

May 18, 1958

OUR AMERICAN INDIAN BROTHERS

Felix S. Cohen, now deceased, was an authority on laws dealing with Indian affairs and wrote in the February, 1953 Yale Law Review an article attacking the administration of Dillon S. Myer, Commissioner of Indian Affairs, 1950-1953. My Myer had previously headed the organization which supervised the relocation of Japanese-Americans. While he was Commissioner of Indian Affairs, Indian freedom began to be restricted, Indian property was increasingly controlled by the Bureau and this agency became more and more an instrument of power.

Said Mr. Cohen, "Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere, and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall of our democratic faith."

Another attorney, during this period, addressed himself to a local situation when he was invited to speak to a group of Protestant church women in Phoenix, Arizona. He decided to talk about his clients, the Pima Indians, and his talk went something like this.

"If you want to obey the biblical injunction to love your neighbor the easy way is to help an orphan through school or collect clothing for people far away. These are worthy activities and give a real sense of satisfaction. But if you are really serious about loving your neighbor you should get into politics and do what you can to see that Arizona Indians get justice. There are some Congressmen from this area who have to vote on Indian affairs and they are sympathetic with the Indians. But to stay in Congress they need votes, most of the votes come from white people, in this arid State whites and Indians compete for water, the Pimas have prior rights to water, but the whites get most of the water. So you wont go far in this before you meet opposi-

tion from your best friends. You can hold a cake-sale and send an Indian girl to school or you can help the Indian child's father get justice, get the water to which he has good claim. Then the father can earn ^{good} a living and educate his children. Indians prefer justice to charity, just as we do." *Can there be Christian love without justice?*

There was no report of the effect of this talk. However, these stark facts stand out.

Ira Hayes - fight against alcoholism

Pima ancestors among first to build irrigation dams in southwest over 1000 years ago -

First rights to water from Gila River for irrigation guaranteed to Pima Indians by Spain, by Mexico, by two acts of the Congress of the U.S.

1924 Congress authorized Department of Interior to build Coolidge dam "for the purpose first of providing water for the irrigation of land allotted to the Pima Indians on the Gila River Reservation, Arizona, now without an adequate supply of water; and second for the irrigation of such other lands in public or private ownership as in the opinion of said secretary (Interior) can be served by water, impounded by said dam, without diminishing the supply necessary for said Indian lands."

loophole - power to Sec. of Interior

went to court Pima lawyer not recognized ... Dept. passed Gila River decree, reversing the priority in water rights.

Pimas applied for permission to dig irrigation wells - permission delayed - finally drilled four wells using own funds - ordered to shut down - 1954. 1956 still not decided by lawyer that Indian wells on Indian reservations are legal -

144 non-Indian wells around reservation pouring water.

② Pressure drove 3 Indians westward.

TREATMENT OF CHEROKEES

In Andrew Jackson "I have long viewed treaties with Indians as an absurdity not to be reconciled to the principles of our government."

At inauguration he said to Indians - "It will be my sincere and constant desire to observe toward the Indian tribes within pur limits a just and liberal policy, and to give that humane and considered attention to their rights and wants which is consistent with the habits of our government and the feelings of our people."

then put through Congress the Indian Removal Act -

Gen. Winfield Scott moved in with 7000 troops - Indians seized, put in camps - livestock, tools and goods stolen - homes burned - march west started in mid-winter, 14,000 left, 4,000 died on the way."

Pres. Van Buren reported to Congress, "The-

"The measures authorized by Congress at its last session have had the happiest effects. The Cherokees have emigrated without any apparent reluctance." Then arranged that the cost of migration be charged against funds credited to tribe in treasury.

(1) 1936, Metro. Water District, drilling a tunnel thru San Jacinto mtn., interrupted an underground water flow which fed wells on Soboba Reservation.

Allotment Act of February 8, 1887 authorized the President to subdivide any Indian reservation into individual allotments, none over 160 acres, to be assigned to individual Indians. Such tracts could not be sold for 25 years, and in event of death, had to be divided equally among all the heirs.

The Indians' answer was a petition to Congress from the Five Civilized Tribes (Cherokees, Creeks, Choctaws, Chickasaws, Seminoles)

"Our people have not asked for or authorized this (allotment), for the reason that they believe it could do no good and would only result in mischief in our present condition... At least 2/3 of the Indian country is suitable only for grazing purposes. No man can afford to live by stock-raising and herding who is restricted to 160 or even 320 acres, especially on lands away from water... The changed individual title would throw the whole of our domain in a few years into the hands of a few persons. In your treaties with us you have agreed that this shall not be done without our consent; we have not asked for it, and we call on you not to violate your pledge with us."

Pledge was violated.

By 1933, when John Collier became Commissioner, the Indians had lost 90,000,000 acres.

Before Collier became Commissioner there had been a change for the better. In 1924 Indians were given the right to vote. In 1926 the Brookings Institution was asked to survey the economic and social conditions of the Indians. This survey resulted in the Meriam report issued in 1928. Under President Hoover two Quakers were appointed as commissioner and assistant commissioner of Indian affairs - They re-organized the system of education on the reservations and got increased appropriation from Congress.

Then in 1934, under Collier, came the Indian Reorganization Act which opened the way for continued progress. Quote Fey, Indian Rights and American Justice, "Congress gave the Indians the right to establish corporations, and two-thirds of the tribes took advantage of the opportunity. (Some of the recent termination bills abolished these corporations but gave the Indians the right to set up others.) Indian tribal councils were given greater authority. They could veto disposal of Indian property by the Indian Bureau and had access to a \$10-million credit fund for developing tribal resources. Indians got preference for Indian Bureau jobs. But the Indian Reorganization act was only a beginning.

In 1935 Congress set up an agency to market Indian handicrafts. Indians began to use the right to vote, and the last states to withhold the right - New Mexico and Arizona - yielded it in 1948. In 1938 the Supreme Court recognized that minerals and timber on Indian reservations belong to the Indian and not to the government. In 1940 Congress refunded the taxes Indians had been forced to pay when thousands of tax-exempt estates were terminated without Indian consent. (What will the courts say concerning the present termination laws if Indians declare they were enacted without their consent, causing them to lose their land and resources?) In 1941 the Supreme Court upheld the right of Indians to lands ~~ex-acts-of~~ Congress--

they had long occupied, even without formal treaties or acts of Congress. During the war thousands of young Indians served in the armed forces. In 1946 an Indian Claims Commission was set up by Congress to help Indians collect the debts they said the government owed them. In 1948 the Supreme Court helped the Indian as well as other minority races when it ruled that racially restrictive covenants are "un-enforceable." By 1949 no state claimed the right to discriminate against the Indian in old age assistance, aid to the blind, aid to dependent children. Two years later the Indian got access to farm housing loans.

Note what these actions accomplished. An atmosphere of hope and optimism spread over the Indian reservations. For the first time in 80 years Indian holdings of land increased - from 48 to 52 million acres. Real Indian income doubled. The death rate was cut in half. The condition of the Indian generally improved."

Reference has been made to the change in atmosphere which occurred under Commissioner Myer. In the hurried concluding days of the 83rd Congress, with little or no advance notice and with almost no discussion, House Concurrent Resolution 108 and Public Law 280 were passed. H C L 108 declared "it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the U. S. subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the U. S., and to end their status as wards of the U. S..."

Public Law 280 authorizes any state, at its own discretion, to substitute its own civil and criminal code and enforcement machinery for the tribal codes and customs, and names five states in which such action is authorized.

In neither case was there provision to gain consent of the Indians. Pres. Eisenhower, when he signed the bill making P L 280 law urged that

"at the earliest possible date it be amended to require consultation with the tribes". Whereupon the New York Times editorialized, "in the absence of an emergency, it is usually wiser and safer to withhold approval of a bill until its dangerous provisions are eliminated rather than to grant approval in the hope that at some time in the future they will be eliminated." Two years later the Sec'y. of the Interior reported, "Amendments were proposed in Congress which would require Indian consent before the extension of State jurisdiction to any Indian reservation. The Department, however, recommended an amendment which would require consultation rather than consent. Neither type of amendment was enacted."

It was news when Ira Hayes, the Pima Indian who raised the American flag at Iwo Jima, died an alcoholic and was given a hero's burial in Arlington National Cemetery. It was news more recently when the Cherokees of N. Carolina chased the KKK out of their community. But for an Indian to appear on a minor charge before a state court in New Mexico would not be news. And when, as Mrs. Van de Mark reported, one considers the "slightly lessened probability of an Indian being acquitted, the slightly heavier sentence a convicted Indian draws, and the extra grain of credence a white jury gives to a white witness," it is not too difficult to understand why there is Indian resistance to withdrawal of federal protection.

Resolution 108 and the laws which followed in its wake are the basis for the government's program of termination. Part of the process is called relocation, a name given to the educational and financial aid, part of which latter is a one way fare, to Indian individuals or families who volunteer or are persuaded to leave the reservation and go to Chicago, St. Louis, Denver or Los Angeles to enter the main stream of urban, free enterprise competition. It is understandable that young men who served in the armed forces or those who worked

at city jobs during the war, or those who have attended college off the reservations, these who have become accustomed to the ways of the white world might well desire to become integrated into the system. Many have done so and have succeeded well and many more will follow. But more than two-thirds of over 400,000 Indians live on reservations and have their own culture and religion which they do not want to surrender.

Why such haste to break up the reservations and relocate the Indian? When Mr. Fey was doing research for his articles in the Christian Century he was unable to determine the exact origin of ~~HEE~~ HCR 108. Not only he, but a number of other keen observers and friends of the Indians are fearful that there are ^{at work powerful} pressures from elements of the majority population in the form of hunger for profits. Oil and uranium lie under the reservations. Valuable timber is on Indian land in Wisconsin and Oregon. There is the constant demand for water in the South West and for land for real estate development here in California.

Here we enter the realm of controversy. Dorothy Van de Mark wrote in Harper's March 1956 "The Raid on the Reservations". "A new program to help the Indian turns out to be just another slick scheme to hand their last refuge over to the land grabbers... The Bureau of Indian Affairs Employment and Relocation plan, designed to give federal aid to Indians who want to leave their reservations to find jobs on the outside is in reality a plan to induce as many Indians as possible to leave. The follow up is persuasion not to return. It is a cover for legislation to separate the Indians from their lands and resources. The Indians are unprepared, the public is ignorant, and the administration carries on with 'emancipation' double talk. The real Indian problems are poverty, ill health, poor education and economic stagnation."

Whether or not one agrees, the fact is that such voices speaking up served to arouse the conscience of many citizens and some officials. The National Congress of American Indians, composed of some 45 member tribes, sent to the national Congress a nine point program, a plan of positive action to alleviate the present poverty, lack of education and training, and the present ill health of the country's Indians. They asked for a master plan for each reservation, based on complete surveys of the total resources. Five of the points make specific reference to the lands of the Indians in a way to indicate they wish to retain possession of their reservations and develop them.

A non-Indian organization working in the cause of justice to the Indian is the Association on American Indian Affairs, headed by Oliver LaFarge. It carries on educational work through regularly published bulletins and occasional reports. The basic position of this organization is that Indian progress must be made through Indian integrity; and that the termination and relocation programs are justifiable only when both the communities that receive them and the Indians are ready for each other.

When is that?

An Indian tribe is ready for termination of its status as such when its members have reached a point of competence at which they find that they will do better on their own, with full freedom to handle or dispose of their assets, than under established protections and restrictions.

Termination requires that the county and state within which the members of the tribe are to live shall have attained such a state of moral advancement that Indians can be sure they will receive equal treatment in all matters, from law enforcement to service in restaurants.

These conditions have apparently been met in a few instances. The Wyandottes, the Peorias and the Ottawas were terminated at their own request by the 84th Congress.

In the case of the Seminoles of Florida and one or two other tribes, vigorous protests have halted termination proceedings.

The two most important termination bills were passed against the Klamath tribe of Oregon and Menominees of Wisconsin, both of which own valuable and extensive timber acreage. These bills lacked adequate provisions for taking care of tribal property, required a rapid ending of tribal organization and set a time limit of five years for carrying out a most complex piece of business. While both tribes had been con-

sulted as to some form of termination they had no opportunity to consider the bills actually enacted. Both tribes were told that if they did not accept ^{the terms of the bills} ~~in-principle~~ they could not share in a distribution of money. As a result all are unhappy, the two states as well as the two tribes.

The Klamath people have been in a particularly bad state. *(For Ever since the law was enacted)* they have been desperately going over the lists to determine membership in the tribe. They have run up against the problem of Who is an Indian? Is it a person with 1/8 Indian blood? 1/16? There has never been a legal definition, so they have ^{had} a rather bad time of deciding the matter. They excluded 80 persons and fixed the membership at 2,070. Since the assets of the tribe are estimated to be worth from \$60 million to \$100 million, and since the tribal roll determines who are to get individual shares worth from \$25,000 to \$45,000, it is not surprising that many people came from distant cities, pleading for a place on the roll when they had no characteristics to identify them as Indian.

The Klamath reservation has such a valuable stand of ponderosa pine, is so important to southern Oregon and northern California as a water-head and recreation center, and its marshlands of over 15,000 acres such a key way station for migratory birds, that grave concern has been expressed over its destruction, *which might well prove disastrous.*

In fact the Secretary of the Interior himself, Fred A. Seaton, has asked Congress to amend the act of 1954 in such a way as to provide for preserving the forest under sustained yield management and to have the marshlands purchased and operated as a national wild-life refuge.

Happily, Senator James E. Murray has introduced in the 85th Congress Senate Concurrent Resolution #3, from which I quote.

Booklet

You ask

What can I do

Visit and support the Indian Center of Los Angeles at 2920 Beverly Blvd. where the 7th Annual Exhibition of Indian Arts and crafts will run to June 15th.

Write to Washington

Quote from the Washington Newsletter of the Friends Committee on National Legislation: "The American public must take a vigorous position on Indian affairs if there is to be any change in Indian policy. Ask President Eisenhower, your Senators and Representative to give the Public Health Service enough money to carry out its long-range Indian health programs. Ask the President and members of Congress to urge the Indian Bureau to stop terminating the reservation system and to concentrate instead upon providing Indians with adequate educational and economic opportunities and the chance to choose their own way of life. Ask your Congressmen to support the new Area Redevelopment Bill, S.3683, which could open the way for truly comprehensive development on Indian reservations."

I must confess to a bias in the Indians' favor. I am among those who have a strong suspicion that the new order proposed by the 83rd Congress was not exactly as it professed, that in the name of justice injustice was being done, and a form of freedom not too genuine offered. As a teenager I read with delight James Fennimore Cooper's The Last of the Mohicans and tramped over the hills and rolling meadows of Western Pennsylvania, imagining myself not an Indian killer, but a companion of such brave and noble men as Cooper's hero, Chingagook.

I believe that every American citizen of these United States should feel the challenge of the situation as it is today; there could be no better time for us than now to be brotherly to our American Indian Brothers.