

To Live On This Earth

Prologue

In the late 1960s, when Washington was more actively involved in the concerns of the poor, the Office of Economic Opportunity (OEO) hired me to help investigate housing conditions on the Rosebud Sioux reservation in South Dakota. With a team of specialists I visited all 22 villages, from Spring Creek to Milk's Camp, and discovered, among odder things, that families there had much to endure.

Many occupied dirt-floor huts bereft of either adequate heat or running water. Some were forced to sleep, even to cook, in rusted-out car bodies. The families were virtually defenseless against the frequent blizzards that swept the South Dakota prairie.

Two of the people I met during that chastening sojourn were Nancy and Sam White Horse, who lived in an unpainted shack atop a wintry knoll near the town of Mission.

Born around the turn-of-the-century, they had spent most of their lives on the reservation, taking strong roles in tribal affairs and sharing with other members of the tribe in the manifold miseries as well as the sporadic improvements that came their way: the new schools, the modernized health facilities and the paved roads that were occasionally vouchsafed to the Sioux of Rosebud.

Now the arrival of "Washington officials" gave grounds for hope that housing might be the next item slated for progress. "Our children need warm houses that can be lit with the electric," said Nancy White Horse, who already had four great-grandchildren of her own.

Then, as we stood amid the yellow grass by her road, she made me a promise. "You're not the first to fly out here and look around," she informed me with a patient smile. "Nothing ever comes of it, but I'll tell you what: if you can get some houses built for my people, I'll make you a quilt."

In time, the OEO built 400 houses on the Rosebud reservation—and Nancy White Horse was as good as her word. The quilt she sent me was a brilliant patchwork of red, orange and white, with a large green star at the center. My wife and I still have it, but we do not sleep beneath it; the artwork seems too fresh, the colors too delicate, to stand nightly wear and tear. Besides, our house has central heating.

“The decade of the 1970s produced an enormous increase in the numbers of Indians graduating from professional schools and entering influential positions in federal and tribal government. The most important contributions thus far have been by Indian lawyers.”

—John A. Folk-Williams, *The American Indian (1981)*

It isn't any wonder that we now have more than 300 Indian lawyers, whereas two decades ago we had fewer than a dozen. Nor should it be a surprise to learn that the Native American Rights Fund (NARF), with its staff of 14 attorneys, plays an indispensable role in Indian affairs.

For we Americans comprise a nation of laws, and that singular virtue has made it possible for Indian tribes to avert extinction and begin to achieve something altogether new: tribal sovereignty within a modern American context.

By learning and using the law, those tribes have compelled the rest of us to keep some of the promises we casually made—the myriad treaties and ordinances signed during two centuries of war or negotiation with a people we both scorned and admired, a people we kept pushing aside in our pursuit of land, gold and Manifest Destiny.

The push was generally westward: the Cherokees of North Carolina and the Seminoles of Florida were marched off to Oklahoma; half the Wisconsin Winnebagos were dispatched to Nebraska.

Few Indians back then escaped the pain of exile, of permanent displacement. Death became their ultimate weapon. By the turn of the 19th century the Indian population nationwide had dwindled to 300,000, down from the one million extant in pre-Columbian times.

Reversing the Tide

Today the country's 1.4 million Indians and their 283 tribes are pushing back—and the direction is chiefly from west to east.

Their assertive quest for the return of stolen lands, for example, began a generation ago with sit-ins on Alcatraz Island, in the shadow of the Golden Gate, and reached a sort of climax on the other side of the continent, in 1980.

That was the year Congress passed the Maine Indian Settlement Act, which deeded 300,000 acres of timberland to the Penobscot and Passamaquoddy tribes. Congress also made provision for a \$27 million tribal trust fund in payment for land permanently lost. NARF, itself an offspring of West Coast Indian militancy, played a key role in that Down East triumph.

“We got started in California in 1970,” recalls John Echohawk, who was present at the creation and is now NARF's executive director. “Ford gave us money—we were working for California Indian Legal Services—to start a national program that would begin to address major Indian legal problems.” By the next year the new program had its own name and was establishing its own independent headquarters in Boulder, Colorado.

“Boulder is the heart of Indian country',” says Echohawk, a Pawnee. “That's why we came here. We thought we'd only last 18 months. Anyway, we raised the money for these two houses and hoped for the best.” Last year NARF made the final payment on the mortgage.

Not all NARF bills are so readily extinguished. “The dollars seem to be getting scarcer all the time,” Echohawk complains, citing recent reductions in both federal and foundation support. If Ford has remained steadfast through the years—its latest two-year grant totals \$605,000—others have strayed. Even the Donner Foundation, which for more than a decade concentrated much of its funding on Indian programs, is now looking elsewhere.

“Transitional” grants in 1982 from Donner and two other foundations, New World and Rosenberg, helped NARF survive sharp federal cutbacks, but could not reverse the overall trend. “The foundations are changing their priorities,” says Echohawk. “Indian issues are being left out.”

The mortgage-free buildings in Boulder—high-ceilinged and tastefully furnished—house the National Indian Law Library as well as most of the NARF operation. (A small contingent maintains a Washington office.) Taken together, the two institutions possess within their stuccoed walls the lion’s share of Indian legal history’ and a goodly share of current Indian legal wisdom to boot.

NABJF the Focal Point

Nearly all the major tribal struggles of the past decade have, one way or another, passed through NARF’s doors, and thence to the courts or the Congress; e.g., federal reinstatement of the Menominee tribe in Wisconsin (an early triumph), the defense by Puget Sound Indians of their hunting and fishing rights (a recent triumph) and the pursuit of water rights by tribes in Nevada and Arizona (a recent defeat).

In addition, NARF lawyers have at times played decisive roles in helping tribes secure such hard-to-come-by ‘ blessings as health services, education, employment, and religious rights.

Consider the Kootenai of western Montana: five bands, 1500 individuals. *Kootenai* means “water people,” and water—which bears food for both the flesh and the spirit—is what sustains the tribe.

With the help of attorneys from NARF, the Kootenai have spent 10 years fending off seven electric cooperatives and the U.S. Bureau of Indian Affairs (BIA), all of whom want a hydro-electric dam built at Kootenai Falls.

Long, Complex Battle

The end of this conflict is nowhere in sight, but the questions it has already raised tell us a good deal about the Indians’ American dilemma. For starters, the dam turns out to be a First Amendment issue, because Kootenai Falls stands at the very center of the tribe’s religious world. Therein dwells “Nupika,” the spirit who speaks to medicine men and to those in quest of visions.

“The area,” declares an affidavit from the tribe, filed by NARF with the Federal Energy’ Regulatory’ Commission (FERC)” ... is the pivot, axis and foundation of tribal existence in political, social and spiritual terms.” Furthermore, it communicates the “life energy, divine will and destiny for the people.” Tribal life without the falls, in other words, is unthinkable.

The dam also raises important environmental questions. Kootenai Falls is the last great untamed waterfall in the Pacific Northwest. Twenty-one others, once rushing watersheds to the Columbia River, have either dried up or been wiped out by hydro-electric projects.

For fishermen, moreover, the Kootenai River is one of Montana’s 10 best trout streams and a spawning

ground for the rare white sturgeon. They hope to keep it that way.

With Friends Like This ...

Finally, the dispute serves to remind Indians that the BIA, which in theory represents Red interests in a white world, actually serves two masters. The BIA-owned Flathead Irrigation and Power Project supplies power to 13,000 electrical customers and 2,600 farmers and ranchers, nearly all of whom are non-Indian.

Not surprisingly, it was the non-Indian interests, not those of the Kootenai, that the BIA represented when it joined with the utilities in pushing for a \$226 million hydro-electric dam.

The cooperatives need a license from FERC to build the dam, and that is where the fight is now centered. Last spring the FERC staff filed a 400-page report urging the commissioners to mm down the power companies' license request.

“There is no question that the Indians' First Amendment rights outweigh development,” the FERC report concluded. In January attorneys from NARF argued the Kootenai case before an administrative law judge, who in due course will make a recommendation to the commissioners.

FERC's decision may end the skirmish but not the war. For whichever side loses will surely appeal to a federal court, thereby beginning a new round of maneuvers, briefs and rebuttals.

“These cases can be pretty slow going,” says Don Miller, a NARF lawyer. “Since I came here, I've had to readjust my whole concept of time— to keep from going crazy.”

Making Up Lost Ground

It is not only that the wheels of justice grind exceedingly slow: until recently, for Indians, they hardly ground at all. Many of NARF's cases, in fact, represent attempts to pick up grains of justice that were long ago discarded. For example:

- In Michigan, by the shores of Lake Superior, a band of Chippewa is taking its first hard look at a treaty its ancestors signed in 1854, when white treaty-makers promised to reserve to the tribe “the unsold land in the townships.”

Most of that land was subsequently sold to non-Indians. As Bob Anderson, the NARF lawyer handling the case has observed, “The tribe could own a lot of land it never knew was theirs.”

- The Alabama-Coushatta tribe lost its roots and status some 230 years ago, when the French in Alabama persuaded tribal members that the English would soon come and kill them all. Fleeing for their lives, the Indians settled in Livingston, Texas, where they have been ever since—a tribe outside the Indian mainstream and under the thumb of the state of Texas.

Among other things, Texas thoughtfully appointed itself the tribe's chief negotiator of oil leases, a role that enriched everyone but the tribe. Then NARF stepped in and began renegotiating the contracts. “The state was livid,” recalls a NARF attorney, but it was powerless to halt the tardy wheels of justice.

- NARF won a major victory on behalf of the Klamath of Oregon, a tribe that had ceded 700,000 acres of land to the U.S. government in 1906. A half-century later it saw its federal reservation status terminated by President Eisenhower.

A U.S. District Court ruled last year that neither the cession of land nor the termination of status abrogated the Klamath's treaty rights to hunt, fish and trap free of regulation on the 700,000 acres. It was the first time, say NARF attorneys, that a court upheld the tribal rights on ceded lands. The decision, of course, has been appealed.

Not all of NARF's scenarios have - happy endings. In quick succession last spring it lost three important water rights cases, when the U.S. Supreme Court seemed to overturn a long-established doctrine, namely, that Indians were entitled to enough water to fulfill the purposes of the tribal reservation.

It was one of those moments, commented the organization's *Legal Review*, "when Indian people . . . begin to wonder whether it is possible to obtain justice and fairness from the federal courts. . . ."

Yet it can be said overall that NARF's efforts have paid off handsomely in terms of more autonomy for the tribes, which are inching towards self-determination.

On the other hand, those efforts have not appreciably reduced Indian poverty, which remains chronic and widespread. The two struggles, in short— one for sovereignty and one for prosperin'—have yielded unequal results.

Terrible Living Standards

Indians endure the lowest life expectancy of any group in America; the teenage suicide rate is nvicc the national average for that age group. Joblessness in Indian country is a way of life, frequently affecting more than half the employable population.

Nearly one-third of all Native Americans are considered illiterate and more than three-fourths reside in housing that the U.S. Census Bureau calls "substandard." The poorest count}' in the United States is Shannon Count}', South Dakota, where Pine Ridge reservation, home of Oglala Sioux, is located. Per capita income there is S2,637 a year.

In a sense beyond metaphor, these depredations come with the territory: they have been part and parcel of the Indian condition ever since we invented reservations and forced Indians to live on them.

The suicides, the alcoholism, the mists of despair that envelop many reservations all seem legacies of a cruel colonial past, and of assimilationist policies emanating from Washington.

Legacy of the Conquered

The second worst riling that can happen to a people is to be conquered.

The worst is to live through the ordeal that follows—to submit.

"Winter in the blood" is how James Welch, the Montana Blackfcet novelist, describes the consequences—a freezing up of the Indian psyche in the face of daily deprivations of the spirit. "I was," he writes, "as distant from myself as the hawk from the moon."

The white policies that chilled Red blood are not difficult to trace, though in the beginning, as the U.S. Supreme Court later noted, Congress showed “the most anxious desire to conciliate the Indian nations.”

The famous Northwest Ordinance, which the first Congress ratified in 1789, stipulated that “The utmost good faith shall always be observed towards Indians; their land and property shall never be taken away from them without their consent.”

But with the ascendance of Andrew Jackson in 1828, the federal government abandoned all pretense of concern for Indian rights. In place of conciliation Jackson and his successors pursued a policy of removal and relocation, forcibly transferring eastern tribes to territories in the west.

Policy of Destruction

There followed an astonishing procession of measures designed to wipe out tribal sovereignty and to assimilate Indians into the white-American mainstream. The reigning idea that Indians were “a vanishing race” nearly became a self-fulfilling prophecy.

In mid-century Congress established federal boarding schools for Indian children, where they were forbidden to speak their parents’ language on pain of corporal punishment; in 1871 it abolished the practice of making treaties with Indian tribes; and in 1887 it passed the notorious General Allotment Act, which divided communally held tribal lands into separate, individually held parcels. The purpose was to break up the tribes’ land base and turn Indians into farmers.

Relief At Last

By the time the allotment system was repealed in 1934, tribal land holdings had dropped from 140 million acres to 50 million acres. John Collier, the New Deal Commissioner of Indian Affairs, did more than merely stop the hemorrhaging.

Through the Indian Reorganization Act, Collier coaxed from America a commitment “to rehabilitate the Indian’s economic life and to give him a chance to develop initiative destroyed by a century of oppression and determinism.”

Collier promised, moreover, that “No interference with Indian religious life or expression will hereafter be tolerated. The cultural history of Indians is in all respects to be considered equal to that of any non-Indian group.”

If succeeding generations have blurred Collier’s generous vision—especially during the Eisenhower years, when Congress terminated assistance to more than 100 tribes—we have nevertheless held fast to his notion of tribal integrity.

Richard Nixon endorsed the idea in 1970, in a major policy statement, and Congress reaffirmed it five years later when it passed the Indian Self-Determination and Education Assistance Act. Even Ronald Reagan has jumped onto the bandwagon, notwithstanding a tendency of his former Interior Secretary, James Watt, to equate life on the reservations with “socialism.”

Building Their Own Base

The government’s many expressions of sympathy for Indian self-determination have encouraged tribes to

flex their sovereign muscles. In addition, federal rhetoric has drawn a framework within which new pan-Indian groups have found useful places. Each organization arose from an activist past, from the crucible of the late Sixties and the early Seventies. Among them:

- The Americans for Indian Opportunity (AIO) is a Washington-based group created and still directed by LaDonna Harris, who—besides much else—is a fullblood Comanche. Founded in 1970 out of concerns for Indian education and economic welfare, the AIO is now focusing on a Tribal Governance Project designed to promote self-determination among the tribes.

“People today feel more committed to their tribes than ever,” Harris says. “They are asking for sovereignty.” It is a message she has taken to the White House, where the reception has been cordial but stingy. To Ronald Reagan, tribal self-determination resembles tribal self-sacrifice.

A White House policy statement issued last year pledged “to encourage and strengthen tribal government” and to “deal with Indian tribes on a government-to-government basis”—but that has not slowed the Administration in its general retreat from Indian program support.

The 1983 federal Indian assistance budget was cut by more than a third, from \$3.5 billion to \$2 billion, including a 44 percent reduction in jobs programs. Not surprisingly, unemployment on the reservation jumped from 30 percent to over 50 percent.

The AIO is aware of the connection between sovereignty and subsidy: invariably, poverty impedes governance. On the other hand, Harris is quick to underscore the tribes’ remarkable record of grit and self-reliance.

A recent AIO paper notes that “American Indian tribal governments have existed long before the Europeans set foot on this continent.” Those civilizations, the paper observes, “left a cultural legacy of such depth and power that Indian people have been able to sustain colonization, war, disease [and] the industrial revolution, and continue to survive in today’s post-industrial era.” • A few tribes have done more than survive. Thanks to abundant riches beneath their feet—coal, gas, oil, uranium—they have joined the industrial revolution for keeps.

They have also joined a Denver-based organization known as CERT—the Council of Energy Resource Tribes—which at its inception in 1975 was billed as “the Indian OPEC.” The brainchild of both the AIO and the Native American Rights Fund, CERT has been helping tribes develop their resources and negotiate harder bargains with energy companies like Peabody Coal and Exxon.

CERT’s 25 member-tribes are wealthier than most. The Navajos raked in \$56 million from mineral contracts in 1983, about \$350 per Navajo; the Southern Utes, with a population just under 2,000, earned \$12.5 million in 1982; the Cheyenne-Arapaho (pop. 5,153), about \$8 million the same year.

But the dollars have not always lived up to their promise. Typical, it appears, is the dilemma confronting the Crows of Montana, who reside atop one of the world’s richest coal bonanzas—17 billion tons.

Only a few years ago Crow leaders thought coal could pave the tribe’s way to prosperity. Now, according to a recent article in *The Wall Street Journal*, the tribe is broke and “suffers from an unemployment rate approaching 70 percent.” Half the families there get some form of welfare assistance.

Part of the trouble stems from circumstances beyond the tribe’s control, such as a nationwide slump in

energy demand.

But other setbacks seem of the tribe's own making. They paid outside consultants enormous sums to dream up enterprises that never got off the ground. Auditors who examined the tribe's books found evidence of missing and misspent federal funds, bloated payrolls and stacks of unpaid bills. When gate receipts from the Crow's annual fair and rodeo disappeared several years ago, the tribe issued 590,000 in rubber checks to rodeo contestants.

As throughout the Third World, the lesson here is all too familiar: instant development will not work. "The tribes can't depend on get-rich-quick schemes," says David Lester, CERT's new executive director. "That's why our interest is in *tribal* development, not in mineral development."

Development is also tops on the agendas of at least two other young institutions: the American Indian National Bank, the only nationally chartered, Indian-owned bank in the country; and the First Nations Financial Project, which a Cherokee from North Carolina, Rebecca Adamson, 33, started in 1981.

- First Nations, based in Falmouth, Virginia, spends about \$ 190,000 a year helping Indians become economically self-sufficient. Among other things, the organization has financed a Chippewa computer business in northern Minnesota and a Zuni gift mail-order enterprise in Arizona.

Last year Adamson traveled to Pine Ridge, South Dakota, where she helped the school there assemble an extraordinary show: the Oglala Sioux Children's Traveling Art Exhibit. The paintings, drawings and photographs will be on display later this year at the Smithsonian Institution.

Adamson gets her development money from the Ford Foundation and the Muskiewinee Fund, as well as from private donors. Several other foundations, she says, are on the verge of making grants.

In choosing targets of assistance, she avoids the 30 richest tribes who are already receiving 38 percent of federal Indian subsidies, and focuses instead on the 253 tribes with virtually no tax base. "You have got to have your priorities straight," says Adamson.

- The American Indian National Bank's priorities run the gamut from major tribal businesses to small, individual entrepreneurs. Based in Washington, D.C. since it was chartered 11 years ago, the bank is owned mainly by tribes that Adamson would count among the "super-rich." The Yakima hold 39 percent of bank stock; the Navajos, 31 percent.

The largest loan ever made by the bank went to the Mississippi Choctaw to finance a wire-harness assembly plant that markets its products to General Motors and other automotive companies. The amount was \$1.3 million. One of the bank's smallest loans, \$40,000, went to a Pueblo jeweler, Dan Lavato, to help him set up shop on the outskirts of Domingo, New Mexico.

"The small ones take almost as much time and care as the big ones," says Alan Parker, who was born on the Rocky Boy reservation in Montana. Parker is the bank's president. "Dan, for instance, is an excellent jeweler but not an experienced businessman. We helped him a lot with the planning." In all, the American Indian Bank has \$6 million in loans outstanding.

So the work of these and other organizations goes on, propelled by tribulation and tribalism, and guided by those who sense that Indian ideals must be nourished with U.S. dollars. In Indian country the bankers and the visionaries may be one and the same.

If much of the work is being conducted in plain sight of everyone, an equal portion, it seems, relates to elements in Indian life that are hidden from view: not only the minerals beneath tribal hills, but also the hopes and traditions, the underground aspirations, that are imbedded in tribal culture.

Above all, there is the law, which is ' sequestered in our archives as well as in our collective conscience, and which attorneys at NARF and elsewhere have been hauling into the light of day.

A recent NARF annual report begins with thoughts that Sitting Bull voiced to his brethren some 100 springs ago. The words speak for themselves.

*See, Brothers, Spring
is here.
The Earth has taken the
embrace of the Sun,
and soon we shall see
the children of that love.
All seeds are awake
and all animals.
From this great power
we too have our lives.
And therefore
we concede to our
fellow creatures,
even our animal fellows,
the same rights as
ourselves,
to live on this earth.*