaluate their own programs, and it is not important who actually operates the program if the tribe does the planning and evaluating (GAO Report, pp. 18, 21). MacDonald and the leaders of the major Indian organizations supported legislation proposed by Abourezk to add a new Title III to the Self-Determination Act. The amendment would have given the tribes the option of receiving a single block grant from the Secretary of Interior for the purpose of accomplishing the objectives set forth in a comprehensive tribal plan to be developed by the tribe. The purpose of the bill, Abourezk explained, was "to greatly simplify the excessive paper work generated by the contracting process and to allow for the necessary flexibility in local policy determinations by the tribes." Reported by the Senate Select Committee, the block grant amendment passed the Senate on September 19, 1978, but was not considered by the House. Subsequent efforts to pass similar legislation have failed. U.S., Congress, Senate. Select Committee on Indian Affairs, Amend the Indian Self-Determination and Education Act, Hearings on S. 2460, 95th Cong., 2nd sess., 1978; Congressional Quarterly Weekly Report, 30 September 1978, p. 1837.

[35]For example, the governor of the Gila River Indian Community Council told the GAO that some tribal officials are reluctant to contract because they are not sure that the funding will continue when the contract expires. Furthermore, some tribal officials believe

Indian policy, Francis Paul Prucha asserts that "Indian hesitation--or refusal--to set aside their dependency" and accept greater responsibility is a principal reason for continued government paternalism.[36]

To Prucha, it is paternalism and not termination that is the more serious threat to Indian self-determination today. Even if the Self-Determination Act were changed to give tribes greater control over program administration (such as appropriating program funds to tribes by means of block grants), the problem of Indian dependency on federal assistance would remain. The policy of tribal self-determination and the grim economic situation on the reservations have caused tribal leaders to develop complex ties with numerous federal departments and agencies in order to obtain the maximum amount of federal support for their respective tribes.[37] Due to the proliferation of federal aid programs for Indian tribes and the tribes' eligibility for an increased number of federal grants-in-aid, over one-half of the total federal budget for Indians for 1975 came from agencies other than the BIA.[38]

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that the risk of a contract not being renewed is much greater for tribal contracts than for BIA and IHS programs which seem to be renewed automatically year after year. GAO Report, pp. 1809.

[36]Francis Paul Prucha, The Indians in American Society (Berkeley: University of California Press, 1985), p. 88. Prucha cites the Indians' support of contracting instead of the Nixon takeover bills as evidence of this reluctance. He does not mention, however, Indian support for more flexible approaches since then.

[37]See Bee, Politics of Indian Policy, pp. 23-64; U.S., Congress, Senate, Select Committee on Indian Affairs, Federal Domestic Assistance Programs, 95th Cong., 1st sess., 1977; Sar A. Levitan and William B. Johnston, Indian Giving: Federal Programs for Native Americans (Baltimore: Johns Hopkins University Press, 1975).

[38]Levitan and Johnston, Indian Giving, p. 9. By 1980, non-BIA

If for no other reason than the fact that tribal governments have become firmly entrenched in the web of intergovernmental relations, tribal leaders have a more immediate concern than the threat of termination--how to keep federal dollars coming in to support fragile reservation economies. For the many federal agencies that serve Indian tribes, including the BIA, and the congressmen who support the programs and services the agencies deliver, keeping tribal governments as clients in the "government-to-government" relationship is in their interest. Thus, the self-determination policy insulates the tribes against termination, but it does not necessarily mean that the tribes have increased control over their destinies. As long as tribal governments are dependent upon federal assistance for their survival, then they must yield some control to the federal government. This is true even for the programs and services under the Indian Self-Determination Act, the law which purports to give tribal organizations the greatest amount of control over federal funds.

Therefore, the policy of Indian self-determination has broad support not because it has brought about real self-determination for Indians, but because it has become all things for all people. Conservatives support the policy because it supposedly replaces federal bureaucrats with locally-based officials--tribal governments. Liberals endorse self-determination policy because it provides needed governmental assistance to a disadvantaged group and combats a sense of powerlessness

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assistance accounted for two-thirds of the $3 billion in the federal budget for Indians.

among Indians by building their political institutions. Tribal governments support the policy because it has ameliorated their fears of termination and provided a measure of autonomy. Bureaucrats continue to favor self-determination because, despite all the rhetoric that surrounds the policy, it preserves their role in Indian administration.

Underlying all this support, however, remain the problems and tensions in Indian policy. The social and economic problems on the reservation continue, and the demand for private and public assistance grows. Although the public presently supports Indian self-determination, frustration and impatience with government efforts may return, and another attempt at forced assimilation may ensue. The danger of the Indian Self-Determination Act is not that it is self-termination in disguise, but that it is self-delusion. By convincing officials that Indian self-determination is program administration, the Act has relieved them from taking more forceful measures to deal with Indian affairs. Without comprehensive strategies for political, economic, and social development--involving both government and the private sector--on a tribe-by-tribe basis, policies to promote Indian self-determination will ultimately fall short. Increasing tribal control of governmental programs is but a small part of what is needed to revitalize reservation life.

Implications for the Study of the Indian Affairs Policy Process

The process by which Indian self-determination policy was formed was considerably different from the process by which policy changes

in the 1930s and 1950s were enacted. The primary actors involved in the making and attempted unmaking of the Indian New Deal were parts of the classic "subsystem" pattern--the leaders of the BIA, chairmen of congressional Indian affairs committees (or after 1946, subcommittees of the Interior Committee), and lobbyists representing interested non-Indian groups. During the 1960s and 1970s, the traditional participants in the Indian policy subsystem were still important in the process of policy formation, but their influence over Indian policy diminished as new actors entered the process. The result was that the Indian policy process was transformed into what Hugh Heclo has called an issue network--a complex web of lobbyists, legislators, and administrators with conflicting points of view, none of whom possessed sufficient power to set policy.[39] How did this transformation come about, what are the components of the evolving Indian policy network, and what are the implications for policymaking in Indian affairs?

Two of the forces which led to the development of issue networks in the 1960s and 1970s, according to Hugh Heclo, are the proliferation of interest groups and the expansion of the number of federal policies and programs, which have increased the number of executive agencies and congressional committees involved in a given policy area and in turn stimulated more interest group activity. Both factors played a significant role in the development of the Indian policy process

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[39]Hugh Heclo, "Issue Networks and the Executive Establishment," in Anthony King, ed., The New American Political System (Washington, DC: American Enterprise Institute, 1978), pp. 87-124.

during the self-determination era. Undoubtedly, the main impetus for policy change came from the political mobilization of the Indian community. Despite numerous political disadvantages, such as lack of money, geographic isolation, internal conflicts (intertribal rivalries, urban/reservation, traditional/assimilated, etc.) and the vulnerability of tribal leaders to cooptation pressures, the Indian movement developed into an effective political force. In the 1960s young Indians used direct action tactics, sometimes in concert with the lobbying activities of moderate Indian organizations such as the NCAI, to mobilize public support for Indian self-determination.[40] These efforts were most successful when targeted at officials outside the Indian policy subsystem, such as the Johnson and Nixon White Houses, the Office of Economic Opportunity, and Senators Ervin, Robert Kennedy, and Edward Kennedy. Later on in the early 1970s, as Indian protests centered more on controversial issues such as land returns and the abolition of the Indian Reorganization Act and led to violence, Indians became more sophisticated in their use of conventional political strategies. Intertribal groups such as the Alaskan Federation of Natives and the All Indian Pueblo Council sprouted across the country. Indian grassroots lobbying, in the form of dozens or even hundreds of letters,

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[40]Jo Freeman, from her study of the women's movement [The Politics of Women's Liberation (New York: David McKay, 1975)], states that social movements "may engage in a division of labor to achieve its political goals. Various groups within the movement specialize in radical action, socialization of new participants, and lobbying political authorities. If the movement is to achieve immediate changes in public policy, there must be general congruence of goals between its lobbying arm and its more radical proponents" (p. 344).

telegrams, and resolutions by tribal councils, provided Washington officials with instant feedback on proposed policy changes. Tribal officials seeking special legislation or favorable administrative decisions traveled to Washington or hired political consultants and law firms to contact federal officials. As the Indian education reform movement demonstrated, coalition-building also was an important political tool. National legal organizations such as the Native American Rights Fund initiated efforts to gain judicial recognition of important Indian claims. By the mid-1970s, Indians had gained effective access to all points in the national policy process.

The other major factor which stimulated the development of the Indian policy network was federal program expansion in the 1960s and 1970s. The passage of federal anti-poverty legislation in education, housing, and economic development increased the concerns of members of Congress and executive agencies outside the Indian affairs subsystem in the problems of the Indian people. For example, programs to aid the educationally disadvantaged led the education committees of Congress to probe into the special educational needs of Indian children. Another instance was when the Office of Economic Opportunity began funding proposals for Indian-controlled community action programs on the reservations. Not only Indians but members of the Interior committees frustrated with the unresponsiveness of committee leaders and the BIA to Indian concerns, such as Senator Fannin and Representative Meeds, turned to other committees on which they served with jurisdiction over programs relevant to Indians. The explosion of federal grants-in-aid programs

linked tribal governments with a host of agencies anxious to develop a clientele and their attendant congressional oversight committees. In turn, the leaders of tribal governments became strong supporters of the various federal aid programs.

As a result of the proliferation of federal programs and the ability of the tribes to obtain federal largesse, responsibility for federal policy toward Indians in the mid-1970s was scattered across numerous executive departments and agencies and congressional committees. The Justice Department assumed responsibility for the enforcement of Indian civil rights, and shared the task of legal protection of Indian trust resources with the solicitor's office in the Interior Department. Responsibility for Indian education was divided among the BIA [reservation schools, administration of Johnson-O'Malley (JOM) aid], the Department of Health, Education, and Welfare (HEW) (impact aid, Title I, bilingual education, Headstart), state and local governments (JOM contractors, Indian Education Act grant recipients), and the Indian tribes themselves. In addition to its administration of Medicare and Medicaid, Social Security, and Aid to Families with Dependent Children, HEW housed the Indian Health Service and the Office of Native American Programs, which administered Indian community action programs. With much of the responsibility for Indian education, health, and welfare outside the Interior Department, the House Education and Labor and especially the Senate Labor and Public Welfare Committees became powerful rivals of the Interior committees, as illustrated by the conflict over passage of the Indian Education Act and Title II of the Self-Determination

Act. Add to this matrix the Departments of Labor (manpower training), Commerce (economic development, small business loans), Housing and Urban Development (community development grants, public housing, rent subsidies), Agriculture (school lunch, food stamps, social conservation, rural electrification), and their respective congressional oversight committees.[41] Taken together, the maze of federal programs, agencies, and congressional committees presents a clear contrast to the relative, simple triangular relationship that once existed among Indian tribes, the BIA, and the Interior committees.

Associated with the expansion of the federal role in domestic policy were institutional changes in Congress and the presidency which also contributed to expanded involvement in Indian policy. Led by the examples of Hubert Humphrey and Paul Douglas, senators interested in building a national reputation became policy entrepreneurs in domestic legislation.[42] In the activist climate of the 1960s, liberal senators, some of them Democratic presidential hopefuls, searched for issues which could be addressed by federal legislation. The rise of the "Red Power" movement gave such senators as Robert and Edward Kennedy, McGovern, and Mondale another issue to be placed on the national reform agenda. Their involvement in developing policy initiatives in Indian affairs, along with the intervention of President Nixon, ultimately led another senator with presidential ambitions, Senator Jackson, to become an

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[41] See Levitan and Johnson, Indian Giving.

[42] Jack Walker, "Setting the Agenda for the U.S. Senate," British Journal of Political Science, 7 (October 1977):432-45.

advocate for Indian interests. Once these senators, later joined by Abourezk, became identified with the cause of Indian self-determination, they maintained their interest in Indian policy throughout their tenure in Congress.

Another consequence of the federal policy activism of the 1960s with implications for Indian affairs was the institutionalization of the legislative presidency. Beginning with Presidents Kennedy and Johnson, presidents have assumed responsibility for the development of legislation in policy areas of highest priority.[43] Prior to 1961, modern presidential involvement in Indian affairs consisted of Bureau of the Budget reviews of agency spending requests and legislative proposals. However, as part of a larger effort to develop a legislative program of domestic policy reform, Kennedy and Johnson appointed presidential task forces to study Indian policy and make recommendations. After a series of fits and starts in finding proposals which would be acceptable to Indians, a task force report in 1968 formed the basis for President Johnson's special message to Congress which recognized self-determination as a goal of federal policy and created the National Council of Indian Opportunity in the office of the Vice President. Continuing the Kennedy-Johnson tradition of developing legislation in the White House, aides to President Nixon were anxious to find issues for a Nixon domestic legislative program. When Nixon's advisors sensed a historic opportunity to help produce major policy changes

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[43]Stephen Wayne, The Legislative Presidency (New York: Harper and Row, 1978), pp. 107-14.

for a group described as "the underdogs of American history," they took the lead in developing a package of legislative policy reforms and lobbying for their passage.

Since Nixon, White House involvement in Indian legislative activity has been limited. However, as part of the development of the institutional presidency, an ongoing presidential presence was established. When unusually turbulent events in Indian country occurred which were beyond the capacity of agency personnel to resolve, the White House was called upon to serve as crisis manager. Illustrative of the point was the intervention of Nixon aides to prevent bloodshed between the authorities and Indian militants at Alcatraz, the BIA headquarters, and Wounded Knee, and of Carter advisors to mediate disputes between tribes and eastern state officials. In addition, Presidents have designated staff in the Executive Office of the President to serve as liaison to tribal officials and provide coordination of federal efforts for the tribes. With many departments and agencies involved in administering Indian programs, there were numerous occasions where the White House responded to interagency disputes. During the Nixon years, the NCIO performed this function.[44] Finally, the Office of Management and Budget (formerly the Bureau of the Budget) maintained

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[44]In the Carter administration, the staff of Vice-President Walter Mondale took over the role of liaison with Indian tribes. The Office of Intergovernmental Relations has assumed coordination responsibilities in the Reagan White House. Presidents may also choose to deal with Indian tribes through the Office of Public Liaison. See Joseph A. Pika, "Interest Groups and the Executive: Presidential Intervention," in Allan J. Sigler and Burdett A. Loomis, eds., Interest Group Politics (Washington, DC: Congressional Quarterly Press, 1983), pp. 298-323.

its role as the primary link between agencies serving Indians and the presidency.

Of course, the Interior committees and the BIA did not relinquish their policymaking roles in Indian affairs during the 1958-75 period. The Interior committees were instrumental in shaping the Indian legislative reforms of the 1970s. Through its policy of contracting in the early 1970s, the BIA supplied the model for the Indian Self-Determination Act. Moreover, the measure gave the BIA and IHS the major responsibility for implementation of the self-determination policy. Oversight of the implementation process was conducted by the successor to the Senate Interior Committee, the Senate Select Committee on Indian Affairs.

The primary role which the traditional members of the Indian policy subsystem played in the making of self-determination policy was a consequence of their ability to adapt to changing political conditions. Pressure from the Indian movement and the challenge of rival committees and the presidency for leadership, together with important internal changes such as Senator Jackson's presidential ambitions, the influence of Indian staff members, and the rise of Abourezk and Meeds as policy entrepreneurs, changed the policy orientation of the Interior committees from adversary to advocate of Indian self-determination. At the same time the BIA struggled to become a facilitator of self-determination in response to a constant barrage of threats to its survival, including proposals for its abolition, repeated criticism from congressmen and clientele groups, destruction by Indian activities, attempts at agency

renaissance imposed from above, and competition from other agencies for administrative control of Indian affairs.

Over time, the self-determination policy may contribute further to the decline in influence of traditional subsystem actors. As Guillemin observes, the political consensus behind the policy, combined with the after-effects of the backlash movement, has resulted in a decline of congressional interest in national Indian legislation.[45] The abolition of the House Indian affairs subcommittee in 1977 and the tenuous status of the Senate Select Committee reflect this disinterest.[46] The possibility that congressional responsibility for Indian affairs, already divided among several committees, may be fragmented further concerns Indian leaders, who are fighting to maintain their traditional points of access. By the same token, the increased number of BIA programs contracted to tribal authorities and the expanding role of non-BIA agencies in Indian policy may make the BIA more vulnerable to attempts to dismantle the agency.

The changing shape of the Indian policy universe has important political implications, especially for the tribes. More agencies and committees to deal with give Indian leaders more opportunity to gain access to the political system, to form and reform political coalitions,

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[45]Guillemin, "Federal Policies and Indian Politics."

[46]On June 6, 1984 the Senate voted to make the Select Committee on Indian Affairs a permanent committee. Included in the authorizing resolution, however, was the establishment of an ad hoc committee to study the Senate committee system and make recommendations to reduce the total number of Senate committees and subcommittees. Congressional Quarterly Weekly Report, 16 June 1984, p. 1440.

and play officials off against each other. Increasingly, tribal officials have become skilled political entrepreneurs, establishing contacts with the federal establishment to get needed government aid for their respective tribes.[47] Not all tribes can compete effectively for government programs. Smaller tribes, especially, lack the resources and clout to develop an adequate federal support network.[48] Even for those tribes that have benefited from entrepreneurial activity,

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[47]Of course, some tribes are better able than others to become economically self-sufficient. Tribes with substantial mineral deposits on their reservations have become more aggressive in promoting development. In 1977, twenty-seven resource-rich tribes formed CERT, the Council of Energy Resource Tribes, in order to maximize Indian bargaining leverage with private energy companies. However, resource-poor tribes have a much more difficult task to accomplish. Since 1978, some of these tribes have taken advantage of their semi-sovereign status to establish gambling operations. For some tribes, big-jackpot games have become a primary revenue-raising source. The extent to which gambling will become a key element of tribal development will depend on what steps federal authorities will take to deal with the matter. Thus far, the federal courts have protected these enterprises from state regulation. Washington Post National Weekly Edition, 12 November 1984, p. 32.

[48]Indian tribes have gradually become recognized as units of local government eligible to receive federal domestic assistance programs. For some programs, such as general revenue sharing and CETA, the tribes received aid directly from the federal government. For most programs, tribes received federal aid through state and local governments. Tribes can also participate in state and local government programs. However, like many state and local governments, Indian tribes have had their problems in confronting the intergovernmental program maze. In 1977, for example, tribes participated in only 167 of the over 700 federal domestic assistance programs for which they were potentially eligible (of the 167, only 17 programs were used by 30 percent or more of the tribes). Studies by the NCIO, AIPRC, and the Senate Select Committee revealed that not all federal agencies considered Indian tribes to be "units of local government" eligible for federal aid. Also, many states did not include tribes in plans to award block grant money. In addition, many tribes reported that they had difficulty getting access to program information and receiving technical assistance for

however, there are considerable costs. The time, pressure, and resources it takes to exploit official contacts exact a great toll on tribal leaders. Competition with other tribes for federal aid negates efforts at building Indian unity for future legislative battles. Administrative problems familiar to students of intergovernmental relations--overhead costs, allowing the chase for federal dollars to distort priorities, difficulties of coordination and control--are another result of tribal dealings with multiple agencies.[49]

Another consequence for Indian politics of the development of issue networks are increased chances for coalition-building and conflict with groups not normally concerned with Indian affairs. According to Heclo, the more public policies there are, the more groups form, and the more complex the relationships among them. Further, "Since

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need assessment, "grantsmanship" capability, and capacity to administer federal programs. The problems were especially acute for the smaller, poorer tribes. AIPRC Final Report, pp. 247-63; Office of the Vice President, National Council on Indian Opportunity, A Study of Federal Domestic Assistance Programs for Indians, February 1974 (a mimeographed reprint released by National Congress of American Indians, Washington, DC, August 1974); U.S., Congress, Senate, Select Committee on Indian Affairs, Federal Domestic Assistance Programs, 95th Cong., 1st sess., 1977.

[49]Unfortunately for the tribes, their entry into the world of IGR has come at the same time as federal intergovernmental aid is being reduced. Since intergovernmental aid is a part of the relatively small portion of the federal budget that is "controllable," it has become a primary target of deficit reduction in the 1980s. Thus, another paradox has been introduced into Indian self-determination policy: as tribes acquire increased control over the administration of federal programs, the funding levels for these programs are likely to be reduced. See Gregory B. Mills, "The Budget: A Failure of Discipline," in John L. Palmer and Isabel V. Sawhill, eds., The Reagan Record (Cambridge, MA: Ballinger, 1984), pp. 107-40.

very few policies ever seem to drop off the public agenda as more are added, congestion among those interested in various issues grows, [and] the chances for accidental collisions increase."[50] An example of a collision between Indian self-determination policy and other policies was a dispute between Indians and environmentalists in the late 1970s over Interior Department decisions which favored Indian rights or tribal economic development at the possible expense of the environment. Two of the decisions to which environmental groups objected were permitting Alaskan Eskimos to hunt bowhead whales, which are an endangered species, and allowing tribal governments to negotiate leases with energy companies to mine mineral resources on reservation lands.[51] There was a touch of irony in the conflict, since Indians and environmentalists often have joined forces to prevent private or government projects which adversely affected Indian lands and resources.[52]

A final implication of the emerging Indian policy network is the increased likelihood of stalemate in the political process. With more committees and subcommittees, agencies, and groups involved in the

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[50]Heclo, "Issue Networks," p. 97.

[51]Dirk Kirschten, "Interior Seeks a Balance Between Environmentalist and Indian Claims," National Journal (November 26, 1977):1841-3. Another example was the conflict between Indians and education groups, particularly the National Education Association, over President Carter's proposal to transfer the education division of the BIA into the proposed U.S. Department of Education. As with past attempts to break up the BIA, Indians opposed this proposal and gained congressional support to keep the education division in the BIA.

[52]An example was the alliance between environmentalists and the Cherokees of North Carolina in opposition to the construction of the Tellico Dam in eastern Tennessee, which the Indians claimed would flood ancient burial grounds.

process, it becomes more difficult to reach agreement on controversial issues. This is one of the reasons why more fundamental issues of Indian policy--such as the extent to which Indian tribes can regulate non-Indians in Indian country, rights of tribal access to and control of natural resources, tribal revenue-raising powers, and Indian land claims--are being taken to the courts.[53] For the most part, this development has been advantageous to Indians. Theoretically, at least, the isolation of the judiciary from public opinion should make it more responsive than other institutions to the concerns of minorities. And, in the past thirty years the federal courts have upheld and expanded the doctrine of tribal sovereignty.[54] However, a change in the composition of the U.S. Supreme Court or a strong shift in the political mood of the country could alter legal doctrine. Realizing the importance of the judiciary to Indian policy, Indians have concentrated much of their political effort in the last two decades toward gaining judicial recognition of their demands. The growing significance of the federal courts in shaping federal policy toward the tribes is but another important feature of the evolving Indian policy network.

Implications for the Study of American Public Policy

The final purpose of this study of the development of recent federal policy toward American Indians is to illuminate how various problems

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[53]Two other reasons are the reluctance of elected officials to deal with redistributive policy demands and the fact that a massive body of Indian law has developed over the past two centuries.

[54]See Wilkinson, American Indians, Time and the Law.

and issues in American society are dealt with by the political process. Policy scholars have observed that the nature of the political process and public policy varies with the nature of the issue.[55] Theodore Lowi has observed that "the substance of a policy influences the role of organizations in its adoption."[56] For example, Randall Ripley and Grace Franklin observe that subgovernments are most influential in the formation of distributive policies, which allocate subsidies to particular individuals, groups, and/or corporations. Regulatory policies, which are designed to protect the public by setting the conditions under which private activities can take place, are resolved on the floors of both houses of Congress by coalitions of legislators, high level members of the administration, and interest groups. The most important actors in making redistributive policy, which transfers wealth, property, rights, or other values from one group to another, and the President and powerful figures in Congress. Of the three types of policy, redistributive policies are least prevalent, since the issues involved tend to generate sharp ideological disagreement and class conflict.[57]

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[55]See, for example, Theodore Lowi, "American Business, Public Policy Case Studies, and Political Theory," World Politics, 61 (July 1964):677-715; Randall Ripley and Grace Franklin, Congress, the Bureaucracy, and Public Policy, 3rd ed. (Chicago: Dorsey Press, 1984).

[56]James Q. Wilson, Political Organizations (New York: Basic Books, 1973), p. 330. For a review of the academic controversy surrounding the Lowi policy typology, see Graham Wootton, Interest Groups: Policy and Politics in America (Englewood Cliffs, NJ: Prentice-Hall, 1985), pp. 239-43.

[57]Ripley and Franklin, Congress, the Bureaucracy, and Public Policy.

Whether because of neglect or the complexity of the issue, policy scholars generally have not attempted to compare the Indian affairs policy process to the processes by which other public policies are made.[58] Kenneth Meier characterized Indian affairs as distributive, because a subgovernment has been responsible for Indian policymaking and Indian tribes are the recipients of numerous federal programs and services.[59] However, there are two difficulties with this analysis. First, if Indian affairs policy is primarily distributive, then the Indian policy process is different than other distributive policy processes such as water resources and agricultural subsidies. As Emmette Redford observed, the Indian affairs subsystem of the 1920-60 period was more conflict-ridden internally than other distributive policy subsystems.[60] The findings of this study have not disproved Redford's observations. Second, there are aspects of Indian policy which have

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[58]Ripley and Franklin's text, now in its fourth edition, does not discuss federal Indian policy, nor classify it in terms of Lowi's categories. Ibid.

[59]Kenneth Meier, Politics and the Bureaucracy (North Scituate, MA: Duxbury Press, 1979).

[60]Emmette Redford, Democracy in the Administrative State (New York: Oxford University Press, 1969), pp. 107-31. From his study of the Indian affairs subsystem during the New Deal years, J. Leiper Freeman concluded that "the influence of groups expressing assimiliationist or separatist views waxes and wanes and shifts its focus from one part of the subsystem to another" (p. 116). The tendencies toward extremes in policy seem to be modified as the "outs" use congressional committees to work against the dominant point of view espoused by the BIA, and vice versa. Freeman, The Political Process: Executive Bureau-Legislative Committee Relations, rev. ed. (New York: Random House, 1965), pp. 115-17.

a regulatory and redistributive impact. The Indian Reorganization Act gives the Secretary of Interior considerable regulatory power, in that the Secretary approves the structure of tribal governments and exercises "trust" responsibility over decisions involving tribal assets. Furthermore, there are some aspects of Indian policy, such as land returns and the determination of water rights, which have redistributive effects.

Nevertheless, the development of the policy of Indian self-determination provides important insights into the nature of the American policy process. First, for each policy type, patterns of political relationships may change over time. Subgovernments are still influential in the determination of distributive policy, but, as Heclo and the preceding discussion of the Indian affairs policy process point out, the influence of subsystem actors may decline as issue networks develop.[61] Opportunities for additional actors to intervene in the distributive policy process have expanded. With more federal policies, there are more chances that policies will conflict, such as tribal economic development and environmental protection, and that subgovernments will collide with each other. Within each policy area there are more political executives in the Cabinet, sub-cabinet, and institutional presidency, more interest groups, more executive agencies, and more congressional committees to influence policy decisions. In short, the politics of distributive policy have become more complex.

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[61]Heclo, "Issue Networks."

Second, there may be more than one policy process in a given policy area. Depending on which issues in Indian policy are the focus of analysis, there are different Indian policy processes. While the process of enacting legislation to transfer administrative control of federal programs to the tribes involved primarily tribal governments, the BIA and IHS, and congressional oversight committees--a subgovernment pattern--the politics of land returns in Alaska and New England involved not only subgovernment actors but the presidency and the federal courts. Policies with redistributive effects in Indian affairs are more likely to enter the realm of what Redford calls macropolitics.[62]

Third, an examination of politics and policies in Indian affairs in the twentieth century reveals that policy and process in an issue area can change over time. To understand the dynamics of policy change, Michael Hayes has expanded upon a theory of "issue movement" which examines the relationship between interest group pressure and public policy outcomes.[63] According to Hayes, disadvantaged, unorganized groups with redistributive policy demands are likely to have their demands suppressed by powerful interests. This is the "non-decision" arena of politics which reflects the "bias of pluralism."[64] In Indian

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[62]Redford, Democracy in an Administrative State, pp. 107-31.

[63]Michael T. Hayes, "The Semi-Sovereign Pressure Groups: A Critique of Current Theory and an Alternative Typology," Journal of Politics, 40 (February 1978):134-61; Lobbyists and Legislators (New Brunswick, NJ: Rutgers University Press, 1981).

[64]Peter Bachrach and Morton Baratz, Power and Poverty: Theory and Practice (New York: Oxford University Press, 1970). Numerous scholars have commented upon the "bias of pluralism" in American

affairs, military force and the passage of the Dawes Act in the late 1800s relegated Indian demands for tribal sovereignty and enforcement of treaty rights to the status of a "non-issue."

The second stage of the process of issue movement occurs when change-seeking groups organize and gather strength, forcing Congress to respond. However, rather than enact redistributive legislation, Hayes argues, Congress often chooses to adopt a "discretionary and essentially symbolic bill."[65] That is, Congress avoids angering competing groups by delegating authority to the executive or judicial branches to resolve the dispute. The usual effect of shifting the locus of decision-making to the executive branch is to give an advantage to groups defending the status quo, according to Hayes. One reason for this is, as Murray Edelman maintains, passing a discretionary bill provides powerless groups and the general public "symbolic reassurance" that something is being done about a problem, when in fact, the struggle over whether to do something is still continuing.[66] A second reason

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politics, in which the demands of unorganized groups, particularly the poor, are ignored or not fully recognized. Some explanations include: (1) the universe of organized interests tends to underrepresent the poor and minorities [E. E. Schattschneider, The Semi-Sovereign People (New York: Holt, Rinehart, and Winston, 1960)]; (2) the decentralization of authority to state and local governments tends to favor organized interests [Grant McConnell, Private Power and American Democracy (New York: Alfred A. Knopf, 1966)]; and (3) congressional delegation of broad authority to executive agencies also favors the well-organized [Theodore J. Lowi, The End of Liberalism, 2nd ed. (New York: W. W. Norton, 1979)]. See, generally, William E. Connolly, ed., The Bias of Pluralism (New York: Lieber-Atherton, 1969).

[65]Hayes, "Semi-Sovereign Pressure Groups," p. 149.

[66]Murray Edelman, The Symbolic Uses of Politics (Urbana:

is that "policy-without-law," or what Lowi describes as "interest group liberalism," allows entrenched interests with superior access to key decision-makers to dominate the administrative process.[67] Other than the questionable effects of regulatory policy, therefore, probably the best outcome that disadvantaged groups challenging the prevailing social structure can hope for is that they will receive some distributive benefits administered by a large welfare bureaucracy. According to Frances Fox Piven and Richard Cloward, this result can best be understood as an effort by government to "regulate the poor."[68]

The passage of the Indian Reorganization Act of 1934 illustrates the second stage of issue movement. In the 1920s and 1930s, the rise of non-Indian reform groups interested in tribal restoration revived the debate over Indian issues. When the Roosevelt administration gave its support to the reform movement, Congress had to find a way to accommodate the competing demands of reformers and assimilationists. The solution, contained in the IRA, was a combination of regulatory and distributive policies. Indian tribes were reorganized, provided with federal services and programs, and granted a limited degree of self-governing power. On the other hand, the Interior Department was delegated extensive power over tribal governments, including the power

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University of Illinois, 1964). See also theories of regulatory agency "capture," e.g., Marver Bernstein, Regulating Business by Independent Commission (Princeton, NJ: Princeton University Press, 1955).

[67]Lowi, End of Liberalism.

[68]Frances Fox Piven and Richard Cloward, Regulating the Poor (New York: Random House, 1971).

to decide the extent to which trust resources would be protected and developed for the benefit of the tribe.[69] Little actual redistribution of land and power had taken place. Still, Indians had developed enough political strength to stop, at least temporarily, congressional attempts in the 1950s to terminate federal recognition of the tribes and consign Indian affairs to "non-issue" status once again.

If groups demanding fundamental change persist, Congress may have to make an explicit choice between the haves and have-nots, thus moving the issue to the redistributive arena. However, Hayes explains that in this third stage of issue movement, instances of genuine redistributive policy in the U.S. are "extremely rare."[70] Challenging groups may fail to gain sufficient strength, or may be divided or coopted by more powerful interests. More likely is that challenging groups will accept symbolic or distributive benefits offered by government. The nature

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[69]Another example of delegation was the creation of the Indian Claims Commission in 1946 to adjudicate Indian land claims and award monetary damages.

[70]Hayes, "Semi-Sovereign Pressure Groups," p. 152. Social Security and Medicare are examples of redistributive policy, but they are based on a regressive system of financing. Nixon's Family Assistance Plan could have had redistributive effects, but was defeated in Congress. An intriguing recent example of redistributive policymaking might be the Tax Reform Act of 1986. See Jeffrey H. Birnbaum and Alan S. Murray, Showdown at Gucci Gulch (New York: Vintage Books, 1988). Another pattern of the redistributive arena is to redefine or package redistributive legislation as distributive legislation. Ripley and Franklin argue that Title I of the Elementary and Secondary Education Assistance Act of 1965, which provides aid to children from poor families who are educationally disadvantaged, was sold as a program which would provide general aid to local school districts. People who supported Title I for its potential to help the poor hoped that future Congresses and administrators would strengthen the program. Ripley and Franklin, Congress, the Bureaucracy, and Public Policy, pp. 470-4.

of the legislative process itself, with its numerous opportunities for opponents to block policy change, may also prevent or modify redistributive legislation. Typically, in order for disadvantaged groups to obtain redistributive policies, they will need to enlarge the scope of conflict sufficiently to enlist the active support of the President and party leaders.[71] Broad-based social movements create the greatest opportunities for the adoption of redistributive bills,[72] as the events surrounding the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 indicate.[73]

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[71]Ibid., p. 161; Ripley and Franklin, Congress, the Bureaucracy, and Public Policy, p. 201. See Schattschneider, Semi-Sovereign People; McConnell, Private Power and American Democracy; Redford, Democracy in the Administrative State, pp. 107-31. Also Schattschneider and others cite the potential of critical elections as a means by which the status quo can be substantially altered. See Walter Dean Burnham, Critical Elections and the Mainsprings of American Politics (New York: W. W. Norton, 1970).

[72]According to Bruce Miroff, Presidents are most likely to become directly concerned with social movements when: (1) the movement's participants are drawn from a President's actual or potential electoral base; (2) the movement and the administration share the same broad goals but increasingly diverge on how to attain those objectives; (3) the demands of the movement point toward clear-cut presidential commitments likely to alienate other important constituencies; and (4) the issue in question is central to the public image a President has projected and to the self-image he privately cherishes. "Presidential Leverage over Social Movements: the Johnson White House and Civil Rights," Journal of Politics, 43 (February 1981):2-23. For more on the importance of social movements, see Jack L. Walker, "A Critique of the Elitist Theory of Democracy," American Political Science Review, 60 (February 1966):285-95; and Andrew S. McFarland, "Public Interest Lobbies versus Minority Faction," in Cigler and Loomis, Interest Group Politics,
pp. 324-53.

[73]However, as civil rights has moved to the administrative arena, the actual extent of redistribution of wealth, power and rights has varied, depending on the issue area. The greatest impact of civil rights legislation has been in the areas of voting and southern school

The reluctance of Congress to pass redistributive legislation was demonstrated by the legislative response to the Indian self-determination movement of the 1960s. The demands of young and traditional Indians for tribal sovereignty and the observance of Indian treaties had profound redistributive implications. In reply, federal officials, including presidents and presidential hopefuls, adopted the rhetoric of self-determination. However, they worked with Indian leaders who felt that the agenda of Indian radicals went too far or was not politically achievable. The result was the enactment of legislation which expanded the system of distributive benefits, making tribal governments part of the intergovernmental network. Also, some administrative controls over tribal government were lifted by the Self-Determination Act, but federal involvement in the name of "trust responsibility" remains. In essence, the federal reforms were similar to the War on Poverty programs of the 1960s, which Lowi described as a classic example of "interest group liberalism."[74]

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segregation, while the least impact has been in employment and housing. Harrell R. Rodgers and Charles S. Bullock, Law and Social Change: Civil Rights Laws and Their Consequences (New York: McGraw-Hill, 1972); Ripley and Franklin, Bureaucracy and Policy Implementation, pp. 178-84.

[74]The resort to "interest group liberalism" as a policy response was characteristic of the Nixon presidency, according to Lowi. Although Nixon sought to abolish that exemplar of "new welfare," the Office of Economic Opportunity, it was more typical of his administration to create new programs which delegated authority to interest groups, states, and local governments. General revenue sharing, block grants for manpower training and community development, and the establishment of new regulatory agencies with broad authority (such as the Environmental Protection Agency, Occupational Safety and Health Administration, and Consumer Product Safety Commission) are examples of what Lowi refers

Moreover, the Indian demands with the greatest redistributive consequences--treaty reform, an Indian-controlled agency to protect trust resources, and aid to urban Indians--were not recognized or enacted.[75] Ironically, the enactment of the largest land return bill in U.S. history, the Alaskan Native Claims Act, was more the result of pressure arising from the discovery of oil on Alaska's North Shore than the century-old claims of the natives. The volatile issues of sovereignty and land returns were left for the non-elected officials of the judiciary to resolve. It is significant that the governmental decisions which sparked the backlash movement came from the courts,

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to as the institutionalization of IGL. End of Liberalism, passim.

Another IGL technique is the increasing tendency of the federal government to underwrite the risk of private entrepreneurship. According to Lowi, the U.S. has entered a "state of permanent receivership," which he defines as a "system of policies that sets a general floor under risk, either by attempting to eliminate risk or to reduce or share the costs of failures" (p. 280). Through the device of loan guarantees the federal government has obligated itself to underwrite $80 billion of private loans in 1977. Outstanding examples are the Lockheed loan in 1971, the Chrysler bailout in 1979, and the federal agreement to underwrite $12.5 billion of New York City bonds in 1978, "which established for the first time a federal responsibility for the solvency of cities" (p. 288). Lowi's insights are useful for the analysis of recent federal Indian policies. The "right of retrocession," which permits tribes to relinquish control of programs to the federal government without fear of termination, is an application of the underwriting technique.

[75] In this regard, it is important to note that the only major piece of Indian legislation proposed by President Nixon which had widespread Indian support and was not enacted was the bill which would have established an independent Indian Trust Counsel Authority. Of all the Nixon bills, this proposal could have done the most to protect and expand Indian land and resource rights. It could be argued that the redistributive nature of the proposal prevented its resolution at the subgovernment level. Only direct intervention by the President, the federal courts, or party leaders could help the tribes secure enactment of the bill.

not Congress and the executive branch.[76] In a reversal of the separation of powers doctrine, Congress served as a quasi-appellate court to which backlash groups could seek relief from judicial decisions recognizing Indian land claims and hunting and fishing rights.[77]

The governmental response to the Indian self-determination movement illustrates the limits on the ability of disadvantaged groups to achieve material and substantial benefits through the American political system. As Chapter III explained, although the "Red Power" movement was the catalyst for policy changes, Indians needed to present a politically and economically feasible program, find officials in the government willing to serve as advocates, and take advantage of windows of opportunity when they arose. Even when these favorable conditions were

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[76]The involvement of the federal courts in redistributive policies, such as Indian land returns, has become a major feature of federal policymaking, beginning with the Warren Court. Relatively powerless groups have often found the courts more receptive to their concerns than Congress or the executive branch. The best example of judicial involvement in redistributive policymaking is, of course, school desegregation. See Richard Kluger, Simple Justice (New York: Alfred A. Knopf, 1976). For an example of judicial redistributive policymaking at the state level, see Richard Lehne, The Quest for Justice: The Politics of School Finance Reform (New York: Longman, 1978).

[77]Another response to Indian advocates of redistributive demands was the political and legal harassment of Indian radicals, and the cooptation of conservative Indian leaders. According to Miroff, Presidents may try to influence and constrain social movements in order to maintain control of the national policy agenda, moderate movement demands, and channel movement activities to more conventional modes of participation. Miroff concentrates on management strategies, which he noted are limited in their impact. Miroff, "Presidential Leverage over Social Movements." The case of the Nixon administration's relations with Indian militants indicates that more coercive attempts at controlling movement activities are also available to the presidency. See Peter Matthiesson, In the Spirit of Crazy Horse (New York: Viking Press, 1983).

present, the account in Chapters IV and V demonstrated the difficulty of bringing about policy change through legislative or administrative action. Eventually, the policy responses to Indian political efforts, as this chapter discussed, avoided major distribution of land, rights, and political power to the tribes.

Still, the Indian political movement achieved many of its objectives. The threat of forced assimilation has diminished. Governmental assistance to the tribes has increased. Strengthening tribal autonomy has become a goal of federal policy. Despite the decline of presidential interest in Indian affairs and a shift in the public mood during the late 1970s and 1980s, Indians withstood the challenge of the backlash movement to preserve the policy gains they had made previously. Whether the gains are sufficient to make Indian self-determination a reality remains to be seen.

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APPENDIX

APPENDIX

Public Law 93-638

January 4, 1975

AN ACT

January 4, 1975
[S. 1017]

To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

Indian Self-Determination and Education Assistance Act.
25 USC 450 note.

CONGRESSIONAL FINDINGS

25 USC 450.

SEC. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

DECLARATION OF POLICY

25 USC 450a.

SEC. 3. (a) The Congress hereby recognizes the obligation of the

United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

DEFINITIONS

25 USC 450b.

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means a person who is a member of an Indian tribe;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(c) "Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

(d) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

REPORTING AND AUDIT REQUIREMENTS

Recordkeeping.
25 USC 450c.

SEC. 5. (a) Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and

such other records as will facilitate an effective audit.

(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Any funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States.

PENALTIES

SEC. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

25 USC 450d.

25 USC 452.

WAGE AND LABOR STANDARDS

SEC. 7. (a) All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c).

25 USC 450e.

40 USC 276a note.

5 USC app. II.

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

25 USC 452.

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

25 USC 1452.

CARRYOVER OF FUNDS

25 USC 13a.

SEC. 8. The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to the Act of November 2,
25 USC 13, 52a. 1921 (42 Stat. 208), for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year.

TITLE I—INDIAN SELF-DETERMINATION ACT

Citation of title. 25 USC 450f note.

SEC. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

25 USC 450f.

SEC. 102. (a) The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organizaton of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act
25 USC 452. of April 16, 1934 (48 Stat. 596), as amended by this Act, any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under the Act
25 USC 13, 52a. of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days, (2) provide to the extent practicable assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

25 USC 450g.

SEC. 103. (a) The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities

under the Act of August 5, 1954 (68 Stat. 674), as amended: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory; (2) adequate protection of trust resources is not assured; or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That the Secretary of Health, Education, and Welfare, in arriving at his finding, shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance. 42 USC 2001.

(b) Whenever the Secretary of Health, Education, and Welfare declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days; (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections; and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised. Hearing.

(c) The Secretary of Health, Education, and Welfare is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance. Liability insurance.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 104. (a) The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for— 25 USC 450h. 25 USC 13, 52a.

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

(4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

(b) The Secretary of Health, Education, and Welfare may, in accordance with regulations adopted pursuant to section 107 of this Act, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.

(c) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

PERSONNEL

SEC. 105. (a) Section 3371(2) of chapter 33 of title 5, United States Code, is amended (1) by deleting the word "and" immediately after the semicolon in clause (A); (2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new clause:

"(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act."

43 USC 1601 note.

Ante, p. 2204.

(b) The Act of August 5, 1954 (68 Stat. 674), as amended, is further amended by adding a new section 8 after section 7 of the Act, as follows:

42 USC 2004a.

"SEC. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act".

42 USC 2004b.

42 USC 215.

Ante, pp. 2206, 2207.

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended".

50 USC app. 456.

42 USC 2001.

(d) Section 502 of the Intergovernmental Personnel Act of 1970 (84 Stat. 1909, 1925) is amended—

42 USC 4762.

(1) by deleting the word "and" after paragraph (3);

(2) by deleting the period after paragraph (4) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) Notwithstanding the population requirements of section 203(a) and 303(c) of this Act, a 'local government' and a 'general local government' also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or com-

42 USC 4723, 4743.

munity, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which performs substantial governmental functions. The requirements of sections 203(c) and 303(d) of this Act, relating to reviews by the Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this Act is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments."

43 USC 1601 note.
42 USC 4723, 4743.

(e) Notwithstanding any other law, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization on or before December 31, 1985, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

Certain tribal organization employees, coverage, rights, and benefits.
25 USC 450i.

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 ("Compensation for Work Injuries") of title 5, United States Code, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, United States Code, as follows:

Work injuries, compensation.
5 USC 8101.

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

Retirement.
5 USC 8301.

(3) To retain coverage, rights, and benefits under chapter 89 ("Health Insurance") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefit Fund (section 8909 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5, United States Code.

Health insurance.
5 USC 8901.

(4) To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of title 5, United States Code, if necessary

Life insurance.
5 USC 8701.

employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee's Life Insurance Fund (section 8714 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5, United States Code.

5 USC 8701.

(f) During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

"Employee."

(h) For the purposes of subsections (e), (f), and (g) of this section, the term "employee" means an employee as defined in section 2105 of title 5, United States Code.

Regulations.

(i) The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

(j) Anything in sections 205 and 207 of title 18, United States Code to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of title 5, United States Code, or section 2072 of the Revised Statutes (25 U.S.C. 48) and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection wth any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.

ADMINISTRATIVE PROVISIONS

25 USC 450j.

SEC. 106. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of

40 USC 270a.

August 24, 1935 (49 Stat. 793), as amended: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act.

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as

the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

Contracts, term.

(c) Any contract requested by a tribe pursuant to sections 102 and 103 of this Act shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amounts of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases beyond the control of a tribal organization.

(d) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as necessary to carry out the purposes of this title: *Provided, however*, That whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not more than one hundred and twenty days from the date of the request by the tribe or at such later date as may be mutually agreed to by the appropriate Secretary and the tribe.

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(f) The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(g) Contracts and grants with tribal organizations pursuant to sections 102, 103, and 104 of this Act and the rules and regulations adopted by the Secretaries of the Interior and Health, Education, and Welfare pursuant to section 107 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(h) The amount of funds provided under the terms of contracts entered into pursuant to sections 102 and 103 shall not be less than the appropriate Secretary would have otherwise provided for his direct operation of the programs or portions thereof for the period covered by the contract: *Provided*, That any savings in operation under such

contracts shall be utilized to provide additonal services or benefits under the contract.

PROMULGATION OF RULES AND REGULATIONS

25 USC 450k.

SEC. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this title.

(b) (1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

Publication in Federal Register.

(3) Within eight months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

Publication in Federal Register.

REPORTS

25 USC 450*l*.

SEC. 108. For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request.

REASSUMPTION OF PROGRAMS

25 USC 450m.

SEC. 109. Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement

in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and hearing to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he shall hold a hearing on such action within ten days thereof. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

Notice and hearing.

EFFECT ON EXISTING RIGHTS

SEC. 110. Nothing in this Act shall be construed as— 25 USC 450n.

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

SEC. 201. This title may be cited as the "Indian Education Assistance Act". Citation of title. 25 USC 455 note.

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

SEC. 202. The Act of April 16, 1934 (48 Stat. 596), as amended, is further amended by adding at the end thereof the following new sections: 25 USC 452.

"SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students. 25 USC 455.

"SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, however*, That, whenever a local Indian committee or committees established pursuant to section 305 (b)(2)(B)(ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior 25 USC 456.

to the date of enactment of this section exists in such school district, such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

"(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

25 USC 457.

"SEC. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students."

Report to congressional committees.
25 USC 457 note.

SEC. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1975, a report which shall include:

25 USC 452.

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including—

(A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

20 USC 236.

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

20 USC 821 note.

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and

20 USC 241aa note.

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

20 USC 631.

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

Indian-controlled community colleges.

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

PART B—SCHOOL CONSTRUCTION

Contract authority.
25 USC 458.

SEC. 204. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part B on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. 20 USC 644.

(c) The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part B on any school eligible to receive funds under section 208 of this Act.

(d) Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians. *Ante*, p. 2213.

(f) Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include— Program evaluation, report to Congress.

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended, from the Department of Health, Education, and Welfare to the Department of the Interior.

20 USC 644.

Appropriation.

(g) For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of $35,000,000 for the fiscal year ending June 30, 1974; $35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

PART C—GENERAL PROVISIONS

25 USC 458a.

SEC. 205. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district.

25 USC 458b.

SEC. 206. No funds from any contract or grant pursuant to this title shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

25 USC 458c.

SEC. 207. (a)(1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

Rules and regulations, publication in Federal Register.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.

(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

Publication in Federal Register.

25 USC 458d.

SEC. 208. The Secretary is authorized and directed to provide funds, pursuant to this Act: the the Act of April 16, 1934 (48 Stat. 596), as amended: or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private

25 USC 452.

school. The Secretary shall transmit annually to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a report on the educational assistance program conducted pursuant to this section. Report to congressional committees.

SEC. 209. The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235). 25 USC 458e. 20 USC 241aa note.

Approved January 4, 1975.

VITA

E. Fletcher McClellan was born on November 17, 1952 in Chambersburg, Pennsylvania. He attended elementary and secondary schools in Franklin County, Pennsylvania, and graduated from Chambersburg Area Senior High School in June 1970. In the fall of 1970 he enrolled at Franklin and Marshall College in Lancaster, Pennsylvania and in June 1974 received a Bachelor of Arts degree in Government. The following September he accepted a teaching assistantship at East Tennessee State University in Johnson City, Tennessee and began study toward a Master's degree in Political Science. The degree was awarded in 1982.

In the fall of 1977 he entered the Graduate School at The University of Tennessee, Knoxville. He was a teaching assistant in the Department of Political Science from 1977 to 1979, and a research assistant for the Bureau of Public Administration from 1979 to 1980. In December 1988 he received the Doctor of Philosophy degree with a major in Political Science.

Beginning in August 1980, he served a two-year appointment as Instructor of Political Science at Lenoir-Rhyne College in Hickory, North Carolina. Since fall 1982 he has worked at Elizabethtown College in Elizabethtown, Pennsylvania, as Assistant Professor of Political Science. He has co-authored several published articles and has presented papers at numerous professional conferences. He is a member of Pi Sigma Alpha, American Society for Public Administration, Pennsylvania Political Science Association, and the American Association of

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