

Malcolm Wiener Center for Social Policy

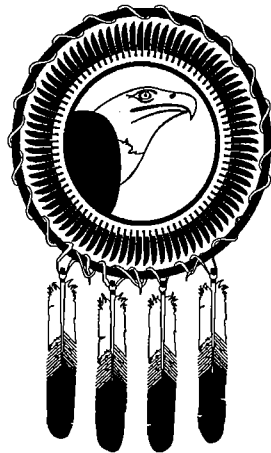
*Goals, Institutions and the BIA:
Problems with Federal Indian Policy*

by

Michael W. Cameron

PRS 88-14

October 1988



Harvard Project on
American Indian Economic Development

John F. Kennedy School of Government
Harvard University

The views expressed in this paper are those of the author(s) and do not necessarily reflect those of past and present sponsors of the Harvard Project on American Indian Economic Development, the Malcolm Wiener Center for Social Policy, the John F. Kennedy School of Government, or Harvard University. Reports to tribes in this series are currently supported by the Christian A. Johnson Endeavor Foundation. The Harvard Project is directed by Professors Stephen Cornell (Udall Center for Studies in Public Policy, University of Arizona), Joseph P. Kalt (John F. Kennedy School of Government, Harvard University) and Manley Begay (Udall Center for Studies in Public Policy, University of Arizona). For further information and reproduction permission, contact the Harvard Project on American Indian Economic Development at (617) 495-1480.

EXECUTIVE SUMMARY

GOALS, INSTITUTIONS AND THE BIA: PROBLEMS WITH FEDERAL INDIAN POLICY

by

Michael W. Cameron
John F. Kennedy School of Government
Harvard University

In the last twenty years a great deal of attention has been paid to problems regarding the relationship of the U.S. government and Native Americans. The bulk of this work has focused on the shortcomings of the BIA. Accordingly, most efforts to improve Federal responsiveness to Indians have been directed at the BIA leadership, its organization, and its scope of responsibility.

This paper examines the nature of the Federal-Indian relationship and contends that most problems in Indian policy are deeper than problems with the BIA. Specifically this paper argues that the absence of clear goals and mission for Indian policy coupled with federal institutions, namely Congress and the BIA, which are fundamentally designed to be more responsive to non-Indian interests, lie at the heart of the problems of Federal Indian policy. Twelve specific problems which are identified are as follows:

GOALS AND MISSION

- 1) Congress has been able to vacillate in its commitment to Indians because it has failed to clearly define the scope and extent of the trust relationship.
- 2) The appropriate balance of federal intrusiveness into Indian lives has not been established with any degree of certainty.
- 3) Federal Indian policy and expectations for the BIA are not consistent or well coordinated.

INSTITUTIONAL DESIGN

- 1) Congress's plenary power in Indian affairs and its accountability to non-Indian constituents permits and compels the U.S. Government to disregard the trust obligation and best interests of American Indians.
- 2) Congress has not been sufficiently committed to reforming the BIA in particular or Indian policy in general.
- 3) The Bureau of Indian Affairs, specifically the Indian Solicitor, is vulnerable to conflicts of interest because of its location within the Department of the Interior.

- 4) Non-Indian political pressures can adversely affect BIA responsiveness to policy initiatives.
- 5) The decentralization of the BIA inhibits reform (Area Offices are too powerful).

PROGRAM EXECUTION

- 1) The BIA has mismanaged Indian natural resources and lands.
- 2) The Bureau of Indian Affairs takes advantage of the unclear trust responsibility in order to advance the institution.
- 3) The Self-Determination and Education Assistance Act (P.L. 93-638) has created conflicts in the BIA between institutional and policy objectives.
- 4) The policy and budget making processes of the BIA lack centralized control and are not sufficiently open to Indian participation, planning or review.

Based on the nature and severity of the problems identified, this paper recommends that two reforms of the Federal system coupled with Indian self-empowerment are the greatest hopes for alleviating the problems with the Indian-Federal relationship.

The first Federal reform is the creation of an autonomous apolitical commission charged with interpreting U.S.-Indian treaties and court decisions to state objectively what obligations the United States has to American Indians, and what should be the objectives of Indian policy. The second reform is the removal of the Indian Solicitor office from the Department of the Interior to an entity where it will be insulated from the influence of non-Indian interests.

The argument that in self-empowerment lies the greatest potential for improving Indian welfare is based on the view that many of the observed problems are endemic to the U.S. democracy under which Indians exercise little influence. The Federal government is probably never going to be a great advocate or protector of Indian rights so long as Indians are a poor and small minority. By learning to coexist with non-Indian cultures and by taking advantage of opportunities to become more independent, such as are offered by the self-determination policy, Indians can protect their cultural sovereignty and increase their capacity to get from the Federal government what they deserve.

RECURRING PROBLEMS IN THE ADMINISTRATION OF FEDERAL AMERICAN INDIAN POLICY¹

I. INTRODUCTION

The 200 year old relationship between American Indians and the U.S. government has been an evolving one. The first Federal agency with an Indian policy was the War Department. Current programs, housed in more hospitable agencies, like the Department of the Interior, Housing and Urban Development, and Health and Human Services, reflect the improvements that time has brought. But tensions still remain and more progress is needed. American Indians are one of the poorest, most unemployed, and least educated groups of people in this country. Those that are concerned with the Indian standard of living identify, among other things, the status of the Federal-Indian relationship as a principal obstacle to improving Indian welfare.

No doubt the relationship remains problematic. The government's principal agency of Indian policy, the Bureau of Indian Affairs (BIA), has been the subject of much criticism and review. Displeasure with the Bureau has run so high that in a recent ten year period the agency was reorganized ten times. The BIA has been subject to constant changes of leadership and its scope of responsibility is forever increased and decreased.

This report examines the problems of the Federal-Indian relationship and suggests that their source lies much deeper than Bureau policies, personnel and programs. The problems begin with the ambiguity of the U.S. obligation to Indians and the design of the

¹. A great deal of work in locating sources and identifying problems was performed by Dick Coccozza and Mary Ellen Fleck of the Special Subcommittee on Investigations of the Senate Select Committee on Indian Affairs. I appreciate very much their contributions to this report.

structure which administers that obligation. More than the agency itself, the foundation of the BIA has lead to the observed problems in Federal Indian policy.

Starting at the bottom and working up to the BIA, this paper examines the goals and mission of Federal Indian policy, then looks at the institutions which make and implement policy, and then highlights specific problems with the operation of the BIA.

II. GOALS AND MISSION

Despite the widely held view that Federal Indian policy and programs need improvement, there appears to be no standard against which this measurement is made. No where has it been articulated what the goals and mission of the Federal government are with regard to American Indians. The job of defining those goals rests with Congress.² As the representative of the U.S. government in treaties with sovereign nations including American Indians, Congress has assumed what the Supreme Court has termed a trust role over American Indians.

However, for reasons discussed at length in the next section, Congress has shied away from thoughtfully asking the politically dangerous question of what the Federal government, as trustee, owes American Indians. Never having set for itself any destination, Congress has often indiscriminately changed the course of Indian policy with no compass to bring it back in line. Three distinct problems have arisen from the absence of a clear statement of mission. They are problems of reliability, scope, and coordination. A discussion of each follows.

1) Congress has been able to vacillate in its commitment to Indians because it has failed to clearly define the scope and extent of the trust relationship.

A careful reading of the U.S.-Indian treaty obligations or any sensitive review of American history, clearly commits the U.S. to respecting and encouraging the property, self-

². Theodore Taylor, The Bureau of Indian Affairs. (Boulder, CO.:Westview Press, 1984.), p.151

government and cultural identity of Indian people.³ However, the history of Indian law is a record where Congress has periodically tried, often brutally, to destroy the identity of American Indian tribes by forcing Indian people to assimilate into "mainstream" American society. Those attempts have come explicitly in the form of laws like the Allotment Act of 1887 and the termination acts of the 1950's which were aimed at ending the reservation system, and more subtly in laws which have had the effect of discouraging traditional Indian ways of life:

[T]his pattern of ineffectiveness represents a 200 year record of erratic policy, fluctuating from periods of benevolence to periods of attempts to totally eliminate tribes, and back to renewed policies of support and protection.⁴

Not only have these vacillations caused immediate hardships like the loss of land and Federal services, but they have created deeper and longer-lasting problems of distrust and resentment felt by Indians. The unreliability of Congress as an ally has caused Indians to fear that even the best intentioned policies, such as the self-determination policy, are wolves in sheep's clothing.⁵ The most difficult obstacle facing recent reform efforts has been convincing Indians that the Federal government really wants to make things better, and to thereby gain necessary Indian support and cooperation.⁶ Even the best designed policies are doomed to failure if the Indians themselves do not cooperate.

³. American Indian Policy Review Commission. Final Report, vol. 1, (Washington, D.C.: GPO, 1977), p.125

⁴. Id. p.231

⁵. Id. p.233

⁶. Based on comments made by Navajo Tribal Chairman Peter McDonald at a meeting in Cambridge, Massachusetts (June 1988). See also, AIPRC Final, p.126

While the plenary power of Congress in Indian affairs prevents Congress from irrevocably committing itself to the issue of its trust obligation (it can always change its mind), some mechanism must be developed which guarantees that the U.S. will not abandon its trust commitment.

2) The appropriate balance of Federal intrusiveness into Indian lives has not been established with any degree of certainty.

Given that Congress has periodically questioned whether it even has a responsibility to Indians, it should come as no surprise that it has not clearly delineated what its responsibilities are. There has always been debate within Congress and Indian communities over how far the U.S. government should go in its role as trustee to the Indians. Succinctly put,

It has never been determined where trust responsibilities end and self-determination begins.⁷

This question has two components. The first question is, for what breadth of services is the U.S. responsible? The historical and narrow definition of the trust obligation limited services to fiduciary management of natural resources. In the past twenty years, however, many have advocated a broader definition which spans human and social services.⁸ The second question is, within those services, how much control over

⁷. General Accounting Office, Land Management Activities on Three Indian Reservations in South Dakota Can Be Improved. (Washington, D.C.: GPO, 1975), p.i

⁸. The position taken by those in favor of a broad interpretation was articulated by the American Indian Policy Review Commission (Final Report) in 1977: "[the trust responsibility is] an obligation to provide those services required to protect and enhance Indian lands, and self-government, and also includes those economic and social programs which are necessary to raise the standard of living and social well-being of Indian people to a level comparable to the non-Indian society."

administration (i.e. in what proportion, how often, and where are services provided) should rest with the Federal government, and how much with Indians?

The debate over the appropriate breadth of services splits over a disagreement about what is best for Indians. Those who defend a large role for the Federal government favor the expanded interpretation of the trust responsibility because it increases the level and amount of Federal services to Indians. In addition, Indians perceive that the greater the federally acknowledged obligation, the more difficult it is for Congress to sever its relationship with the Indians. The symbolic value of the U.S. commitment is high for Indians because of the history of termination laws.

Those that argue for the narrow interpretation do so largely because the BIA has not satisfactorily delivered quality services to Indians. Many Indians think that they could deliver the services more effectively themselves. Due to the legal obligations bestowed on the BIA as administrator of the trust, however, the Bureau has vigorously resisted permitting Indians to assume control over programs.⁹ An interpretation of the trust responsibility which reduces the BIA role in administering human and social services would allow Indians to improve their quality of life.

The tension over what should and should not be included in Federal services, and how control over services is divided, has resulted in vacillations between broad and narrow

The proposal to get the BIA back to its traditional trust role of fiduciary for quantifiable assets, like land, resources and money, was clearly stated by Senator James Abourezk during 1973 hearings to reorganize the BIA: "Too much emphasis on social problems has detracted from the equally important trust responsibilities; which if properly solved would mitigate present and future social problems."

⁹. For a discussion of the institutional motivations for resisting relinquishing control see Section IV, problem two.

responsibilities. Inconsistency in the types of services provided have prevented tribes from creating stable and efficient institutions to receive Federal services and deliver non-Federal services because their role in service delivery is always changing.

The current example is the Self-Determination and Education Assistance Act (P.L. 93-638) of 1975 which has required tribal governments to develop the capacity to administer programs for which they previously had only to apply and lobby. This adjustment has been no small task, especially for the 80 percent of federally recognized tribes that have fewer than 1,000 enrolled members.

Currently many tribes are struggling to improve the decision-making powers of their governments to deal with their new autonomy and responsibilities. These adjustments take time. Because Congress has no enduring sense of its own or Indians' responsibilities, it is entirely possible that Congress will become frustrated and repeal self-determination before tribes have had sufficient time to adjust. As long as Congress shifts responsibilities back and forth between the Federal government and the tribes, tribal governments will remain unstable and inefficient organizations.¹⁰ As one author put it,

¹⁰. A good example of the issue of boundaries of responsibility is the 1975 case of setting grazing fee rates at the Cheyenne River Reservation in South Dakota. As part of its fiduciary responsibility, the BIA is mandated by the Code of Federal Regulations (CFR) to set the minimum allowable grazing fee rates according to the "fair-market" value of comparable off-reservation lands. The intent of this regulation is to ensure that Indian landowners receive the highest possible return for their land.

At Cheyenne River, however, rangeland conditions were considered less than competitive because of limited water, inadequate fencing, and fractionated lands. In response, the tribal council passed a resolution calling for lower than "fair market" rates. Out of deference to the spirit of the self-determination policy, the BIA approved the lower rates. An argument was raised, however, that this decision was not in the best interests of non-ranching members of the tribe. To the extent that all tribal members have an interest in tribal lands, and not all members benefited from the BIA decision, the federal government appears to have violated its trust responsibility.

[Indians are] deprived of the social structural means necessary for a complete functioning society. Without these means the tribal peoples cannot help but remain -whatever else is done - client populations dependent on external support and direction.¹¹

The need for a clear definition of the scope of Federal responsibilities is plain. Indians will fare better if they know what to expect - not only next year but in ten years - of the Federal government. At some point Congress must decide thoughtfully where its responsibilities begin and end so that Indians can in turn know where their responsibilities begin and end.

3) Federal Indian policy and expectations for the BIA are not consistent or well coordinated.

At the simplest level Federal services to Indians fall into two categories. The first is to serve as the fiduciary for Indian assets. The second is to provide human and social services. A tension exists, however, in the fulfillment of these two objectives. The former requires the concentration of programs under a single roof, such as the BIA, to ensure accountability, a precept for fiduciary services. The latter requires a system of distinct

The BIA is not entirely to blame in this situation. On the one hand the Bureau is required to act as trustee for Indians. On the other hand the Bureau is responsible for encouraging self-determination. The contradiction between these missions might simply be put as one message to not abandon the Indians and another to set the Indians free. The guidance offered by Congress has not been sufficient to help the BIA avoid problems like the one at Cheyenne river.

¹¹. George Pierre Castile, "The Headless Horseman: Recapitulating the Beheaded Community," Indian Historian, vol. 11, (September, 1978), p.40. For a discussion of why it might be in the interest of the Federal government to keep it this way see Section III, Institutional Design.

specialized organizations, each designed for a specific task to ensure efficiency and quality of service delivery.

Not having resolved this tension, Congress has alternated between assigning services to their logical line agency to ensure quality and efficiency (e.g. Indian Health Service in the Department of Public Health), and assigning services to the BIA because the BIA is best designed to respond to Indian interests (even if those services, e.g. education, fall far from the realm of expertise of the DOI). Over the years Congress has inconsistently delegated responsibilities. Prior to the Great Society era all significant programs were concentrated in the BIA. By the mid 1970's a minimum of 12 agencies had Indian Desks which administered large Indian programs. As the Reagan era comes to a close the emphasis has again shifted back to concentrating functions within the Bureau of Indian Affairs. The tension caused by the incompatible organizational requirements of these programs has led to a haphazard and incoherent administrative structure under which Indian people fail to access services which are designed for them.¹²

For example, if a tribe is in need of housing development it must push for the BIA to budget for and build roads and sidewalks; the Department of Health and Human Services (HHS) to budget and install water and sewage systems; and the Department Housing and Urban Development (HUD) to budget and build the houses. Any local government, Indian or non-Indian, would find such efforts a demanding task.

Part of the reason for the haphazard and disjointed assignment of service responsibilities is the very complicated and often incompatible tasks which the government

¹². General Accounting Office, More Federal Efforts Needed to Improve Indians' Standard of Living Through Business Development. (Washington D.C.: GPO, 1978), p.56

is trying to undertake. A second reason is the ever changing goals of federal Indian policy. Together the complexity and poor design have resulted in enormous confusion for both Indians and agencies alike, leading to consistently ineffective service delivery.

SUMMARY AND RECOMMENDATIONS

As with all U.S. citizens, Indians' freedoms and powers are constrained by the federal government. Unlike other Americans, however, Indians' freedoms and powers are subject to dramatic change. While most rights of non-Indian Americans are firmly established in the Bill of Rights and are consistent, many rights of Indians are vulnerable to the shifting sands of Congressional priorities and sensitivity to Indian interests.

This has proven to be a precarious reality for Indians. Congress has been unreliable and indecisive, forever granting and then rescinding rights and liberties. Consequently Indians have developed a deep sense of distrust and suspicion of the one power that can give them what they need and deserve.

Policies have been so short-lived that tribal governments and Indian societies have not been able to develop any continuity or stability. Those services which Indians have come to rely on are entangled in such a confusion of red tape that tribes are often unaware of the services that are available to them or they are unable to qualify for them due to confusing and complex eligibility requirements.

The solution to these problems primarily is stability and constancy in the goals of Indian policy and the missions of administrative agencies. The mix of services and the role of the BIA are almost secondary at this point in history. If only Indians knew what to expect of the federal government tomorrow they might be able to adapt and make the most

of their lives. Achieving consistency in an elective body, however, is like trying to pick up water with your fingers. The plenary powers of Congress prevent it from ever fully committing itself.

Furthermore, ideally Congress should not define the goals of Indian policy because this decision is not or should not be political. While there are ambiguities regarding the rights of Indians and the responsibilities of the U.S. to Indians, the fine tuning of those definitions should be made by an objective reading of treaties and not by the politically motivated interests of elected officials who represent a non-Indian majority. The very reason for Indians having a trustee is to protect them from those very interests.

The task of reformers then is to identify a way to get a fair and clear statement of obligation and to ensure that there is longevity to that statement. One possibility would be the creation of an autonomous and apolitical commission that is free from Congressional oversight and appropriation authority. The mission of the agency would be to interpret the treaties and history of U.S. relations with Native Americans and to state the obligations of the U.S. to the Indian people. The commission would not likely have any oversight responsibilities because the enormous cost of Indian programs will always require Congressional appropriation.

While the commission would probably not have any binding authority, it would still go far in addressing the problems mentioned above. Its very existence would affirm the trust obligation and serve as a check to any future Congress which might lapse into a termination disposition. In addition, because the body would be insulated from political pressures, its interpretation of the trust obligation and its statement regarding the purposes and services of the federal-Indian relationship would be stable and constant. Although any

such statement would inevitably be controversial (a primary reason why Congress has avoided making such a statement), its reliability would allow tribes to finally develop stable and efficient institutions for both accepting federal services and providing services that the government will not provide.

The commission also would reduce the level of tribal political infighting and instability that results from unpredictable and capricious changes in federal services. Finally, such an institution would contribute toward consistency and coordination of federal services. Administrative agencies would benefit from a clearer and more constant mission.

III. INSTITUTIONAL DESIGN

The previous section discussed how the absence of clear and stable policy goals underlies many of the problems in the administration of federal Indian policy. Another important cause of the failings of Indian policy has been that the institutions which interact to create and implement Indian policy (Congress, the BIA and other Federal agencies) are fundamentally not designed to be sensitive to Indian needs.

Reform efforts which focus on the Federal government place too much faith in a system which will forever be more responsive to non-Indian interests. While there is room for improvement there are limits to how sensitive the Federal government will ever be. This section describes how Congress and the BIA are prevented from wholeheartedly advocating Indian interests.

1) Congress's plenary power in Indian affairs and its accountability to non-Indian constituents permits and compels the U.S. Government to disregard the trust obligation and best interests of American Indians.

It is somewhat remarkable that the description of the U.S.-Indian relationship has been termed one of trustee to beneficiary. One of the fundamental principles of the trust notion is that the trustee has an unwavering stake (legal liability) in the welfare of the beneficiary. Congress has no such interest for two important reasons. Foremost is that Congress has plenary power in Indian affairs. It can, anytime it wishes, terminate its trust responsibilities. Congress is not therefore, in the true sense of the word, a trustee for Native Americans.

The second reason why Congress does not find itself compelled to always act in the interests of Indians is because it is a political body with an overwhelming non-Indian

majority. While it is far-reaching to suggest that a political body could ever assume the role of a trustee, it is especially true in the case of the U.S. Congress and American Indians where Indians represent such a small minority of voters. This point was made by the American Indian Policy Review Commission (AIPRC):

More and more, it appears that congressional delegations from States with significant Indian populations are catering to those constituents with the greatest voting power. Where those interests conflict with Indian interests, the members of Congress are reluctant to openly and vigorously support the legal status and promote protection, preservation and enhancement of Indian assets.¹³

Congress simply does not have the incentives to treat Native Americans satisfactorily. Indians have to rely on the magnanimity of Congress, or on recourse to the courts, to get fair treatment. As the meeting place of hundreds of competing and powerful interests, Congress tends not to be magnanimous very often. This is something that American Indians probably understand better than other American citizens.

2) Congress has not been sufficiently committed to reforming the BIA in particular or Indian policy in general.

Related to its lack of incentives, Congress has too often initiated efforts to improve the federal treatment of Indians and then not had the willpower and oversight capacity to follow through on them.¹⁴ As discussed in a BIA internal memorandum regarding improving management conditions at the BIA:

¹³. AIPRC Final Report, p.295

¹⁴. Russel Lawrence Barsh, "The BIA Reorganization Follies of 1978: a Lesson in Bureaucratic Self-Defense", American Indian Law Review, vol. 7, Summer 1979, p.13. See also American Indian Policy Review Commission, Management Study of the Bureau of Indian Affairs. (Washington, D.C.: GPO, 1976).

[It is] difficult to contend that a burning interest of the average Senator or Representative will be the internal strengthening of the Bureau which now is playing a more effective role in representing its clients in land, water and other natural resource matters against majority interests of far more concern to a Congressman.¹⁵

Congress has often gone for the quick fix but has never attempted to systematically address the most pressing problems of Indian policy. In the nine years between 1964 and 1973 the Bureau was reorganized ten times; it is safe to conclude that at least the first nine were unsuccessful.¹⁶ So many short lived and poorly conceived reform efforts have built up the suspicion and resentment of Indians and the many people in the BIA who are committed to helping the Indians:

[It] sends the signal throughout the [BIA] that "the status quo" still prevails regarding management attitudes and values: a political, personal and subjective approach is again being used rather than a principled, institutional and objective one... [an approach which] once again furthers the interest of the power-and-status hungry, enhances opportunities for the political/personal climbers, and denigrates institutional values and management systems.¹⁷

One should not be surprised if the BIA or Indians fail to take Congressional policies very seriously. The past inconsistencies seem to have left the BIA an organization with a muddled sense of purpose and one which has learned to humor short-lived Congressional initiatives.

¹⁵. U.S. Dept. of the Interior. "Assessment of Current Management Conditions in the Bureau of Indian Affairs", Internal Memorandum. (Washington, D.C.: October 18, 1978.), p.12

¹⁶. See generally, U.S. Cong. Senate Committee on Interior and Insular Affairs. Subcommittee on Indian Affairs. Realignment of the Bureau of Indian Affairs Central Office. 93rd Congress, 1st Session, June 25 and July 10, 1973. Washington, D.C.: GPO, 1973.

¹⁷. DOI "Assessment", p.17

3) The Bureau of Indian Affairs, specifically the Indian Solicitor, is vulnerable to conflicts of interest because of its location within the Department of the Interior.

If any single problem of Federal Indian affairs has received the greatest amount of recognition it is probably the conflict of interest surrounding the Indian Solicitor. The most famous critic on this note is President Nixon, who in delivering his Indian policy statement to Congress in 1970 noted that:

The U.S. Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal Government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the government holds as trustee... No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position.¹⁸

The same Interior Department which is responsible for advocating and protecting Indian interests is the agency which is charged with representing the resource interests of all non-Indians. The historical conflict that exists between Indians and non-Indians over land and resources, therefore, is brought to a head in one federal executive agency.

A famous example of the divided loyalties of the Interior department is the case of Pyramid Lake Paiute Tribe v. Morton. In this instance the Interior Department was enjoined by a federal court from diverting water into a Bureau of Reclamation project at the expense of reducing the water quality of the downstream Pyramid Lake which sits on the Paiute Reservation.

¹⁸. "The American Indians - Message From the President of the United States," Congressional Record. 8 July, 1970, p.23135

To make matters worse, the Indian Solicitor within the BIA often simultaneously represents Indian interests and the interests of other Interior Bureaus, such as the Bureau of Reclamation and the Bureau of Land Management in issues where the interests of the separate bureaus conflict.¹⁹ Indians, therefore, are not even assured that, within the BIA, they will receive uncompromised representation.

Finally, when Indians cannot depend on fair and adequate legal representation by its legal trustee, they must hire private counsel with tribal funds. The BIA, however, has to approve these contracts. Consequently, cases arise where a tribe wishes to bring suit against the BIA but has to ask the BIA for permission to hire its attorney. In some of those cases the Secretary has denied those requests.²⁰

4) Non-Indian political pressures can adversely affect BIA responsiveness to policy initiatives.

Aside from overt conflicts of interest created by the BIA's placement within DOI, it is unreasonable to believe that the BIA exists only to serve Indians. While there is a widely held view that the BIA exists exclusively to be the Indians' advocate within the federal government, the agency in fact has other compelling interests to serve. In its role as administrator of the federal trust obligation, the BIA acts as U.S. representative to the Indians so that when Indian and federal interests diverge, the BIA can be expected to side with the federal government:

...the Office of Commissioner and the agency under the Commissioner are instrumentalities of the United States, not the Indians, and represent the U.S.

¹⁹. Barsh "Reorganization Follies", p.8

²⁰. American Indian Policy Review Commission, Task Force III, Report on Federal Administration and Structure of Indian Affairs. (Washington, D.C.: GPO, 1976), p.3

side of the table in relation to the tribes...there is also an irreducible area in which the Indians will be at odds with any federal agency, regardless of the mandate of that agency to serve Indian interests.²¹

For example, it is difficult to imagine that during the energy crisis of the 1970's the Department of the Interior was able to administer Indian energy resources entirely in the interests of Indians (who stood to gain enormous revenues) and free from the pressures of non-Indian energy consumers. The Executive division, like Congress, is subject to constituent pressures when administering policy.²²

5) The decentralization of the BIA inhibits reform (Area Offices are too powerful).

A frequent allegation against the BIA is that its three-tiered structure has created fiefdoms at the area level offices where area directors are able to ignore central office (and therefore Congressional) directives and set policies according to their own personal interests.²³ For example, in 1977, after area directors had continually condoned the practice of state governments coercing Indians to sell their lands in order to become eligible for public assistance benefits, the Commissioner of Indian Affairs issued a directive to cease such practices. Despite clear direction to the contrary, area offices continued to encourage this harmful practice.²⁴

²¹. Id. p.4

²². Dick Kirschten, "Interior Seeks a Balance Between Environmentalists and Indian Claims." National Journal, vol. 9, Nov. 26, 1977, pp.1842-3

²³. Michael P.Gross, "Indian Self-Determination and Tribal Sovereignty: An Analysis of Recent Federal Indian Policy," Texas Law Review, vol. 56, August, 1978, p.1227. See also Barsh "Reorganization Follies", p.20

²⁴. Lynn Kickingbird, Kirke Kickingbird, Indians and the U.S. Government. (Institute for the Development of Indian Law. Washington, D.C. 1977) p.65

In addition, the structure has been accused of creating unreasonable delays concerning small decisions. As one respected observer noted:

The 'layering' and compartmentalizing which require actions moving up and down to go sideways also, back and forth, on each layer, result inevitably in slowness, frustrations and negativism, as well as a continuing Niagara of studies, assessments, opinions and reports. The Bureau in consequence is literally drowned in paperwork, while on the reservation level the Indians wait.²⁵

Those who defend the structure argue that three layers are necessary for the coordination of so many agency level offices (82) and the 18,000 Bureau employees. Others argue that the delivery system is designed for stability; area office directors are not within reach of either the tribes or Congress. The insulation of the decision-makers from outside pressures has created an environment which does not encourage innovation:

It is doubtful that very much could be done with or to the people in the organization, given the present structure...[which] not only serves to reward unaggressive behavior and docility but punishes, usually by transfer, those who persist in behaving like leaders. The reward system of BIA discourages leadership, on purpose. It is, therefore, not possible to conceive of change and improvement within the present structure.²⁶

While change might be the cure it is hard to imagine that the area offices, which have proven to be autonomous, would ever allow themselves to be reformed or have their powers reduced.²⁷ The prospects for correcting the BIA structure are reflected in a BIA internal memorandum:

The BIA reorganization is all words and no action. It is another one of the perennial Bureau reorganizations, which will not solve any of the real problems nor affect the real work in the field. What momentum it might

²⁵. Alvin M. Josephy, The American Indian and the Bureau of Indian Affairs 1969: A Study With Recommendations. (Indian-Eskimo Association of Canada, Toronto, 1969), p.55

²⁶. Id. p.56

²⁷. Barsh "Reorganization Follies", p.20

have had is lost, and the effort is no longer credible, particularly since it is a Central Office directed initiative, for which office there is little respect.²⁸

SUMMARY AND RECOMMENDATIONS.

The theme of this section is that the two major players in Indian policy, Congress and the BIA, are not designed, and therefore are not inclined, to improve or change the current system and all of its problems. This presents serious obstacles to well-intentioned reformers. At least two strategies to improve upon these institutional problems exist. The first is to improve the institutions and the second is to improve Indians' ability to respond to those institutions as they are.

The prospects for improving the institutions are not good. The problem with Congressional incentives are endemic to the U.S. democratic form of government. Obviously the U.S. Congress is not going to change its structure in order to accommodate Indian problems and the non-Indian majority is unlikely to care enough to invoke Congress to treat Indians better.

Accordingly, the fact that the BIA answers to Congress's will implies that the chances of improving the Bureau are equally discouraging, with one significant exception. There is no reason for the persistence of Indian Solicitor's conflict of interest. At a minimum the Solicitor of Indian Affairs ought to work solely on Indian matters and probably should not be housed in Interior. Congress, as the supreme lawmaker of the country, should see to it that Indians have uncompromised legal representation. The idea of separating the Indian Solicitor into an independent agency is not new and its

²⁸. DOI "Assessing", p.24

implementation is possibly the easiest and most significant improvement that could be made in Indian affairs.

The vulnerability of the BIA to outside political influence is also endemic to our form of government. As long as the BIA is subject to the oversight and appropriation authority of Congress, and no argument has yet been made that it should not be, the BIA will continue to serve as the agent of the federal government, not as the advocate of Indian interests.

Finally, the problems of the Area Office fiefdoms call for reorganization. History has proven, however, that the BIA is resistant to such change and if Congress does not have the desire to force change in the Bureau then change is not likely to come. In the larger scheme of things there are better places for Indian advocates to put their energies than in another attempt to reorganize the BIA.

Probably the greatest hope for improving upon the problems of Indian institutions lies with the Indians themselves. They do not have the power to change those institutions, but they do have the power to strategically react to them.²⁹ What can Indians do? Without having to sever or weaken their relationship with the U.S. government, the Indians have to learn to take from the U.S. what is good and turn away from what is bad; to use Indian law and treaties to protect and enlarge the land and resource base; and continue to accept federal funding and services which do not retard the development of social infrastructures or constrict Indian self-sufficiency.

²⁹. This is not a novel thought. The American Indian Movement (AIM), whose techniques possibly were not the best vehicle for bringing change, rose out of frustration with non-Indian leaders and a realization that only Indians will fight for Indians.

Many tribes are literally ignoring the BIA and proceeding with their own economic development programs. The White Mountain Apaches in Arizona have overcome BIA interference and established one of the better run and most profitable logging and milling operations in the country. The operation has succeeded in providing skilled jobs for the people and revenues for the tribal government that the BIA does not control.

Another area for self-empowerment is improving tribal governing structures. The Crow Tribe of Montana is currently planning a constitutional convention to strengthen their government to allow the tribe to function more independently of the BIA. Most tribal constitutions were created under the 1934 Indian Reorganization Act and for the purposes of effective self-government were poorly designed (many were based on the model of the American Legion). In many cases weak and inefficient tribal institutions have prevented good decision-making and service delivery, are very unstable, and increase tribal reliance on the federal government.

The current self-determination policy is helping many tribes to increase their capacities for independent existence. Now may be one of the better times in history for American Indians to help themselves. Without entertaining the notion of reducing the federal commitment to Indians, tribes should increase their capacity to take advantage of opportunities and decrease their vulnerability to those who will take advantage of Indian communities.

IV PROGRAM EXECUTION

The previous two sections have dealt with problems that have received disproportionately little attention in previous reviews of Federal Indian affairs. The bulk of work has focused on the shortcomings of the BIA. While this report takes extra care to avoid the convenience of blaming the BIA for everything, no complete discussion of Indian affairs can avoid the record of the BIA. Granting that the BIA has an unclear mission and complex objectives, it still has not performed adequately.

This section involves less analysis than the previous two and focuses on the main allegations which critics have levelled against the BIA. The problems discussed relate specifically to BIA management of natural resources and generally to BIA operations. The problems noted here can be extrapolated with reasonable confidence to other BIA programs.

1) The BIA has mismanaged Indian natural resources and lands.

Reports of BIA mismanagement of Indian resources are extensive. The following sample gives an idea of the type and extent of the problem.

* A 1975 General Accounting Office (GAO) report estimated that 30 percent of Indian rangeland, some 13 million acres, were overgrazed, and alleged that range improvements were poorly used and maintained.³⁰

* Bureau managers for the Yakima Tribe have been accused of violating sustainable yield forestry practices in favor of maximum achievable cut/revenue policies.

* From the 1940's to the 1960's the BIA implemented a deforestation policy on the White River Apache reservation to facilitate the runoff of rainwater to benefit the city of Phoenix.

³⁰. General Accounting Office. Indian Natural Resources: Opportunities for Improved Management and Increased Productivity. (Washington, D.C.: GPO, 1975), p.30

* Another GAO study found that the BIA had negotiated nine out of eleven mineral leases using a fixed royalty rate instead of the industry standard sliding rate whereby royalty payments escalate with price increases.³¹ Similar leasing practices cost the Crow tribe of Montana millions of dollars when coal prices escalated during the 1970's energy crisis.

Analyses of the BIA assign blame for these problems to, among other things, an absence of staff who are skilled in their area of responsibility:

The BIA is staffed with some employees who are not committed to the development of Indian lands and resources for tribal benefit. They are frequently unprepared and unsympathetic to effectively work for the interests of the tribes. The employees often lack current knowledge of resource development techniques... They often lack a basic understanding of the tribes they serve and the needs of those tribes by not considering themselves as part of the 'Indian community' life...³²

Others contend that the BIA has failed to help Indians develop land themselves.

A great portion of Indian lands have been leased to and used by non-Indians, denying many tribes of their only real opportunity for employment. Critics argue that fractionated land ownership has obstructed efficient development of timber, agriculture and ranching. Furthermore, Indians allegedly have inadequate access to credit and technical training necessary to undertake development of their own resources.³³ The BIA has been implicated in these problems.

The failings of the BIA in managing Indian natural resources are heralded because of the cultural and economic importance of these resources to the Indian people. While some tribes are less endowed than others, an argument can be made that the greatest hope

³¹. Judith Miller, Mark Miller. "The Politics of Energy vs. the American Indian," USA Today (magazine), vol. 107, March 1979, p.10

³². AIPRC, Federal Administration, p.13

³³. AIPRC Final Report, p.7

for alleviating chronic Indian problems lies in the wise use of their natural resources. The poor record of the management of these resources has been laid, with some justification, at the door of the BIA.

2) The Bureau of Indian Affairs takes advantage of the unclear trust responsibility in order to advance the institution.

Another allegation against the BIA is one that is frequently leveled against most federal agencies; that the BIA is protective of its policy turf and jealously guards it from intrusion. The Bureau does respond well to initiatives which have the effect of reducing its jurisdiction, budget, or staff. Some have gone so far as to say that the BIA is in business to sell poverty to Congress; i.e. the poorer and more miserable the Indian condition, the more reason to keep the BIA and increase its budget. Arguably it has never been in the interest of the BIA, as an organization, to empower Indians and enable them to take care of themselves:

If the tribes get into a situation where they actually, literally, became confident and could conduct their own business, they would run their enterprises through whatever means they chose. What would you need the Bureau for?³⁴

The self-defense instincts of the Bureau have been cited as an explanation of the Bureau's overly paternalistic interpretation of the trust responsibility. In light of Congress' unwillingness to clearly define the trust responsibilities and clarify the role of the federal government in Indian lives, the BIA has been able to interpret the trust doctrine to its own advantage. As noted in the final report of the AIPRC:

"The research of this Commission shows that the Bureau of Indian Affairs...has used the trust doctrine as a means to develop a paternalistic

³⁴. "Arguing for a Separation of Powers," American Indian Journal, vol. 6, September 1980, p.15

control over the day to day affairs of Indian tribes and individuals... Federal-Indian trust law, as expressed both by Congress and by the courts, calls for Federal protection, not Federal domination."³⁵

The success of the BIA in securing its turf and increasing its budget are reflected by the Bureau's recent growth into the largest bureau within the Department of the Interior with over 18,000 employees and an annual budget of over one billion dollars. The disturbing ratio of one BIA employee for every 19 Indians, and the fact that, in 1977, only 15 cents of every dollar appropriated to the Bureau reached tribes as cash, further substantiate the allegation that the internal priorities of the BIA are largely to protect and enhance its own existence.³⁶

3) The Self-Determination and Education Assistance Act (P.L. 93-638) has created conflicts in the BIA between institutional and policy objectives.

The major goal of Title I of the Self-Determination and Education Assistance Act is to increase tribal control over government programs by requiring the BIA and other federal agencies to pass program dollars to the tribes in the form of service contracts. In other words, agencies are required to relinquish control over Indian programs.

If one accepts the argument that the BIA is protective of its budget and staff, then it is logical to expect Bureau resistance to the spirit of the self-determination. Rather than anticipating this behavior, however, the Act actually provokes the self-defense mechanisms of the agency.

The flaw in the Act is its allowance for broad administrative discretion. The Act is replete with the phrase "with the consent of the Secretary [of the Interior]". This presents

³⁵ AIPRC Final Report, p.191

³⁶ Id. p.227. Barsh "Reorganization Follies", p.3

the Secretary with a potentially irresolvable conflict between judging a proposed "638" contract on its merits versus its damage to the Bureau.³⁷ The Bureau has been known to resist tribal contracts arguing that if an Indian contractor delivers sub-standard services the trust doctrine still holds the BIA, not the contractor, responsible. Furthermore, the Act delegates to the BIA the power to frame the Act's regulations with no guidance for how the regulations should affect the BIA itself.³⁸ As stated by one author:

The Self-Determination and Education Assistance Act promised to transfer Bureau programs contractually to individual tribes. Contracts must be renewed annually in the discretion of the Bureau, however, and the Bureau reserves power to regulate all aspects of service delivery policy except employment. Contractor tribes become legally responsible for service quality while Congress and the BIA retain complete control of funding, a dangerous separation of power and liability.³⁹

Several years after the Act had been passed the issue of sufficient funding became such a reality that amendments to the Act were passed to ensure that tribes were given enough resources to meet the competency requirements of the contracts. The BIA allegedly has managed the Act, however, to increase its power to manipulate tribes and protect its turf. Former BIA employee Ernie Stevens, Oneida recalled the following example:

[W]hen we started contracting, the Bureau started running low on money. The under Secretary issued an order to cut back on administration by 10 percent at all central and area offices. The 10 percent was to go into programs... A week later the order went out and there was a national Indian uprising because the area offices subtly, well not so subtly, asked the tribes, 'if we were to cut back by 10 percent, which programs would you cut back?'

³⁷. Castile, p.42

³⁸. Gross, p1201

³⁹. Barsh "Reorganization Follies", p.13

Everything works for the Bureau in this kind of sick relationship between us and the United States.⁴⁰

The record of the BIA seems to have been fairly cooperative, at least at the Area Office level, in the realm of human service programs where administration had always been a headache and for which tribes will always need money. But in those programs such as forestry and minerals where there is a danger of tribes controlling physical resources and achieving self-sufficiency the BIA has used the broad controls conferred on it by the Act to frustrate tribal programs which, if successful, might reduce the need for the BIA.⁴¹

4) The policy and budget-making processes of the BIA lack centralized control and are not sufficiently open to Indian participation, planning or review.

Many of the policy and budget decisions of the Bureau are considered unresponsive to Indian needs. There are no standards or guidelines for service delivery, managers are not held accountable, employee responsibilities are not defined, and there is no feedback.⁴² Within and among area offices there is little consistency. Telling evidence of this problem is the unexplained variance in per capita Indian expenditures which in 1976 ranged from \$500 on one reservation to \$3,600 on another.⁴³ While some variation is understandable (e.g. due to differences in the cost of living), this magnitude seems extreme.

⁴⁰. "Arguing for a Separation of Powers," p.15

⁴¹. Based on an interview with Charlie O'Hara, former Executive Assistant to the Tribal Chairman for the White Mountain Apache Tribe of Arizona (August 1988).

⁴². DOI "Assessing", p.24

⁴³. AIPRC Final Report, p.267



In the 1976 management study of the Bureau the weaknesses of BIA management procedures were summarized in the following six points:

1. There is a notable absence of managerial and organizational capacity throughout the BIA.
2. Decisions are made on a day-to-day basis with little long-range planning.
3. Communications among the organizational levels are poor, as are agency tribe relationships.
4. Evidence of critical analysis and determination of appropriate performance standards for key positions are almost non-existent.
5. Employee attitude and morale are poor.
6. The budget system (Band Analysis) is inadequate.⁴⁴

In addition to poor controls, planning, communication, etc., there are insufficient opportunities for Indians to affect the program and budget decisions which so significantly affect their lives.⁴⁵ Even with band analysis more than half of the budget is set without local needs analysis or opportunity for Indian review.⁴⁶

SUMMARY AND RECOMMENDATIONS

Given that the bulk of work done on the problems with Indian policy has focused on the BIA, it is not surprising that reform efforts have dealt with improving this organizational aspect of the administration of Federal Indian policy. It is not an exaggeration to say that the BIA is reorganized so often that the organization chart is

⁴⁴. Id. p.269

⁴⁵. AIPRC Management Study, p.8

⁴⁶. AIPRC Final Report, p.269

almost always out of date. The consistent failure of those efforts suggests that something bigger than the reporting structure and training practices of the BIA are at the root of the problem.

Previous efforts to reform the BIA have identified correctly that the absence of Bureau accountability to Indians underlies most of the managerial and program implementation problems mentioned in this section. That the agency could be criticized for so long over the same issues and seemingly never change implies that the Bureau is not sufficiently subject to the pressures of those it serves.

Unfortunately efforts to increase accountability have been limited to ineffective and cosmetic changes like reorganization and changes in Bureau leadership. It should not be surprising that problems which reach so deep into this huge 18,000 employee organization have not been resolved by firing Commissioners and realigning the program functions of the Bureau. Assuming that the BIA had all the tools and incentives to do a good job, these techniques would no doubt bring positive change. But, as suggested in the previous sections, if the entire system of federal Indian affairs is flawed, then these changes have little chance of making a difference. The principal reason that the BIA may not be effective in empowering the Indians is because it has not been directed or designed to be so.

CONCLUSION

This paper suggests that problems with the administration of Federal Indian policy exist at three levels. First is a lack of clear goals and mission for Indian policy. Secondly, the institutions which design and implement Indian policy are not, as many people suggest, Indian advocates but rather are instruments of the non-Indian majority which often finds its interests in conflict with those of Indians. Finally, and I suggest of secondary importance, is the demonstrated poor record of the BIA in serving Indians.

The outlook for Indian welfare is good despite the seemingly intractable problems of the Federal system. Some changes can be reasonably expected within the Federal government and a great deal can be expected of Indians' ability to cope with the federal system.

Within the Federal government it should be possible to get an objective and thoughtful statement of the goals and mission of Indian affairs from a newly created apolitical commission. In one of its more benevolent moments Congress may have the conviction to delegate this control. The open question with regard to this option is whether non-binding policy statements issued by an otherwise powerless commission would carry enough influence to overcome the strong counter-pressures which have prevented Congress from fulfilling this role itself. It is also unclear how such a body could influence the responsiveness of the BIA if the commission has no oversight power. Despite these issues, the very existence of such a commission will add to the permanency of the Federal commitment and is likely to help clarify the goals and mission of the U.S. obligation.

A second significant change to the Federal system would be to guarantee that Indians have uncompromised legal council. Indian interests, which depend so much on

interpretations of the law, cannot be protected under the current structure. Several variations of this proposed change exist but what is most important is that the Indian Solicitor be insulated from the pressures of other DOI bureaus and other cabinet departments. This change would involve minimum disruption to the current service delivery system and therefore is not likely to meet with strong resistance. There is no reason that such a small organizational change, which is of such great importance, to Indian welfare should not be made.

Even if these changes to the federal structure are made the system will remain imperfect as far as American Indians are concerned. For this reason the greatest hope, and the most energy, should be placed in the self-empowerment of the Indians. Indians have made great strides in learning to interact with non-Indian culture through increases in the numbers of Indian lawyers, doctors and other professionals. The ability of tribes to understand and work with the non-Indian world coupled with windows of opportunity such as the current self-determination policy may propel Indians into a state of independence unknown for over one hundred years.

A great deal of tribal energies have been put into economic and government development projects. The goals of these efforts are ambitious and undoubtedly painful for Indian communities, but success could release Indians from absolute dependence on the Federal government. If Indians increase their bargaining power with the Federal government and learn to live with the pendulum of Federal policies then the great debate over the Federal-Indian problems will recede and energies can be diverted into more fruitful endeavors.

WORKS CONSULTED

Josephy, Alvin M. The American Indian and the Bureau of Indian Affairs 1969: A Study With Recommendations. Toronto, Indian-Eskimo Association of Canada, 1969.

"The American Indians - Message From the President of the United States," Congressional Record. 8 July, 1970, pp. 23131-23136.

Schifter, Richard. "Trends in Federal Indian Administration", South Dakota Law Review, vol. XV. 1970.

U.S. Cong. Senate Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary. A Study of Administrative Conflicts of Interest in the Protection of Indian Natural Resources. 91st Congress, 2nd Session. Washington, D.C.: GPO, 1971.

U.S. Cong. Senate Committee on Interior and Insular Affairs. Subcommittee on Indian Affairs. Realignment of the Bureau of Indian Affairs Central Office. 93rd Congress, 1st Session, June 25 and July 10, 1973. Washington, D.C.: GPO, 1973.

Chambers, Reid Peyton, "Judicial Enforcement of the Federal Trust Responsibility to Indians," Stanford Law Review, vol. 27: 1213, May, 1975.

General Accounting Office. Indian Natural Resources: Opportunities for Improved Management and Increased Productivity. Washington, D.C.: GPO, 1975.

----- Land Management Activities on Three Indian Reservations in South Dakota Can Be Improved. Washington, D.C.: GPO, 1975.

----- Letter to Senator Paul J. Fannin Regarding Band Analysis for Educational Funding. Washington, D.C.: GPO, 1975.

Barsh, Russel Lawrence, Ronald L. Trosper. "Title I of the Indian Self-Determination and Education Assistance Act of 1975," American Indian Law Review. vol 3. 1975

American Indian Policy Review Commission. Report on Federal Administration and Structure of Indian Affairs. Washington, D.C.: GPO, 1976.

----- Management Study of the Bureau of Indian Affairs. Washington, D.C.: GPO, 1976.

----- Final Report. Volume One, Washington, D.C.: GPO, May 17, 1977.

"Indians and the U.S. Government," Institute For the Development of Indian Law. 1977.

Kickingbird, Lynn, Kickingbird, Kirke. Indians and the U.S. Government. Washington D.C. Institute for the Development of Indian Law. 1977

Kirschten, Dick. "Interior Seeks a Balance Between Environmentalists and Indian Claims." National Journal, vol. 9, Nov. 26, 1977.

U.S. Cong. Senate Select Committee on Indian Affairs. Bureau of Indian Affairs Organization: Hearing. 95th Congress, 1st Session. Washington, D.C.: GPO, 1978.

----- Bureau of Indian Affairs Reorganization: Hearing. 95th Congress, 2nd Session. April 10 and 12, 1978. Washington, D.C.: GPO, 1978.

----- Status of the Bureau of Indian Affairs Reorganization: Hearing. 95th Congress, 2nd Session. August 16, 1978. Washington, D.C.: GPO, 1978.

Champagne, Duane. "Organizational Change and Conflict: A Case Study of the Bureau of Indian Affairs", Cambridge, MA. Unpublished, approx. 1978.

U.S. Dept. of the Interior. "Assessment of Current Management Conditions in the Bureau of Indian Affairs", Internal Memorandum. Washington, D.C.: October 18, 1978.

Castile, George Pierre. "The Headless Horseman: Recapitulating the Beheaded Community," Indian Historian, vol. 11, September, 1978.

Fialka, John J. "The Indians, the Royalties, and the BIA," Civil Rights Digest, vol. 10, Winter, 1978.

General Accounting Office. More Federal Efforts Needed to Improve Indians' Standard of Living Through Business Development. Washington D.C.: GPO, 1978.

Gross, Michael P. "Indian Self-Determination and Tribal Sovereignty: An Analysis of Recent Federal Indian Policy," Texas Law Review, vol. 56, August, 1978.

Miller, Judith, Mark Miller. "The Politics of Energy vs. the American Indian," USA Today (magazine), vol. 107, March, 1979.

"Interview With Forrest J. Gerard," American Indian Journal, vol. 5, April, 1979.

"Arguing for a Separation of Powers," American Indian Journal, vol. 6, September, 1980.

Barsh, Russel Lawrence. "The BIA Reorganization Follies of 1978: a Lesson in Bureaucratic Self-Defense," American Indian Law Review. vol. 7, Summer 1979.

Guillemin, Jeanne. "Federal Policies and Indian Politics," Society. vol. 17, May - June, 1980.

U.S. Cong. Senate Select Committee on Indian Affairs. Realignment of the Bureau of Indian Affairs: Hearing, 97th Congress, 2nd Session. June 11, 1982, Washington, D.C.: GPO, 1984.

General Accounting Office. Better Management of Information Resources at BIA Could Reduce Waste and Improve Productivity. Washington, D.C.: GPO, 1984.

Presidential Commission on Indian Reservation Economies. Report and Recommendations to the President off the United States. Washington, D.C.: GPO, November, 1984.

Barsh, Russel Lawrence. "The Structure of Federal Aid for Indian Programs in the Decade of Prosperity. 1970 - 1980," American Indian Quarterly. vol. 8, Winter, 1984.

Taylor, Theodore W. The Bureau of Indian Affairs. Boulder, CO., Westview Press, 1984.

Office of the Inspector General, Department of the Interior. Summary Report: Bureau of Indian Affairs Procurement Audit Report. Washington, D.C.: GPO, 1986.

U.S. Cong. Senate Select Committee on Indian Affairs. Indian Trust Fund Oversight: Hearings. 99th Congress, 2nd Session. September 23, 1986. Washington, D.C.: GPO, 1986.

ADDITIONAL READING

U.S. Cong. Senate Select Committee on Indian Affairs. Indian Self-Determination and Education Assistance Act Implementation: Hearings. 95th Congress, 1st session. June 7 and 24, 1977. Washington, D.C.: GPO 1977.

Kickingbird, Lynn, Kirke Kickingbird. Indians and the U.S. Government. Washington, D.C., Institute for the Development of Indian Law, 1977.

Jackson, Curtis Emanuel, Marcia J. Galli. A History of the Bureau of Indian Affairs and its Activities Among Indians. San Francisco, R & E Research Associates, 1977.

U.S. Cong. House Committee on Education and Labor. Subcommittee on Elementary, Secondary and Vocational Education. Oversight Hearings on Indian Education. 95th Congress, 1st session. May 17-19, 1977. Washington, D.C.: GPO, 1977.

----- Indian Education -- Oversight; Part III, Bureau of Indian Affairs -- Reorganization. 95th Congress, 1st session, September 26-30. Washington, D.C.: GPO, 1978.

Townley, John M. "Reclamation and the Red Man: Relationships on the Truckee-Carson Project, Nevada," Indian Historian. vol. 11, Winter, 1978.

Officer, James E. "The Bureau of Indian Affairs Since 1945: An Assessment," American Academy of Political and Social Science. Annals, vol. 436, March 1978.

Raines, Howell. "American Indians: Struggling for Power and Identity," New York Times Magazine. February 11, 1979.

Kickingbird, Lynn, Kirke Kickingbird. "A Short History of Indian Education," American Indian Journal. vol. 5, August, 1979: September, 1979.

Singleton, Nina. "The Navajo Want to Make it in Their Own," Planning. vol. 46, December, 1980.

U.S. Dept of the Interior. BIA Profile: The Bureau of Indian Affairs and American Indians. Washington, D.C.: GPO, 1981.

Libecap, Gary D. "Competing for the Rental Value of Federal Land: The Assignment of Use Rights and Their Regulation," Cato Journal. vol. 1, Fall, 1981.

"American Indians: Policy, Paradigms and Prognosis: A Symposium," Social Science Journal. vol. 19, July, 1982.

U.S. Cong. House Committee on Interior and Insular Affairs. Federal Housing Assistance for Indian Families: Hearings. 97th Congress, 2nd Session, March 4, 1983. Washington, D.C.: GPO, 1983.

U.S. Cong. Senate Select Committee on Indian Affairs. Oversight of Indirect Costs and Contract Provisions of the Indian Self-Determination and Education Assistance Act: Hearings. 97th Congress, 2nd session. June 30, 1982. Washington, D.C.: GPO 1983.

----- Indian Education Oversight: Hearings. 97th Congress, 2nd session. May 18-19, 1982. Washington, D.C.: GPO 1983.

President's Private Sector Survey on Cost Control. Report on the Department of the Interior. Washington, D.C.: GPO, 1983.

Winslow, Art. "Reagan's Indian Policy: Speaking With Forked Tongue," Nation. vol. 236, February 12, 1983.

Maxfield, Peter C. "Tribal Control of Indian Mineral Development," Oregon Law Review. vol. 62, no. 1, 1983.

Hoar, William P. "James Watt Was Right About Socialism and the Indians," American Opinion. vol. 26, April, 1983.

U.S. Cong. House Committee on Government Operations. Environment, Energy, and Natural Resources Subcommittee. Problems Associated with the Department of the Interior's Distribution of Oil and Gas Royalty Payments to Indians: Hearings. 99th Congress, 1st Session. Washington, D.C.: GPO, 1985.

Cook, Chuck, Mike Masterson, Mark N. Trahant. "Fraud in Indian Country: A Billion-Dollar Betrayal," Arizona Republic. 1987.

U.S. Dept. of the Interior. Bureau of Indian Affairs. Office of Indian Education Programs. Report on BIA Education: Excellence in Indian Education through the Effective School Process. Washington, D.C.: The Bureau of Indian Affairs, 1988.

Sylvester, Kathleen. "Washington Ponders a New Truce with Indian Tribes," Governing. vol. 1, April 1988.

