

# a new image for the great white father?

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In 1831, Chief Justice John Marshall wrote that “the relation to the United States of the Indian tribes within its territorial limits resembles that of a ward to his guardian.” In explaining this observation, he went on to say of the Indians: “They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father. . . .”<sup>2</sup>

Marshall’s statement is still frequently quoted by the courts to describe a situation which to the present day has tied Indians to their Federal government in ways that are unique to this minority group. Out of this relationship has emerged a set of highly paternalistic interaction patterns based on the guardian-ward or father-child model. Observers of the contemporary Indian scene have recently attacked this relationship with considerable vehemence, maintaining that it has seriously damaged Indian personality development.<sup>3</sup>

In a 1969 appearance before the Senate Subcommittee on Indian Education, psychiatrist Robert Leon remarked that:

In the area of human development, the Bureau of Indian Affairs and the American Indians have been for years locked in a destructive interaction system. . . . This interaction pattern . . . stems from the inability of Indians to actively rebel against paternalistic attitudes of the Bureau of Indian Affairs. . . . We find Indians reacting in passive-aggressive and self-destructive ways to their anger over Bureau domination.<sup>4</sup>

In a previous article on the same subject, Leon conjectured that the problems of passive-aggressive and self-destructive Indian behavior could be overcome by a deliberate and conscious effort on the part of the Bureau of Indian Affairs to “reverse the authority patterns.”<sup>5</sup>

The intent of the author in the present article is to examine some of the prevailing patterns of paternalism in U.S. Indian administration as practiced by the Bureau of Indian Affairs, and to propose a series of actions which the Federal government and the Indians might take to move in the direction which Dr. Leon has advocated.

### paternalism and the individual indian

The pinch of Federal paternalism is felt by Indians at two levels: that of the individual and that of the tribe. At both levels it relates most importantly to the management of land and income. At the individual level, it also relates to the provision of such community services as education, social welfare and law and order.

On many reservations Indians enjoy the beneficial ownership of land allotments or interests in such allotments by virtue of what are known as "trust" or "restricted" titles. While assuring Indian holders the use of land and enjoyment of the fruits thereof, these titles do not permit them complete freedom with respect to property management. For example, the holder of a trust or restricted title may not sell, lease or mortgage his land without first securing the approval of the Commissioner of Indian Affairs. Since the authority of the Commissioner is also limited in that he may not take actions concerning land allotments without the consent of the title holders, the relationship technically resembles partnership more than it does trusteeship, although the Indian Commissioner is generally referred to as the "trustee." To this partnership the Indian contributes his land, the government contributes management skills and both may contribute capital and labor. From the Indian point of view, the positive elements of the relationship include entitlement to the profits and exemption from income and real property taxes.

The Bureau of Indian Affairs provides a broad range of land management services to the holders of trust and restricted titles. Usually contributed without cost to the landholder, these include arranging for leases and sales, appraising land and resource values, husbanding renewable resources such as timber and collecting and distributing fees, rentals and royalties.

Funds collected by the BIA from leases or sales of land and from sales of such resources as minerals and timber may be turned over directly to the owners, or retained in special accounts known as Individual Indian Money Accounts and advanced in accordance with plans agreed upon by the Bureau and the Indian beneficiaries.

Income from trust or restricted allotments is generally exempt from Federal and state taxes. This exemption extends to money derived from use of the land by the owners, as well as rental income from leasing.

In addition to land and income management services, the Bureau of

Indian Affairs provided reservation communities with a number of social services—most notably education, social welfare (general assistance), adult vocational training, job placement and law enforcement. The more affluent tribes sometimes fund and operate programs of their own in these areas, especially scholarship assistance to college students,<sup>6</sup> social welfare and law enforcement. They commonly pattern their programs after those of the Bureau, although decision making rests in tribal hands. In the case of programs funded by the Federal government, decision making has traditionally been entirely in the hands of Indian Bureau officials.

The Federal trusteeship over Indian lands was established originally to protect Indians from exploitation and alienation of their property. The tax exemption stems from the trusteeship, since courts have held that Indian trust property enjoys the same tax immunity as would property wholly owned or controlled by the Federal government.

If he chooses to do so, the holder of a trust or restricted title may petition to have all restrictions removed. In deciding whether to grant such petitions, the Indian Bureau must be satisfied that the petitioner is competent to manage the property prudently. However, there are at present no formal guidelines for making such a determination and as a result, some Indians with relatively little ability at land management have received full fee titles—often leading to the sale of land out of Indian ownership—whereas others with obviously greater ability continue to hold trust titles and enjoy tax immunity. This latter fact is a source of great annoyance to state and local officials, managers of heavily taxed industries in reservation states, Congressmen and some Federal administrators. When major reform of the system is discussed, such persons point to the tax exemption as the area in which reform should begin.<sup>7</sup>

Indians, on the other hand, resist change most strongly in this area, not only because of their desire to maintain the tax exemption and continue to be eligible for land management services, but because many—especially those in positions of tribal leadership—also recognize that trusteeship with all its paternalism has been an effective instrument for keeping land in Indian ownership. This is important because owning land is a means of maintaining a link with tribal history, it provides a measure of security and it is an important symbol of tribal identity.<sup>8</sup>

Many Indians apparently do favor a relaxation of Federal controls with respect to income.<sup>9</sup> Unlike land, money is not related to the maintenance of tribal identity, and the tax exemption which stems from the trust status of the land applies to the income it produces without regard to whether the income itself is held in trust. The present Indian Bureau guidelines with respect to the administration of income from trust land are vague, and local Bureau officials have latitude in deciding which Indians shall receive trust funds without strings and which shall not.

Inspired perhaps in part by the Indian Community Action Programs which have developed on many reservations since passage of the Economic Opportunity Act in 1964, some tribal leaders have in recent years appealed to the Bureau of Indian Affairs to restructure the system of providing community services on the reservations so as to permit them to administer such services themselves. A continuing Federal subsidy would, of course, be required since most Indian tribes lack the revenue to meet the costs of these services. Unlike the Office of Economic Opportunity, the Indian Bureau has no authority to make direct grants to tribes for such purposes, but the Solicitor for the Department of the Interior has held that the Bureau may enter into contracts with tribes providing for them to administer services to their members.

Responding to requests from particular tribes, the Indian Bureau had, by mid-1969, concluded contracts with some thirty groups by the terms of which the Indians were providing various kinds of law and order services for their own communities. At the Salt River Reservation in Arizona, the tribe had taken over complete responsibility for police protection and the maintenance of detention facilities and all BIA law enforcement personnel had been withdrawn.

In the field of social services (welfare) the Bureau had contracted with fourteen different Indian tribes for the administration of work assistance programs. Two Indian communities—Blackwater on the Gila River Reservation and Rough Rock on the Navajo Reservation—had contracted for the operation of local elementary schools.<sup>10</sup> At the Cherokee Reservation in North Carolina, BIA administrators continued to operate the elementary school, but maintenance and bus service were provided through contract.

In justifying appropriations requests before examiners of the Bureau of the Budget and members of the appropriations committees of Congress during the 1960's, the author encountered resistance to tribal service contracts from individuals who expressed concern that the Indians might not administer contract funds wisely and efficiently. Such persons maintained that so long as the Federal government was paying the bills, it should also run the programs. In the late winter of 1968, when the author was working with White House aides in preparing a major message on Indians for President Johnson to deliver to Congress, he found Bureau of the Budget personnel reluctant to approve a statement encouraging the formation of local Indian community school boards to administer education programs. At least twice while the document was in the drafting stage, Budget Bureau officials edited the message to read "Indian *advisory* school boards." Although the word *advisory* was deleted before the message was delivered, BIA officials later in the year found the examiners of the Bureau of the Budget unchanged in their opposition to tribal service contracts for education.<sup>11</sup>

Opposition has also emerged from professionals within the Indian

Bureau. Educators, social welfare workers and law enforcement personnel, for example, have in the author's presence expressed concern that a transfer of administrative responsibility might result in a lowering of service standards. Among other objections, they have pointed out that few Indians have been professionally trained for these responsibilities and, in the absence of assurances of tenure and adequate salary, few outside professionals could be attracted to work on the reservations.

Another potential barrier to tribal service contracts is the legal one. At present, the Indian Bureau relies upon an antiquated statute known as the "Buy Indian" Act for its authority to enter into such agreements. Passed into law more than half a century ago, this Act was intended to stimulate the purchase by the BIA of certain goods produced by Indians. The Solicitor of the Interior Department has construed the Act broadly enough to permit the purchase of services as well as goods. However, that opinion is open to challenge by Congress, the Bureau of the Budget or the courts, and should problems arise involving the misuse of funds under a service contract, a challenge could well be forthcoming.

A final barrier to the more rapid conversion from Federal to local administration is the attitude of the Indians themselves. In a personal communication to the author, the Superintendent of the Pima Agency in Arizona reported in 1969 that he had been trying without success for nearly a year to interest the Indians under his jurisdiction in assuming full responsibility for administering the law and order program on the reservation. Tribal leaders thus far have indicated they do not consider themselves ready to take on this additional burden.

Some Indians apparently fear that once the administrative change has been made, the Federal government may withdraw its financial support. Wendell Chino, Chairman of the Mescalero (New Mexico) Apaches and formerly President of the National Congress of American Indians, presented a statement of these views to President Nixon in December of 1968. According to him:

If Indian tribes with very little capital contract with the Bureau of Indian Affairs, this contracting could bankrupt them unless payment procedures by the Bureau are improved. Further, the failure of Congress to give continuity of appropriations for Indian contract programs and developments could leave Indian contractors with costly, but unusable equipment. Excessive contract supervision and red tape requirements should also be kept in check if Indian tribes are to be expected to contract successfully.<sup>12</sup>

### paternalism and the tribe

From the standpoint of an Indian tribe, Federal paternalism also has an impact upon the management of land and income. In addition, it intrudes into the area of tribal self-government.

With respect to land, tribal holdings are usually of the same character as individual allotments—that is, they are held in trust by the Federal government. Usually, title to the land is actually *in* the Federal government, rather than the tribe, although legislation or executive order requires that the land be administered *for the benefit* of the Indians. (The legal status of Indian tribal lands is exceedingly complicated and one would have to go well beyond the scope of this article to describe it thoroughly.)

Transactions involving tribal land, except for those relating to its use by the Indian owners, require the approval of the Commissioner of Indian Affairs. Such transactions do not include sales, since tribal trust land cannot be sold without the consent of Congress. The same range of land services provided the owners of individual lands is also available to tribes with group holdings.

In most instances tribal trust funds are required by law to be credited to the Indians and placed in special accounts of the U.S. Treasury where they earn simple interest at the rate of four per cent per year. In the past, this has been a favorable rate, but under present conditions it is not so regarded and, as a result, many tribes have asked to have their funds transferred from the Treasury into private investments producing a higher yield. When the Bureau of Indian Affairs arranges such investments, the funds retain their trust status and may not be withdrawn by the Indians without the consent of the Secretary of the Interior. Tribal funds in Treasury deposits are subject to appropriation by Congress—in spite of the fact that they belong to the Indians. Money derived from the successful presentation of lawsuits against the Federal government is also subject to appropriation, and cannot be advanced *after* its appropriation until a plan for its use has been adopted by the tribe and approved by both the Congress and the Interior Secretary.

When planning for the use of tribal funds in the custody of the U.S. Treasury, tribal officials prepare annual budgets which are subject to approval by the regional directors of the Indian Bureau. Guidelines for budget approval—like those for the administration of individual Indian money—are vague and, therefore, may be interpreted flexibly or rigidly, depending upon the persuasions of individual administrators.

In general, the money which tribes earn from their own use of reservation lands and resources—as, for example, in the case of the operation of tribal enterprises—is deposited in bank accounts controlled by the tribes themselves. Insofar as the annual budget of a tribe consists of those “local” funds, it does not require BIA approval.

Tribal earnings from trust resources, like those of individual Indian landowners, are exempt from taxation. This exemption extends both to funds earned by tribal enterprises and those derived from leases, royalties, mineral exploration permits, rights-of-way and so on.

One common source of conflict between tribal leaders and Federal

administrators is the requirement that certain actions of tribal governing bodies or tribal members acting together must be approved by the Bureau of Indian Affairs.<sup>13</sup> These actions include the adoption of constitutions under the Indian Reorganization Act of 1934, the amendment of such constitutions, certain kinds of tribal council resolutions, and tribal ordinances.

The Indian Reorganization Act specifies that the Secretary must call constitutional elections, as well as approve constitutions and constitutional amendments before they become effective. This sometimes poses a dilemma for him, in that he may be asked to call an election to vote on an amendment or constitution which he knows beforehand he cannot approve. In most instances petitioners or tribal leaders withdraw election requests when advised that approval will not be forthcoming, but there have been instances where this was not so. For example, in 1966, the Walker River Paiute Tribe of Nevada requested an election to amend its constitution so as to redefine membership requirements. The effect of the amendment would have been to disenfranchise many persons who had previously enjoyed the full benefits of tribal citizenship. Although Secretary Udall did not indicate how he would react to such an amendment, other officials of the Department of the Interior communicated their opposition to members of the Tribal Council who still insisted that an election be called. In the letter complying with their request, the Secretary pointed out that his decision to hold the election should not be regarded as an endorsement of the amendment.

The supporters of the amendment were successful in securing a favorable vote, but the Secretary disapproved the action.

Tribal council resolutions calling for the advancement of trust funds for any purpose are subject to Indian Bureau approval, but in the case of funds destined to pay outside tribal advisers, there is a double dose of paternalism. Present Federal law requires that contracts with such persons be approved by the Secretary of the Interior. Today, most of the larger and wealthier tribes engage attorneys on a retainer basis, paying out about a million dollars annually in fees and expenses.<sup>14</sup>

Other consultants are sometimes employed for such purposes as appraising land and resources, although these services are available through the Bureau of Indian Affairs. When tribes invest their own funds in the employment of such persons, they usually do so because of dissatisfaction with the quality of BIA services. Paradoxically, decisions made on the basis of advice from these consultants—even though their contracts have been approved by the Department of the Interior—may still be subject to review and approval by the Indian Bureau, since the existence of a contract does not absolve the Federal government from the responsibility for actions taken in accordance with a private consultant's advice. Nevertheless, armed with an opinion from its own

expert, a tribe is in a stronger position than otherwise to challenge a course of action proposed by the Bureau with which it does not agree.

There are other kinds of tribal resolutions which also require Federal approval. The authority calling for such approval is the governing document of the particular tribe. During the 1930's, when BIA personnel were assisting tribes with drafting their constitutions, they frequently insisted upon the insertion of clauses requiring Secretarial approval for specified actions as a check against improper actions by the tribal governing bodies.

The law and order ordinances of tribes are subject to review or approval also when organizational documents so prescribe. Furthermore, in the case of the few remaining tribes which have never promulgated law and order codes of their own and which are subject to regulations developed by the Department of the Interior, all ordinances recommended by the tribes require Secretarial approval.<sup>15</sup>

In spite of the fact that not all actions of tribal councils require Federal approval, and others require approval only because the constitutions of particular tribes so prescribe, the Secretary of the Interior does exercise authority over many of the most important actions taken by the governing bodies of a majority of the tribes.

Administrators of the Indian Bureau, in explaining why they have taken few steps to seek changes in the present system of Federal supervision over tribal councils and their actions, have in the past cited the fact that these governing bodies were often abusive of the civil rights of their members, who did not enjoy the legal remedies for such abuse afforded other American citizens by the Bill of Rights of the United States Constitution.<sup>16</sup> Subjecting certain of the actions of tribal councils to approval by the Secretary of the Interior has been looked upon as one means of controlling this situation. Now however, with the passage in 1968 of an Indian Civil Rights Act—which was in part drafted to overcome the above deficiency—the argument of BIA officials may no longer apply.<sup>17</sup>

While the formal pattern of Federal intervention in tribal affairs has changed little since the passage of the Indian Reorganization Act in 1934, the amount of paternalism has lessened somewhat in the past thirty-five years. Informed and aggressive tribal leaders have insisted upon emphasizing the partnership features of their relationship with the Federal government, rather than the guardianship features, and have demanded a greater share of decision-making authority within the existing framework. Basehart and Sasaki discuss this situation at some length in their study of the Jicarilla Apaches of New Mexico.<sup>18</sup> The fact remains, however, that the potential for paternalism remains high, and many BIA administrators continue to behave paternalistically toward the Indians with whom they are associated.



## programming a retreat from paternalism

Underlying the proposals which follow is the conviction that efforts to change present paternalistic patterns require Indian support if they are to succeed. During the period between 1961 and 1968, when the author was serving as Associate Commissioner of Indian Affairs, not one piece of major Indian legislation was enacted over the general objections of the Indian tribes. Among those bills which were defeated were various measures relating to a solution of the so-called "heirship problem"<sup>19</sup> and the Indian Resources Development Act of 1967 (popularly named "the Omnibus Bill"). Many members of Congress supported the former, and the latter had the support of the Johnson Administration. Indians opposed both and lobbied extensively and successfully against them.

Mindful of the need for Indian support to overcome paternalism and taking into account recent developments in Indian affairs and among other minority groups in our society, the author has formulated a set of propositions which have guided him in the development of specific proposals. These propositions are the following:

- (1) Indians will resist changes in the present system which threaten their personal and tribal identities *as Indians*. In such statements as that made at the 1961 American Indian Chicago Conference and in the annual resolutions of the National Congress of American Indians, leaders of the Indian tribes have stressed their desire to continue to be Indians in both the personal and the tribal sense.
- (2) Land is viewed as vital to retention of Indian identity, and Indians will resist any changes in the present system which pose threats to their ownership of land.<sup>20</sup>
- (3) The benefits of tax exemptions on trust land and income outweigh in the eyes of many Indians the paternalistic disadvantages of the present system. This is true not only because of the financial advantages involved, but because Indians view tax foreclosure as a threat to their ownership of land.
- (4) Income is not associated with Indian identity in the same way that land is, and Indians will more likely support a relaxation of present restrictions on income expenditure than on land use.
- (5) With the advantage of nearly thirty-five years of experience behind them, Indian groups generally are competent to assume more responsibility for administering their own lands and money than they presently have; however, they will resist efforts to thrust more responsibility upon them without their prior agreement.

Frequently cited by Indian leaders as a reason for opposing the Indian Resources Development Act of 1967 was their belief that they had not been properly consulted with respect to developing this legislative

proposal. Passage of the Act would have given tribes, at their own option, much greater control of their resources, both land and money.

- (6) Most Indians are capable of managing their personal incomes, although some—such as minors and those who are legally incompetent—will require continuing assistance in this regard, either through Federal supervision or through court appointed guardians.<sup>21</sup>
- (7) With the passage of the Indian Civil Rights Act of 1968, the likelihood of oppressive action by tribal governing bodies against individual members has lessened, and can no longer serve as a valid excuse for continuing Federal supervision over such matters as tribal resolutions, ordinances and constitutional amendments.
- (8) With private attorneys available, review of tribal actions by Federal administrators to determine their legality and constitutionality should no longer be necessary.
- (9) Indians may be expected to increase their demands for more control over Federal programs for the provision of local community services in line with the national trend in this regard.
- (10) In connection with transferring greater authority to individual Indians and tribes, action must also be taken to relieve Federal officials of responsibility for the outcome of decisions taken pursuant thereto.

Basehart and Sasaki have pointed out that as tribal leaders become more aggressive in their demands to share authority with the Federal government and to have complete authority over certain matters, the *effective* authority of an Indian Bureau Superintendent is apt to decrease, whereas at the same time, his responsibility does not diminish. He remains legally responsible for the performance of his trust obligations and is subject to legal suit as the accountable agent. They note that “if these two trends were to continue over time, a Superintendent would find himself in the wholly untenable position of lacking any effective authority or power while continuing to have responsibility.”<sup>22</sup>

The first barrier to overcome in reversing authority patterns is that of non-Indian attitudes with respect to land management and taxation. So long as many Congressmen, along with Federal budget specialists and administrators, insist upon commencing their attack on paternalism in these areas, rather than elsewhere, the prospect of Indian support is virtually nil. Conceding the importance of eventually coming to grips with these topics, the author suggests they be shelved temporarily in favor of other changes which will be viewed positively by the Indians and permit them management and decision-making experiences which can contribute to greater self-confidence in facing the day when the most basic paternalistic features of the reservation system can be altered.

Contracting for community services provides one of the most important areas in which to begin. Not only will it be possible to take advantage of a national trend toward greater local control of Federally funded services, but Indians themselves are now expressing increased interest in such programs. The question of whether to seek immediate strengthening of the Indian Bureau's authority for contracting (and risk losing even the authority it now has) is a tactical one, but the Bureau, if it is willing to view the opinion of the Department Solicitor in its most favorable light, can move immediately toward much more contracting than is presently underway. At the outset, standards may suffer since there are many obvious problems connected with the employment by tribes of competent administrators, but risk taking and transfer of responsibility are much more plausible in this area than, for example, with respect to land management.

A second major area in which the Indian Bureau can transfer both authority and responsibility is with respect to income management, individual as well as tribal. Those tribes which prefer to withdraw their income from the U.S. Treasury and place it in private bank accounts should be encouraged to do so and the law changed to permit such action and relieve the Secretary of the Interior of further responsibility. On the other hand, the author believes that until all tribes have agreed to make this change, the option to deposit tribal funds in the U.S. Treasury should remain open.

Often overlooked by those who insist upon Federal supervision of tribal funds are two facts: first, many tribes now have more than thirty years of experience in managing large sums of money; and second, income from tribal enterprises, some of which are of considerable size, goes into local bank accounts and is managed by the tribes *without* Federal supervision. It is inconsistent to regard tribes as capable of managing money derived from some sources, but not others.

Present procedures for supervising the expenditure of awards made to tribes by the Indian Claims Commission and the Court of Claims are among the most paternalistic in the whole realm of Indian administration. After a tribe has been granted such an award, the money is automatically placed in a Treasury account; but the Indians see little of it<sup>23</sup> until they have presented a plan for the use of the award, the plan has been approved by the Department of the Interior and Congress has enacted a special bill appropriating the money subject to the provisions of the plan. Several years may thus go by before a tribe is able to gain access to its own funds.

In 1968, while addressing the annual meeting of the National Congress of American Indians, the author was vigorously applauded for suggesting that claims awards be paid directly to tribes wherever possible. There is little reason to doubt that the Indians would lend their support to such a proposal.

For the most part, individual Indians today receive income from leases, rights-of-way and other uses of their land without any restrictions, although such income is frequently collected and disbursed by the Indian Bureau. Some Indians seem to prefer receiving their money from the BIA disbursing office, rather than directly from lessees. The author would not consider it wise to establish an "either-or" policy in this regard, but wherever leasing is not complicated by fractionated ownership of allotments,<sup>24</sup> the Bureau should as a matter of policy, offer the Indian owners the option of receiving payment directly. Some superintendents already do this routinely; others do not.

A third area in which the Bureau might move to change its paternalistic image is with respect to the approval of constitutions, constitutional amendments, tribal ordinances and tribal resolutions. In many cases, this would involve encouraging the tribes to eliminate from their constitutions those provisions which call for Bureau approval of tribal actions. It would also call for amendments to the Indian Reorganization Act. The likelihood of Indian support for such changes will be much greater if they are permitted some options in the matter.

Dobyns<sup>25</sup> has observed that Indian tribes, especially since the passage of the Indians Claims Commission Act of 1946, have acquired considerable sophistication in dealing with such outside consultants as attorneys. Those tribes which prefer to select their own advisors and determine the amount of their salaries or fees should be permitted to do so. However, amendments to present law which would make this possible should also provide for a plebiscite of the full membership before independent contracting authority is passed to tribal councils. The latter provision is desirable because at the present time many Indians view the involvement of the BIA as helpful in preventing domination by particular political factions and the consultants identified with them.

In addition to seeking legislation to permit tribes the option of contracting without Bureau supervision, the Commissioner of Indian Affairs should take the legal steps necessary to free himself from responsibility for decisions which tribes make upon the advice of these consultants. Otherwise, he will continue to feel the need for intervention in tribal decision making.

Relaxing paternalism in the area of land management is the knottiest problem of all, since this issue is mixed up with the emotionalism surrounding such questions as land ownership, Indian identity, tribal sovereignty and taxation. Nevertheless, without posing threats in these areas, greater decision making options can be provided both tribes and individual Indians.

In the case of the latter, the Bureau of Indian Affairs should encourage the development of opportunities for individual Indians, with the aid of outside advisors—whether BIA employees or private consultants—to negotiate and conclude leases and sales free of BIA super-

vision. Here, too, the Commissioner would need to seek legislation to absolve himself from the responsibility for decisions flowing from this exercise of Indian initiative.

The long and often heated debate over the Indian Resources Development Act of 1967 revealed that there are some tribes which *do* want more control of their land resources and which *are* willing to assume the full responsibility for their decisions, provided they are not forced to give up present tax exemptions. Rather than seeking *general* legislation defining procedures under which such transfer of authority and responsibility may take place, the Indian Bureau should encourage tribes to come forth with their own plans and seek individual legislation in this regard. A few have already done so, and others are contemplating such action.

In all instances where regulations and statutes are changed to permit greater authority and responsibility for Indians, the option of continuing under present arrangements should be provided. Furthermore, Indians should not be forced to make decisions about these matters within some arbitrary time frame such as that imposed by the Indian Reorganization Act of 1934. Not all are equally ready, or equally willing, to go it on their own.

The question of Indian tax immunity is admittedly a vital one which has received little attention in this article. However, Indians will resist the assumption of this responsibility more strongly than any other, and proposals for reversing authority patterns which are tied to this issue, or pointed toward it, will be rejected by them. Therefore, looking at the matter primarily from the standpoint of paternalism and its debilitating effects, we must begin where a start can be made with the expectation of Indian support, and leave the tax question for future consideration.

Most of the recent discussions concerning changes in Federal-Indian relationships have centered more on the issue of whether to transfer the Indian Bureau out of the Department of the Interior or shift some of its functions elsewhere, than on the much more basic question of reversing the paternalistic patterns of the reservation system. Underlying most of the proposals emerging from these discussions has been the feeling that the Bureau has failed to carry out its "service" mission in an efficient and effective manner. Without attempting to argue the question of efficiency, I find all such proposals deficient in that they place so little emphasis on *real* change in the critical area of Federal paternalism. Indians also sense this deficiency, as is evidenced by the following quotation which Stan Steiner attributes to a tribal leader in New Mexico:

"It's good to know your enemy. We know the Bureau. Anyway, it's weak now. On its last legs. If the tribes keep up the pressure to run things themselves, soon we would be able to take over the Bureau's services. But if they give it

over to one of those aggressive agencies we'll never be able to win self-determination from them. We will have to begin again. At the beginning. To try to convince a whole new carload of bureaucrats that what we want is to do these things ourselves."<sup>26</sup>

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## footnotes

1. The author, now a Professor of Anthropology at the University of Arizona, served in the Department of the Interior from 1961 through January 1969, first as Associate Commissioner of Indian Affairs and later as Administrative Assistant to the Secretary of the Interior. He presented the original of this article to the annual meeting of the Society for Applied Anthropology held in Mexico City in April 1969.

2. *Cherokee Nation v. Georgia*, 5 Pet. 1. For a comprehensive discussion of the similarities and differences between Indian "wardship" and the relationship of a guardian and a ward at common law, see *Federal Indian Law*, United States Government Printing Office (Washington, 1958), 557-566.

3. For examples of articles and longer works which touch on the damaging effects of paternalistic policies, see: Biloine W. Young, "The American Indian: Citizen in Captivity," *The Saturday Review* (December 11, 1965); Omer Stewart, "Questions Regarding American Indian Criminality," *Human Organization*, XXIII, No. 1 (Spring 1964); Ralph Nader, "Lo, the Poor Indian," *The New Republic* (March 30, 1968); Peter Farb, "The American Indian, A Portrait in Limbo," *The Saturday Review* (October 12, 1968); and Stan Steiner, *The New Indians* (New York, Evanston and London, 1968).

4. Leon's comments are printed in *Indian Education Hearings Before the Special Senate Subcommittee on Indian Education*, Part V (Washington, 1969), 2155.

5. See "Maladaptive Interaction Between Bureau of Indian Affairs Staff and Indian Clients," *American Journal of Orthopsychiatry*, XXV (July 1965), 727. Dr. Leon mentions only one personality disorder (passive-aggressive behavior) specifically related to Federal paternalism. We may presume there are others. In a paper entitled "Powerless Politics" delivered to the annual meeting of the American Anthropological Association in Detroit (November 1964), Robert Thomas implied the existence of special behavioral patterns arising in response to Federal controls over the actions of tribal governing bodies, with particular reference to the Pine Ridge Sioux of South Dakota. For a discussion of the effects of acculturation on Indian personality, see George D. and Louise S. Spindler, "American Indian Personality Types and Their Sociocultural Roots," *The Annals of the American Academy of Political and Social Science* (May 1957).

6. The Navajo Tribe spends more than \$400,000 per year in providing college scholarships to its members.

7. This issue has recently become one of considerable concern to the state of Arizona, where more than twenty-five per cent of the land area lies within Indian reservations, thus greatly reducing the base upon which real property taxes can be assessed.

8. For a discussion of the importance of a reservation land base to Indian identity, see Nancy O. Lurie, "What the Red Man Wants in the Land That Was His," *The Saturday Review* (October 4, 1969), 40.

9. While serving in Washington as Associate Commissioner of Indian Affairs, the author held many discussions with Indians who were disgruntled about continuing Federal controls over the expenditures of Indian trust funds, both individual and tribal.

10. For a description of the Rough Rock experiment, see Estelle Fuchs, "Innovation at Rough Rock," *The Saturday Review* (September 16, 1967).

11. President Johnson's message was delivered to Congress on March 6, 1968. Although criticized by Ralph Nader (see footnote 3 above), it was hailed in other quarters as the most comprehensive and significant statement on Indian affairs made by any President in recent history. For a favorable review of the message, see William H. Kelly, "Indian Adjustment and the History of Indian Affairs," in *Arizona Law Review*, X, No. 3 (Winter 1968), 576-577.

12. See "Indian Views on Administration of Indian Affairs During the Nixon Administration" by Wendell Chino (mimeographed for distribution December 13, 1968), 5.

13. Ernest L. Schusky offers one of the most comprehensive general statements on tribal government and Federal paternalism in his monograph *The Right to be Indian* (Institute of Indian Studies, State University of South Dakota and Board of National Missions United Presbyterian Church, 1965). For other works on this topic, see Robert Thomas (footnote 5); James Clifton, "The Southern Ute Tribe as a Fixed Membership Group," *Human Organization*, XXIV, No. 4 (Winter 1965), and "Factional Conflict and the Indian Community: The

Prairie Potawatomic Case," *The American Indian Today*, edited by Stuart Levine and Nancy O. Lurie (DeLand, Florida, 1968); Mary Shephardson, *Navajo Ways in Government; a Study in Political Process* (American Anthropological Association Memoir 96, 1963); Aubrey Williams, "The Function of the Chapter House System in Contemporary Navajo Political Structure" (unpublished dissertation, University of Arizona, 1964); and Lawrence C. Kelly, *The Navajo Indians and Federal Indian Policy* (Tucson, 1968).

14. This amount does not include the sums paid to attorneys and other advisors for the prosecution of lawsuits under the Indian Claims Commission Act of 1946. For an excellent discussion of the role of claims and other Indian tribal attorneys, see Henry Dobyns, "Therapeutic Experience of Responsible Democracy," in *The American Indian Today*, edited by Stuart Levine and Nancy O. Lurie.

15. The so-called "Courts of Indian Offenses" established by the Secretary of the Interior date from an earlier period before tribes had set up courts of their own. Only a few such courts remain.

16. For a discussion of the limitations on tribal government imposed by the United States Constitution, see *Federal Indian Law*, United States Government Printing Office, 396-402.

17. The Act of April 11, 1968 (Public Law 90-284) in Title II imposes upon actions of tribal governments restrictions similar to those imposed upon Federal, state and local governments by the Constitution of the United States, particularly the Bill of Rights. It also makes available a writ of habeas corpus from an appropriate Federal court to test the legality of the detention of an individual in violation of his defined rights.

18. See Harry Basehart and Tom Sasaki, "Changing Political Organization in the Jicarilla Apache Reservation Community," *Human Organization*, XXIV, No. 4 (Winter 1965), 285.

19. In many cases Indian allotments are today owned collectively by so many heirs of the original allottee that their economic use has greatly diminished.

20. Some tribes for all practical purposes passed out of existence through loss of their landbase as a result of the Dawes Act of 1887, which provided for allotment of tribal lands and the sale of those which remained after all members had been allotted.

21. The experience of the Federal government with guardians appointed by state courts has not been wholly successful. In 1969 the Secretary of the Interior was obliged to reassume supervision over the affairs of members of the Agua Caliente Tribe of Palm Springs, California, because of the questionable activities of individuals appointed by the state courts to supervise the estates of these Indians.

22. Basehart and Sasaki, "Changing Political Organization," 285.

23. Under present law, the Secretary of the Interior may advance money from a claims award to a tribe for the purpose of preparing a plan for the use of the remainder.

24. When the ownership of allotted lands is highly fractionated, the problem of determining the amounts due each owner and sending separate checks to each is sometimes so great that prospective lessees are unwilling to undertake it unless the amount of the rental is reduced. In these cases, the Indian Bureau usually assumes the accounting responsibility and disburses the checks. The land records problem has been reduced in some areas by the use of the computer, but the Indian Bureau has not been able to obtain the necessary funds to computerize all its land records. At the Salt River Reservation in Arizona, the tribe itself has assumed the latter responsibility and has contracted with a private accounting firm. Although the individual land owners must pay a small amount for this service, it does eliminate the need for it to be performed by either the Indian Bureau or the lessees.

25. Dobyns, "Therapeutic Experience."

26. See Stan Steiner, *The New Indians* (New York, Evanston and London, 1968), 263.