

FRANCIS PAUL PRUCHA

# The Great Father

*The United States Government  
and the American Indians*

I

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# *Contents*

## VOLUME I

List of Maps, xix

List of Illustrations, xxi

List of Tables, xxv

Preface, xxvii

Acknowledgments, xxxi

Abbreviations, 3

### PROLOGUE: THE COLONIAL EXPERIENCE, 5

Images of the Indians. Christianization.

Invasion of the Indian Lands.

Trade Relations. British Imperial Policy.

### PART ONE: FORMATIVE YEARS, 29

I. Peace after the Revolution, 35

The Policy of the Continental Congress.

Early Treaties and Ordinances.

The Constitution and Indian Policy.

- Treaty-Making Principles and Practices.  
Indian Rights to the Land.
  - 2. War and Defense, 61
    - Subjugating the Indians Northwest of the Ohio River.
    - Unrest and Retaliation in the South.
    - Probing the New West: The War of 1812.
    - American Dominion—North, West, and South.
  - 3. Trade and Intercourse Laws, 89
    - Legislation to Control the Frontier Whites.
    - Regulating the Trade in Furs.
    - The Crusade against Ardent Spirits.
    - Crimes in the Indian Country.
    - Removal of Intruders on Indian Lands.
  - 4. Government Trading Houses (Factories), 115
    - Beginnings of the Factory System.
    - Jeffersonian Expansion. Attack and Support.
    - The End of the Factories.
  - 5. Civilization and Education, 135
    - Civilization. Agriculture and Domestic Industry.
    - Christianization. The Role of Thomas L. McKenney.
    - The Civilization Fund and Indian Schools.
    - Jedidiah Morse's Report.
  - 6. The Indian Department, 159
    - Superintendents and Agents. Headquarters Organization.
    - Assistance from Military Commanders.
    - Presents and Annuities. Peace Medals and Delegations.
- PART TWO: INDIAN REMOVAL, 179
- 7. The Policy of Indian Removal, 183
    - Formulation of the Policy.
- 
- Andrew Jackson and Removal. Motivation for Removal.  
Controversy and Debate. The Cherokee Cases.
  - 8. The Emigration of the Southern Tribes, 214
    - Chocowas. Creeks. Chickasaws.
    - Investigating the Lands in the West.
    - Seminoles and the Florida War.
    - Cherokees and the Trail of Tears.
  - 9. Removal of the Northern Indians, 243
    - Clearing the Old Northwest. Potawatomi Dispersal.
    - Sacs and Foxes and the Black Hawk War.
    - Other Tribes. New York Indians.
    - The Role of the Traders.
  - 10. The Emigrant Indians in the West, 270
    - Transplanted Indian Nations.
    - Military Defense of the Frontier.
    - Benevolence and Reform.
  - 11. New Structures and Programs, 293
    - Development of the Indian Department.
    - Proposals for an Indian State.
    - Annuities and Liquor Regulation.
- PART THREE: AMERICAN EXPANSION AND  
THE RESERVATION SYSTEM, 315
- 12. The Indian Office: Men and Policies, 319
    - Department of the Interior. Commissioners of the 1850s.
    - An Expanded Indian Department.
    - Perennial Problems: Annuities and Liquor.
    - The Challenge of Scientific Racism.
  - 13. A Pathway to the Pacific, 339
    - Colonization of the Western Tribes.

Kansas-Nebraska and the Indians.  
Military Action on the Plains.

14. Texas, New Mexico, and Utah, 354

The Indian Situation in Texas.  
Reservations for Texas Indians.  
Indian Affairs in New Mexico.  
Indians, Mormons, and Gentiles.

15. California, Oregon, and Washington, 381

A Reservation Policy for California.  
Indian Affairs in the Oregon Country.  
The Indians of Washington Territory.

PART FOUR: THE CIVIL WAR YEARS, 411

16. The Southern Indians and the

Confederate States, 415  
Tribes in the Indian Territory.  
Indian Treaties with the Confederacy.  
War in the Indian Territory.  
Peace Council at Fort Smith.  
Reconstruction Treaties.

17. Indian Conflicts: A Series of Other Wars, 437

Sioux Uprising in Minnesota.  
War in the Southwest.  
Bosque Redondo—The Great Experiment. Sand Creek.

18. The Indian System and Its Critics, 462

Commissioner Dole and the Reservation System.  
Protests against the Indian System.  
Proposals for Military Control.

PART FIVE: THE PEACE POLICY, 479

19. Stirrings of Reform, 485

Doolittle Committee.  
Indian Peace Commission. Civilization for the Indians.  
Reform Impulses.

20. Structures of the Peace Policy, 501

The Board of Indian Commissioners.  
Churches and the Agencies. Failure of the Structures.  
The End of Treaty Making.

21. Military Challenge, 534

Indian Wars. The Army and the Indian.  
The Transfer Issue.  
The End of the Military Phase.

22. Reservation Policy, 562

Consolidation of Reservations.  
Indian Resistance to Removal.  
Revision of Reservation Policy.

23. The Indian Service:

Policies and Administration, 582  
An Array of Commissioners.  
Fraud and the "Indian Rings."  
Inspectors and Special Agents.  
Policies and Programs. Law and Order.

Illustration and Map Credits,

Volume I, 607

VOLUME II

PART SIX: AMERICANIZING THE AMERICAN INDIANS, 609

24. The New Christian Reformers, 611  
Reform Organizations: Christian Humanitarianism.  
Americanization. Other Voices.

25. The Reservations and Reform, 631  
Dismantling the Great Sioux Reserve.  
Mission Indians of California.  
Promotion of Civilization.  
Continuing Liquor Problems.  
Opposition to Reservations.

26. Severalty, Law and Citizenship, 659  
The Drive for a General Allotment Law.  
The Dawes Act. Leasing of Allotments.  
Renaming the Indians: Law for the Indians.  
Citizenship.

27. Education for Patriotic Citizenship, 687  
Promotion of Indian Schools.  
Carlisle Indian Industrial School.  
Thomas Jefferson Morgan and Indian Schools.  
Conflict over the Contract Schools.  
Competition from the Wild West Shows.
28. The Indian Service:  
Bureaucratization and Reform, 716  
Growth of the Indian Service.  
Civil Service Reform. The Lesson of Wounded Knee.  
Replacing the Political Agents.

29. Liquidating the Indian Territory, 737  
The Drive for Territorial Organization.  
Invasion of the Indian Territory.  
Defeat of the Five Civilized Tribes.  
Oklahoma Statehood.

PART SEVEN: THE NATION'S WARDS, 759

30. The Indian Office: The Indians' Guardian, 763  
Progressives in the Indian Office.  
The Decline of the Christian Reformers.  
Administrative Efficiency.  
Liquor and Peyote.

31. The 1920s: The Guardian on Trial, 790  
Continuity and Development. The Bureau under Siege.  
Investigations and Reports.

32. Education for Self-Support, 814  
The Indian School System.  
Public Schools for Indians: Courses of Study.  
Success and Failure.

33. Concern for Indian Health, 841  
The Condition of Indian Health.  
Initial Campaigns against Disease.  
A Continuing but Insufficient Fight.  
The Critics.

34. The Indians' Land, 864  
Continuing Allotment: Modifications of the Dawes Act.  
Competency and Pee Patents. Land Policy in the 1920s.  
Forestry and Irrigation.  
Appraisal of the Allotment Policy.

35. Indians of Oklahoma and New York, 897  
Final Dissolution of the Five Civilized Tribes.

Removal of Restrictions.  
The Scandal of the Probate Courts.  
Indian Schools in Oklahoma.  
The Indians of New York State.

PART EIGHT: THE INDIAN NEW DEAL, 917

36. Transition: The Hoover Years, 921  
New Officials: Progress and Reform.  
Failures: Attacks and Rebuttals.

37. The New Reform, 940  
John Collier, Commissioner: Conservation and Relief.  
New Deal Measures: John Collier's Reform Proposal.  
The Wheeler-Howard (Indian Reorganization) Act.  
Indian Organization.

38. Rounding Out the New Deal, 969  
Extending the Indian Reorganization Act.  
Indian Arts and Crafts.  
Continuing Educational Reform. Health Programs.  
Economic Development: The Bureaucracy.

39. The End of the Indian New Deal, 993  
John Collier's Travails: Congressional Attacks.  
The Indians and World War II.  
The Legacy of the Indian New Deal.

PART NINE: TERMINATION, 1013

40. The Postwar Years, 1017  
The Indian Claims Commission: Postwar Readjustment.  
The Approach of Termination: Bureau Reorganization.

41. Termination in Action, 1041  
Legislative Action: Termination Laws.  
Reversal of Policy.

42. Programs for Indians, 1060  
Education for Cultural Change.  
Transfer of Indian Health Services.  
Economic Development: Relocation.

PART TEN: INDIAN SELF-DETERMINATION, 1085

43. Turnabout in the 1960s, 1087  
The New Trail: The War against Poverty.  
New Emphasis on Indian Self-Determination.  
The State of Indian Education.  
The Civil Rights Act of 1968.

44. Signs of the New Day, 1111  
Nixon's Indian Policy: The New Indians and Red Power.  
Turnover and Turmoil in the BIA: Religious Freedom.  
Alaska Native Claims: Menominee Restoration.

45. Advances in Indian Rights and  
Responsibilities, 1139  
Indian Education: Indian Health.  
Indian Child Welfare Act: Indian Self-Determination Act.  
American Indian Policy Review Commission.

46. Legal and Judicial Maneuvering, 1171  
Land Claims and Conflicts: Water Rights.  
Fishing and Hunting Rights.  
Inherent Sovereignty and Tribal Jurisdiction.

47. *The American Indians in 1980*, 1191

Urban Indians and Nonrecognized Tribes.

Federal Programs for Indians.

Building an Economic Base.

- Trust Responsibility: The Great Father Redivivus.

America's Unfinished Business.

APPENDIXES, 1209

Appendix A, 1211

Presidents, Secretaries of War and Interior,  
and Commissioners of Indian Affairs

Appendix B, 1217

Indian Population

Appendix C, 1219

Indian Tribal Entities That Have  
a Government-to-Government Relationship  
with the United States, 1980

Appendix D, 1227

Nomenclature of the Bureau of Indian Affairs

Bibliographical Essay, 1231

Illustration and Map Credits,  
Volume II, 1259

Index, 1261

# Maps

## VOLUME I

1. United States Factory System, 1795-1822, 123
2. Land Cessions of the Five Civilized Tribes, 220
  3. Potawatomi Land Cessions—  
An Example of the Piecemeal Removal  
of the Northern Tribes, 250
  4. Indian Land Cessions in the North, 260
  5. Location of Indians in the Indian Territory,  
after Removal, 275
  6. The Indian Territory, 1866-1888, 435
  7. The Long Walk of the Navajo Indians, 454
  8. The United States Army and the Indians—  
The Plains and Mountains, 1865-1880, 547
  9. Indian Reservations, 1880, 578

## VOLUME II

10. The Sioux Reservations, 1890, 639
11. Lac du Flambeau Reservation, 1933:  
Ownership Status of Land, 950
12. Alaska: The Regional Corporations, 1134
13. Indian Lands and Communities, 1168

# Reservation Policy

*Consolidation of Reservations.*

*Indian Resistance to Removal.*

*Revision of Reservation Policy.*

The post-Civil War Indian Office and the Indian reformers inherited a reservation policy that had developed gradually during the previous decades, and the concentration of Indians on reservations was the underpinning of Grant's peace policy.<sup>1</sup> Commissioner Ely S. Parker's question to the new Board of Indian Commissioners asking whether the Indians should be placed on reservations received a unanimous affirmative answer. The board declared in its first report:

The policy of collecting the Indian tribes upon small reservations contiguous to each other, and within the limits of a large reservation, eventually to become a State of the Union, and of which the small reservations will probably be the counties, seems to be the best that can be devised. Many tribes may thus be collected in the present Indian territory. The larger the number that can be thus concentrated the better for the success of the plan; care being taken to separate hereditary enemies from each other. When upon the reservation they should be taught as soon as possible the advantage of individual ownership of property; and should be given land in severalty as soon

1. This chapter is taken largely from Francis Paul Puchta, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900* (Norman: University of Oklahoma Press, 1976), pp. 107-31.

as it is desired by any of them, and the tribal relation should be discouraged.<sup>2</sup>

## CONSOLIDATION OF RESERVATIONS

The views of the Board of Indian Commissioners accorded well with those of responsible men in Grant's administration. Secretary of the Interior Jacob D. Cox looked not to a new reservation policy but to "an enlarged and more enlightened application of the general principles of the old one." He saw two objects in the policy: "First, the location of the Indians upon fixed reservations, so that the pioneers and settlers may be freed from the terrors of wandering hostile tribes; and second, an earnest effort at their civilization, so that they may themselves be elevated in the scale of humanity, and our obligation to them as fellowmen be discharged." Cox, in agreement with the Board of Indian Commissioners, saw that larger concentration would obviate many of the evils that arose when small reservations were surrounded by the unscrupulous frontier whites, and he hoped that moving less advanced tribes into contact with more civilized ones would have a beneficial result. He was sanguine about the prospects of concentrating the tribes in the Indian Territory and the organization of a territorial government over them. In the north and west of the Rockies he wanted the same sort of development, although he realized that there it would take more time.<sup>3</sup>

With Columbus Delano, Cox's successor, consolidation of tribes in the Indian Territory became almost an obsession, and he began to play a numbers game, trying to fit all the Indians into one large reservation. He counted 172,000 Indians outside the Indian Territory, occupying 96,155,785 acres—558 acres per capita. Inside the Indian Territory he found only one person to every 630 acres. "Could the entire Indian population of the country, excluding Alaska and those scattered among the States . . . be located in the Indian Territory," he decided, "there would be 180 acres of land, *per capita*, for the entire number, showing that there is ample area of land to afford them all comfortable homes." At the same time he candidly admitted that the acres given up by the assembling tribes could be thrown open to white settlement and cultivation. He wanted the Indians to realize that if they did not cooperate in this scheme to preserve them in the consoli-

2. *Report of the Board of Indian Commissioners, 1869*, pp. 3, 9; minutes of May 26, 1869, Minutes of the Board of Indian Commissioners, vol. 1, p. 4, National Archives, Record Group 75.

3. Report of the Secretary of the Interior, 1869, *House Executive Document* no. 1, 41-2, serial 1414, pp. viii-ix.

dated reservation, they would inevitably be inundated or crushed by the rapidly growing tide of white emigration.<sup>4</sup>

In this work of reducing the Indians' reservations, Felix Brunot of the Board of Indian Commissioners played a large part. Negotiations with the Crows, carried on in 1873 by Brunot, which were intended to move the Indians from their reservation on the Yellowstone River in southern Montana to one in the Judith Basin and reduce their lands by four million acres, delighted the people of Montana. The territorial governor thanked Brunot for his work and attributed the success of the negotiations to "the ability and patience by which the negotiations were conducted, aided by the friendly feeling that has been brought about by the humane policy of the President towards the Indian tribes." To the disappointment of the whites, Congress failed to ratify the agreement, and the Crows stayed for the time being on their lands along the Yellowstone. But the case shows both the sincere desire of humanitarians like Brunot to reduce the Indians' land holdings and how the "friendly feeling" that was a conscious part of the peace policy worked toward the ultimate dispossession of the Indians.<sup>5</sup>

An even more personal involvement of Brunot in reducing the reservations came in his dealings with the Utes. Ouray, chief of the Utes, was steadfast at first in his refusal to sell any lands. When Brunot met Ouray at a council in 1872, the chief told him of the capture of his young son fifteen years before by a party of Cheyennes and Arapahos. Brunot and the secretary of the Board of Indian Commissioners, Thomas Cree, undertook to recover the long-lost son, who was found in Texas and united with his father in the office of the board in Washington. The young Indian, unfortunately, died on his way home. "But the gratitude which he [Ouray] felt toward Mr. Brunot and Mr. Cree," Brunot's biographer wrote, "did what a special commission could not do, and when Mr. Brunot told him he thought it right for him to sell a portion of his reservation, Ouray threw all his strong influence in favour of the sale, though a year before he intended opposition to the bitter end." Brunot did "what neither commissioners nor armies could accomplish"; after six days of patient negotiation on his part the Utes ceded five million acres, the southern half of their reservation in southwestern Colorado.<sup>6</sup>

Secretary Delano remarked in 1873 that the efforts of the Indian Office

4. *Ibid.*, 1871, *House Executive Document* no. 1, part 5, 42-2, serial 1505, pp. 6-7; *ibid.*, 1872, *House Executive Document* no. 1, part 5, 42-3, serial 1560, pp. 5-7.

5. Charles Lewis Slattery, *Felix Reville Brunot, 1820-1898* (New York: Longmans, Green and Company, 1901), pp. 207-13. The agreement is in Kappler, vol. 4, pp. 1142-47.

6. Slattery, *Brunot*, pp. 191-92, 214-15. The agreement of September 13, 1873, is in Kappler, vol. 1, pp. 151-52. The story of Ouray's lost son is told in Ann W. Hatfen, "Efforts to Recover the Stolen Son of Chief Ouray," *Colorado Magazine* 16 (January 1939): 53-62.

had been "unremitting," and he continued to urge the Indians to exchange reservations lying within the range of advancing settlements and railroad construction for other locations. Even the Sioux in Dakota and Montana did not escape his solicitous attention. He noted the unproductive soil and the severity of the winters in those northern regions, conditions that hindered all attempts to improve the Indians' condition through agriculture and grazing. Rejecting the older idea of a northern as well as a southern reserve, he wanted to move these northern Indians en masse to the Indian Territory, where "both climate and soil are so favorable for the production of everything necessary to sustain and make them comfortable." Delano lamented the obstinacy of the Sioux, who refused to move, but he thought that time would ultimately overcome their objections.<sup>7</sup>

Delano's plans did not die when he was forced out of office in 1875. His successor, Zachariah Chandler, continued to urge them, although he was willing to use a reservation in Minnesota and another in the southern part of Washington Territory in addition to the Indian Territory as the new permanent homes for the scattered Indians. He also seemed less enthusiastic about what all this would do for the Indians and more concerned about saving money and trouble for the government. His report of 1876 neatly summed up the arguments:

Briefly, the arguments are all in favor of the consolidation; expensive agencies would be abolished, the Indians themselves can be more easily watched over and controlled, evil-designing men be the better kept away from them, and illicit trade and barter in arms, ammunition, and whiskey prevented; goods could be supplied at a great saving; the military service relieved; the Indians better taught, and friendly rivalry established among them, those most civilized hastening the progress of those below them, and most of the land now occupied as reserves, reverting to the General Government, would be open to entry and sale.<sup>8</sup>

It might be suspected that men like Delano, whose record was none too clean, were more interested in freeing Indian lands for white exploitation than in Indian welfare, but they no doubt honestly believed that the Indians had to be moved from their present situations if they were to survive

7. Report of the Secretary of the Interior, 1873, *House Executive Document* no. 1, part 5, 43-1, serial 1601, pp. vii-viii; *ibid.*, 1874, *House Executive Document* no. 1, part 5, 44-2, serial 1639, p. xii.

8. *Ibid.*, 1876, *House Executive Document* no. 1, part 5, 44-2, serial 1749, p. vi. Chandler was merely repeating the arguments and proposals put forth by Commissioner of Indian Affairs John Q. Smith in his annual report, CIA Report, 1876, serial 1749, pp. 385-87. Two years later Commissioner E. A. Hayt drew up a bill to consolidate the tribes further. CIA Report, 1878, serial 1850, p. 440.

and advance. It was the almost universal opinion of the age and a doctrine that went back clearly as far as Thomas Jefferson. Views like Delano's on Indian consolidation were accepted as part of the humanitarians' package of Indian reform. "Since the inauguration of the present Indian policy," the Board of Indian Commissioners declared in 1876, "this board has not ceased to recommend the consolidation of agencies where it can be effected without infringing existing treaties. The time has now arrived when the Government must, if it would see an impulse given to the work of Indian civilization, take decided ground and prompt action upon this important subject." The board was convinced that "the public sentiment in and out of Congress will see the great advantage of this important advance movement in Indian civilization." Tribes that occupied small reservations and had made little progress, if moved to large reservations, would profit from the encouragement of their more advanced brethren and would learn by daily observation "that thrift, enterprise, and energy do always produce their legitimate fruits of civilization and self-dependence." Moreover, a system of law could be more easily introduced, early allotment of land could be provided, and tribal relations could be broken up. Such action, the board concluded, would "go far toward the successful solution of the Indian problem, which has so long perplexed our nation, puzzled our statesmen, and disturbed our philanthropists."<sup>9</sup>

#### INDIAN RESISTANCE TO REMOVAL

The theorists who elaborated schemes for consolidating all the Indians in one big reservation reckoned too little with the Indians, whom they were so willing to move around like pieces on a chessboard. The Indians were deeply attached to their homelands, and the topographical and climatic conditions were psychologically if not physically of tremendous importance to their well-being. Sioux, long acclimated to the northern plains, foresaw only misery and disaster if they had to move to the actually better lands in the Indian Territory. In the 1870s, while government officials and humanitarians were concocting fine schemes to remove the Indians to a few large reservations in order to save money and at the same time speed

9. *Report of the Board of Indian Commissioners, 1876*, pp. 4-6. The board repeated its recommendations in subsequent years. In 1878, a resolution submitted to the Senate asserted that there were 300,000 Indians on 300,000,000 acres of public land in the United States, or about 1,000 acres for each Indian, whereas whites were restricted to a 160-acre homestead for a family. The creation of four Indian reservations or territories was proposed, two west of the Rockies and two east, with the provision that Indians who cut loose from the tribe could take out homesteads where they were. *Senate Miscellaneous Document no. 16, 45-2, serial 1785*.

the civilization process, three disastrous removals propelled the issue into the public consciousness.

The most famous removal was that of the Ponca Indians from their reservation along the Missouri River to the Indian Territory. It was, in fact, the spark that ignited a new flame of concern for the rights of the Indians. The cause was just, the propaganda arising from it was spectacular, and the interest of eastern philanthropists in the Indians burned with new intensity.<sup>10</sup>

The Poncas, a small peaceful Siouan tribe, in 1865 had been guaranteed a reservation of 96,000 acres along the Missouri north of the Niobrara River. Three years later, however, the United States in the Fort Laramie treaty with the Sioux—without consulting the Poncas—ceded the entire Ponca reservation to the Sioux, the Poncas' traditional enemies.<sup>11</sup> Although the United States admitted that the transfer to the Sioux had been a mistake, the government's resolution of the problem was not to restore the lands, which might have irritated the Sioux, but to remove the Poncas to the Indian Territory. Over their objections, the Indians in 1877 were escorted south by federal troops and settled on the Quappaw reserve.

The hardships of the journey and the change in climate brought great misery and many deaths to the Poncas, and even after they had found a new and more favorable location within the Indian Territory, they remained restless and unhappy and longed to return to their old home in the north. "I am sorry to be compelled to say," Commissioner of Indian Affairs Ezra Hayt lamented, "the Poncas were wronged, and restitution should be made as far as it is in the power of the government to do so." Secretary of the Interior Schurz echoed these sentiments, but Congress paid no heed to the reports, and the Indians' condition remained precarious.<sup>12</sup>

One of the chiefs, Standing Bear, could endure the situation no longer. Taking along the body of his dead son, who had succumbed to malaria, and followed by a small portion of the tribe, he started out in January 1879 to return north. Reaching Nebraska early in the spring, the group settled

10. The story of Ponca removal is traced in Earl W. Hayver, "The Ponca Removal," *North Dakota Historical Quarterly* 6 (July 1932): 262-75; and Stanley Clark, "Ponca Publicity," *Mississippi Valley Historical Review* 29 (March 1943): 495-516. An account by one of the men who fought for the Poncas' rights, with reprints of important documents, is Zvylyf [Thomas Henry Tibbles], *The Ponca Chiefs: An Attempt to Appeal from the Tomahawk to the Courts* (Boston, 1880; reprinted with an introduction by Kay Girard, Lincoln: University of Nebraska Press, 1972). An excellent account of the Ponca affair and the reaction of the reformers is in Robert Winston Mardock, *The Reformers and the American Indian* (Columbia: University of Missouri Press, 1971), pp. 168-91.

11. Kappler, pp. 875-76, 998.

12. Report of the Secretary of the Interior, 1877, *House Executive Document no. 1*, part 5, 45-2, serial 1800, pp. vii-viii; CIA Report, 1877, serial 1800, pp. 417-19. The quotation from Hayt is in CIA Report, 1878, serial 1850, p. 467.

down for the time being with the Omaha Indians, their longtime friends. The plight of Standing Bear and his followers had by this time become a public issue, and a group of citizens of Omaha, encouraged by General Crook, took up their case. When federal troops arrived to arrest the runaways and return them to the Indian Territory, prominent lawyers of the city drew up a writ of habeas corpus to prevent the chief's return, and on April 30 the matter was brought before Judge Elmer S. Dundy of the United States District Court. In the celebrated case of *Standing Bear v. Crook*, Judge Dundy ruled that "an Indian is a 'person' within the meaning of the laws of the United States, and has, therefore, the right to sue out a writ of habeas corpus in a federal court." Since he could find no authority for forcing the Poncas back to the Indian Territory, Dundy ordered their release.<sup>13</sup>

The Ponca affair had important repercussions on Indian reform, for a man much involved in the origins of the Standing Bear case in Omaha soon mounted a campaign in the East to stir up public support for the Poncas. He was Thomas Henry Tibbles, one of the strangest characters in the history of Indian reform. Tibbles had been a member of John Brown's band in Kansas, a guide and scout on the plains, an itinerant preacher, a Pullman car conductor, and a newspaper reporter. When the Poncas returned north, he was an assistant editor of the Omaha *Herald*. According to his own testimony, he was the prime mover in the Standing Bear case, and after the chief's release he resorted to the lecture platform to keep the Ponca issue alive. Accompanied by Standing Bear and Susette La Flesche, an Omaha Indian girl known as Bright Eyes, he appeared in Chicago and in several eastern cities to relate the wrongs of the Poncas, condemn the government for its actions, and appeal for support of the Indians' cause.<sup>14</sup>

The greatest success of Tibbles was in Boston, where a group of prominent men (including John D. Long, governor of Massachusetts, and Frederick O. Prince, mayor of Boston) organized the Boston Indian Citizenship Committee to fight for the rights of the Poncas and other Indians. The principal thrust of the group's program was to demand respect for the Indians' rights, including the return to their original reservation, and to denounce the federal government for its part in the Ponca removal. Tibbles fitted well into the program and spoke to enthusiastic audiences in Boston. Bright Eyes and Standing Bear, appearing on stage in Indian dress, added a strong personal touch to the proceedings.

The bête noire of Tibbles and the Boston reformers was Secretary of the Interior Carl Schurz, who had assumed his duties just as the actual move-

13. 25 *Federal Cases* 695-701. The quotation is at 700-701.

14. *Dictionary of American Biography*, s.v. Tibbles, Thomas Henry, by W. J. Ghent, publisher's preface in Thomas Henry Tibbles, *Buckskin and Blanket Days: Memoirs of a Friend of the Indians* (Garden City, New York: Doubleday, 1957). Autobiographical material appears in *Buckskin and Blanket Days* and in Zwyff, *Ponca Chiefs*.

ment of the Poncas to the Indian Territory got under way. In public speeches and published letters, the Boston committee and its supporters on one side and Secretary Schurz on the other engaged in acrimonious debate in which neither side adhered strictly to the facts. The atrocity stories of Tibbles and Bright Eyes were countered by Schurz's descriptions of the favorable condition of the Poncas in the Indian Territory. At a public meeting in Boston on December 3, 1880, presided over by Governor Long, Tibbles delivered an enthusiastically received diatribe against Schurz and his handling of the Ponca case, and other speeches were made by Long, Prince, Bright Eyes, and Wendell Phillips. Schurz replied to the talks in an open letter to Governor Long dated December 9, 1880, in which he urged that justice be accorded the government officials as well as the Indians, he argued that to move the Poncas back to Dakota, as the Boston group demanded, would cause new misery to the Indians and open the door to white invasions of the Indian Territory. This brought a long and denunciatory reply from Boston renewing the charges against the secretary.<sup>15</sup>

Schurz was also engaged in a public exchange with Helen Hunt Jackson, who had heard Tibbles and Bright Eyes in Boston in November 1879 and became a zealous convert to the cause of Indian reform. Schurz quashed an attempt to carry the Standing Bear case to the Supreme Court, and he urged Jackson and her friends, who were collecting funds for further legal action on Indian rights, to use the money for Indian education rather than pour it into the pockets of attorneys in futile cases.<sup>16</sup>

Still another of Schurz's opponents was Senator Henry L. Dawes of Massachusetts, with whom he tangled over the accidental killing of Standing Bear's brother, Big Snake, at the Ponca agency on October 31, 1879.<sup>17</sup> In a Senate inquiry into the killing, Dawes insinuated that the government had plotted the shooting of the Ponca chief; he then alluded to Schurz's German background: "It has been a relief to me, however, in examining

15. T. H. Tibbles, *Western Men Defended: Speech of Mr. T. H. Tibbles in Tremont Temple, Boston, Mass., December, 1880* (Boston: Lockwood, Brooks and Company, 1880); Schurz to Long, December 9, 1880, *Speeches, Correspondence and Political Papers of Carl Schurz*, ed. Frederic Bancroft, 6 vols. (New York: G. P. Putnam's Sons, 1913), 4: 50-78; Schurz to Edward Atkinson, November 28, 1879, *ibid.*, 3: 481-89; *Secretary Schurz: Reply of the Boston Committee, Governor John D. Long, Chairman. Misrepresentations Corrected and Important Facts Presented* (Boston: Frank Wood, 1881).

16. The exchange of letters is printed in Helen Hunt Jackson, *A Century of Dishonor: A Sketch of the United States Government's Dealings with Some of the Indian Tribes* (New York: Harper and Brothers, 1881), pp. 359-66. Another expression of Schurz's views appears in his brief statement "The Removal of the Poncas," *Independent* 32 (January 1, 1880): 1.

17. Reports on the killing of Big Snake are printed in *Senate Executive Document no. 14, 46-3*, serial 1941. See also the testimony in *Senate Report no. 670, 46-2*, serial 1898, pp. 245-51. A useful article is J. Stanley Clark, "The Killing of Big Snake," *Chronicles of Oklahoma* 49 (Autumn 1971): 302-14.

our treatment of these weak and defenseless people, to find that these methods are not American in their origin, but bear too striking a resemblance to the modes of an imperial government carried on by espionage and arbitrary power. They are methods which I believe to be unique, and which I trust will never be naturalized."<sup>18</sup> In reply Schurz addressed an open letter to Dawes and gave every senator a copy on his desk as his only means of replying to Dawes's privileged congressional remarks. The letter was a devastating refutation of the senator's charges. The agitation in the Big Snake affair was, said Schurz, a new illustration of the fact that it was "difficult to exaggerate the malignant unscrupulousness of the speculator in philanthropy hunting for a sensation."<sup>19</sup>

The verbal combat between the reformers and the secretary of the interior did not prevent the working out of a solution to the Ponca problem, although nearly every move of the administration was subject to critical attack. A special Senate committee investigating the Ponca removal strongly condemned the government's action but split over a remedy. The majority report advocated returning the Poncas to their old home, whereas a minority report sided with Schurz in recommending that the Indians be indemnified but kept in the Indian Territory.<sup>20</sup> At the end of 1880 President Hayes appointed a special commission to confer with the Poncas, both those in the Indian Territory and those in Nebraska, and to recommend action. The commission, headed by General George Crook and made up of General Nelson A. Miles, William Stickney of the Board of Indian Commissioners, and William Allen of Boston, recommended that the Poncas in the Indian Territory remain there and that provision be made for those who wanted to stay in the north with Standing Bear. The decision of the commission was in accord with a declaration of wishes presented to the president by a delegation of Poncas from the Indian Territory on December 27, 1880, that indicated their desire to remain on the lands they then occupied and to relinquish all interest in their former reservation on the Missouri.<sup>21</sup>

18. *Congressional Record*, 11: 1938.

19. Carl Schurz, *An Open Letter in Answer to a Speech of Hon. H. L. Dawes, United States Senate, on the Case of Big Snake* (Washington, 1881). The letter, dated February 7, 1881, is printed also in *Speeches of Schurz*, 4: 91-113. The quotation is from p. 102. An account of the controversy, based in large part on the Dawes Papers in the Library of Congress, is in Loring Benson Priest, *Uncle Sam's Stepchildren: The Reformation of United States Indian Policy, 1865-1887* (New Brunswick: Rutgers University Press, 1942), pp. 78-79; Schurz's biographer, Claude Moore Fuess, in *Carl Schurz: Reformer* (New York: Dodd, Mead and Company, 1932), pp. 252-77, believes that Schurz was completely vindicated in his conflicts with the humanitarian reformers.

20. *Senate Report* no. 670, 46-2, serial 1898.

21. The commission's report and a copy of its proceedings are in *Senate Executive Document* no. 30, 46-3, serial 1941. Included is a minority report submitted by Allen,

Hayes recommended that immediate action be taken in line with the Crook commission report and the Ponca request. At last Congress acted, on March 3 it appropriated \$165,000 to enable the secretary of the interior "to indemnify the Ponca tribe of Indians for losses sustained by them in consequence of their removal to the Indian Territory, to secure to them land in severalty on either the old or new reservation, in accordance with their wishes, and to settle all matters of difference with these Indians." All that remained was to gain Sioux approval for the Poncas of Standing Bear's party to remain in the north, and this was accomplished by a special agreement drawn up with a Sioux delegation in Washington in August 1881.<sup>22</sup>

The controversy over the Poncas between Schurz and the reformers, although it kept the country much alive to Indian problems, was unfortunate, for it obscured the fundamental agreement of both sides in their desire to promote justice for the Indians. In large part, no doubt, the attacks on Schurz by the evangelical reformers reflected the fundamental differences of the two parties. Schurz was a severely practical and unsentimental man. His program was one of "policy," not of religious motivation. A man more different in background and outlook from the general run of Indian reformers can hardly be imagined, yet Schurz's Indian policy—attack upon corruption and inefficiency in the Indian Office, support of civilian as opposed to military control of Indian affairs, allotment of land in severalty and sale of "surplus" lands, and an aggressive educational program for Indians—were all in line with what the friends of the Indian came to espouse so ardently later in the 1880s.

Senator Dawes, for his part, learned the danger of opposing the administration. After Schurz left office, Dawes wrote concerning the new secretary of the interior, Samuel J. Kirkwood, who had defended Schurz's position on the Poncas: "Of course we widely differ from him but an open conflict with this new administration, as with the last, on the Indian policy, must be avoided if possible, or we shall be very much disabled. . . . Let us, Boston and all, try to pull with Washington, but to be sure and pull the hardest!"<sup>23</sup> The reform groups learned, too, to base their arguments on sound information and not to be carried away as they had been in the first flush of their reform enthusiasm, by such exaggerated tales as those told by Tibbles and Bright Eyes.<sup>24</sup>

who was unwilling to believe that the Indians had genuinely decided to stay in the Indian Territory.

22. Hayes letter of February 1, 1881, *Senate Executive Document* no. 30, 46-3, serial 1941, pp. 1-4; 21 *United States Statutes* 422; agreement with Sioux, *House Executive Document* no. 1, 47-1, serial 2018, pp. 39-40.

23. Dawes to Allen, August 11, 1881, Dawes Papers, quoted in Priest, *Uncle Sam's Stepchildren*, p. 79.

24. Tibbles, whose first wife died in 1879, married Bright Eyes in 1881.

Another celebrated case that illustrated the weakness of the consolidation policy was the flight of a band of Northern Cheyennes from the Indian Territory in 1878.<sup>25</sup> Following military action on the northern plains after Custer's defeat, a party of these Indians had been placed on the reservation of the Southern Cheyennes and Arapahos near Fort Reno. The Indians suffered greatly in their new home, and the subsistence supplied by the government was inadequate. On September 9, 1878, about three hundred of them led by chiefs Dull Knife and Little Wolf fled the reservation and headed north to join their friends the Sioux. When troops of the United States army were sent to stop the Indians and return them to the Indian Territory, the flight became a running fight, and the Cheyennes killed a number of settlers in their passage through Kansas.

When the Indians reached the Platte, they separated into two groups. One of them under Dull Knife moved westward toward Fort Robinson; the party surrendered on October 23 and was imprisoned at the fort. The post commandant received orders to transport the Indians back to the Indian Territory, but they steadfastly refused to go, and the officer attempted to freeze and starve them into submission. Able to endure the torture no longer and frightened by the seizure of one of their leaders, the Indians broke out of their quarters on the night of January 9. Weakened by the ordeal of their imprisonment, they were easy prey for the soldiers who pursued them, and fifty or sixty men, women, and children were killed in flight. Some were captured and returned to the south, while Dull Knife and others escaped to the Sioux. The other group, led by Little Wolf, had continued north, hoping to reach Montana. They were induced to surrender on March 25, 1879, and were taken to Fort Keogh, where they were allowed to remain.

Commissioner Hayt blamed the affair upon unwarranted dissatisfaction on the part of the Indians and asserted that Dull Knife's band contained "the vilest and most dangerous element of their tribe." With elaborate statistics he attempted to prove that the Indians had not been maltreated or undertired in the Indian Territory.<sup>26</sup> But other evidence soon became available. A select committee of the Senate appointed to investigate the case

25. A full account of the event is given in George Bird Grinnell, *The Fighting Cheyennes* (New York: Charles Scribner's Sons, 1915), chapters 19-20. Mari Sandoz, *Cheyenne Autumn* (New York: McGraw-Hill Book Company, 1953), tells the story of the Indians in dramatic style. See also Verne Dusenberry, "The Northern Cheyenne," *Montana Magazine of History* 5 (Winter 1955): 23-40.

26. CIA Report, 1878, serial 1850, pp. 455-57. Hayt's views were supported by Secretary Schurz in Report of the Secretary of the Interior, *House Executive Document* no. 1, part 5, 45-3, serial 1850, pp. vii-ix. See also CIA Report, 1879, serial 1910, pp. 80-82, and a letter of T. J. Morgan, April 23, 1890, *Senate Executive Document* no. 121, 51-1, serial 2686, pp. 2-9.

returned a critical report in June 1880 based on abundant testimony taken at Fort Reno and on interviews with Indians imprisoned in Kansas. Its findings sharply contradicted Hayt's report and described the government's lack of compliance with treaty agreements and the disastrous conditions that resulted from the shortage of supplies. "It is impossible to say," the committee reported, "that these were or were not the causes that led three hundred Indians in a body to escape from the Territory and to return to Dakota. They were doubtless provoking causes to that hegira, but the Indians were also strongly impelled by a longing desire to return to their native country, and by a feeling of disgust towards their new location." The committee noted, too, that the band had left the reservation not as a marauding party but simply with the intention of escaping to their former homes, and that they had begun to fight only when attacked by the army. The handling of Dull Knife's band at Fort Robinson was severely condemned.<sup>27</sup>

The committee's conclusion was decisive: there was no hope of civilizing Indians and making them self-supporting in a location where they were discontented. Unless they were living in a place they could look upon as home, it was unlikely that they would ever gain the independence of feeling that would lead them to work for their own living. "If they are compelled to accept a prison as a home," the report said, "they will naturally prefer to compel the keepers to feed and clothe them. They will remain pensioners upon our humanity, having lost all pride of character and all care of anything except to live." Moreover, the concentration of Indians in large numbers in one place was out of line with the changing relations between the government and the Indians. "They are already surrounded and separated into limited districts by the intervening white settlements," the senators noted, "and the time is near at hand when they must become members of the same communities with the white people."<sup>28</sup>

Ironically, at the very time Dull Knife and Little Wolf were fleeing north, another band of Northern Cheyennes led by Little Chief was moving south into the Indian Territory from western Nebraska. This group, too, was severely dissatisfied with its new surroundings and in the summer of 1879 sent a delegation to Washington to beg permission to join their tribesmen at Fort Keogh. Although Commissioner Hayt reported that the delegation was induced to return cheerfully to the Indian Territory, the case was by no means closed. In 1881, after continued petitioning, Little Chief's band was transferred to the Sioux reservation at Pine Ridge, and in

27. *Senate Report* no. 708, 46-2, serial 1899, pp. xvi-xviii. The failure of the attempt to force the Cheyennes into white agricultural patterns is studied in Ramon Pow-ers, "Why the Northern Cheyenne Left Indian Territory in 1878: A Cultural Analysis," *Kansas Quarterly* 3 (Fall 1971): 72-81.

28. *Senate Report* no. 708, 46-2, serial 1899, p. xxi.

1883, under congressional authorization, the Northern Cheyennes still in the Indian Territory were allowed to follow.<sup>29</sup>

The Sioux reservation in Dakota did not completely satisfy the Cheyennes, however, and little by little they drifted west into Montana to join their brethren, for whom a reservation, eventually extended to the Tongue River, had been established by executive order on November 26, 1884. No attempts were made to restrain this voluntary migration of the Indians. Captain J. M. Bell, acting agent at Pine Ridge, urged in 1886 that the departing Cheyennes be brought back by force or imprisoned when they arrived at Fort Keogh. "Until measures of this kind are adopted," he reasoned, "they will continue roaming from place to place, and will accomplish nothing in the way of civilization." But Commissioner of Indian Affairs Hiram Price demurred, and Secretary of the Interior L. Q. C. Lamar declared: "These straying Indians, a restless element at their old agencies, appear to be satisfied in their new location, and it is not deemed advisable to force them to return to the Sioux Reservation."<sup>30</sup> This was a clear admission of the failure of the concentration policy.

Still another example of the impossibility of forcing northern Indians into the Indian Territory was the case of Chief Joseph's band of Nez Percés. When these Indians surrendered to General Miles in northern Montana in October 1877, Miles had promised that they could return to Idaho in the spring to settle down peacefully on the reservation. General Sherman overruled this humane decision. Declaring that the Indians were prisoners of war and that they "should never again be allowed to return to Oregon or to Lapwai," Sherman directed that the Nez Percés be imprisoned at Fort Leavenworth until they could be turned over to the Indian Office for disposition.<sup>31</sup> Transported down the Yellowstone and the Missouri to Fort Leavenworth, the miserable Indians were encamped in unhealthy lowlands along the river, where, ill provided for and pining for the clear mountain streams of their homeland, they succumbed to sickness, and many died.

29. The story of Little Chief and of the transfer of the Cheyennes to Dakota can be traced in CIA Report, 1880, serial 1959, p. 109; CIA Report, 1881, serial 2018, pp. 41-42; CIA Report, 1882, serial 2100, p. 50; CIA Report, 1883, serial 2191, p. 39.

30. Executive order in *House Document* no. 153, 55-3, serial 3807, p. 145; letters of J. M. Bell, J. D. C. Atkins, and L. Q. C. Lamar, in *Senate Executive Document* no. 212, 49-1, serial 2341. The movement of the Cheyennes on their own accord from Pine Ridge to Tongue River upset the supply of subsistence, and the Indian Office repeatedly asked Congress for aid in relieving the Indians' misery. See *Senate Executive Document* no. 208, 48-1, serial 2168; *House Executive Document* no. 17, 49-1, serial 2387; *Senate Executive Document* no. 212, 49-1, serial 2341; and *Senate Executive Document* no. 121, 51-1, serial 2686.

31. Report of Sherman, November 7, 1877, *House Executive Document* no. 1, 45-2, serial 1794, p. 15.

Commissioner Hayt had noted in his report for 1877 that "humanity prompts us to send them back and place them on the Nez Perce reservation." Yet he saw an "insuperable difficulty in the way." The murder of whites by members of Chief Joseph's band at the beginning of the outbreak meant that the Indians would find neither peace nor safety in their old haunts. Indictments had in fact been issued in Idaho for certain Nez Percés, and the memory of the murders would continue to be an obstacle to the return of the band. "But for these foul crimes," Hayt asserted, "these Indians would be sent back to the reservation in Idaho. Now, however, they will have to be sent to the Indian Territory; and this will be no hardship to them, as the difference in the temperature between that latitude and their old homes is inconsiderable." The Nez Percés at Fort Leavenworth were turned over by the army to agents of the Indian Office, and on July 21, 1878, they headed south to be settled on a section of the Quapaw Reservation. It was hoped that there, under the guidance of the Quaker agent, the desolate Indians would soon become self-supporting, as the Modocs had done in the same location.<sup>32</sup>

The Indians did not recover, and more of the band sickened and died. Two members of the Board of Indian Commissioners who visited them in August 1878 found Joseph absolutely averse to remaining in the Indian Territory. "Seldom have we been in councils where the Indians more eloquently or earnestly advocated their side of the question," they reported. "Joseph's arraignment of the Army for alleged bad faith to him after the surrender of himself and people to General Miles was almost unanswerable."<sup>33</sup> The commissioners ordered medical supplies for the Indians and made arrangements for a better tract of land on the Quapaw reserve for the Nez Percés, but these actions hardly struck at the heart of the matter.

When Hayt visited Joseph the following October, he was informed in unmistakable terms of the chief's dissatisfaction. The Indian insisted that he had been promised by Miles and Howard that he would be allowed to return to Idaho and that he had surrendered under that condition, and he complained about the quality of the region selected for his people in the Indian Territory. Hayt, like all who came in contact with the Nez Perce leader, was impressed with his intelligence, character, and integrity, and he tried to convince the chief that his people were prevented from returning to Idaho for their own protection and welfare. He attempted a limited accommodation, moreover, by taking Joseph west on a trip of exploration to

32. CIA Report, 1877, serial 1800, p. 409. Two thoroughly documented studies of the Nez Percés in the Indian Territory are J. Stanley Clark, "The Nez Percés in Exile," *Pacific Northwest Quarterly* 36 (July 1945): 213-32, and Berlin B. Chapman, "Nez Percés in Indian Territory: An Archival Study," *Oregon Historical Quarterly* 50 (June 1949): 98-121.

33. Report of the Board of Indian Commissioners, 1878, pp. 47-48.

seek a better spot for his band. A place on Salt Creek in the Cherokee Outlet near the Poncas seemed to please the chief, and Hayt believed that he would agree to settle there. Hayt had been accompanied by E. M. Kingsley, a member of the Board of Indian Commissioners, who was favorably impressed with Joseph's argument about Miles's promise and about bad conditions in the Indian Territory. "This statement is believed to be true in the main," Kingsley noted, "and, if so, Joseph stands before the American people a victim of duplicity, his confidence wantonly betrayed, his substance pillaged, an involuntary exile from home and kindred, his 'cause' lost, his people rapidly wasting by pestilence; an object not of haughty contempt or vulgar ridicule, but of generous, humane treatment and consideration."<sup>34</sup>

The wheels of justice moved very slowly and none too surely. Still reluctant to send the Indians back among hostile frontiersmen, the government in June settled the Nez Percés on the new tract in the Cherokee Outlet. Joseph was not reconciled. He told the reformer Alfred B. Meacham in July: "You come to see me as you would a man upon his deathbed. The Great Spirit Chief above has left me and my people to our fate. The white men forget us, and death comes almost every day for some of my people. He will come for all of us. A few months more and we will be in the ground. We are a doomed people."<sup>35</sup> Such dire predictions were not fulfilled, and the tribe's condition improved as the Indians engaged in agriculture and stock raising, but the basic dissatisfaction remained.

Finally in 1883 arrangements were made for the return of thirty-three women and children to Idaho. Philanthropists, encouraged no doubt by this break in the government's position, carried on a campaign to return the rest of the Nez Percés to the Pacific Northwest, and numerous memorials were sent to Congress for that purpose.<sup>36</sup> Congress now acted. A law of July 4, 1884, authorized the secretary of the interior to remove the Nez Percés from the Indian Territory if he judged proper. In May 1885, 118 of the band settled on the Lapwai Reservation in Idaho, where they were warmly received by friends and relatives. The remaining 150, because of continuing threats from Idaho citizens against some of them, were sent on to the Colville Reservation in Washington, where adjustment was slow.<sup>37</sup> Chief Joseph's eternal hope that he might eventually return to the Wallowa Valley was never fulfilled.

34. CIA Report, 1878, serial 1850, pp. 464-65; *Report of the Board of Indian Commissioners*, 1878, p. 51.

35. *Council Fire 2* (October 1879): 145.

36. The memorials can be traced through the indexes to the House and Senate Journals, 48th Congress, 1st session. Some of the memorials came from citizens of Kansas, who may have been moved as much by a desire to free the Cherokee Outlet as by philanthropic motives.

37. 23 *United States Statutes* 90, 378; CIA Report, 1885, serial 2379, p. 57.

#### REVISION OF RESERVATION POLICY

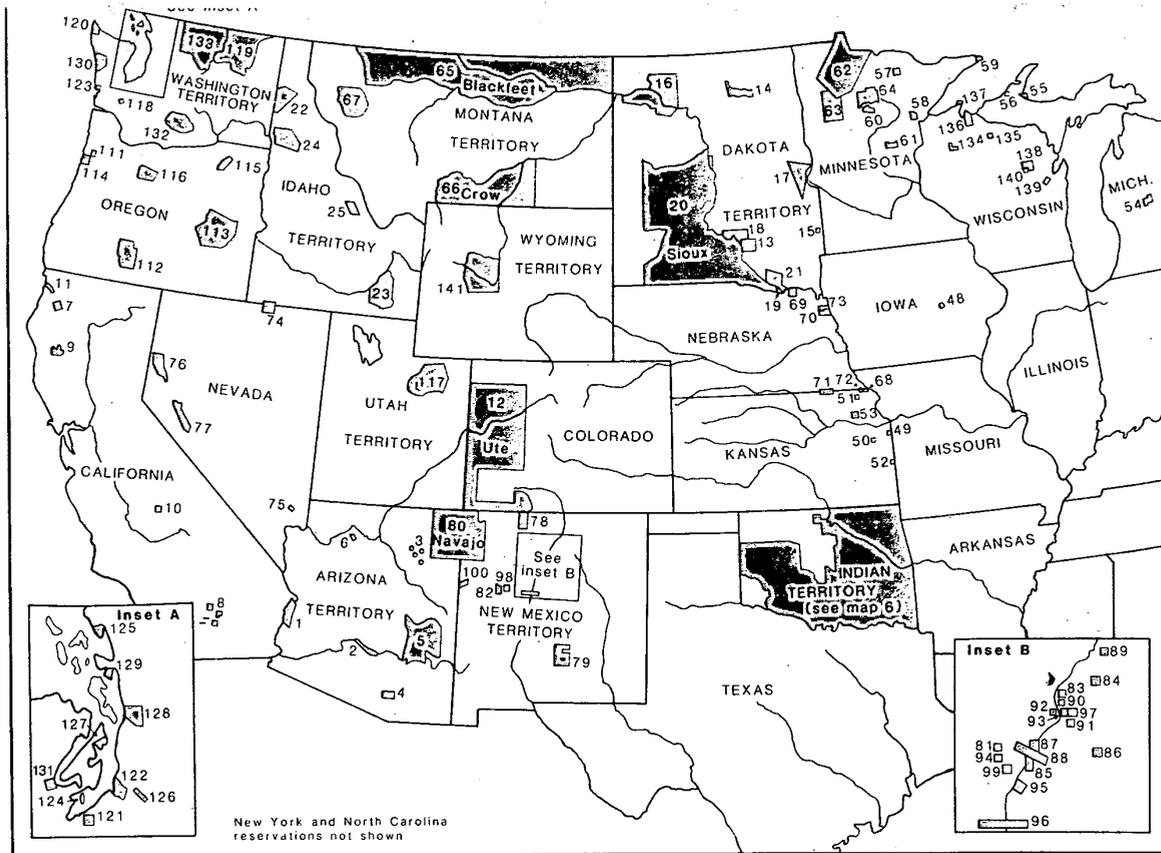
The cases of the Poncas, northern Cheyennes, and Nez Percés uncovered evils in forced removals that no one could hide and that policy makers could not ignore, whatever theoretical advantages there might have been in moving small tribes to large reservations and consolidating the agencies. Men who had held firmly to a removal policy were forced by the course of events to change their ground. Carl Schurz noted in 1880 that when he had taken charge of the Department of the Interior three and a half years earlier, the prevailing opinion seemed to be that it was best for the Indians to be gathered together where they could be kept out of contact with the whites and where their peaceful conduct could be ensured by a few strong military posts. He had accepted that view himself, but as he learned more from experience he realized that it was a "mistaken policy." In his new wisdom, he argued that it was more in accordance with justice as well as experience to respect the home attachments of the Indians and to introduce them to agricultural and pastoral pursuits in the lands they occupied, provided the lands were capable of sustaining the tribe. Moreover, he began to see that large reservations would become impracticable as the pressure of white settlement increased. "The policy of changing, shifting, and consolidating reservations," he declared, "... was therefore abandoned."<sup>38</sup>

In 1881, however, Schurz's successor Kirkwood tried to return to a policy of consolidation. He counted 102 reservations west of the Mississippi, occupied by about 224,000 Indians. Attached to these reservations were sixty-eight agencies, and nearby for the protection of the whites and the Indians, were thirty-seven military posts. The expenses of this multiplication of agencies and forts disturbed Kirkwood. He believed that, if all the Indians could be gathered together into four or five reservations, the savings would be great and the benefit to the Indians proportionate. He urged Congress to appoint a commission to make recommendations about consolidation.<sup>39</sup>

Kirkwood could not reverse the new trend of thought. The humanitarian reformers resolved in 1884 that "careful observation has conclusively proved that the removal of Indians from reservations which they have long occupied, to other reservations far distant from the former and possessing different soil and climate, is attended by great suffering and loss of life." The reformers were moving rapidly away from support of any kind

38. Report of the Secretary of the Interior, 1880, *House Executive Document* no. 1, part 5, 46-3, serial 1959, pp. 3-4.

39. Report of the Secretary of the Interior, 1881, *House Executive Document* no. 1, part 5, vol. 1, serial 2017, pp. v-vi.



MAP 9: Indian Reservations, 1880

- |                          |                         |                             |                       |  |
|--------------------------|-------------------------|-----------------------------|-----------------------|--|
| <b>ARIZONA TERRITORY</b> | 27. Cherokee            | <b>MINNESOTA</b>            | 84. Picuris           | <b>115. Umatilla</b>   |
| 1. Colorado River        | 28. Chickasaw           | 57. Bois Forte              | 85. San Felipe        | <b>116. Warm Springs</b>   |
| 2. Gila River            | 29. Choctaw             | 58. Fond du Lac             | 86. Pecos             | <b>UTAH TERRITORY</b>  |
| 3. Moqui Pueblo          | 30. Creek               | 59. Grand Portage           | 87. Cochiti           | <b>117. Uinta Valley</b>   |
| 4. Papago                | 31. Kansas              | 60. Leech Lake              | 88. Santo Domingo     | <b>WASHINGTON TERRITORY</b>  |
| 5. White Mountain        | 32. Kiowa and Comanche  | 61. Mille Lac               | 89. Taos              | 118. Chehalis  |
| 6. Suppai                | 33. Modoc               | 62. Red Lake                | 90. Santa Clara       | 119. Colville  |
| <b>CALIFORNIA</b>        | 34. Nez Perce           | 63. White Earth             | 91. Tesuque           | 120. Makah   |
| 7. Hoopa Valley          | 35. Osage               | 64. Winnebago               | 92. San Ildefonso     | 121. Nisqually   |
| 8. Mission               | 36. Ottawa              | <b>MONTANA TERRITORY</b>    | 93. Pojoaque          | 122. Puyallup  |
| 9. Round Valley          | 37. Pawnee              | 65. Blackfeet               | 94. Zia               | 123. Shoalwater  |
| 10. Tule River           | 38. Peoria              | 66. Crow                    | 95. Sandia            | 124. Squaxin Island  |
| 11. Klamath River        | 39. Ponca               | 67. Jocko                   | 96. Isleta            | 125. Lummi   |
| <b>COLORADO</b>          | 40. Potawatomi          | <b>NEBRASKA</b>             | 97. Nambe             | 126. Muckleshoot   |
| 12. Ute                  | 41. Quapaw              | 68. Iowa                    | 98. Laguna            | 127. Port Madison  |
| <b>DAKOTA TERRITORY</b>  | 42. Sac and Fox         | 69. Niobrara                | 99. Santa Ana         | 128. Snohomish or Tulalip  |
| 13. Crow Creek           | 43. Seminole            | 70. Omaha                   | 100. Zuni             | 129. Swinomish   |
| 14. Devils Lake          | 44. Seneca              | 71. Oto                     | <b>NEW YORK</b>       | 130. Quinaieft   |
| 15. Flandreau            | 45. Shawnee             | 72. Sac and Fox             | 101. Allegany         | 131. Skokomish   |
| 16. Ft. Berthold         | 46. Wichita             | 73. Winnebago               | 102. Cattaraugus      | 132. Yakima  |
| 17. Lake Traverse        | 47. Wyandot             | <b>NEVADA</b>               | 103. Oil Spring       | 133. Columbia  |
| 18. Old Winnebago        | <b>IOWA</b>             | 74. Duck Valley             | 104. Oneida           | <b>WISCONSIN</b>   |
| 19. Ponca                | 48. Sac and Fox         | 75. Moapa Valley            | 105. Onandaga         | 134. Lac Court Oreilles  |
| 20. Sioux                | <b>KANSAS</b>           | 76. Pyramid Lake            | 106. St. Regis        | 135. Lac du Flambeau   |
| 21. Yankton              | 49. Black Bob           | 77. Walker River            | 107. Tonawanda        | 136. La Point (Bad River)  |
| <b>IDAHO TERRITORY</b>   | 50. Chippewa and Munsee | <b>NEW MEXICO TERRITORY</b> | 108. Tuscarora        | 137. Red Cliff   |
| 22. Coeur d'Alene        | 51. Kickapoo            | 78. Jicarilla Apache        | <b>NORTH CAROLINA</b> | 138. Menominee   |
| 23. Ft. Hall             | 52. Miami               | 79. Mescalero Apache        | 109. Cheoah Boundary  | 139. Oneida  |
| 24. Lapwai               | 53. Potawatomi          | 80. Navajo                  | 110. Qualla Boundary  | 140. Stockbridge   |
| 25. Lemhi                | <b>MICHIGAN</b>         | <b>Pueblos</b>              | <b>OREGON</b>         | <b>WYOMING TERRITORY</b>   |
| <b>INDIAN TERRITORY</b>  | 54. Isabella            | 81. Jemez                   | 111. Grande Ronde     | 141. Wind River  |
| 26. Arapaho and Cheyenne | 55. L'Anse              | 82. Acoma                   | 112. Klamath          | Source: Annual Report of the Commissioner of Indian Affairs, 1880. |
|                          | 56. Ontonagon           | 83. San Juan                | 113. Malheur          |  |
|                          |                         |                             | 114. Siletz           |  |

of reservation system, whether scattered or consolidated, and urged now that the Indians be given the right to take homesteads on the lands they had traditionally occupied. Consolidation of the Indians in the Indian Territory met strong objections also from the white population in Missouri, Kansas, Texas, and Arkansas, who fought the concentration of more Indians in their vicinity. Although in fact they had nothing to fear from the Indians, the fuss they raised convinced Secretary of the Interior Lamar in 1885 that the scheme was impracticable. "The policy of change and unsettlement," he said, "should give way to that of fixed homes with security of title and possession, and hereafter the civilizing influences and forces already at work among the Indians should be pushed forward upon the lands which they now occupy."<sup>40</sup>

Yet the idea of Indian removals and concentration within the Indian Territory could not be completely scotched. Commissioner of Indian Affairs J. D. C. Atkins in the late 1880s, in the hope of easing white pressure upon vacant lands within the territory, advocated anew filling up the area by moving in various Indian groups. He met violent opposition from the reformers. "We ought by this time to have learned something from the experience in regard to such removals," one wrote. "Nearly all of our wars have originated in irritations growing out of them; our pauperizing policy of feeding and clothing Indians grew out of them, as this was an inducement offered, and it would be difficult to find a tribe whose removal has not proved to be a long step backward in their progress. The Commissioner should make a study of the past before he urges to its adoption this policy which has been fruitful of evil, and evil alone, hitherto."<sup>41</sup>

But if consolidation of reservations was given up as a realizable ideal, reduction of the existing reservations continued to be strongly pushed. Secretary Kirkwood, although he preferred consolidation, at least wanted to cut the size of those reservations that were "entirely out of proportion to the number of Indians thereon." Henry M. Teller, a former senator from Colorado, who followed Kirkwood as secretary of the interior, strongly advocated such reduction. He admitted the necessity of the reservations but did not think their size should be disproportionate to the needs of the Indians. "Very many of these reservations," he noted, "contain large areas of valuable land that cannot be cultivated by the Indians, even though they were as energetic and laborious as the best class of white agriculturists. All such reservations ought to be reduced in size and the surplus not needed

40. *Lake Mohonk Conference Proceedings*, 1884, pp. 15-16; Report of the Secretary of the Interior, 1885, *House Executive Document* no. 1, part 5, vol. 1, 49-1, serial 2378, pp. 27-28. Lamar largely repeats CIA Report, 1885, serial 2379, pp. 8-12.

41. CIA Report, 1886, serial 2467, pp. 88-90; Charles C. Painter, *The Proposed Removal of Indians to Oklahoma* [Philadelphia: Indian Rights Association, 1888], p. 6.

ought to be bought by the government and opened to the operation of the homestead law, and it would then soon be settled by industrious whites, who, as neighbors, would become valuable auxiliaries in the work of civilizing the Indians residing on the remainder of the reservation." The reduced lands should be vested in the tribe in fee simple. Teller urged that his plan be adopted for the Crow reservation in Montana Territory. Of the 4,713,000 acres in that reserve, Teller estimated that at least three million could be disposed of, leaving the Indians about 600 acres apiece, enough for them to become self-sufficient in agriculture or stock raising. Proceeds from the sale of the surplus lands, if properly used to buy herds for the Crows, could make the Indians self-supporting in a few years.<sup>42</sup>

The reformers continued to see great advantages in such a program. The pressure of the whites on Indian lands would be lessened if not entirely removed, the land left in Indian hands could be given a sure title, proceeds from the sale of the excess lands could replace direct appropriations for Indian subsistence and welfare, and the Indians would be driven closer to an agricultural pattern.

42. Report of the Secretary of the Interior, 1881, *House Executive Document* no. 1, part 5, vol. 1, 47-1, serial 2017, pp. v-vi; *ibid.*, 1882, *House Executive Document* no. 1, part 5, vol. 1, 47-2, serial 2099, p. viii; *ibid.*, 1884, *House Executive Document* no. 1, part 5, vol. 1, 48-2, serial 2286, pp. xiii-xiv. The Crow reservation, however, was not reduced until 1891.

*The Indian Service:**Policies and Administration**An Array of Commissioners. Fraud and**the "Indian Rings." Inspectors and**Special Agents. Policies and**Programs. Law and Order.*

The Indian service, upon which rested much of the responsibility for solving the "Indian problem" of the post-Civil War decades, was itself a large part of the problem. The fraud and abuses that Bishop Whipple had railed against in the early 1860s became a much-publicized national concern in the years that followed, and the Indian service was a primary example of the corruption that tainted Grant's administration. To protect and aid the Indians without at the same time curtailing the expansion of white population in the West created a problem of major dimensions for the Indian Office. Commissioner Dennis Cooley saw it clearly as he neared the end of his term. He wrote in 1866:

It does not seem a great task to attend to the business of directing the management of about three hundred thousand Indians, but when it is considered that those Indians are scattered over a continent, and divided into more than two hundred tribes, in [the] charge of fourteen superintendents and some seventy agents, whose frequent reports and quarterly accounts are to be examined and adjusted; that no general rules can be adopted for the guidance of those officers, for the reason that the people under their charge are so different in habits, customs, manners, and organization, varying from the civilized and educated Cherokee and Choctaw to the miserable lizard-eaters of Arizona; and that this office is called upon to protect the Indians,

whether under treaty stipulations or roaming at will over his wild hunting-grounds, from abuse by unscrupulous whites, while at the same time it must concede every reasonable privilege to the spirit of enterprise and adventure which is pouring its hardy population into the western country; when these things are considered, the task assigned to this bureau will not seem so light as it is sometimes thought.<sup>1</sup>

The tensions would have taxed the abilities of wise and competent men. Yet somehow, in spite of all the experiments with philanthropic advisers and church-related agents, the men who ran the Indian service, although they promoted the civilization programs that had become a standard element of Indian policy, left much to be desired.

## AN ARRAY OF COMMISSIONERS

In the first decade and a half after the Civil War, the period in which the Indian peace policy took form, ten men held the office of commissioner of Indian affairs, if one counts the short period in which William P. Dole carried over into Andrew Johnson's administration. This was an average tenure of about a year and a half, a very short time given the reform ferment and the frontier turmoil of the time. Commissioner Cooley, who directed the crucial work of dealing with the Indian nations in the Indian Territory after the war, was appalled by the waste and corruption of the Indian service, but Congress was too busy with other matters to pay attention to the call for reform. Cooley's successor, Lewis Vital Bogy, a flexible Missouri politician, failed to win confirmation from the Senate, which accused him of fraudulent contracts for Indian goods. More significant in directing Indian affairs was Nathaniel G. Taylor, the Methodist minister and Tennessee politician whose humanitarian sentiments put a strong stamp of Christian philanthropy on Indian Office documents and activities, but whose convictions on Indian perfectability often got in the way of his grasp of the present situation. Ely S. Parker, the Seneca, who formally began the peace policy of Grant, resigned under a cloud in 1871, just as the program was getting under way.<sup>2</sup>

The peace policy was then directed by a group of commissioners with

1. CIA Report, 1866, serial 1284, pp. 1-2.

2. For Bogy, see William E. Unrau, "Lewis Vital Bogy, 1866-67," in Robert M. Kvasnicka and Herman J. Viola, eds., *The Commissioners of Indian Affairs, 1824-1977* (Lincoln: University of Nebraska Press, 1979), pp. 109-14, and William E. Unrau, "Politics, Bureaucracy and the Bogus Administration of Indian Commissioner Lewis Vital Bogy, 1866-1867," *American Indian Law Review* 5 (Summer 1977): 185-94.

strong views about Indian policy and the civilization of their charges. The first of these, Francis A. Walker, was an anomaly. A brilliant economist and statistician who had directed the Ninth Census, Walker was appointed to the Indian Office to keep him on the government payroll when census salary appropriations were cut. Although he had no previous Indian experience, he quickly grasped the situation and the needs of the office. In spite of the fact that he held office only temporarily—from late 1871 to early 1873—he wrote a long and forceful annual report in 1872 (later incorporated with two other essays into a book called *The Indian Question*) in which he advanced his philosophy of firmness in settling Indians on definite reservations and a strong commitment to protecting their rights once they arrived there. A practical man with little trace of the sentimentality that marked Christian reformers like Nathaniel Taylor, Walker nevertheless had strong humanitarian instincts and deep concern for fair treatment of the Indians. At the end of his term he wrote:

In good faith and good feeling we must take up this work of Indian civilization, and, at whatever cost, do our whole duty by this unhappy people. Better that we should entail a debt upon our posterity on Indian account, were that necessary, than that we should leave them an inheritance of shame. We may have no fear that the dying curse of the red man, outcast and homeless by our fault, will bring barrenness upon the soil that once was his, or dry the streams of the beautiful land that, through so much of evil and of good, has become our patrimony; but surely we shall be clearer in our lives and freer to meet the glances of our sons and grandsons, if in our generation we do justice and show mercy to a race which has been impoverished that we might be made rich.<sup>3</sup>

Edward P. Smith, who succeeded Walker, was the epitome of a peace policy commissioner. He was the son of a clergyman who, after obtaining a degree from Yale, entered the seminary and in 1856 was ordained a Congregational minister. His baptism in public good works came when he was with the United States Christian Commission during the Civil War as the commission's general field agent with the Army of the Cumberland; later he was field secretary for the central office of the commission. After 1866 he worked with the American Missionary Association in New York City and was nominated by that body to be an Indian agent under the peace policy, and in February 1871 he became agent of the Chippewas in Minnesota.

3. Francis A. Walker, "The Indian Question," *North American Review* 116 (April 1873): 388. See also Francis A. Walker, *The Indian Question* (Boston: James R. Osgood and Company, 1874), CIA Report, 1872, serial 1560, pp. 391-493; H. Craig Miner, "Francis A. Walker, 1871-73," in Kvasnicka and Viola, *Commissioners of Indian Affairs*, pp. 135-40.

He was strongly recommended for the position of commissioner of Indian affairs by Secretary Delano and by the Board of Indian Commissioners and was appointed to that office on March 20, 1873, bringing with him a commitment to the reforms urged by the Christian humanitarians. He held no brief with Indians as sovereign tribes and promoted incessantly the movement toward individual allotment of land, American law for the Indians, and progress toward self-support; and in true missionary fashion he continually reported in optimistic terms the advancement he saw among the Indians. Ironically, Smith fell victim himself to the demand for reform, for his actions as Chippewa agent in regard to timber sales led to a formal investigation. Although he was cleared of any wrongdoing in the Chippewa affair, he was attacked again during an investigation of charges of fraud against the Red Cloud agent in 1875, and in December of that year he resigned.<sup>4</sup>

John Q. Smith, who followed, continued the reform principles of his predecessors, but he left no strong mark on the office or on Indian affairs. His term, from December 1875 to September 1877, was a high point for charges of fraud against the Indian service, and although he himself escaped any charges of personal corruption, he was removed from office soon after Carl Schurz became secretary of the interior.<sup>5</sup>

Smith's successor was Ezra A. Hayt, a businessman from New Jersey with close ties to the Board of Foreign Missions of the Reformed Church, which had secured his appointment on the Board of Indian Commissioners in 1874. He was an effective member of the board and during most of his time on it was chairman of the purchasing committee. In that capacity he came into conflict with the Indian Office. Following an investigation of flour purchased for Indians in the Indian Territory over which Hayt and Commissioner J. Q. Smith strongly disagreed, President Grant demanded that Hayt resign from the board, which he did on January 20, 1877. Schurz, seeking a man of high integrity to replace Smith as commissioner of Indian affairs, appointed Hayt to the position. Hayt carried out his duties with energy and aggressive promotion of a civilization program for the Indians. When he suffered the usual attacks from persons critical of all Indian Office actions and was blamed for disturbances (the Northern Cheyenne and the Ute troubles, for example) that had their roots in earlier administrations, he was strongly backed by Schurz. But when evidence of irregularities at the San Carlos Agency were uncovered that incriminated him, Hayt became a liability in Schurz's campaign of reform, and the secretary removed him from office at the end of January 1880.<sup>6</sup>

4. Richard C. Crawford, "Edward Parmelee Smith, 1873-75," in Kvasnicka and Viola, *Commissioners of Indian Affairs*, pp. 141-47.

5. Edward E. Hill, "John Q. Smith, 1875-77," *ibid.*, pp. 149-53.

6. Roy E. Meyer, "Ezra A. Hayt, 1877-80," *ibid.*, pp. 155-66.

Under such circumstances, the Hayes administration sought a man of unassailable integrity. It found him in a Michigan representative, Roland E. Trowbridge, whose background showed no interest in Indians but whose college classmate and close friend was Rutherford B. Hayes. Honesty was Trowbridge's hallmark, and he suffered no charges of corruption. But he made no innovations in the service, and illness forced long absences from his duties. After less than a year in office and without even signing the annual report (which was submitted by the acting commissioner, H. R. Clum), Trowbridge resigned in March 1881.<sup>7</sup>

#### FRAUD AND THE "INDIAN RINGS"

These commissioners, including two ordained Protestant ministers and other upright Christian gentlemen of close church affiliation, were unable to stem the abuses that plagued the Indian service, for they faced conditions that stimulated fraud and corruption in official Indian-white relations. As land sessions multiplied and the money and other goods due the Indians increased, the chances for unscrupulous whites to cash in on the payments grew almost without bounds. Disposition of such resources as timber from Indian reservations offered still other opportunities for robbing the Indians through fraudulent contracts. Not only was this a matter of plain injustice to the nation's wards, but cheating the Indians of their rightful due frequently led to reprisals. Supplying goods to the Indians—a multimillion dollar business by the 1870s—was the chief arena for illegal and unjust economic gain at the expense of the government and the Indians. There seemed to be endless ways of cheating by the supply of inferior or insufficient goods for full or inflated prices, and the huge transportation costs of moving masses of goods from eastern markets to the far distant and often isolated agencies offered still other prizes. Although it was never possible to put one's finger on them precisely, "Indian rings"—some sort of conspiratorial aggregation of suppliers and Indian service personnel and sometimes corrupt Indian leaders—seemed to be everywhere.<sup>8</sup>

The creation of the Board of Indian Commissioners was one attempt to correct the evils by having an independent, disinterested group of high-minded businessmen supervise the purchase of Indian goods. The purchasing committee of the board performed valuable and to some extent effective

7. Michael A. Goldman, "Roland E. Trowbridge, 1880-81," *ibid.*, pp. 167-72.

8. Although charges against the "Indian ring" or against "Indian rings" were widespread, there was no agreement about who precisely was involved. For one study of their operations, see George H. Phillips, "The Indian Ring in Dakota Territory, 1870-1890," *South Dakota History* 2 (Fall 1972): 345-76.

service by checking the bids and inspecting the goods supplied, and the board was optimistic. It reported in 1871 "that all 'Indian rings' can be broken up, and that the wards of this nation, who have been so long the victims of greedy and designing men, ought and must be treated in a manner worthy of the highest moral obligations of a Christian government." But it soon enough discovered the "tricks, subterfuges, evasions, and combinations" of the men who became rich from the Indian business.<sup>9</sup>

One of these subtle schemes was described by George Stuart, who chaired the first purchasing committee of the board:

I . . . soon discovered how it was that the "Indian Ring" was enabled to make such immense profits out of the annual supplies furnished to the government for its Indian wards. The advertisements for such goods specified certain classes, number one, number two, etc., each class containing several articles, so that the bidders had to bid for the whole of a class of goods, and the lowest *total* bid obtained the award. At the foot of the advertisement specifying the several classes, it was stated that "the government reserves the right to diminish or increase the quantity taken of any of the articles of any class." On further examination, I found [that] a bidder who was said to have made a large fortune out of the government had bid about half-price for a large quantity of goods called for by one article in one of the classes, and nearly double its market value for an article in the same class of which a very small quantity was called for. On this class his bid was, very naturally, the lowest. Finally, I found that he ultimately supplied a very small quantity of the article for which he had bid half-price, and a very large quantity of the article for which he had bid nearly double its market value.<sup>10</sup>

No matter how much the board's supervising functions may have helped, the failure of the board to break through entrenched corruption meant that it was not the solution to the problem. Nor did the church nomination of agency personnel provide a satisfactory answer by furnishing presumably honest men to deal with the Indians, for evils continued to crop up, and even Christian gentlemen in the office of commissioner of Indian affairs were forced from office because tainted by corrupt practices for which they may or may not have been personally responsible.

A special case that received much publicity showed the continuing problem: charges leveled against Red Cloud Agent J. J. Saville by Chief Red

9. *Report of the Board of Indian Commissioners, 1871*, p. 161; *ibid.*, 1878, pp. 19-24.

The latter gives specific cases.

10. George Hay Stuart, *The Life of George Hay Stuart: Written by Himself*, ed. Robert Ellis Thompson (Philadelphia: J. M. Stoddart, 1890), pp. 242-43.

Cloud and highly publicized by the noted Yale paleontologist, Othniel C. Marsh.<sup>11</sup> When Marsh was in Dakota hunting fossils, Red Cloud complained to him about the ill treatment he received and showed him samples of bad supplies furnished by the government. Marsh in turn took the complaints to the Board of Indian Commissioners and to the public at large. The board called for an investigation, and Secretary Delano, not wanting to be left out, cooperated with the president of the board in appointing a special committee to investigate the charges.<sup>12</sup> The whole affair was pretty much a fiasco. Red Cloud admitted that the samples he had shown Marsh were not typical of goods the Indians received. Marsh himself was less than completely helpful to the investigating committee, filing his complaints in the form of a pamphlet addressed to the president of the United States that he released to the press before the committee received it. He had laid the matter directly before the president, he said, because he had "no confidence whatever in the sincerity of the Secretary of the Interior or the Commissioner of Indian Affairs." Delano's response, also printed as a pamphlet, questioned Marsh's competence and judgment in the case and blamed the affair on attempts of the press to injure him.<sup>13</sup>

The committee determined that Red Cloud's samples were not representative of goods issued the Sioux, but it did find inferior supplies and agreed that the government and the Indians were being defrauded. The committee members recommended replacing the contractors for pork and flour and generally tightening the supply procedures. They thought, too, that Seville should be removed as agent, not because they found him guilty of fraud but because of lax administration that made fraud possible. Commissioner Edward P. Smith considered the committee's report a vindication of the Indian Office, however, and little came of the inquiry except the public airing of conditions in the Indian service that plainly called for remedy.<sup>14</sup>

The first significant moves came with the appointment of Carl Schurz as secretary of the interior. A reformer of long standing, Schurz was deter-

11. An excellent discussion of the case is in James C. Olson, *Red Cloud and the Sioux Problem* (Lincoln: University of Nebraska Press, 1965), pp. 179, 183-84, 189-98. The most important documents are in *Report of the Special Commission Appointed to Investigate the Affairs of the Red Cloud Indian Agency, July, 1875* [Washington: GPO, 1875]. Marsh's side of the affair is recounted in Charles Schuchert and Clara Mae LaVene, *O. C. Marsh: Pioneer in Paleontology* (New Haven: Yale University Press, 1940), pp. 145-68.

12. Minutes of April 28 and 29, 1875, Minutes of the Board of Indian Commissioners, National Archives, Record Group 75.

13. O. C. Marsh, *A Statement of Affairs at Red Cloud Agency: Made to the President of the United States* (n.p., 1875), *Documents Relating to the Charges of Professor O. C. Marsh of Fraud and Mismanagement at the Red Cloud Agency* (n.p., 1875).

14. CIA Report, 1875, serial 1680, pp. 538-39.

mined to end the fraud and the conditions that made it possible. He noted in his first report, among other problems, "the temptations to fraud and speculation in furnishing and distributing supplies; [and] the careless and blundering management of agents, removed from immediate supervision." Schurz was a realist and knew that correction of the evils he saw would require time, patient labor, and "above all things, an honest and efficient Indian service."<sup>15</sup> The key, as always, was the character of the men who managed Indian affairs, and Schurz moved quickly, beginning at the top. After Commissioner J. Q. Smith, who had been carried over from the previous administration, resigned under pressure, Schurz turned to investigate the work of the chief clerk of the Indian Office, S. A. Galpin. A special committee of three, appointed by Schurz, not only judged specific charges against Galpin but reviewed broadly the whole operation of the Indian Office. Its report, dated December 31, 1877, found much carelessness and mismanagement to condemn all along the line, and Galpin was removed from office.<sup>16</sup>

But Schurz did not succeed completely. Even his carefully picked commissioner of Indian affairs, Ezra Hayt, proved a disappointment in the end, and the problem of finding proper men to conduct an absolutely honest and efficient service remained.

#### INSPECTORS AND SPECIAL AGENTS

One special remedy that was used to ease the problem was a corps of inspectors to keep tab on operations in the field and to give the central headquarters closer supervision over the activities of the agents and other personnel on the reservations. First put into effect in 1873, the provision for Indian inspectors rested on earlier recommendations. The Doolittle Committee's major practical suggestion for eliminating abuses had been a system of five inspection districts, each to be served by a three-man commission. Senator Doolittle's bill incorporating the inspection provisions passed the Senate in March 1866, but it never came to vote in the House.<sup>17</sup>

15. Report of the Secretary of the Interior, 1877, *House Executive Document* no. 1, part 5, 45-2, serial 1800, pp. x-xii.

16. *Report of the Board of Inquiry Convened by Authority of the Secretary of the Interior of June 7, 1877, to Investigate Certain Charges against S. A. Galpin, Chief Clerk of the Indian Bureau, and Concerning Irregularities in Said Bureau* (Washington: GPO, 1878). There is an account of the episode in Loring Benson Priest, *Uncle Sam's Stepchildren: The Reformation of United States Indian Policy, 1865-1887* (New Brunswick: Rutgers University Press, 1942), pp. 68-69.

17. *Senate Journal*, 39-1, serial 1236, pp. 235, 243, 246. See Doolittle's support of the measure and debate on it in *Congressional Globe*, 39th Congress, 1st session, pp. 1449-50, 1485-92.

The supervisory duties envisaged by Doolittle were then carried out in part by the Board of Indian Commissioners. Because the board's unofficial status led to conflict with the official bureaucracy, however, that group did not function well as the watchdog it was intended to be, except to some extent in its supervision of the purchase of Indian goods. An inspection mechanism within the Indian Office itself was needed, and the Board of Indian Commissioners, in fact, in its report of 1872 called for a "board of inspectors" of at least five persons to be appointed by the president from names recommended by the annual meetings of the various religious denominations.<sup>18</sup>

In January 1873, when the Indian appropriation bill reached the Senate, Senator William M. Stewart of Nevada offered an amendment as an added section of the bill. He proposed that the president detail an army officer to visit each agency every six months to examine the agency and its reservation and to report back to the president how its business was conducted, how the money was spent, how the Indians were being treated, and what progress they were making in civilization. The officer would be given authority to investigate all records and to examine agents and others under oath. When objections arose against such use of army officers and the conflict that was likely to occur between the two branches of government, Stewart proposed a substitute amendment by which the president would appoint "a person" to inspect the agencies every six months. To a suggestion that the Board of Indian Commissioners could fulfill the function, he replied: "The present Indian commission is composed of very nice men, very well-disposed men, men whom I have every reason to have the highest confidence in, so far as I know, but they are old men, they are not very active men, they have not seen all the reservations; they cannot give you this information, they cannot make this examination." After agreeing that the superintendencies as well as the agencies should be inspected and haggling over the number of inspectors and the salary to be paid them, the Senate on January 10 passed an amendment providing for no more than five inspectors, with annual salary of \$3,000 plus traveling expenses. The inspectors would have power not only to inspect all records but to suspend superintendents, agents, and agency employees and appoint others in their places, subject to the president's approval.<sup>19</sup>

When the amendment reached the House of Representatives, the inspection scheme was combined with the question of whether the superintendencies should be continued. Added to the Senate amendment when it was reported to the House by the Committee on Appropriations was a clause abolishing all superintendencies as of June 30, 1873, and using the

funds provided for their salaries to pay the inspectors. Some members pointed to the continuing need for superintendents in some parts of the country, but Representative Aaron A. Sargent of California, the chief advocate of the amendment, noted that the Board of Indian Commissioners in its 1872 report had recommended the discontinuation of the superintendencies; he thought it would be "unjust to this board, and rather a dangerous experiment, to adopt one part of their suggestions [inspectors] and reject the other." At any rate, he wanted to see if the country could not get along without "this expensive machinery of superintendents and superintendents clerks." The House concurred in the abolition of all superintendencies, of which there were eight at the time.<sup>20</sup>

This attack on the superintendencies as unnecessary was not a new thing. Congress in 1870 had authorized the president "to discontinue any one or more of the Indian superintendencies, and to require the Indian agents of such superintendencies to report directly to the commissioner of Indian affairs." In the following year it had charged the president to dispense with agents and superintendencies when feasible. The moves came from a desire for economy, ever present in Indian appropriations, but they were also due no doubt to changing conditions on the frontier. When diplomatic relations with the tribes were uppermost and treaty negotiations an important element in the handling of Indian affairs by the United States, the superintendents played a large role, for they often took part in the treaty making. With the developing reservation system and the emphasis on changing patterns of Indian life, the agent on the reservation assumed a new and more important role in directing the Indians toward civilization.<sup>21</sup>

In 1873 the measure that came out of the conference committee was a compromise. The appointment, pay, number, and duties of the inspectors were left untouched, for the House had concurred in this part of the Senate amendment. But the bill now directed that only four of the eight superintendencies be abolished. The president was to have authority to assign the four remaining superintendents over such agencies as he thought proper and to dispense with all of them at his discretion. In this form the measure became law on February 14, 1873.<sup>22</sup> The Indian service now had its board of inspectors.

20. *Ibid.*, pp. 916-17. The recommendation of the Board of Indian Commissioners is in *Report of the Board of Indian Commissioners, 1872*, p. 19. Congress in 1873 authorized the following superintendencies: two east of the Rockies, one each for Oregon and California, and one each for the territories of Washington, New Mexico, Arizona, and Montana. 17 *United States Statutes* 438.

21. 16 *United States Statutes* 360-61, 345; Paul Stuart, *The Indian Office: Growth and Development of an American Institution, 1865-1900* (Ann Arbor: UMI Research Press, 1979), pp. 73-78.

22. *Congressional Globe*, 42d Congress, 3d session, p. 1079; 17 *United States Statutes* 463.

18. *Report of the Board of Indian Commissioners, 1872*, p. 19.

19. *Congressional Globe*, 42d Congress, 3d session, pp. 436, 439-40, 480-81.

The Indian inspectors were hardly a panacea, but they provided an instrument that, with the right personnel and the right use, could facilitate reform and a tighter and more formal organization of the service. Inspectors had of course been carried on before by special agents or commissioners appointed for particular one-time duties, but the inspectors authorized in 1873 were a new element between the agencies and the Washington office—men who, unlike the superintendents, viewed headquarters rather than the agents as the object of their first loyalty. Even though the number of inspectors was reduced to three in 1875 and the semi-annual inspection of each agency was no longer required, the new office hastened the demise of the remaining superintendencies, the last of which was closed in January 1878. Then in 1880 the number of inspectors was raised again to five. In addition, Congress in 1878 authorized two special agents and in 1882 doubled the number. These men were used to strengthen the inspection service.<sup>23</sup>

In 1873, when the inspectors were authorized, the system of church management of the agencies and superintendencies was in full force, and the first inspectors were chosen from men connected with the church-run agencies, with consequent interdenominational rivalry. Later inspectors were chosen from former agents and superintendents. The inspectors performed a great variety of tasks, although their primary function was to monitor the activities of the agents and make sure that laws and regulations were obeyed. They were used frequently to investigate specific complaints lodged against agents, often by whites in the neighborhood who charged discrimination against their economic interests. They aided in the removal of tribes (for example, the Ponca removal of 1877). They helped in problems resulting from the dissolution of the superintendencies, negotiated with tribes for railroad rights of way through the reservations, and made recommendations about transfers of personnel.<sup>24</sup>

At first the inspectors and the special agents both reported to the commissioner of Indian affairs, but in 1880 Schurz directed the inspectors to report directly to him. Because the legislation authorizing the Indian inspectors called for reports to be sent to the president, Schurz reasoned that in legal effect he acted for the president in the matter and should get the reports. Under his direction the work of the inspectors became more routinized, for he required them to report regularly on their activities. As in-

23. 18 *United States Statutes* 422-23; 20 *United States Statutes* 60; 21 *United States Statutes* 116; 22 *United States Statutes* 70. Stuart, *Indian Office*, chapters 6-9, discusses the work of the inspectors and the part they played in the formalization and institutionalization of the Indian Office.

24. Stuart, *Indian Office*, pp. 80-81, 87-96. Details on the inspection at three agencies, 1873-1906, are given on pp. 101-18.

structions to the inspectors became more detailed, their reports in turn became more patterned. In 1883 a formal set of instructions was issued.<sup>25</sup>

#### POLICIES AND PROGRAMS

As they struggled to control and improve the administration of Indian affairs, the commissioners, despite their diversity of background and short tenures, nevertheless had a uniform policy. All of them, in varying degrees, continued the promotion of Indian civilization that was the corollary of the reservation system. And in this they had the support of their superiors, the secretaries of the interior. Although in the period from the Civil War to 1880 no major legislative enactments effected the reforms advocated by humanitarians and their supporters in the government, the proposals that were to mark the last two decades of the nineteenth century began to assume a form that was generally agreed upon. By the end of Carl Schurz's administration in the Interior Department, the formulations were ready for the intensive campaign that followed to get Congress to enact them into law.

The policies were based on an increasingly clear realization that the expansion of the white population across the nation had forever doomed the Indians' traditional way of life. Ignatius Donnelly, then a young representative from Minnesota, predicted the outcome before the Civil War had ended. He saw white population closing in on the Indians from both the east and the west. "With the termination of our great war, now near its close," he said in the House on February 7, 1865, "a migration will spring up of which the world has as yet known no parallel, and in a few short years every tract capable of settlement and cultivation will pass into the occupancy of the white man. What is to become of the Indians as the races of the world thus draw together from the opposite shores of the continent?" Dennis Cooley in 1866 saw the white population "rapidly crowding westward upon the Indians, either in the search for farming lands or for the precious minerals; and the people who have held these lands are compelled to give way before the advancing tide." He saw a continued increase in the difficulties for there was no way to avoid the collision. "It is the law of nature and of the progress of mankind," he said, "and its operation cannot be stayed."<sup>26</sup>

The movement of railroads westward and the climactic event of the completion of the Union Pacific transcontinental line in 1869 greatly

25. *Ibid.*, pp. 82-83.

26. *Congressional Globe*, 38th Congress, 2d session, appendix, p. 61; CIA Report, 1866, serial 1284, p. 2.

speeded the process. "The completion of one of the great lines of railway to the Pacific coast has totally changed the conditions under which the civilized population of the country come in contact with the wild tribes," Secretary Cox noted in that year. "Instead of a slowly advancing tide of migration, making its gradual inroads upon the circumference of the great interior wilderness, the very center of the desert has been pierced. Every station upon the railway has become a nucleus for a civilized settlement, and a base from which lines of exploration for both mineral and agricultural wealth are pushed in every direction." The inevitability of the advance was taken for granted; the westward course of white population could not—and should not—be stopped or delayed by the Indians. Francis Walker lectured the humanitarian reformers in 1872 that they should exert themselves "not feebly and futilely to attempt to stay this tide, whose depth and strength can hardly be measured, but to snatch the remnants of the Indian race from destruction before it."<sup>27</sup>

The first step in saving the Indians from destruction had been the reservation system, which sought to remove the Indians from the path of the onrushing whites; by 1880 the pattern of reservations was set, although some of them would later be reduced again in size. But once that measure was accomplished, proposals for how to treat the Indians now confined to the reservations became the important elements of United States Indian policy. The Indians, having lost the independence and freedom that marked their aboriginal existence, now became in fact the wards and dependents of a paternal government, and the officials of the Department of the Interior and the Indian Office accepted that fact. They saw it as their responsibility to provide the means for the Indians to move from their traditional life to the white man's civilization—and to force this change upon the Indians for their own good. Commissioner Walker expressed the conclusion with his usual forcefulness:

The Government should extend over them a rigid reformatory discipline, to save them from falling hopelessly into the condition of pauperism and petty crime. Merely to disarm the savages, and to surround them by forces which it is hopeless in them to resist, without exercising over them for a series of years a system of paternal control, requiring them to learn and practice the arts of industry at least until one generation has been fairly started on a course of self-improvement, is to make it pretty much a matter of certainty that by far the larger part of the now roving Indians will become simply vagabonds in the midst of civilization, forming little camps here and there over the

27. Report of the Secretary of the Interior, 1869, *House Executive Document* no. 1, 41-2, serial 1414, p. vii; CIA Report, 1872, serial 1560, p. 397.

face of the Western States, which will be festering sores on the communities near which they are located, the men resorting for a living to basket-making and hog-stealing; the women to fortune-telling and harlotry.<sup>28</sup>

When Carl Schurz left office, almost a decade later, he expressed the same concern and recommended strong government control. "Nothing is more indispensable," he said, "than the protecting and guiding care of the Government during the dangerous period of transition from savage to civilized life. . . . [The Indian] is overcome by a feeling of helplessness, and he naturally looks to the 'Great Father' to take him by the hand and guide him on. That guiding hand must necessarily be one of authority and power to command confidence and respect. It can be only that of the government which the Indian is accustomed to regard as a sort of omnipotence on earth. Everything depends upon the wisdom and justice of that guidance."<sup>29</sup>

A list of priorities in Indian policy emerged during the 1870s that the secretaries of the interior and the commissioners of Indian affairs, aided and abetted by reform sentiment (such as that expressed in the reports of the Board of Indian Commissioners), all espoused. They were set forth in excellent summary form by Schurz in 1879:

1. To set the Indians to work as agriculturists or herders, thus to break up their habits of savage life and to make them self-supporting.
2. To educate their youth of both sexes, so as to introduce to the growing generation civilized ideas, wants, and aspirations.
3. To allot parcels of land to Indians in severalty and to give them individual title to their farms in fee, inalienable for a certain period, thus to foster the pride of individual ownership of property instead of their former dependence upon the tribe, with its territory held in common.
4. When settlement in severalty with individual title is accomplished, to dispose, with their consent, of those lands on their reservations which are not settled and used by them, the proceeds to form a fund for their benefit, which will gradually relieve the government of the expenses at present provided for by annual appropriations.
5. When this is accomplished, to treat the Indians like other inhabitants of the United States, under the laws of the land.

To Schurz these elements of an Indian policy would solve the problems without injustice to the Indians or hindrance to the development of white

28. CIA Report, 1872, serial 1560, p. 399.

29. Carl Schurz, "Present Aspects of the Indian Problem," *North American Review* 133 (July 1881): 8-9.

settlement. The Indians would be raised to a high level of civilization because of the stimulus of individual ownership of property. The policy would not deprive them by force of what belonged to them but would induce them to part with, for a just compensation, lands they did not need and did not cultivate, which could then be opened to progress and improvement.<sup>30</sup>

The policies and programs carried out or recommended by the Indian Office and its supporters continued to rest upon a belief that the Indians were fully capable of adopting civilized ways. Although there were always voices raised against the competence of the Indians and ridicule made of attempts to raise the "savages" to the level of the whites, the dominant official views remained strong in the Christian humanitarian tradition, echoing in many ways such classic statements as those of Commissioner Taylor in 1868. This, of course, was to be expected from the commissioners who by experience and religious outlook were cast in the same mold. Among the most optimistic was Commissioner E. P. Smith, who in 1874 and 1875 was ready to declare large numbers of the Indians ready to be absorbed as citizens into American society. His successor, J. Q. Smith, though more aware of the long road ahead for many Indians, declared in 1876: "From the fact that for so long a period Indian civilization has been retarded, it must not be concluded that some inherent characteristic in the race disqualified it for civilized life. It may well be doubted whether this be true of any race of men. Surely it cannot be true of a race, any portion of which has made the actual progress realized by some of our Indians. They can and do learn to labor; they can and do learn to read. Many thousands to-day are engaged in civilized occupations." Carl Schurz, more hard-headed than the sentimental philanthropists with whom he sparred, held the same opinion. "That all the Indians on this northern continent have been savages and that many of them are savages now is true," he wrote in 1879, "but it is also true that many tribes have risen to a promising degree of civilization, and there is no reason to doubt that the rest, if wisely guided, will be found capable of following their example."<sup>31</sup>

Mundane policies of law and land allotment and self-support were not the only forces at work. Suffusing all was the powerful spirit of Christianity, and missionaries continued to be the primary agents of the government's program for Indian improvement. The assignment of agencies to Christian denominations gave the greatest momentum to the drive, but that was a result, not the cause, of the Christian philanthropic spirit. The

30. Report of the Secretary of the Interior, 1879, *House Executive Document* no. 1, part 5, 46-2, serial 1910, pp. 5-6.

31. CIA Report, 1874, serial 1639, pp. 313, 316; CIA Report, 1875, serial 1680, pp. 527-31; CIA Report, 1876, serial 1749, pp. 384-85; Report of the Secretary of the Interior, 1879, *House Executive Document* no. 1, part 5, 46-2, serial 1910, p. 4.

peace policy enlisted the kind of aid "for which the Government has no substitute" E. P. Smith said, "and without which all effort for civilization will drag heavily until it is abandoned." Then he put his finger on the peculiarly American manifestation of religious aid:

No movement for changing the character and habits and prevailing condition of a people or a class can attain anything worthy the name of success without calling for the help which a volunteer benevolent or religious organization outside of the Government alone can give. The Sanitary and Christian Commissions of the war, Prison Associations, Children's Aid and other Relief Societies, and the multitude of benevolent organizations which the Government and the States call to their aid whenever any work of humanity or recovery of man is to be undertaken, bear abundant testimony to the prevailing opinion on this subject which has grown out of experience.<sup>32</sup>

The missionaries, whose aid was so generally praised, continued to play an especially important role in educating the Indians; one of the motives behind the allotment of agencies to religious denominations had been to encourage the educational and other work of the missionaries on the reservations by eliminating conflict between them and agents. It is difficult, however, to determine exactly the proportion of Indian school work done by church groups. The United States supplied funds to tribes for their own schools in accord with treaty specifications and used some funds designated for "civilization" for school support. In 1870 Congress for the first time appropriated money "for the support of industrial and other schools among the Indian tribes not otherwise provided for." The sum of \$100,000 was provided, but the Indian Office that year expended only \$37,597, and the money was reappropriated for later use. Money spent for schools rose only slowly until after 1880, when the sums advanced dramatically, reaching \$2,277,557 in fiscal year 1893. Even though the government thus became firmly committed to maintaining a system of public schools for the Indians, it continued to rely for much Indian education on mission schools on a contract basis in which the church groups built the schoolhouses and supplied the teachers in return for an annual per capita payment for the students they enrolled. A considerable number of schools, in addition, were supported entirely by the churches.<sup>33</sup>

32. CIA Report, 1875, serial 1680, p. 524.

33. 16 *United States Statutes* 359; Stuart, *Indian Office*, pp. 119-34. A useful history and analysis of school development and expenditures is provided in the Report of the Indian School Superintendent (John H. Oberly) for 1885, CIA Report, 1885, serial 2379, pp. 75-127.

Much of the program of civilization, Christianization, and education, of course, was no more than a continuation and intensification of ideas long promoted by officials and others interested in Indian affairs. Newer was the emphasis on law for the Indians. It had been an assumption of United States Indian policy that the tribes were political entities within which law and order were maintained by Indian custom or law. But the traumatic changes brought by reservation life and the stepped-up attacks on Indian tribalism and Indian ways that were part of the reform movement brought with them a general disorganization and disintegration of Indian societies. "A serious detriment to the progress of the partially civilized Indians," the Board of Indian Commissioners declared in 1871, "is found in the fact that they are not brought under the domination of law, so far as regards crimes committed against each other." The board admitted that Indian tribes differed greatly among themselves and that all were not yet suited to white legal norms. "But when they have adopted civilized costume and civilized modes of subsistence," it said, "we owe it to them, and to ourselves, to teach them the majesty of civilized law, and to extend to them its protection against the lawless among themselves."<sup>34</sup>

A sharp blow at the traditional status of the Indian tribes was the legislation of 1871 declaring that thereafter no Indian tribe would be recognized as an independent nation with whom the United States could contract by treaty. Although agreements still were concluded that were no different from previous treaties except in mode of ratification, the formal end of treaty making and the conscious intention thereby to denigrate the power of the chiefs resulted in a loss of old systems of internal order without the substitution of anything in their place. Francis A. Walker clearly defined the problem:

While the Act of 1871 strikes down at a blow the hereditary authority of the chiefs, no legislation has invested Indian agents with magisterial power, or provided for the assembling of the Indian *demos*. There is at this time no semblance of authority for the punishment of any crime which one Indian may commit against another, nor any mode of procedure, recognized by treaty or statute, for the regulation of matters between the government and the several tribes. So far as the law is concerned, complete anarchy exists in Indian affairs; and

34. *Report of the Board of Indian Commissioners, 1871*, pp. 7-8; see also *ibid.*, 1873, p. 6. In this section I use material from Francis Paul Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900* (Norman: University of Oklahoma Press, 1976), pp. 201-8, 329-31.

nothing but the singular homogeneity of Indian communities, and the almost unaccountable spontaneity and unanimity of public sentiment within them, has thus far prevented the attention of Congress and the country being called most painfully to the unpardonable negligence of the national legislature in failing to provide a substitute for the time-honored policy which was destroyed by the Act of 1871.<sup>35</sup>

Walker's successor, who inherited the problem, was no less concerned, and he recommended the application of United States courts to the Indian territories as a substitute for the former tribal authority. This became the common cry of reformers both in and out of the government. Even among white men, they asserted, civilization would not long exist without the guarantees of law. How, then, could there be any hope of civilizing the Indians without law? "That the benevolent efforts and purposes of the Government have proved so largely fruitless," the commissioner of Indian affairs declared in 1876, "is, in my judgment, due more to its failure to make these people amenable to our laws than to any other cause, or to all other causes combined." From all sides the refrain sounded. Bishop William Hare, the Episcopal missionary among the Sioux, wrote in 1877: "Wish well to the Indians as we may, and do for them what we will, the efforts of civil agents, teachers, and missionaries are like the struggles of drowning men weighted with lead, as long as by the absence of law Indian society is left without a base." Indians, too, were appealed to, and the commissioner of Indian affairs in 1878 said that Chief Joseph, the famous Nez Perce leader, believed that the greatest need of the Indians was a system of law by which controversies among Indians and between Indians and whites could be settled without appealing to physical force.<sup>36</sup>

A bill was introduced in Congress early in 1879 that authorized the president to prescribe police regulations for the Indian reservations and that provided for the laws of the respective states and territories relating to major crimes to be in force on the reservations. Both Schurz and Hays strongly supported the measure. The latter declared: "A civilized community could not exist as such without law, and a semi-civilized and barbarous people are in a hopeless state of anarchy without its protection and sanctions. It is true the various tribes have regulations and customs of their own, which, however, are founded on superstition and ignorance of the usages of civilized communities, and generally tend to perpetuate feuds and keep alive animosities. To supply their place it is the bounden

35. Walker, *The Indian Question*, pp. 12-13.

36. CIA Report, 1873, serial 1601, pp. 372-73; CIA Report, 1875, serial 1680, pp. 517-18; CIA Report, 1876, serial 1749, pp. 387-88; CIA Report, 1878, serial 1850, p. 465. Bishop Hare is quoted in CIA Report, 1883, serial 2191, p. 7.

duty of the government to provide laws suited to the dependent condition of the Indians.<sup>37</sup> Congress could not be persuaded to enact the bill, but agitation kept the idea strong, and increasing pressure arose for law as a necessary means to bring about the reform and civilization among the Indians that humanitarians wanted. Under the paternal care of the United States, the Indians were to be introduced to white concepts of law.

A new agency of law that developed in the 1870s, which became a regular element on the reservations, was an Indian police force, quasi-military units under the command of the agents that emerged as substitutes for the authority of the chiefs or for military control of the reservations.<sup>38</sup> Some sort of police force was necessary in the best-ordered societies; it was argued, and to think that the Indian reservations, whose traditional tribal governments were weakened by the white reformers' attacks, could get along without law enforcers was absurd. It was all very well to condemn military management of Indian affairs, but if army troops were not on hand, the agent had to find some other way to back up his decisions.

The idea of a constabulary force of Indian policemen arose spontaneously on several reservations. Indians enrolled by the army as scouts had performed well, and it was not a difficult step to conceive of Indians as a temporary or even a permanent civilian corps. When Benjamin F. Lushbaugh became agent of the Pawnees in 1862, he was immediately annoyed by the frequent thefts, chiefly of horses, by young men of the tribe, and he organized a makeshift Indian police force to facilitate the recovery of property. In 1872-1873 a group of Navajo policemen, placed under a war chief, served well in preventing depredations and in expediting the return of stolen stock. Similar expedients for preserving order were used with success among the Klamaths, the Chippewas in Wisconsin, the Sioux, and the Blackfeet.<sup>39</sup>

The Apache police force established by John P. Clum, the extraordinary young agent at the San Carlos Reservation, was the best example. Clum had been nominated by the Dutch Reformed Church, which had been allotted the agency under Grant's peace policy and which, having no missionaries of its own willing to accept the hazards of the post, had turned to Rutgers College to find recruits. Clum had attended there briefly before

37. Report of the Secretary of the Interior, 1879, *House Executive Document* no. 1, part 5, 46-2, serial 1910, pp. 12-13; CIA Report, 1879, serial 1910, pp. 105-6.

38. An excellent, thorough treatment of Indian police and Indian judges is William T. Hagan, *Indian Police and Judges: Experiments in Acculturation and Control* (New Haven, Yale University Press, 1966).

39. Lushbaugh to Charles E. Mix, September 15, 1862, CIA Report, 1862, serial 1157, p. 266; Oskah L. Jones, Jr., "The Origins of the Navajo Indian Police, 1872-1873," *Ari-zona and the West* 8 (Autumn 1966): 225-38; Hagan, *Indian Police and Judges*, pp. 25-27, 39-40.

going west with the United States Weather Service, and former classmates recommended him for the position. He arrived at San Carlos on August 8, 1874, a cocky twenty-two year old "with instructions to assume *entire* control of the San Carlos agency." This meant forcing out the military and setting up his own enforcement agency. Two days after his arrival, Clum held a big talk with the Apaches and explained his plans. "I then told them that I intended to appoint some Indians as police-men," he later wrote; "that we would establish a supreme court for the trial of offenders; that I would preside as chief justice, and four or five Apache chiefs would serve as assistant justices; that Indians would be called as witnesses at the trials. Under this system, all Apache offenders would be arrested by Apache police, brought before an Apache court, with Apaches as witnesses, and, if convicted, sentenced by Apache judges, and finally delivered into the custody of Apache guards." The self-government plan worked, and Clum controlled the volatile Apaches without the aid of the army. The Indian Office and the Dutch Reformed Church supported him, and his Apache police were accepted as an integral part of the agency.<sup>40</sup>

The Board of Indian Commissioners raised the question of Indian police formally in its report for 1874. In a section entitled "Enforcement of Order," it noted that the power of the chiefs was limited and that outside intervention was resented. The result was that although the wild tribes had treaty obligations to maintain order, to educate their children, to apprehend and deliver offenders for punishment, and to labor for their own support, no machinery existed to enforce these stipulations and they had remained nugatory. The solution would be a "police or constabulary force" made up of the Indians themselves. Noting the successful attempts along this line at various reservations, the board concluded that there was abundant evidence to prove that a small, disciplined, and well-instructed police force of Indians would be a safe and effective means of preserving order and of assisting the tribe in enforcing its treaty obligations. And such a force in many cases, the board asserted, would obviate the necessity of a military post near the agency.<sup>41</sup>

In the following year the board moved ahead vigorously with its scheme. On August 1, 1875, it sent a circular letter to all the Indian agents as part of

40. Woodworth Clum, *Apache Agent: The Story of John P. Clum* (Boston: Houghton Mifflin Company 1936), pp. 119-21, 132, 134-35. Clum's annual reports appear in the annual reports of the commissioner of Indian affairs, 1874-1877. Clum in later life wrote about his Apache police in "The San Carlos Apache Police," *New Mexico Historical Review* 4 (July 1929): 203-19, 5 (January 1930): 67-92. For a detailed, heavily documented account of Clum's career as agent, with emphasis on his struggle with the military, see Ralph Henrick Ogle, *Federal Control of the Western Apaches, 1848-1886* (Albuquerque: University of New Mexico Press, 1970).

41. *Report of the Board of Indian Commissioners, 1874*, p. 9.

its campaign against military control of the reservations. After requesting information about the existence of military forces in their vicinity and the effect of the troops on the Indians, the letter posed a specific question about Indian police: "Would the organization of an armed Indian police, under proper restrictions and discipline, for the enforcement of order, arrest of criminals, and the prevention of incursions of evil-disposed persons upon your reservation, prove safe or advisable, and to what extent would such an organization supersede the necessity of a military force?" A number of the agents saw no need for a police force because their charges were peaceful and well-ordered, and some believed that the Indian distaste for taking punitive action against other Indians would make such a police force useless, but the great majority replied favorably, some even enthusiastically. Agents who had already employed Indians as police of one sort or another pointed to the success of their efforts.<sup>42</sup>

It took some time for the work of the board to bear fruit. Commissioner Hayt picked up the recommendation in 1877 and urged the creation of a general system of Indian police. He noted the successes where such police had already been tried and the practice of using police in Canada. The police system, he said, would relieve the army from police duty on Indian reservations, would save lives and property, and would "materially aid in placing the entire Indian population of the country on the road to civilization." But Congress, where supporters of military control of the reservations were numerous and influential, held back. Finally, on May 27, 1878, a system of Indian police got congressional authorization. A section of the Indian appropriation act provided \$30,000 to pay for 430 privates at \$5 a month and fifty officers at \$8 a month, "to be employed in maintaining order and prohibiting illegal traffic in liquor on the several Indian reservations." By the end of the year, the commissioner reported success at the thirty agencies where police forces had been organized, and in 1879 Congress doubled the number of policemen authorized. By 1880 there were police at forty agencies and a decade later at fifty-nine.<sup>43</sup>

The police were immediately useful to the agents as an extension of their authority. The tasks they performed were in many cases hardly police duties at all. An Indian policeman was the "reservation handyman." The police served as couriers and messengers, slaughtered cattle for the beef ration, kept accounts of births and deaths in the tribe, and took censuses for the agent, and they augmented the labor force of the agency by building roads, clearing out irrigation ditches, and doing other chores. In all this

42. *Ibid.*, 1875, pp. 64-103.

43. CIA Report, 1877, serial 1800, pp. 398-99; CIA Report, 1878, serial 1850, pp. 471-72; CIA Report, 1880, serial 1959, pp. 88-89; CIA Report, 1890, serial 2841, pp. xc-xciv, 20 *United States Statutes* 86, 315.

they contributed substantially to the smooth operation of the agency. Routine labor, however, did not obscure the enforcement of order, which had been foremost on the minds of advocates of the police system. The Indian police were armed and often mounted, at the beck and call of the agent when disorder threatened or force was needed to see that rules and regulations on the reservation were properly observed. The police arrested or turned back intruders on the Indian lands and tore out the squatters' stakes, arrested horse thieves, escorted surveying parties, and served as scouts. They acted as guards at annuity payments, preserved order at ration issues, protected agency buildings and other property, and returned truant children to school. They searched for and returned lost or stolen goods, prevented depredations in timber, and brought whiskey sellers to trial. They arrested Indians for disorderly conduct, drunkenness, wife beating, and theft, and reported the comings and goings of strangers on the reservation.<sup>44</sup>

The reformers soon became aware, if they had not been from the start, that these duties and responsibilities of the Indian police were means to an end of greater worth than day-to-day good order on the reservations. The police were to become important chiefly for their moral influence. The police force on a reservation impressed the Indians with the supremacy of law; it discouraged the traditional practice of personal revenge; it imbued a sense of duty and personal responsibility, subjected the policemen themselves to strict discipline and self-control, and inspired them with a pride of good conduct; it taught respect for the personal and property rights of others, by strengthening the authority of the government agent against that of the chiefs, it prepared the Indians for the dissolution of their tribal relations and pushed them forward toward incorporation into American society. The Indian police taught by good example as well as by the enforcement of precepts. They were expected to have only one wife and to dress in the accepted white man's costume, with short hair and unpainted faces. The police force, Commissioner Hiram Price commented in 1881, was "a perpetual educator."

All in all, the Indian police worked remarkably well in fulfilling the reformers' designs. Four years after the program began, the commissioner of Indian affairs reported: "Tried as an experiment, it has proved a decided success. It has accomplished all that was claimed for it, and at many agencies has become an absolute necessity." Compared with white police forces throughout the country, he declared two years later, the Indian police could not be surpassed for faithfulness and the impartial performance of duty. And this was all the more remarkable considering that the police

44. Hagan, *Indian Police and Judges*, pp. 69-81. See also the annual reports of the commissioner of Indian affairs.

were asked to enforce against members of their own race laws made by white officials, many of which went strongly against established practices and customs, often of a religious nature.<sup>45</sup> The success rested to a large extent on the fact that the police forces often paralleled or replaced similar institutions within the tribes themselves. The soldier societies that had regulated much of tribal life had performed functions not unlike those assigned to the Indian police, and wittingly or unwittingly, agents drew their policemen from the membership of such societies.<sup>46</sup>

There were, of course, some nay sayers. The strongest argument made against the Indian police was that they gave too much power to the agent. The chairman of the House Committee on Indian Affairs in 1880 argued strongly against the continuation of the police on that basis. "This provision turns him [the Indian] over, bound hand and foot, to the agents," he said. "These men had authority before almost without restriction, except as they are restricted by the want of physical force. Now we give them eight hundred men armed and equipped, and thus the fullest authority is allowed with fearful power to execute not known laws, but the will of the agent."<sup>47</sup> There was no doubt that an obedient police force in the hands of an authoritarian or unscrupulous agent would be a dangerous thing. But isolated examples of dangerous behavior did not outweigh the overwhelmingly favorable impression made by the Indian police on white observers.<sup>48</sup>

Part of the agitation for law for the Indians came, not from fear of disorders within the Indian societies, which the Indian police might ease, but from the difficulties of protecting Indians from crimes perpetrated upon them by white aggressors. The instrument that was supposed to offer protection from such attacks was the Indian Trade and Intercourse Act of 1834, with its array of restrictions upon white contacts with Indians and penalties for violating them. Like the officials in the 1850s, who lamented the inapplicability of the old law to changed conditions, the secretaries and commissioners of the 1860s and 1870s saw urgent need for revision. Commissioner Cooley in 1866 began the refrain: "The intercourse laws,

45. CIA Report, 1882, serial 2100, pp. 35-36; CIA Report, 1884, serial 2287, p. 12. See also CIA Report, 1890, serial 2841, pp. xci-xciv, for extracts of agents' reports praising the Indian police.

46. Clark Wissler, *Indian Civilization; or, Life on the Old-Time Indian Reservations* [New York: Sheridan House, 1938], pp. 128-29; Hagan, *Indian Police and Judges*, p. 161.

47. *Congressional Record*, 10: 2487. Several other members of the House spoke strongly in favor of the police, and the objection was not sustained. See the debate, *ibid.*, pp. 2487-89.

48. George E. Hyde, *A Sioux Chronicle* (Norman: University of Oklahoma Press, 1936), generally supports the critics' position, but Hagan's *Indian Police and Judges* gives a more sober and favorable evaluation of the police.

passed over thirty years since, and apparently sufficient at that time, before the tide of emigration had begun to set strongly towards the frontier, and while none but occasional hunters or trappers interfered with the occupancy of the country by the Indians, are insufficient now, when the white population west of the Mississippi begins to number its millions." A typical echo was that of Columbus Delano in 1874, who declared that the provisions of the act of 1834 were "entirely inadequate to meet the present requirements of the service" and that experience had shown that the law was no longer sufficient to protect the Indians.<sup>49</sup>

The problem was twofold. First, the Indians needed more effective protection against crimes committed against their persons and property by whites. What was called for was "a plain, comprehensive code, by which the superintendents and agents may dispense justice within their jurisdictions, and the infliction of appropriate penalties may be rendered certain, whether the offender be red or white." The longtime discrimination in favor of whites could not escape notice. "In too many cases, indeed almost universally" the commissioner wrote in 1866, "where a white offender against the rights or life of an Indian is brought into our courts through the efforts of the agent, he is sure of acquittal, but reverse the case, and the Indian almost surely suffers. It does seem practicable," he concluded, "to improve upon this condition of things." Secretary Delano, almost a decade later, pointed to the same problems.<sup>50</sup>

The second major concern was the inadequacy of the regulations for trade with the Indians. Indiscriminate granting of licenses to American citizens was a norm, and Congress in fact in 1866 had reinforced the principle by authorizing any loyal citizen to trade with the Indians. Such looseness aggravated the problems, for the Indian Office had authority neither to restrict the number of traders nor eliminate those judged unfit or unable to supply the Indians fairly and adequately.<sup>51</sup>

The result in both cases was severe irritation of the Indians, who sought revenge against the abuses and kept the frontier in turmoil. But more important, in the minds of the reformers, the situation left the Indians in an anomalous state in regard to law. The failure of Congress to act in providing a code of law for the Indians led Commissioner E. P. Smith in 1875 to

49. CIA Report, 1866, serial 1284, pp. 16-17; Report of the Secretary of the Interior, 1874, *House Executive Document* no. 1, part 5, 43-2, serial 1639, p. viii. See also CIA Report, 1867, serial 1336, part 2, p. 5; CIA Report, 1871, serial 1505, p. 422.

50. CIA Report, 1866, serial 1284, p. 17; Report of the Secretary of the Interior, 1874, *House Executive Document* no. 1, part 5, 43-2, serial 1639, p. viii. See the plea for better law for the Indians, both among themselves and in relation to whites, in CIA Report, 1874, serial 1639, pp. 324-25.

51. 14 *United States Statutes* 280, CIA Report, 1866, serial 1284, p. 17; CIA Report, 1877, serial 1800, pp. 404-5.

recommend the "divorcement of the United States and Indians as 'citizens of a domestic sovereignty within our borders,' and the transfer of the Indians and their property to the States where they reside." This could be done at once, he thought, in New York and for some of the Indians in Michigan; Wisconsin, and Minnesota; it could be done for others as soon as they were advanced enough in civilization to be treated as ordinary citizens.<sup>52</sup>

All the plans and the progress that came from them in implementing the peace policy fell short of the firm legislative enactments that were the ultimate goal of the reformers. Again and again the commissioners and the secretaries of the Interior, supported and urged forward by church and other reform groups, had recommended legal support of land allotment, a system of courts, and increased educational facilities for Indians. To a large extent their exhortations were ineffective at the time, but they were not in vain. The ideas espoused in the 1860s and 1870s became the platform for a concentrated and successful drive in the next two decades that transformed the relations between the United States government and the Indians.

52. CIA Report, 1875, serial 1680, pp. 519-20. This was close to the policy of "termination" of the 1950s, although that term was not used.

## Illustration and Map Credits Volume I

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the Penobscot Nation, and the Houlton Band of Maliseet Indians (a small group that had also advanced claims), and it was adopted by the Maine legislature and signed by the governor on April 2, 1980. On June 13 the proposal was introduced into Congress by Maine's two senators, and hearings were held to gather the views of all interested parties. There was strong pressure on Congress to approve, even though the cost to the United States was considerably higher than the administration had previously supported.<sup>7</sup>

On October 10 the Maine Indian Claims Settlement Act of 1980 (P.L. 96-420) became law. It ratified all transfers of land and other natural resources by the Indians and thus extinguished all their claims to the land. In return Congress established a Maine Indian Claims Settlement Fund of \$27 million, to be held in trust by the secretary of the interior for the tribes and the income used for their benefit. Another \$54.5 million created a Maine Indian Claims Land Acquisition Fund (\$26.8 million each for the Passamaquoddy and the Penobscots and \$900,000 for the Houlton Band), from which 300,000 acres of land would be purchased for the Indians of the state. The tribes were recognized by the federal government and able to draw on the full federal services provided for Indian groups. They were, however, to be under the civil and criminal jurisdiction of the state.<sup>8</sup>

Before the Maine case had reached this successful conclusion, the claims of the Narragansett Indians in Rhode Island had been settled. The tribe claimed aboriginal title to 3,200 acres of land within the town of Charlestown and asserted that the alienation of those lands between 1790 and 1880 was null and void because of the provisions of the Trade and Inter-course Acts. The lawsuits clouded the title of most of the land in the town, and after lengthy negotiations the parties to the lawsuits, together with Governor J. Joseph Garrahy of Rhode Island and the Charlestown Town Council, signed a settlement agreement out of court, which Congress was asked to approve. The Rhode Island Indian Claims Settlement Act of September 30, 1978 (P.L. 95-395) confirmed the agreement. The state transferred to a state-chartered and Indian-controlled corporation about 900 acres of state land, and Congress appropriated \$3.5 million to purchase another 900 acres for the Indians. In return all tribal land claims within Rhode Island were extinguished.<sup>9</sup>

7. "Proposed Settlement of Maine Indian Land Claims," *Hearings before the Select Committee on Indian Affairs, United States Senate, 96th Congress, 2d Session, on S. 2829, 2 vols.* (1980); "Settlement of Indian Land Claims in the State of Maine," *Hearing before the Committee on Interior and Insular Affairs, House of Representatives, 96th Congress, 2d Session, on H.R. 7919* (1980), *Senate Report no. 96-957, 96-2*, serial 13330; *House Report no. 96-1353, 96-2*, serial 13377.

8. 94 *United States Statutes* 1785-97.

9. "Rhode Island Indian Claims Settlement Act," *Joint Hearing before the United States Senate Select Committee on Indian Affairs and the U.S. House of Representatives*

The Mashpee case was similar, but it had quite a different outcome. These Indians, living in a small community on Cape Cod, brought suit as the "Mashpee Tribe" in the federal court in August 1976 and asked the court to declare that they were the legal owners of much of the land in the town of Mashpee because the provisions of the 1790 law had not been followed in alienating the land. This claim, like that of the Maine and Rhode Island Indians, immediately threw the town into economic turmoil because of the uncertainty of land titles. After a long trial on the question of the tribal status of the Mashpees, the jury found that although the Indians had been a federal Indian tribe in 1834 and 1842, they had ceased to be so by 1869, at which time their lands were sold to individual white purchasers, and that they were not a tribe when they brought suit in 1976. The district court approved the jury's decisions and dismissed the case in March 1978, and this action was upheld by the United States Supreme Court Appeals, First Circuit, in February 1979. The United States Supreme Court declined to review the actions of the lower courts, thus ending the case unfavorably for the Indians.<sup>10</sup>

A case of quite a different sort arose from a festering land dispute between the Navajos and the Hopis. The dispute was of long standing, and the problem became critical in the 1970s. Congressional attempts to solve it by partition and relocation led to new cries of federal heartlessness.<sup>11</sup> The Hopis, a sedentary people relying on farming and grazing for a livelihood, had inhabited their mesa-top villages for centuries. The Navajos were later arrivals—a semi-nomadic people for whom grazing was a pri-

*Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs and Public Lands, 95th Congress, 2d Session, on S. 3153 and H.R. 12860* (1978); *Senate Report no. 95-972, 95-2*, serial 13197-7; *House Report no. 95-1453, 95-2*, serial 13201-10; *92 United States Statutes* 813-18. The necessary Rhode Island legislation to implement the act was signed on May 10, 1979.

10. *Mashpee Tribe v. Town of Mashpee*, 447 *Federal Supplement* 940-50; *Mashpee Tribe v. New Seabury Corp.*, 592 *Federal Reporter, Second Series* 575-95. The question of tribal existence is discussed in James D. St. Clair and William F. Lee, "Defense of Non-intercourse Act Claims: The Requirement of Tribal Existence," *Maine Law Review* 31, no. 1 (1979): 91-113. Useful accounts of the Mashpee Indians and their case are Francis G. Hutchins, *Mashpee: The Story of Cape Cod's Indian Town* (West Franklin, New Hampshire: Amara Press, 1979), and Paul Brodeur, "The Mashpees," *New Yorker*, November 6, 1978, pp. 62-150.

11. Two useful analyses of the case are Kevin Teahan, "Of Indians, Land, and the Federal Government: The Navajo-Hopi Land Dispute," *Arizona State Law Journal*, 1976, pp. 173-212, and James M. Goodman and Gary L. Thompson, "The Hopi-Navaho Land Dispute," *American Indian Law Review* 3, no. 2 (1975): 397-417. A more detailed account, described as a combination of "history and investigative reporting," which describes the persons involved and the political maneuvering, is Jerry Kammer, *The Second Long Walk: The Navajo-Hopi Land Dispute* (Albuquerque: University of New Mexico Press, 1980).

many occupation—and they gradually spread from their center in northwestern New Mexico. After their return from forced exile at the Bosque Redondo in 1868, they expanded their reservation to keep pace with increasing population, ultimately surrounding the Hopis. To meet the growing Hopi complaints about Navajo encroachment, President Chester A. Arthur on December 16, 1882, by executive order set aside a reservation of nearly 2.5 million acres for the Hopis. The order was hastily drawn and imprecisely worded; it set the land aside "for the use and occupancy of the Mogui [Hopi], and such other Indians as the Secretary of the Interior may see fit to settle thereon." At the time there were an estimated three hundred Navajos living in the area.<sup>12</sup> The Hopis actually lived in a contracted area and did not use the full 1882 reservation, although their religious traditions required the use of shrines throughout the region, and the aggressive Navajos, still growing, moved onto it with their flocks and herds. By 1960 there were perhaps eighty-five hundred Navajos occupying land within the 1882 reservation boundaries. The acquiescence of the federal government in this encroachment was taken to be an application of the secretary of the interior's authority to settle other tribes there.

A related controversy developed around the Hopi village of Moencopi, located outside the 1882 reservation to the west of the main Hopi settlements. When Congress in 1934 defined the Navajo Reservation (which had grown piecemeal over the years), it specified that the lands were set aside for the Navajos and "such other Indians as are already settled thereon." Thus the Hopis got an undetermined interest in lands within the 1934 Navajo reservation, but the two tribes were unable to reach an agreement as to the precise interests held by the Hopis at Moencopi.<sup>13</sup>

Attempts to settle the question about the 1882 reservation by negotiation failed, and in 1958 a court settlement of conflicting interests was sought. By a law of July 22, 1958 (Pl. 85-547), Congress converted the tenancy by sufferance (which the Indians had under the executive order of 1882) to a vested interest with the government holding the lands in trust, and it authorized adjudication of the two tribes' claims by a three-member United States District Court in the District of Arizona—thus treating the issue primarily as a legal one, not one calling for a broader legislative resolution of the dispute. The court rendered its decision in the case of *Healing*

12. Executive order, December 16, 1882, printed in Kappler, vol. 1, p. 805. The area reserved was a rectangle approximately seventy miles from north to south and fifty-seven miles from east to west.

13. 48 *United States Statutes* 960-62. The act specifically declared that "nothing herein contained shall affect the existing status of the Mogui [Hopi] Indian Reservation created by Executive order of December 16, 1882." For a discussion of the Moencopi dispute, see Tehan, "Of Indians, Land, and the Federal Government," pp. 183-84, 198-203.

*v. Jones* on September 28, 1962. It held that the Hopis had an exclusive interest in that part of the reservation defined in 1943 as Land Management District Six (some 631,000 acres in the area they had traditionally inhabited) and that both tribes had a joint, undivided, and equal interest in the remaining 1.8 million acres. The court, however, asserted that the act of 1958 did not authorize it actually to partition the land held jointly.<sup>14</sup>

The *Healing* decision did not resolve the conflict. The Navajos' suggestion that they buy out Hopi interests in the areas of Navajo settlement was rejected by the Hopis, and new negotiations between the tribes were unsuccessful. When the Hopi Tribe sought court action to enable it to utilize the joint-use land and to remove Navajo stock from Hopi lands, the Court of Appeals for the Ninth Circuit directed the district court to determine appropriate relief. The district court in October 1972 ordered a program of stock reduction by the Navajos, restoration of overgrazed lands, and a limitation on Navajo construction within the joint-use area. When the Navajo Tribe failed to comply with the order, it was held in contempt of court.<sup>15</sup> The tension between the two tribes increased to such an extent that the *New York Times* in May 1974 could report the issue in a feature article with the headline "Rival Tribes Threaten War over Million Acres."<sup>16</sup>

Congress sought to end the impasse with new legislation, but it was not easy to decide what that legislation should contain. The House and Senate were faced with the genuine conflicting interests of the two tribes, a variety of proposals to solve the difficulties equitably, and a considerable amount of political agitation and maneuvering, so that it was difficult to find a solution that would be generally accepted. Three proposals were considered. The Hopis wanted a clear partition that would affirm their rights, which had been acknowledged in *Healing v. Jones*. The Navajos wanted to stay where they were in the disputed area and to buy out the Hopi interest in those lands. A third proposal urged still further negotiation and mediation. Extended hearings on the proposals brought forth

14. *Healing v. Jones*, 210 *Federal Supplement* 125-92, which includes a lengthy historical discussion of the dispute. There is an analysis of the decision in Tehan, "Of Indians, Land, and the Federal Government," pp. 189-94. The Navajo position is presented by two lawyers from the law firm representing the Navajos in Richard Schiffer and W. Richard West, Jr., "Healing v. Jones: Mandate for Another Trail of Tears?" *North Dakota Law Review* 51 (Fall 1974): 73-106.

15. The post-*Healing* court action is traced in Hamilton v. MacDonald, 503 *Federal Reporter*, Second Series 1138-51. The various cases and court orders are printed in "Relocation of Certain Hopi and Navajo Indians," *Hearing before the United States Senate Select Committee on Indian Affairs*, 95th Congress, 2d Session, on S. 1714 (1978), pp. 775-918.

16. *New York Times*, May 10, 1974, p. 39.

sharp disagreement. The Navajo chairman, Peter MacDonald, stressed the human suffering and disaster that would occur with forced removal and relocation of the Navajos and their livestock, repeating a common Navajo charge that partition and relocation would mean another Long Walk for his tribe comparable to the tragic episode of the 1860s, which was still vividly remembered by the Indians. Abbott Sekaquapewa, chairman of the Hopi Tribe, on the other hand, spoke eloquently about the Hopis' long history of suffering under the aggressive encroachment of the Navajos and belittled the cries of hardship connected with relocation. "The Navajo Tribe has yet to explain," he said, "why great psychological harm will be done if they move off Hopi lands, and similar harm is not done to them when they uproot their homes and families and move in on Hopi territories."<sup>17</sup>

Congress sided with the Hopis, as did the Department of the Interior. The department at first opposed a legislative solution, hoping that an answer to the dispute could still be found through negotiation and court action, but it eventually despaired of such a solution and supported partition and relocation. "We recognize that a major relocation of people in this way is a grave human problem," Commissioner of Indian Affairs Morris Thompson asserted on June 24, 1974. "We earnestly hope that if [the relocation bill] is enacted, the affected peoples will move willingly and we are recommending a system of cash incentives to encourage early and voluntary relocation. However, we realize that some affected persons may resist relocation and that in some cases it may not be possible to carry out the court's partition on a voluntary basis."<sup>18</sup>

An act of December 22, 1974 (P.L. 93-531), provided for Navajo and Hopi negotiating teams under a federal mediator to settle the conflict, but if no agreement were reached within six months, it directed the district court to partition the joint-use area. To carry out the necessary relocations, it established a three-member Navajo and Hopi Relocation Commission and authorized the appropriation of funds to provide incentives for volun-

17. "Partition of Navajo and Hopi 1882 Reservation," *Hearings before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, House of Representatives, 93d Congress, 1st Session, on H.R. 5647, H.R. 7679, and H.R. 7716 (Navajo-Hopi Dispute)* (1974); "Navajo-Hopi Land Dispute," *Hearing before the Committee on Interior and Insular Affairs, United States Senate, 93d Congress, 2d Session, on H.R. 10337, S. 2424, S. 3230, and S. 3724* (1974). See Sekaquapewa's testimony and prepared statement on pp. 25-30 of the House hearings and MacDonald's on pp. 256-61 of the Senate hearings.

18. Statement of Morris Thompson, June 24, 1974, in "Navajo-Hopi Land Dispute," *Senate Hearings*, pp. 243-46. The political positions in the congressional action are treated in Kammer, *Second Long Walk*, pp. 91-137. See also *House Report no. 93-909, 93-2, serial 13061-2, and Senate Report no. 93-1177, 93-2, serial 13057-8*.

tary moving and to pay the costs of relocation. The secretary of the interior was authorized to sell the Navajos 250,000 acres of Bureau of Land Management lands on which to resettle the families forced to relocate. The final court decree on partition came in April 1979; it accepted the detailed partition plan worked out by the mediator. The Relocation Commission was required to submit a final relocation plan within two years. Five years were then allowed to complete the relocation.<sup>19</sup>

As removal approached, the Navajos dug in their heels to stay, and they sought amendment or repeal of the 1974 act. This time Congress was more sympathetic to them and, over the cries of the Hopis that their rights established by the court decision and affirmed in P.L. 93-531 were being washed away, provided for life estates to allow certain Navajos to stay on the land. It also authorized the acquisition of additional lands for the Navajos. This act of July 8, 1980, however, did not reverse the basic policy of partition and relocation.<sup>20</sup> As the Relocation Commission carried out its work, the anguished cries of the Navajos continued, and the final settlement of the long and bitter conflict remained in doubt.<sup>21</sup>

#### WATER RIGHTS

The 1970s brought a tremendous concern for the rights of Indians to water on their reservations. As population increased in the arid West, pressure on the limited water resources mounted, and the Indians were threatened by loss of water necessary for their existence. Fifty-five percent of all the In-

19. 88 *United States Statutes* 1712-23. The 1974 act also authorized court action regarding conflicting claims relating to areas within the Navajo reservation defined in 1934, that is, the Moencopi area. The mediator's report is printed in "Relocating Certain Hopi and Navajo Indians," pp. 919-1037. The regulations on procedures for the Relocation Commission are in 25 *Code of Federal Regulations* 700. There are copies of the commission's report, manual of procedure, and other related documents in "Relocation of Certain Hopi and Navajo Indians," pp. 161-774.

20. 94 *United States Statutes* 929-36. For the continuing disagreements between the Hopis and the Navajos and the congressional reasoning, see "Relocation of Certain Hopi and Navajo Indians," *Senate Hearing on S. 1714, "Relocation of Certain Hopi and Navajo Indians," Hearing before the Select Committee on Indian Affairs, United States Senate, 96th Congress, 1st Session on S. 751 and S. 1077* (1979). *Senate Report no. 96-373, 96-1, serial 13245; House Report no. 96-544, 96-1, serial 13302*.

21. The Navajos charged that the Hopis were unduly influenced by power companies interested in coal deposits in the disputed area, a charge that is difficult to substantiate. Certainly the basic dispute of the Hopis with the Navajos antedated serious energy development activities. See the discussion in Kammer, *Second Long Walk*, pp. 85-90, 133-37.