

CHAPTER FIVE
Federal Legislation and Policy





FEDERAL LEGISLATION AND POLICY



There have been numerous types of legislation passed which affect the Chippewa of Minnesota and other Indian tribes. Usually, the type of legislation ratified portrays a clear picture of the Federal governments policy toward Indians during a certain time frame in Indian History. This policy is constantly changing in favor of and back again, like a pendulum, to a policy detrimental to Indians and their existence.

During the treaty signing period, legislative action could be found in almost all departments of the Federal government as appropriations for the Indian department. This legislative activity allowed funds for carrying out various activities guaranteed to Indians in treaty-making, or meeting obligations of the Federal government. Students should realize that appropriations Acts are very difficult and complicated documents because they are last minute pressure points in which various items are cut or not included. It can be said that appropriations Acts of Congress have been made vehicles of **covert legislation**. An example of this is briefly brought to light by Commissioner Collier below.

The appropriation sub committees, especially in the House of Representatives, are all but autonomous, which nullify and reverse the policies established by the Congress. Examples of this anomaly of the United States Congressional system are as follows as quoted by Commissioner Collier:

“Specifically, in the Indian field, land acquisition for Indians, authorized by Congress, is blocked through the appropriation bills; the situation is similar with respect to the expansion of the Indian co-operative credit systems. Congress legislated that Indian tribes and corporations should be given technical advice and assistance in their operations, and then the appropriation Act nullified the legislation. In general, the appropriation Acts have handicapped the Indian Service and the Indians in the realization of every democratic, libertarian policy that Congress has established as the law of the land.”¹

When studying Indian legislation students should first understand a little of the history in Indian policy because Indian policy by the Federal government has not always been consistent.

During the century from the 1860's to the 1960's there were two peaks in congressional action based on the view that the special governmental relationship should be terminated. There were also two peaks based on the opposing view that it should continue. Reaction against the effects of the Dawes Act of 1889 (see chapter three) led to the first important legislation favoring the continuing special federal relationship. In 1910 the Congress recognized the chaos in Indian Affairs which had been brought about by the allotment system or the Dawes Act. This Act was totally contrary to the principles of the Allotment Act, that citizenship for Indians should be contingent on individual ownership of land; being born in the United States was now sufficient and conformity to anglo customs was irrelevant.

The reversal of National Indian Policy came to the fore front in the Indian Reorganization Act of 1934. This not only prohibited further individual allotment and provided for acquisition of more tribal land, but also authorized the right of Indian to local self-government. It sought to correct the destructive effects on Indian community life and the blind spots in federal policy.

Within a decade a reaction set in against the newly defined relationship between Indian communities and the United States government. The numbers of both houses of Congress by 1944 had reached about the same basic conclusions.

¹ John Collier, *Indians of the Americas*, 1947.

1. They did not want the special status for Indians to be unduly prolonged. They apparently felt the Bureau under Collier had been "dragging its feet." They seemed to wonder why more of the tribes hadn't advanced further with self-government and managing their own business affairs as their constitutions and charters would allow.
2. They were concerned with the cost of administering Indian affairs under the Indian Reorganization Act and the possibility that they might be building up in the Bureau an expensive machine that would tend to perpetuate itself indefinitely. Slogans such as "Set the Indian Free" began to be heard in Congress and in popular writings. In 1946 the Congress created the Indian Claims Commission which was designed to provide a means for eliminating once and for all the claims of Indians against the United States for losses of land. If carried through, it was felt, this would finally fulfill a basic obligation of the government to the Indians. By 1953 the termination of special administrative relationships and the severance of governmental supervision in Indian affairs was a priority in Congressional considerations.

The result was the affirmation of a policy of withdrawal by the federal government.

This was expressed in House concurrent resolution 108 which stated that Indians should be made subject to the same laws as other citizens of the United States as rapidly as possible. It also declared that nine specifically designated groups of Indians and their individual members should be "freed" at the earliest possible time from federal supervision and control and called on the Secretary of Interior to submit recommendations for bringing this about. The same Congress in 1953 passed a Public Law 280 which authorizes states to assume responsibility for law and order in Indian areas. None of these two congressional acts mentioned any need for securing Indian consent. The mood of Congress was like that of the 1890's. A new policy was being authorized which was directly opposed to that which had guided the legislation of the Indian Reorganization Act. Public Law 280 was hailed as one of the major developments contributing to the reduction of federal responsibility in Indian affairs. Aside from a few other states, this law brought Indian lands in Minnesota (except for the Red Lake Reservation) under the criminal and civil jurisdiction of the state and largely relieved the Bureau of further law enforcement duties. While this unique pattern has worked fairly well in some areas, in other places it has led to a great many complicated legal problems. The jurisdiction given to the state of Minnesota was subject to a number of important limitations designed to preserve the trust protections which now surrounds Indian property such as maintaining for the Indians treaty rights they have such as hunting and fishing. Also, federal trust lands were tax exempt lands meaning that states could not enforce taxation schemes. Legal problems have surfaced in Minnesota regarding these treaty rights because the state unilaterally assumed jurisdiction over these rights. These cases have been settled in the Minnesota Supreme Court in favor of the Indians as will be discussed later.

Indians experienced another trend again in Federal Indian policy from termination to self-determination during the early 1960's. In his special message on "The Forgotten American" delivered to Congress March 6, 1968, President Lyndon B. Johnson called for an end to discussion of tribal termination and proposed a "new goal" for the governments Indian programs:

"Our goal must be" 

- a standard of living for the Indian equal to that of the country as a whole.

- freedom of choice: An opportunity to remain in their homesteads, if they choose, without surrendering their dignity; an opportunity to move to the towns and cities of America, if they choose, equipped with the skills to live with equality and dignity.

- full participation in the life of modern America, with a full share of economic opportunity and social justice.

"I propose, in short, a policy of maximum choice for the American Indian: a policy expressed in programs of self-help, self-development, self-determination."²

In his special message to Congress 1970, President Richard Nixon stated, "the time has come to break decisively with the past and to create conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions."³

This along with specific proposals for legislation, affirmed the historic relationship's between the Federal government and Indian tribes. This same message also proposed that Indian communities be allowed to choose to take over control and operation of federally funded Indian programs.

The paternalistic attitude of the BIA was to be done away with and an "Indianization" of Indian affairs was to occur that would give Indian people the responsibility for their own lives. This policy was another upward swing of the pendulum similar to that of the 1934 period, that would result in, besides other responsibilities, the contracting of services and functions formerly provided through the Bureau of Indian Affairs to Indian tribes themselves. A major piece of legislation reflecting this policy is the Indian Self-Determination and Education Assistance Act of 1975 discussed in this unit.

As of this writing, "the U.S. Congress appears to be at the apex at which the downward swing of the pendulum is back to an era of anti-Indian policy. That downward swing is being referred to in National Indian Circles as the "White Backlash."

The backlash manifests itself in the form of growing anti-tribal organizations in various states that comprise the Interstate Congress for Equal Rights and Responsibilities. Resentment by non-Indian people on or near reservations to what they feel is unlimited funds going to Indian reservations from the Federal government; major Indian victories in land claims, hunting and fishing rights, taxation powers, are all major issues being won in court and are primary contributing factors to this backlash.⁴

Several peices of legislation have been introduced by various congressmen and representatives that are directed toward the abrogation of all Indian treaties, termination of all tribes and dissolution of all hunting and fishing rights of Indian tribes. These are just a few of the major pieces of legislation being introduced that are detrimental to Indian tribes. There remains many more that, if passed, would severely prohibit tribal self-government as well as to insult the integrity of Congress itself. Students should obtain copies of all the anti-Indian legislation that is being proposed for classroom discussion. What can be done to counteract this "White Backlash?"

² Special message on "The Forgotten American" by President Johnson in the Senate on March 6, 1968.

³ Special message of the President of the U.S. Richard M. Nixon to the Congress, July 8, 1970.

⁴ A report on Indian Legislation, Charles E. Trimble, Executive Director, NCAI, 1977.



The following pages will touch briefly upon the various Congressional Acts which altered tribal life in Minnesota one way or another. Those acts which meet the interests of most students should be selected for in-depth research and discussion purposes.

Students and teachers may refer to **A History of Indian Policy**, by S. Lyman Tyler, for research into important aspects that surround any specific piece of legislation covered in this unit as well as to research government policy as it relates to Indian affairs. **Documents of United States Indian Policy**, Francis Paul Prucha, University of Nebraska Press, contains copies of several pieces of legislation and most of those covered in this unit. In addition, a listing of several books and publications is attached to the Teachers Guide. These references are very good and should be utilized for any research purpose.

The following legislation is covered briefly in this unit on how they affect the Chippewa of Minnesota:

1. The Nelson Act of 1889
2. The Clapp Act of 1906
3. The Snyder Act of 1921
4. The Indian Citizenship Act of 1924
5. The Johnson O'Malley Act of 1934
6. The Indian Reorganization Act of 1934
7. House Concurrent Resolution 108
8. Public Law 280
9. Public Law 93-638



The Nelson Act of 1889



The Nelson Act was yet another attempt of the United States Government to strip the Minnesota Chippewas of their land and to move them onto reservations, where they could attain the civilized life of farmers. The Congress, at this time, felt the land owned by the Indians was of little or no use to them. Whereas, the thrifty, energetic white settlers needed the land and timber.

In 1886 a bill was introduced to Congress calling for the relief and civilization of all the Chippewas of Minnesota. This would later become known as **The Nelson Act**. The main provisions of this bill included: (1) The Chippewa of Minnesota were to cede to the United States all the reservations in the state except Red Lake and White Earth. (2) All the Chippewas of Minnesota except the Red Lake bands were to be moved onto the White Earth Reservation and given allotments of land. The lands remaining on both reservations after allotments were made were to be ceded. (3) No land sales or cessions were to be made without the consent of two thirds of all male adults of the reservation, it then had to be approved by the president. The bill also called for a census to be taken of all the bands. (4) To obtain cessions of land from the Indians, to take the census and vote, to make allotments and payments, and to supervise the removal of the Indians, the Secretary of the Interior was directed to appoint three commissioners, one of them to be a citizen of Minnesota. (5) The lands ceded were to be surveyed and classified as pine and agricultural lands. The agricultural land was to be sold at one dollar an acre. The pine lands were to be appraised, and not to be sold for under three dollars an acre. It also provided for the sale of all acquired pine lands in forty acre lots at public auction to the highest bidder for cash; not more than one-tenth of the pine lands should be offered for sale in any year. (6) All monies received from the sales of lands on both kinds, after deductions were made for the cost of the census, of the cessions, of the removals and allotments, and of the surveys and appraisals, were to be deposited to the credit of the

Chippewa of Minnesota in the Treasury of the United States, to remain there as a permanent fund for fifty years and to draw interest at three per cent annually. One half of the interest was to be paid in equal shares in cash to heads of families and orphan minors; one fourth was to be paid in equal shares to all other classes of Indians; the remaining fourth was to be used for establishing and maintaining Indian schools. At the end of the term the principle sum was to be divided equally among "all of the said Chippewa Indians and their issue then living."⁵

The Bill passed through the House on March 8, 1888, with one amendment. It provided that individual Indians need not move to White Earth, but might remain on their old reservations and take up allotments thereon. The bill then went to the Senate Committee on Indian Affairs, whose main concern was the deposition of the pine lands. The committee added the provision that pine lands be sold not at three dollars an acre, but at three dollars per thousand feet of lumber. Also that agricultural lands be sold for a dollar and a quarter per acre instead of a dollar. On January 4, 1889, the "Nelson Bill" was approved by the president and became a law.



These railway cars full of timber are a good example of the enormous amount of timber resources logged from the White Earth Reservation during the early 1900's.

The United States Chippewa Commission was made responsible for seeing that all provisions of the Act were carried out. The commission convinced the Indians to give up timber lands, by leading them to believe that the land would be a source of endless trouble because of thievery and fires, and eventually they would get nothing for it. By selling the land they would be relieved of the troubles and it would provide funds to assist them in farming. Another task of the commission was the removal of the Indians to White Earth. The Indians had the choice of staying on their old land, but the commission decided to pressure as many as possible into moving. On June 7, 1894, out of 4,000 subject to removal, only 775 Indians had moved from their old reservations to White Earth. The commission began making allotments on White Earth on December 9, 1891, but the Indians refused to accept them, because the promised one hundred and sixty acres was cut to eighty acres by a Dawes Act amendment. Later many individuals consented, probably advised by the commission, to take the eighty acre allotments on the condition that the additional eighties be patented to them.

⁵ William Watts Folwell, *A History of Minnesota*, p. 220-222

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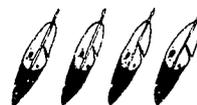
On April 24, 1896, after the ceded pine land had been surveyed and appraised by a corps of examiners, 115,342.78 acres, containing 225,977,000 feet of pine, on the Red Lake cession was put up for sale. 65,038.33 acres were sold. There remained 50,304.45 acres unsold and subject to private entry. On August 24, 1896, David R. Francis replaced Hode Smith as Secretary of Interior. Francis found such an accumulation of charges against the pine land examiners he discharged all of them. Francis found gross miscalculations of timber lands, for example, eighty five quarter sections reported as containing 9,635,000 feet actually contained 17,271,000 feet, one section reported containing 11,000 when actually it contained 295,000 feet. The cost of the examinations to date had been \$151,290, whereas they should have cost not more than \$52,000. As a result, all the unsold pine lands were temporarily withdrawn from sale. Another survey was taken and some twenty one thousand acres more was sold at the price of \$173,000.

In 1902, the Indian Affairs Committee brought the Nelson Act Bill before the House. In reporting the bill, the Committee stated that the Act of 1889, was an unsatisfactory plan with great frauds in estimating timber. Nearly three million acres of timber has been ceded; one hundred and sixty thousand acres of timber had been sold and five hundred thousand acres of land had been homesteaded.

Since the Bureau of Indian Affairs and the Department of Interior are in charge of protecting the Indian Trusts and property, and in light of this act, it is possible that other outside interests may devise schemes to take the remaining lands and tribal resources? What can be done today that Indians were not able to do during the late 1800's?



The Clapp Act



From the time of the establishment of the White Earth reservation in 1867, it was the expectation of the government that the Indians living there would become prosperous and orderly citizens. Their allotted lands were to be **free from taxation and inalienable** except to members of the Chippewa Tribe. The virtual destruction of the White Earth reservation has been affected by means of a series of legislative and administrative acts.

The Clapp Rider of 1904, authorized the Chippewa of Minnesota, with the consent of the Secretary of the Interior, to sell the timber on their allotments. The timber on the allotments of minors might be sold by their fathers, mothers, Indian agents, or officers in charge. Four days after the passage of the Clapp Act, the Steenerson Bill became law which guaranteed the Indians of White Earth Reservation full 160 acre allotments.

The Clapp Rider and the Steenerson Bill so contemptuously filled into each other as if they had been matched for a purpose. The Clapp Rider of 1904, provided for the sale of allotment pine and the Steenerson Act furnished the pine. No one concerned could have been ignorant of the fact that to supply to each allottee on White Earth his full 160 acres and to supply allotments to anyone who had neglected to select them (also a part of the Steenerson Bill), would exhaust the whole area of the reservation.

During this period there were still standing on the White Earth reservation, some three hundred million feet of pine which lumber companies were aware. The Clapp Rider also allowed lumbermen to negotiate with individual Indians for their pine. This timber was put up for sale at a public auction under the direction of the federal government acting as **trustee** for the Indians. Senator Clapp who had been legal counsel for some of the great lumber companies had advised the commissioner of Indian Affairs that the final result of all lumber bids

were too low. The commissioner, therefore, recommended that all should be rejected. This procedure was not satisfactory to the interested parties and it was not difficult to devise another plan for "the relief and civilization of the Chippewa," one that would permit the disposal of land as well as timber and would relieve the transactions from the supervision of the Indian officer.



A typical land allotment hearing at White Earth Reservation. Today, court cases are currently being litigated as a direct result of land allotment policies of the past.

A plan was worked out for which Representative Steenerson was willing to father the necessary legislation. It was, therefore, arranged that Senator Clapp, who forwarded the plan, should see to it that when the Indian appropriation bill came in regular course to him as chairman of the Senate Committee on Indian Affairs, a suitable paragraph would be inserted as an amendment. The House had a rule forbidding the introduction of new legislation into appropriation bills; hence the amendment had to originate from the Senate. The scheme worked as planned and the "Clapp Rider of 1906" became law on June 21, 1906. It provided that; "All restrictions as to sale, incumbrance, or taxation for allotments within the White Earth reservation, now or hereafter held by adult mixed-blood Indians, are hereby removed...and as to full bloods, said restriction shall be removed when the Secretary of Interior is satisfied that such adult full blood Indians are competent to handle their own affairs." As a result, whites began by, obtaining from Indians, mortgages running from ten years, with interest at ten per cent collected in advance, in consideration of a small amount of cash, ordinarily \$25, and a promise to pay \$273 when the Clapp Rider should become law. In the course of three weeks, some 250 mortgages were recorded in Becker County alone.

The main purpose of the Clapp Rider of 1906, was not to enable certain persons to lend money to Indians at high interest; these persons were out for "Indians" land. Their next proceeding was to convert the mortgages taken into deeds, thus acquiring the lands at prices ridiculously low, averaging \$5 an acre, according to the superintendent of the White Earth Indian Agency, for land worth \$25 per acre. Purchases from adult-mixed-bloods might be strictly legal, but full-bloods and minors were not legally competent to sell. In utter violation of the law, land sharks from near and far brought allotments of full-bloods and took their deeds and had them recorded. Such deeds were accompanied by an affidavit that the allottee was an adult-mixed-blood Indian. Similar affidavits were used to obtain minors deeds.

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The celebration was over in a few months, but land speculation continued long afterwards. A report was finally published from a study done by a scientist named Warren King Moorehead, who was interested in Indian Ethnology. It disclosed that ninety percent of the allotments to full-bloods had been sold or mortgaged and the eighty percent of the whole acreage of the reservation had passed into private hands. Full-bloods had received not more than ten percent of the value of their land and timber. Mortgages had been placed to run as long as ten years, interest had been paid in advance out of the loans, and foreclosures had been prompt. In a separate section of the report it stated that, although the sale of liquor on the reservation was expressly forbidden by treaty, saloons were in full swing in the railroad villages on the reservation as well as many places just outside the boundaries, and that, according to interpreters, "nearly all of the Indians who sold were under the influence of liquor," and "frequently the interpreters and land buyers persuaded them to drink."⁶ Another section gave the names of bankers and others who had been acquiring farming lands of full-bloods and minors by "every scheme that human ingenuity could devise."⁷

In summary, the Clapp Act allowed any mixed-blood White Earth Chippewa to transform his trust patent (see Unit III for definition) into a patent fee and freed him from government supervision. The individual Indians could then dispose of their allotments as they saw fit. As a result pine timber lands held by White Earth Indians were sold to lumber interests at unfair and inadequate prices. This was considered one of the most blatant violations of the protection of Indian trust property in the administration of Indian affairs as pointed out by S. Lyman Tyler.⁸

This action referred to as the "White Earth Scandal" is one of the few cases where Congress intervened in the activities of the Department of Interior and took supervision of Indian property with the result that Indian title was soon lost. The loss of this valuable property which followed the Congressional action is one of the **Black Spots** in the administration of Indian affairs.

There was much litigation that followed the passage of the Clapp Act and its amendments in years to come. To this day there are legal issues involved and some Indian descendants of those robbed of their lands have been successful in obtaining their rights to land. The B.I.A., Tupper, Smith & Seck, Ltd., attorneys for The Minnesota Chippewa Tribe, have been doing a study to ascertain how many Indians lost their lands because of tax forfeiture in the White Earth Reservation. A final tabulation of these cases should be complete in the near future with results that at least some of the lands will be returned to the rightful owners.



The Snyder Act

A Bill for Service Delivery



As the 20th Century began, services were delivered to Indian tribes by one single agency, the Bureau of Indian Affairs, but were authorized by scores of treaties and subsequent acts of Congress. The Bureau of Indian Affairs thus dealt with hundreds of confusing authorized acts and treaties. To further complicate matters, each Indian agency received its own appropriations bill, as would also the Navajo or Sioux. The chaos in administration and management was very evident. Additionally, each reservation could easily be subjected to political pressure since the Bureau of Indian Affairs could vigorously push for a tribal budget, or it could be passive in it's support.

⁶ Folwell, *Ibid* p. 283

⁷ Folwell, *Op. cit.*, P. 283

⁸ Lyman Tyler, *A History of Indian Policy, Allotments to individual Indians*, pp. 105.

In 1921, Congress decided to put all federal services under one authorizing act. The Snyder Act of 1921 authorizes expenditures for health, education (of all kinds), social services, law enforcement, engineering services (for irrigation), and for the administration of the Bureau of Indian Affairs. This list of services represents the sum total of those services a community might need, and the Bureau of Indian Affairs is authorized to provide all of them. The Snyder Act is still an important piece of legislation because; (a) it is comprehensive, it covers everything; (b) there is no limit on the amount Congress can appropriate and; (c) the Bureau of Indian Affairs does not have to obtain a yearly authorization from Congress. Thus, Congress cannot effectively dismantle the Bureau of Indian Affairs by simply not authorizing funds for its operation. Congress presently makes a spending limit as part of appropriations acts such as the poverty and unemployment programs of today. The Snyder Act contains no such limitation.

Under the Snyder Act, the Bureau of Indian Affairs is authorized to expend congressionally appropriated money for the benefit, care and assistance of Indians throughout the United States for purposes such as: general support and civilization-including education, relief of distress, and conservation of health, industrial development, employment of supervisors, police, judges, etc. The Act also establishes the Bureau of Indian Affairs and Indian Health Services as agencies that have permanent financial authorization and, therefore, require only annual appropriations as stated above.

It should be understood by students that these services are delivered because of **federal obligations** toward Indians, not as **acts of charity**. The services remain the primary responsibility of the Bureau of Indian Affairs which was formed in 1824 within the War Department. While assimilation of Indian people and dissolution of tribal governments were part of federal policy, the services delivered reflected that policy. At times the service itself, such as education, actively sought the destruction of Indian culture. In addition, other problems included disagreements with the delivery and management of services which led to an uneven and uniform distribution of services. As an alternative, many tribes voiced a strong desire to manage and control their own affairs through direct contracting methods. Eventually self-determination became the motto and as a result, the Indian Self-Determination Act and the Indian Education Assistance Act became law in 1975, and allowed tribes to manage federal programs for Indians.



The Indian Citizenship Act of June 30, 1924



Before 1924, the Dawes Act was one method of acquiring citizenship. A Chippewa person who obtained a fee patent (left land in trust by the United States Government and individuals given title after 25 years), on his land became a citizen of the United States and was no longer a tribal member (see unit three). Another method after 1888 was that Indian women could marry white men and gain citizenship.

Although generations of Indians had been born on American soil, they were not to have full citizenship until 1924. While all Americans became citizens with the creation of the constitution of the United States, it took 172 years for this right to include Indians. Since Indians did not have citizenship, they had few or no rights as did other people. No one really cared, for Indians were usually on Indian reservations far removed from everyone

As citizens, Indians were residents of States and entitled to vote in the State and National elections. This was not true immediately because several states refused to let Indians vote. Only after Indians began to protest this violation did the law say that all States must let Indians vote in elections. The following is the statement of the federal government about citizenship.

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"That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States; provided, that the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property."⁹

It should be further pointed out to students that this same act made Indians eligible for services as United States citizens and did not terminate services derived from treaties. Indians enjoy a double system of entitlement. For example, an Indian is eligible for Bureau of Indian Affairs educational scholarships by virtue of being Indian.

If he is also poor, he may be eligible for poverty funds. Indians may thus receive services as members of their tribe and as citizens of the United States.

The dual system of rights often confuses and angers non-Indians. "Why," they ask, "should anyone have a different class of citizenship?" These same people are often sympathetic to Indian problems, yet they still reject the idea that Indians enjoy a dual citizenship. In fact, Indians do not enjoy a dual citizenship in the same way a Hungarian born in the United States does. In one instance, a child born of Hungarian parents is a citizen of Hungary by virtue of his ancestry. Such a dual citizenship may be questioned when the child reaches the age 21 since one or the other country may force a choice as to which country he wishes to belong. Indians are not vulnerable to any such conflict, and the dual citizenship is actually access to two systems of service, not citizenship as it is known in international law.



Johnson O'Malley Act of 1934



The Johnson O'Malley Act came into being on April 15th, 1934. This act is one of the most unique Acts affecting Indian people, as it provides federal funds to States to enable them to educate eligible Indian children in their public school system.

The purpose of the original Act is three-fold; 1) to get the Federal government out of the business of the education of Indian children; 2) through financial inducement, to further the long established practice of turning over the responsibility of Indian education to the States and local districts; and 3) to "civilize" Indians, the primary historical goal of all Federal Indian Legislation. At the time of the composition of the Act, it was generally the frame of mind that "daily contact with white children would facilitate their civilization and through them, contribute to the enlightenment of adult Indian parents."

The language of the Johnson O'Malley Act is often vague and ambiguous, for it authorizes the Secretary of the Interior to enter into contracts with States or Territories "for the education, medical attention, agricultural assistance and social welfare of Indians." The only minimum criteria that is stated in the Act, is that "minimum standards of service are not less than the highest maintained by the States..."

On June 4, 1936, an amendment was ratified that added authority to the Secretary of the Interior as to who contracts could be made with. The amendment made it possible for contracts to be made, not only with any "State or Territory," but now included "with any State university, college or school, or with any appropriate State or private corporation, agency, or institution.."

⁹ Indian Citizenship Act, 1924.

The "Indian Self-Determination and Education Assistance Act" of 1975, "public Law 93-638," further amends the Johnson O'Malley Act. Public Law 93-638 is "an Act to promote 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 Indian tribes in programs and services conducted by the Federal Government for 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; to train professionals in Indian education; to establish Indian Youth Intern Programs; and for other purposes."

The initial efforts to transfer the responsibility of Indian education from the Bureau of Indian Affairs to the States began in 1937. Prior to this time, the Bureau of Indian Affairs and various religious denominations shared the role of Indian educators, while the States disregarded congressional mandates that dictated otherwise, and also ignored the fact, that Indians were citizens and entitled to free public education. Nevertheless, the Bureau of Indian Affairs continued to provide tuition payments covering instructional costs, noon meals, and transportation.

In 1936, the State of Minnesota contracted for the administration of Johnson O'Malley funds and created an Indian Division within the Department of Education. The main purpose of this new division was to negotiate with school districts and to act as fiscal agent regarding the expenditures of Johnson O'Malley funds, thereby, relieving the Bureau of Indian Affairs of this task. The federal regulations, in this period, read: "to accommodate unmet financial needs of school districts having large tracts of non-taxable Indian land." The major criterion for assistance is the financial need of the school district for supplemental funds. Johnson O'Malley is designed in most instances, to balance the school districts operating budget. The amount of Johnson O'Malley funds that a school district may get is supposed to be that sum of money which the district needs to operate an "adequate school" for Indian children, after all other sources of local, state, and federal money have been counted. Therefore, Johnson O'Malley is a program whose allocations are based on the school districts financial need, and **not** on the education needs of the Indian students.

The proceeding years brought more change and assumption of additional authority and duties to the newly realigned Indian Education Division of the State of Minnesota. Through the years, very little cooperative working relationships existed between the Indian Education Division and The Minnesota Chippewa Tribe. For the most part, the Tribe felt it was being disregarded and ignored concerning the educational needs of members of The Minnesota Chippewa Tribe, a conglomerate of six of the seven Chippewa reservations in Minnesota. They were also concerned that the Minnesota Indian Education Committee (a Committee established in 1969 by authority of Minnesota Public Law 714, their main responsibility being, to advise the State Department of Human Relations, the State Board of Education, and the State Commissioner of Education, with their primary task being "the authority to develop guidelines to be followed by school districts") was not representative of The Minnesota Chippewa Tribe and its members. The members of The Minnesota Indian Education Committee were usually selected by the staff of the Indian Education Division or by Minnesota Indian Education Committee members. Tribal members did not participate fully in the Committee. It was also felt, by some members, that the Tribal Education Committee of The Minnesota Chippewa Tribe should have played a much larger role in this committee, considering how many Indian people that they represented. There was further concern that the Committee was controlled by urban groups and that this group was not sympathetic and familiar enough with the reservations to make good judgements concerning programs that would affect the reservations. The largest concern was that of the reservation members, given the unique status of Indian Tribes, that going to and through a division office would lessen their rights to govern tribal members. Tribal members feel the only ones they can engage in business or governmental transactions with, is the Governor and Department heads.

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Within this same period, the State Department of Education employed a few individuals who had anti-tribal feelings; this alienated some members of the committee to the point where they refused to participate in the Minnesota Indian Education Committee.

For the next two years, the ties between tribal groups, and the State Department, remained relatively uneventful. The Minnesota Indian Education Committee, because of its composition, was mainly involved in urban problems and had little concern for the reservation areas.

In late 1972, and early 1973, many things began to happen that expressed the Tribe's discontent with the State administration and operation of Indian programs. The Tribal Executive Committee unanimously decided to contract, themselves, for Johnson O'Malley funds. The major reasoning behind the policy to contract for these funds was based on the working concept of The Minnesota Chippewa Tribe: "Self-Determination, Governmental, and Political Sovereignty." The Tribe felt that it could better represent the needs of Indian people on the reservations, than could a state agency located in St. Paul, that had little contact with Indian communities. The Tribe also wanted to implement local autonomy in individual Indian communities in education, for they look upon "local control of education as a right, not as a privilege."

The decision to contract for the administration of Johnson O'Malley funds brought about much criticism by Indian people throughout the state and many educators, including school superintendents. The movement to oppose tribal take-over was led by employees of the State Department of Education. Their opposition was an active campaign with accusations that accused tribal leaders of being dictatorial, thwarting citizen input, destroying programs and "ripping off programs." These employees lobbied Bureau of Indian Affairs officials, Local Indian Education Committees and Congressmen. They circulated petitions to Indian groups, Local Indian Education Committees and others. Letters were sent out of the central office in St. Paul to school superintendents, requesting their opinion on the matter, and not surprisingly, the opinions were very negative regarding Tribal take-over of the Johnson O'Malley contracts.

The beginning of the fiscal year in 1973, brought the award of Johnson O'Malley contracts to The Minnesota Chippewa Tribe. This meant that school districts, tribal organizations, or Indian corporations, including tribally or Indian controlled schools that are eligible, must apply for a contract from The Minnesota Chippewa Tribe for supplemental or operational support programs, provided, that such school districts, tribal organizations, Indian corporations, or Indian controlled schools serve eligible Indian students who are members of The Minnesota Chippewa Tribe and comprise a majority of the total eligible Indian students on or near the Nett Lake, Grand Portage, Fond du Lac, Leech Lake, White Earth, or the Mille Lacs Reservations.

The eligible contractor must have a duly authorized and elected Indian Education Committee which will participate fully in the planning, development, implementation, and evaluation of all programs, including both supplemental and operational support programs. The contractor must also formulate and submit an educational plan to The Minnesota Chippewa Tribe. The plan must be approved by the local Indian Education Committee and contain educational goals and objectives which adequately address the educational needs of the Indian students served.

The Johnson O'Malley Program, as administered by The Minnesota Chippewa Tribe, operates under the philosophy of self-determination, that is, the Local Indian Education Committees have the freedom to plan, implement and evaluate programs on the local level, which fit into their individual needs.

Attached is the Johnson O'Malley Act approved April 16, 1934 and Johnson O'Malley Act amended, June 4, 1936.

JOHNSON O'MALLEY ACT

Authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized, in his discretion, to enter into a contract or contracts with any State or Territory having legal authority so to do, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the qualified agencies of such State or Territory, and to expend under such contract or contracts monies appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State.

Sec. 2. That the Secretary of the Interior, in making any contract herein authorized with any State or Territory, may permit such State or Territory to utilize for the purpose of this Act, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance.

Sec. 3. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of the Act into effect: Provided, That such minimum standards of service are not less than the highest maintained by the States or Territories with which said contract or contracts, as herein provided, are executed.

Sec. 4. That the Secretary of the Interior shall report annually to the Congress any contract or contracts made under the provisions of this Act, and the monies expended thereunder.

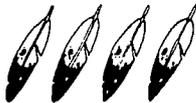
Sec. 5. That the provisions of this Act shall not apply to the State of Oklahoma.

Approved, April 16, 1934.

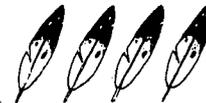
JOHNSON O'MALLEY ACT AMENDED, JUNE 4, 1936

"That the Secretary of the Interior be, and hereby is, authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college or school, or with any appropriate State or **Private corporation**, agency, or institution, for the education, medical (1459) attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expand under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory."

"Sec. 2. That the Secretary of the Interior, in making any contract herein authorized, may permit such contracting party to utilize, for the purposes of this Act, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance.



The Indian Reorganization Act of 1934



At the beginning of the Franklin Roosevelt administration, Congress passed the Wheeler-Howard Act of 1934, called the Indian Reorganization Act (I.R.A.). In order to have effect on a reservation, it had to be approved by a majority vote of the tribal members. It tried to repair the damage of the allotment period by ending the allotting of tribal land to individual Indians. The government realized that there was not enough reservation land for the growing Indian population, so it set aside two million dollars a year for the purpose of buying land for reservations. This new land could include land purchased from whites on the reservation, and also land which was outside the existing reservations. During the next ten years, over four million acres of land were returned to Indian tribes.

The Indian Reorganization Act set up a ten million dollar Indian loan fund, which enabled many Indians to borrow money for agricultural, livestock, and fishing purposes. To help out Indian students \$250,000 a year was set aside for educational loans. Only \$50,000, however, could be used for college. The remaining funds were to be used for vocational training. Finally, the Indian Reorganization Act made it possible for any tribe to organize and establish a constitution and by-laws for the management of its own local affairs.

A more detailed study of the History and content of the Indian Reorganization Act can be found in unit number three of this course.



House Concurrent Resolution 108 and Public Law 280



After World War II the mood of Congress changed from that of 1934. Congress began to dismantle the programs passed in the 1930's. In 1947 legislation was introduced to place tribal lands on state tax rolls, and to require Indians, who live on the reservations where land was allotted to individuals to give up federal services and assistance. The bill did not pass immediately, but, in 1953, the House of Representatives passed a RESOLUTION (different from a law in that a resolution is an expression of policy) called HOUSE CONCURRENT RESOLUTION 108. This resolution called for the federal government to TERMINATE (end) its special relationship to Indian tribes. This resolution, if implemented, would have been the final example of congressional power-solving the problem by simply legislating the tribes out of existence. Fortunately, only a few tribes were terminated, none in Minnesota, and, just recently, the Menominees of Wisconsin have had their termination reversed.

Termination means that the federal government no longer supervises or protects the land of an Indian tribe. The land is turned over to the individual members of that tribe. It means the historical relationship between the federal government and the tribe is ended. The tribe no longer has the right to deal directly with the federal government, without going through the state. Unique Indian relationships are ended and the state takes over. When this happens, all criminal and civil laws of the state apply to all those living on the reservation. In the end, the reservation simply ceases to be a reservation.

Another attempt to limit tribal sovereignty happened in 1953 when Congress passed PUBLIC LAW 280 which allowed the states to extend their jurisdiction over tribes in areas of criminal law and civil suits. Aside from the open threat of termination, the implementation of Public Law 280 was the most damaging since it gave the states the right to enact legislation on Indians, pre-empting the roll of tribal government. All the Chippewa reservations, with the exception of the Red Lake Reservation, were included under Public Law 280.

As amended, Public Law 280 confers civil and criminal jurisdiction on six states with specified exceptions, as follows:

STATE INDIAN COUNTRY AFFECTED

Alaska	All Indian country, except with respect to criminal jurisdiction there is an exception permitting the Metlakatla Indian community to exercise jurisdiction over offenses committed by Indians on the Annette Islands.
Minnesota	All Indian country except the Red Lake Reservation.
California	All Indian Country
Oregon	All Indian country, except the Warm Springs Reservations.
Wisconsin	All Indian country.
Nebraska	All Indian country.

Public Law 280 was unsatisfactory to both the states and the tribes from the beginning. Many disagreements arose concerning the scope of powers conferred on the states and the methods of assuming power. Two important aspects of the law were highly critical which were: the lack of a requirement of tribal consent to state jurisdiction. As a result of pressure from tribes and Indian organizations, the act was amended in 1968 to add a tribal consent requirement and to authorize states to retrocede jurisdiction to the federal government. This amendment brought Public Law 280 more in line with the federal Indian policy of greater Indian self-determinations, but, did not resolve the controversy and uncertainties concerning the act.

As an example of one of those uncertainties was the **Bryan vs. Itasca County in Minnesota, 1976**. This was a supreme court decision that states Public Law 280 does not constitute a grant of power to the state to tax reservation Indians. Thus, Minnesota could not, under the Public Law 280, impose a personal property tax on a mobile home located on trust property within the Leech Lake Reservation. Further, the court has stated that under Public Law 280, Minnesota does not have the authority to levy state taxes on Indians residing on the reservation. However, the extent of the state authority in areas such as taxation of non-Indians leasehold interest in trust property, is not yet clarified.

The confusion and uncertainties over the full scope of Public Law 280 has not yet been fully clarified. Other reservations of The Minnesota Chippewa Tribe are currently involved in litigation over the state's authority within individual reservations.

It should be pointed out to students that the State of Minnesota had assumed that it had full jurisdiction over hunting, fishing, and wild ricing rights of the Leech Lake Reservation prior to 1972. Public Law 280 specifically states that the law itself does not change any of the rights guaranteed through treaties. The State of Minnesota had attempted to regulate Indian hunting, fishing and wild ricing rights up until 1972, when the **Herbst vs. State of Minnesota**, specifically stated that the state could not extend its jurisdiction to regulate hunting, fishing, and wild ricing rights on the reservation because of rights guaranteed through treaties.

Public Law 280 and House Concurrent Resolution 108 were laws passed during possibly the darkest period in the history of tribal government (the early 1950's). In less than 20 years from the Indian Reorganization Act, which was intended to strengthen and preserve tribal governments, Congress had become dramatically opposed to their continuations. Under the terms of termination, over 400 treaties and 200 years of court decisions, administrative procedures and acts of Congress, could be wiped out. This is surely the most awesome display of congressional plenary power possible.

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THE INDIAN SELF-DETERMINATION ACT, 1975



In response to widespread Indian interests and support, Congress enacted Public Law 93-638, The Indian Self-Determination and Education Assistance Act, which became law January 4, 1975. Title I was designated the "Indian Self-Determination Act." Title II amended the Johnson O'Malley Act of 1934 to give the Indian community more control over programs designed to meet educational needs.

Title I of the Act, which is primary emphasis here, gives Indian tribes the opportunity to administer Departments of Interior and Health Education and Welfare Programs, (HEW). Under Sections 102-103 of the Act, Secretaries of Interior and HEW, if requested by any Indian tribe, are directed to contract with any tribal organization to plan, conduct, and to administer programs or program segments which the B.I.A. and Indian Health Service are authorized to administer for the benefit of Indians. These sections also establish a procedure by which the Secretary of the Interior may refuse to enter into proposed contracts when not in the public interest. In such cases, the Secretary must help tribes overcome the obstacles which prompted the refusal. In addition, the Secretary must provide the tribes with a hearing and an opportunity to appeal.

This act also authorizes the Secretary to award grants to help tribes develop the capability to operate programs for which they may eventually contract for. These grants, authorized under Section 104, would be used:¹⁰

- 1) To undertake orderly planning for the takeover of the more complex Federally-operated programs;
- 2) To train Indians to assume managerial and technical positions once the tribe has assumed control and management of Federal programs; and
- 3) To finance a thorough evaluation of performance following a reasonable period of time in which a former Federally-controlled program has been administered by a tribe under contract.

Many tribal leaders are not convinced that contracting, the congressionally established method for achieving Indian Self-determination, is a workable method. Many tribes are unlikely to utilize the act extensively, until such Indian leaders are convinced that contracting is a workable method. Students should understand, however, in view of the Indian experience with the federal government (as discussed in chapter five, Legislation) there will be a great deal of reluctance on the part of tribal leaders to accept the sincerity of the Indian Self-determination program.

At present, many Indian tribes fear that contracting will lead to termination. This fear has also been expressed by Indian leaders in conferences and in testimony before the Senate Select Committee on Indian Affairs.

Tribal leaders have given many reasons for not contracting to operate more B.I.A. and I.H.S. programs. As long as tribes have serious doubts about requesting Title I contracts, any notable change in federal domination over Indian programs is unlikely.

¹⁰ Report to the Congress, by the Comptroller General, pp. 3

Other sections of Title I authorize the assignment of Federal employee's to tribal organizations, provide for the retention of certain Federal benefits for civil service employees who are hired by tribes, and permit contracts and grants for personal services which would otherwise be performed by Federal employees. Title I also states that none of the Self-Determination Act's provisions authorize or require the termination of any existing trust responsibility of the United States with respect to Indian people.

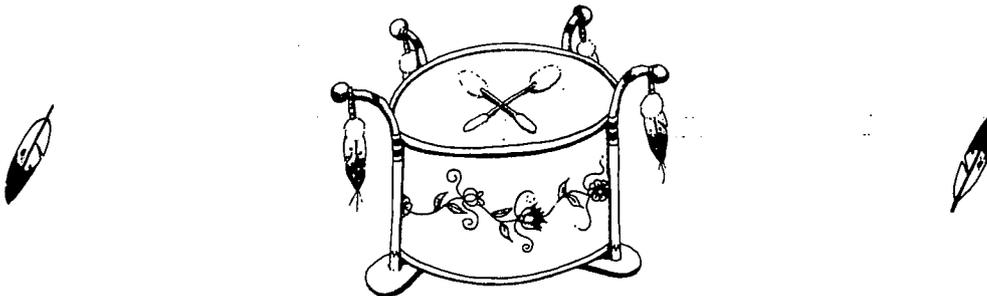
As stated earlier, only those programs administered by the Interior and HEW are contractable under Title I. A brief look at what these two agencies do at the present time is as follows:

"The Bureau of Indian Affairs of the Department of the Interior, has the primary responsibility for administering Federal programs for Indians. Its principal objectives are to encourage and train Indians to manage their own affairs and to fully develop their human and natural resource potentials. The Congress has also vested in the Bureau of Indian Affairs various "trust" responsibilities with respect to tribal lands, moneys, and mineral rights. The Bureau of Indian Affairs operates and helps develop and manage public education systems on the reservations, works with the Indian people to obtain or provide social and community development programs and services, and helps establish and administer economic and natural resource development programs consistent with the principles of resource conservation. The Bureau of Indian Affairs has divided the United States into areas which perform administrative and housekeeping functions, and represent the Bureau of Indian Affairs in its dealings with the Indians, the public, State governments, and other Federal agencies with respect to each area's jurisdiction."

"The IHS of the Indian Health Service Administration HEW, is responsible for providing comprehensive health care to Indians. IHS offers programs for hospitalization, out-patient medical care, public health nursing, school health, maternal and child health, dental and nutrition services, health education, and environmental health services. The mission of the IHS is to raise the level of health of American Indians and Alaskan Natives to the highest possible level. This mission is accomplished in the field through eight area offices and four program offices. Each is responsible for operating the Indian health program within its geographical area. In addition, the area offices perform administrative support functions for the program offices, such as finance and personnel activities, to achieve economics of scale.

Those interested in understanding the complexity, the numerous problems existing with 93-638, and reviewing much of the controversy of the act as well as understanding the feelings of many tribal leaders should review the report to the Congress of the United States, "The Indian Self-Determination Act --- many obstacles remain," March 1, 1978. Copies of G.A.O. reports are available to the general public at a cost of \$1.00 a copy. Members of press, college libraries, faculty members, and STUDENTS; non-profit organizations may receive up to two (2) copies free of charge. Requests entitled to reports without charge should address their requests to:

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CULTURAL STUDIES ON TRIBAL GOVERNMENT
STUDENT WORKSHEET QUESTIONS
CHAPTER FIVE

1. Indians consider themselves citizens of the United States of America, and what other sovereignty?
2. Indians finally became citizens by an act of Congress, in what year?
3. The Johnson O'Malley Act allows Indians to contract with the Federal government in the field of:
 - A. Housing
 - B. Hunting and Fishing
 - C. Education
 - D. Social Services
4. The Clapp Act adversely affected what reservation, and briefly how?
5. Public Law 280 is considered very detrimental to Indian tribes, Why?
6. Are states now able to tax Indians on reservations?
7. The Nelson Act was designed to do what?
8. Who controls Johnson O'Malley moneys?
9. The Dawes Act allocated what to adult Indians?
10. What was another name for the Wheeler-Howard Act, and what did it do?

