States of the Union

THE INDIANS AND THE LAW

BY RICHARD J. MARGOLIS

FOR AMERICAN Indians the 1970s have been the worst of times and the best of times. Looked at through the usual demographic telescope, the Indians' situation remains hopeless: They are the most poverty-stricken, disease-ridden, unschooled, and unemployed minority group in all America. A recent Congressional report says Indians are poorer today, compared with other Americans, than they were in 1965 when the great "war on poverty" was officially declared. Moreover, the average Indian can expect to die at age 47, or 24 years earlier than his white compatriot. No wonder the Indian suicide rate—32 per 100,000—is twice the non-Indian rate and still rising.

But demographics are not the whole story. There is also the Indians' relation to the law to be considered, a complicated network of treaties, Congressional acts and judicial decisions covering more than two centuries of disputes and settlements between the red and the white. And here, within a legalistic maze that surpasses most people's understanding, the Indians have been making remarkable progress. Their object is to regain control of about 50 million acres of land now held "in trust" by the Federal government; their dream is to achieve tribal sovereignty, a status they define roughly as that of "nations within a nation."

If many whites find this dream far-fetched and even threatening, most Indians find it natural, practical and more within reach than at any time since the American Revolution. There are still 106 tribes of varying size and cohesiveness—each with its own government, language, religion, and history—currently living in the United States. These have withstood both the passing of the years and the politics of white assimilationists—the boarding schools that separated children from their clans and forbade them to speak their native tongues, the missionaries who replaced an Indian pantheism with Christ, the relocation programs that lured them off the reservation and into city slums, and through it all the Bureau of Indian Affairs (BIA), that enervating father-figure of a Federal agency that thrives on Indian weakness and dependency.

Having survived to tell the tale—an astonishing ethnic miracle in itself—the tribes are now groping for ways to increase and prosper. They have discovered a partial avenue through the courts, and they are making the most of it. A decade ago there were fewer than a dozen Indian lawyers; today there are about 175, and nearly all are working for tribes or for national Indian organizations.

Their labors are paying off handsomely. Of the last 12 "Indian cases" heard by the U.S. Supreme Court—in which tribes challenged one or another aspect of white authority—11 were decided in favor of the Indians. The most recent case *Bryan v. Itasca County*, was typical. A Minnesota Chippewa rejected the right of Itasca County to levy a tax on his trailer, noting that he and his home occupied Federal ground (a reservation) and were therefore exempt from all but Federal taxes. The law is eminently clear on this point, yet the county argued that the judges should make an exception since Minnesota was a "280 state"—that is, one of a half-dozen states given special jurisdiction over reservation Indians by the United States Congress some 20 years ago.

The county lost, but in arguing as they did its lawyers underscored the palimpsest-like complexity of what is referred to as Indian law. Title 280 was passed by an Eisenhower-intoxicated Congress eager to break up the reservations and assimilate the former residents into the prevailing white culture. This "termination" policy was essentially a reaction to the New Deal's Indian Reorganization Act of 1934, an attempt to strengthen tribal government and block further erosion of tribal land holdings. The 1934 measure had itself been a belated response to the infamous 1878 Dawes Act, legislation that demoted tribes from "nations within

a nation" to Federal wards and parceled out their land to individual Indian families (many of whom were soon cheated out of it by white neighbors). Thus the pendulum swings, from sovereignty to termination, from government philanthropy to tribal autonomy.

These conflicting approaches seem once again to be headed for a collision, an event that is repeated every three or four decades. This time the scales appear likely to tip toward sovereignty, although predictions today about red-white relations are riskier than ever: The stakes are higher now and the opposition to reform more bitter.

Land is the problem and land is the prize. In the Northeast, tribes such as the Passamaquoddy and Penebscot of Maine are claiming rights to millions of acres long held and cultivated by non-Indians. Indeed, half the state, they have told the courts, legally belongs to them, and so far the courts hearing their cases have agreed.

In the West, the tribes have discovered a bonanza of coal and oil beneath reservation soil—soil the whites of an earlier generation had considered useless and therefore suitable for Indians. Some experts estimate that over half our untapped energy supply lies under Indian ground. The tribes want to profit from their luck, but they also want to protect their environment; they are wary of coal-mining executives who come bearing leases. Many of the documents have been negotiated on their behalf by the BIA—a part of the Department of Interior, that tireless servant of the coal and oil industries. Consequently, the Indians are fearful of being left with the worst of both worlds: less than their share of dollars from the energy profits, and more than their share of erosion and ugliness from the mining.

All of these issues, plus many others, have been subjects of intense debate among Indians these past two years, thanks chiefly to the American Indian Policy Review Commission, a creation of the Congress. The Commission, co-chaired by Senator James Abourezk (D.-S.D.) and Representative Lloyd Meeds (D.-Wash.), has already distributed a draft report to more than 1,100 tribes and organizations —white groups as well as red ones —and is scheduled to submit a final version to the Congress by May 17. It will cover the entire range of Indian affairs, from sovereignty and land tenure to education and nutrition.

The last such wide-ranging study undertaken by Congress led to the Merriam Report of 1928; it set ground rules for the Indian Reorganization Act, passed six years later. The present Commission seems considerably more open than any of its predecessors. It has solicited the help of Indian leaders (but not, alas, those who head the militant American Indian Movement), and it has even attempted to reach the rank-and-file through a series of forums, journeying from reservation to reservation in a kind of traveling roadshow.

As a result, the Commission's report will undoubtedly reflect Indian aspirations to self-government and tribal development—precisely the reforms that many white people, especially those in the rural West, do not want. For obvious reasons—land control, tax revenues and the like —the white majority would prefer to deal with weak tribes and to assign ultimate jurisdiction over Indian life to the state legislatures, those provincial bastions of white racism.

It is a measure of the Indians' recent legal successes that their white neighbors in the West have felt called upon to organize against them in groups with "newspeak" titles, such as Montanans Opposed to Discrimination. There is also an organization known as the Interstate Congress for Equal Rights and Responsibilities, with headquarters in Wynner, South Dakota, a village on the eastern border of the Rosebud Sioux reservation. Interstate claims to be a registered national lobby, though I could find no listing for it in the Washington telephone directory.

The rhetoric of these people is all backlash, circa 1966. "We have nothing against Indians," an Interstate spokesperson assured me when I telephoned her. "We just want equality for white people, too." She went on to explain that while Indians "get all the goodies from the government," they don't have to pay taxes. That is a common complaint, but it doesn't stand up. Indians do pay taxes, although not to states or municipalities, only to the Federal government. On the matter of goodies, a new Congressional study indicates that counties *adjoining* Indian reservations invariably receive larger Federal subsidies than the reservations. As an Indian acquaintance remarked, "All America is on the dole."

Nevertheless, the white opposition is having some effect. Lloyd Meeds, usually a popular politician in his Washington district, barely scraped by in last November's election, winning by a scant 300 votes. Observers tend to agree that his work on the Commission turned many whites against him. Meeds' co-chairman, Senator Abourezk, who has endured a similar backlash in South Dakota, two months ago announced he would not seek re-election in 1978.

So the Indians still have a long road to travel. Politically outgunned in the West, frequently ignored or romanticized in the East, they suffer from a chronic shortage of allies on the Hill and in the White House. We need not despair, however. There are those 106 obdurate tribes and those 175 indefatigable lawyers. They have read our law and made it theirs. Who save their enemies could fail to applaud or wish them well?