

CUSTER DIED



FOR YOUR SINS

AN INDIAN MANIFESTO

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2 * LAWS AND TREATIES

AFTER LYNDON B. JOHNSON had been elected he came before the American people with his message on Vietnam. The import of the message was that America had to keep her commitments in southeast Asia or the world would lose faith in the promises of our country.

Some years back Richard Nixon warned the American people that Russia was bad because she had not kept any treaty or agreement signed with her. You can trust the Communists, the saying went, to be Communists.

Indian people laugh themselves sick when they hear these statements. America has yet to keep one Indian treaty or agreement despite the fact that the United States government signed over four hundred such treaties and agreements with Indian tribes. It would take Russia another century to make and break as many treaties as the United States has already violated.

Since it is doubtful that any nation will ever exceed the record of the United States for perfidy, it is significant that statesmen such as Johnson and Nixon, both professional politicians and

opportunists of the first magnitude, have made such a fuss about the necessity of keeping one's commitments. History may well record that while the United States was squandering some one hundred billion dollars in Vietnam while justifying this bloody orgy as commitment-keeping, it was also busy breaking the oldest Indian treaty, that between the United States and the Seneca tribe of the Iroquois Nation, the Pickering Treaty of 1794.

After the Revolution it appeared necessary to the colonies, now states in the new confederation, that in order to have peace on the frontier a treaty would have to be signed with the Iroquois of New York. George Washington sent a delegation to Iroquois country headed by Timothy Pickering. In return for peace and friendship the United States promised to respect the lands and boundaries which the Iroquois had set for themselves and never to disturb the Indians in the use of their land. The United States also affirmed its promise that it would never claim the Indian lands.

In the early 1960's, however, a dam was built which flooded the major part of the Seneca reservation. Although the tribe hired their own engineer and offered an alternative site on which the dam would have been less expensive to construct and more efficient, the government went ahead and broke the treaty, taking the land they had decided on for the dam.

It has been alleged by people who had reason to know that this dam was part of the price of keeping Pennsylvania in line for John F. Kennedy at the 1960 Democratic convention.

Article III of the Pickering Treaty read:

Now the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneca nation; and the United States will never claim the same, nor disturb the Seneca nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

Rather than having a choice as to whether or not to sell to the United States, the Senecas were simply forced to sell. It was a buyer's market.

Hucksterism and land theft have gone hand in hand in American history. The tragedy of the past is that it set precedents for land theft today when there is no longer any real need to steal such vast areas. But more damage is being done to Indian people today by the United States government than was done in the last century. Water rights are being trampled on. Land is being condemned for irrigation and reclamation projects. Indian rights are being ground into the dirt.

It is fairly easy to trace the principal factors leading to the great land steals. The ideological basis for taking Indian land was pronounced by the Christian churches shortly after the discovery of the New World, when the doctrine of discovery was announced.

Discovery negated the rights of the Indian tribes to sovereignty and equality among the nations of the world. It took away their title to their land and gave them the right only to sell. And they had to sell it to the European nation that had *discovered* their land.

Consequently the European nation—whether England, France, Spain, or Holland—that claimed to have discovered a piece of land had the right to that land regardless of the people living there at the time. This was the doctrine of the Western world which was applied to the New World and endorsed as the will of God by the Christian churches of western Europe.

As early as 1496 the King of England, head of the English church, commissioned John Cabot to discover countries then unknown to Christian peoples and to take possession of them in the name of the English king. In Cabot's commission was the provision that should any prior Christian title to the land be discovered it should be recognized. Christianity thus endorsed and advocated the rape of the North American continent, and her representatives have done their utmost to contribute to this process ever since.

After the Revolution the new United States adopted the doctrine of discovery and continued the process of land acquisition. The official white attitude toward Indian lands was that discovery gave the United States exclusive right to extinguish Indian title of occupancy either by purchase or conquest.

It turned out that the United States acquired the land neither by purchase nor by conquest, but by a more sophisticated technique known as trusteeship. Accordingly few tribes were defeated in war by the United States, fewer still sold their land to the United States, but most sold some land and allowed the United States to hold the remainder in trust for them. In turn, the tribes acknowledged the sovereignty of the United States in preference to other possible sovereigns, such as England, France, and Spain. From this humble beginning the federal government stole some two billion acres of land and continues to take what it can without arousing the ire of the ignorant public.

This fight for land has caused much bitterness against the white man. It is this blatant violation of the treaties that creates such frustration among the Indian people. Many wonder exactly what their rights are, for no matter where they turn treaties are disregarded and laws are used to deprive them of what little land remains to them.

The original import of the treaties was allegedly to guarantee peace on the frontier. And the tribes generally held to their promises, discontinued the fighting, and accepted the protection of the United States over their remaining lands. Yet submission became merely the first step from freedom to classification as incompetents whose every move had to be approved by government bureaucrats.

Incompetency was a doctrine devised to explain the distinction between people who held their land free from trust restrictions and those who still had their land in trust. But it soon mushroomed out of proportion. Eventually any decision made by an Indian was casually overlooked because the Indian was, by definition, incompetent.

Indians often consider the history of the Jews in Egypt. For

four hundred years these people were subjected to cultural and economic oppression. They were treated as slaves without rights and property although the original promise of the Pharoah to Joseph, like the Indian treaties, spelled out Hebrew rights. Like the Great White Father, the Pharoah turned his back on his former allies and began official oppression and destruction of rights. Yet the Hebrews survived.

America's four-hundred-year period is nearly up. Many Indians see the necessity of a tribal regrouping comparable to the Hebrew revival of old.

What were the treaties and agreements that the United States violated? For the most part they were contracts signed with tribes living in areas into which the whites moved during the last century. Nearly a third were treaties of peace; the rest were treaties for land cession.

Some tribes signed a number of treaties. The Chippewa and Potawatomi signed over twenty treaties at one time or another. The Cherokees had a number of treaties which were basically land-cession treaties. The Sioux signed a great many treaties, primarily peace treaties. In the Far West many treaties were made, but never ratified by Congress, leaving them in a legalistic limbo.

A glance at some of the obscure provisions of the treaties indicates that there must have been no intention on the part of the United States to keep them. The United States was obviously promising things it could not, at least politically speaking, deliver. And the curious thing about court cases which have occurred since treaty days is that legal interpretation has been traditionally pro-Indian. Treaties must be interpreted as the Indians would have understood them, the courts have ruled. Unfortunately in many cases the tribes can't even get into court because of the ambiguous and inconsistent interpretation of their legal status.

The concept of dependency, a favorite topic in government agencies and Congress, originally came from the Delaware

Treaty of September 17, 1778. Dependency, as the term is used today, implies a group of lazy, dirty Indians loafing the day away at the agency. Indeed, this is the precise connotation which people love to give. But the actual provision in the Delaware Treaty is not a social or philosophical or even political theory of man. Rather it is a narrowly economic provision of dependency, as seen in Article V:

Whereas the confederation entered into by the Delaware Nation and the United States renders the first dependent on the latter for all the articles of cloathing, utensils and implements of war, and it is judged not only reasonable, but indispensably necessary, that the aforesaid Nation be supplied with such articles from time to time, as far as the United States may have it in their power, by a well regulated trade . . .

Dependency, as one can easily tell from the article, was simply a trade dependency. Nowhere was there any inkling that the tribe would eventually be classified as *incompetent*. Indeed, the very next article, Article VI, implies that the United States considered the Delawares as competent as any people on earth:

. . . the United States do engage to guarantee to the aforesaid nation of Delawares, and their heirs, all their territorial rights in the fullest and most ample manner as it hath been bound by former treaties, as long as they the said Delaware nation shall abide by and hold fast the chain of friendship now entered into. And it is further agreed on between the contracting parties should it for the future be found conducive for the mutual interest of both parties to invite any other tribes who have been friends to the interest of the United States, to join the present confederation, and to form a state whereof the Delaware nation shall be the head, and have a representation in Congress: Provided, nothing contained in this article to be considered as conclusive until it meets with the approbation of Congress.

During the darkest days of the Revolution, in order to keep the Indians from siding with the British and completely crushing the new little nation, the United States held out equality and statehood to the Delawares and any other tribes they could muster to support the United States. But when the shooting was

all over the Delawares were forgotten in the rush to steal their land.

This promise was not only made to the Delawares. In Article XII of the Hopewell Treaty of November 28, 1785 the United States promised the Cherokee Nation:

That the Indians may have full confidence in the justice of the United States, respecting their interest, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress.

The early dream of the Indian nations to achieve some type of peaceful compromise and enter the United States as an equal was brutally betrayed a generation later when, after winning the Supreme Court case *Worcester v. Georgia*, the President of the United States refused to enforce federal law and allowed the state of Georgia to overrun the Cherokee Nation. But in those days it was not uncommon for commissioners to promise the most enticing things in treaties, knowing full well that the United States would never honor them.

Treaties initially marked off the boundaries between the lands of the Indian nations and the United States. Early treaties allowed the tribes to punish white men violating their laws and borders, but since any attempt by the tribes to exercise this right was used as an incident to provoke war, that right was soon taken away "for the Indians' own protection."

Besides marking boundaries, treaties defined alliances between the United States and tribes in the eighteenth century. England and France were still very much involved in the acquisition of land and power on the continent and it was to the best advantage of the United States to have strong Indian allies to prevent a European invasion of the fledgling United States. Thus Article II of the 1791 Treaty with the Cherokees contained the provision that

they also stipulate that the said Cherokee Nation will not hold any treaty with any foreign power, individual state, or with individuals of any state.

When Indian people remember how weak and helpless the United States once was, how much it needed the good graces of the tribes for its very existence, how the tribes shepherded the ignorant colonists through drought and blizzard, kept them alive, helped them grow—they burn with resentment at the treatment they have since received from the United States government.

It is as if a man had invited a helpless person to his home, fed and clothed him until he was strong and able to care for himself, only to have the person he had nursed wreak incredible havoc on the entire household. And all this destruction in the name of help. It is too much to bear.

Treaties were originally viewed as contracts. Many treaties contain the phrase “contracting parties” and specify that each party must agree to the terms of the treaty for it to be valid. It would have seemed that, if treaties were contracts, the United States was required under the impairment of contracts or due process clause to protect the rights of the Indian tribes. Or at least it so seemed to the Cherokees, Choctaws, and other tribes who continually went to court to establish their property rights. But, although on one occasion, New Jersey was not allowed to break a contract with a band of the Delawares, the federal government has not traditionally recognized treaties as contracts. So tribes had no recourse in the federal courts although many treaties had provided that the tribes should have rights and that the United States should stand behind the treaty provisions as guarantor.

Often when discussing treaty rights with whites, Indians find themselves being told that “We gave you the land and you haven’t done anything with it.” Or some commentator, opposed to the welfare state remarks, “We gave the Indians a small piece of land and then put them on the dole and they are unable to take care of themselves.”

The truth is that practically the only thing the white men ever gave the Indian was disease and poverty. To imply that Indians were given land is to completely reverse the facts of history.

Treaties settled disputes over boundaries and land cessions. Never did the United States give any Indian tribe any land at all. Rather, the Indian tribe gave the United States land in consideration for having Indian title to the remaining land confirmed.

The August 13, 1802 Treaty with the Kaskaskias is one of the clearest examples of this concept. When settlement was made, it was stated in Article I that the Kaskaskias were “reserving to themselves” certain lands. Often the phrase “to live and hunt upon, and otherwise occupy as they shall see fit” was used to indicate the extent of right and lands reserved (Treaty with the Wiandot, Delaware, Ottawa, Pattawatima, and Sac, January 9, 1789). Or a passage might state that “the United States [will] never interrupt the said tribes in the possession of the lands which they rightfully claim, but will on the contrary protect them in the quiet enjoyment of the same. . .” (Treaty with the United Tribes of Sac and Fox, November 3, 1804).

Indian rights to lands reserved by them are clearly stated in the treaties. Article II of the Treaty with the Wiandot, Delaware, Ottawa, Pattawatima, and Sac of January 9, 1789, states that

(the United States) do by these presents renew and confirm the said boundary line; to the end that the same may remain as a division line between the lands of the United States of America, and the lands of said nations, forever.

And Article III of the same treaty elaborates on the Indian title to lands reserved:

The United States of America do by these presents relinquish and quit claim to the said nations respectively, all the lands lying between the limits above described, for them the said Indians to live and hunt upon, and otherwise to occupy as they shall see fit.

Similarly Article II of the Treaty with the Weas, October 2, 1818, stated:

The said Wea tribe of Indians reserve to themselves the following described tract of land . . .

The United States pledged over and over again that it would guarantee to the tribes the peaceful enjoyment of their lands. Initially tribes were allowed to punish whites entering their lands in violation of treaty provisions. Then the Army was given the task of punishing the intruders. Finally the government gave up all pretense of enforcing the treaty provisions. But it was many years before the tribes were shocked into awareness that the United States had silently taken absolute power over their lands and lives.

It was not only a shock, but a breach of common decency when Congress decided that it had absolute power over the once-powerful tribes. When the Supreme Court also decided that such should be the policy in *Lone Wolf v. Hitchcock*, the silent conquest of unsuspecting tribes was complete.

At the turn of the century an agreement was reached with the Kiowa, Comanche, and Apache tribes of Oklahoma in regard to their lands. When an act ratifying the agreement was presented before Congress in the form of a bill, a rider was placed on it which had the effect of providing for the allotment of lands in severalty to the members of the tribes and opening the remainder of their reservation to white settlement.

The law was totally unrelated to the previous agreement with the tribes. When the controversy reached the Supreme Court—in the case of *Lone Wolf*, a Kiowa leader, versus *Hitchcock*, then Secretary of the Interior—to enjoin the Interior Department from carrying out the allotment, the Supreme Court ruled against the tribes. It laid down the principle that the tribes had no title to the land at all. Rather the land was held by the United States and the tribes had mere occupancy rights. Therefore the power of Congress to dictate conditions of life and possession on the reservations was limited only by its own sense of justice.

That decision slammed the door on the question of morality and justice. It was like appointing a fox to guard the chicken coop. Under the theory expounded in *Lone Wolf* the Indians had no chance whatsoever to acquire title or rights to lands which had been theirs for centuries. And without the power to

acquire rights, they were cut loose from all power to enforce agreements that were generations old.

It had not been much over a century from the time when the United States had begged for its very existence to the time when it had broken every treaty—except the Pickering Treaty—and made the tribes beggars on their ancestral lands. Lands of which the United States had guaranteed to the tribes a free and undisturbed use became pawns in the old game of cowboys and Indians. And everywhere Indians appealed for help there stood a man in chaps with a big black hat.

The subject of tax exemption of Indian lands is often raised. Most Indian tribes feel that they paid taxes for all time when they gave up some two billion acres of land to the United States. This, they claim, paid the bill quite a few centuries in advance. For certainly any bargain of a contract nature would have had to include the exemption of lands reserved and retained by the tribes for their own use or it would have been unreasonable to have assumed that tribes would have signed treaties.

Furthermore there is a real question about the right of the United States to tax Indians at all. Taxing authority and power are a function of the exercise of sovereignty. The United States never had original sovereignty over the Indian people, merely a right to extinguish the Indian title to land. Where, argue Indian people when questioned, did sovereignty come from?

Certainly the treaties do not support the contentions of the government with respect to sovereignty. The Treaty of the United Sac and Fox tribe of November 3, 1804, is a case in point. Article I states:

The United States receive the united Sac and Fox tribes into their friendship and protection, and the said tribes agree to consider themselves under the protection of the United States, and of no other power whatsoever.

Here, certainly is not affirmation of sovereignty. At most it is a defense pact to protect the tribes and guarantee peace for the United States.

Early statutes in the colonies exempted Indians from taxation in Massachusetts, Connecticut, and Virginia and some of these still exist today. Each Thanksgiving the Virginia Indians still take a turkey, deer, clams, and other treaty payments to the Governor's mansion to fulfill their part of the treaty. The state of Virginia, at least, has kept its part of the treaty with the Virginia Indians.

Perhaps the clearest expression of exemption from taxation is contained in the Treaty of September 29, 1817, with the Wyandot, Seneca, Delaware, Shawanese, Potawatomees, Ottawas, and Chippeway. This treaty states in Article XV that

The tracts of land herein granted to the chiefs for the use of the Wyandot, Shawnese, Seneca and Delaware Indians, and the reserve for the Ottawa Indians, shall not be liable to taxes of any kind so long as such land continues the property of the said Indians.

Succeeding treaties generally provided for lands to be held "as Indian lands are held." From this practice tribes have felt that their lands were tax free and the federal government has upheld the taxation theory of the tribes, although with an added twist. Current federal theory indicates the federal government supports tax exemption on the basis of its trusteeship rather than on the basis of its long-standing treaty promises.

Courts have generally upheld tribal claims to tax exemption. In *The Kansas Indians*, a Supreme Court case of the last century, Kansas was prohibited from taxing the lands of the Shawnees because they still kept their tribal entity intact and maintained their relationship with the federal government.

Such a decision would seem to indicate that tax exemption is a general right of Indian tribes based upon their cessions of land in the last century. Later courts have found reasons for tax exemption all the way from such exotic theories as Indians being a *federal activity* to a vague and generalized purpose of *rehabilitation* of the individual Indian, whose progress would be impeded by taxation.

Because taxation is such a nebulous and misunderstood concept, the general public usually believes that Indians *get away*

with millions of dollars of tax-free money. In fact, as has been pointed out many times, the income from taxing the entire Navajo reservation, some sixteen million acres, would be less than the income from taxing a large bank building in downtown Phoenix.

Another primary concern of the Indian people through the years has been the protection of their hunting and fishing rights. In the early days Indians preferred to feed themselves by hunting and fishing, and some tribes refused to move or change reservations until they were assured that there would be plenty of game available to feed their people.

The first few years after the Revolution saw a great movement of settlers westward, and although Indians ceded land, they rarely gave up their hunting rights on the land sold. The Treaty of August 3, 1795, with the Wyandots, Delawares, Shawanoes, Ottawas, Chippewa, Putawatimes, Miamis, Eel-River, Weea's, Kickapoos, Piankashaws, and Kaskaskias states in

Article VII: The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hinderance of molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States.

Recent conflicts between Indian people and the states of Idaho, Washington, and Oregon have stemmed from treaty provisions such as these by which Indian people reserved for themselves an easement on lands they ceded for hunting and fishing purposes. Today hunting and fishing are an important source of food of poverty-stricken Indian peoples, but they are merely a *sport* for white men in the western Pacific states. Yet the states insist upon harassment of Indian people in continual attempts to take by force what they promised a century earlier would be reserved for Indians forever.

It is the actions of scattered, yet powerful groups of white men breaking the treaties that cause nearly all of the red-white tensions today. Foremost of the whites violating Indian treaties have been the fish and game departments in Washington,

Oregon, Wisconsin, and Nevada and the Corps of Army Engineers.

Recently the Supreme Court once again had an Indian fishing case before it and the decision was so vague and indecisive that neither Indians nor the state could determine the next course of action.

The fishing controversy can be stated simply. Indians have reserved the right to hunt and fish off the reservation because there was not sufficient game on the reservations to feed their families. In the meantime, powerful sportsmen's clubs of overweight urbanites who go into the woods to shoot at each other each fall, have sought to override Indian rights, claiming conservation as their motive.

Meanwhile the general public has sat back, shed tears over the treatment of Indians a century ago, and bemoaned the plight of the Indian. In many instances, when the tribes have attempted to bring their case before the public, it has turned a deaf ear, claiming that the treaties are some historical fancy dreamed up by the Indian to justify his irresponsibility.

This despite the fact that during the period before the War of 1812 the United States government hurriedly sent emissaries to the western tribes and tried to force them to choose sides against Great Britain. Again when the life of the small nation was hanging in the balance, the United States was eager to have the support of the Indian tribes.

Article II of the Treaty with the Wyandots, Delawares, Shawanese, Senecas, and Miamies of July 22, 1814, provided that:

The tribes and bands abovementioned, engage to give their aid to the United States in prosecuting the war against Great Britain, and such of the Indian tribes as still continue hostile; and to make no peace with either without the consent of the United States the assistance herein stipulated for, is to consist of such a number of their warriors from each tribe, as the president of the United States, or any officer having his authority therefore, may require.

Within a generation these same tribes that fought and died for

the United States against Great Britain were to be marched to the dusty plains of Oklahoma, dropped in an alien and disease-ridden land, and left to disappear. Hardly had the war been concluded when the first of a series of removal treaties began to force the tribes west across the Mississippi, first to Missouri and Arkansas, then on to Oklahoma. By 1834 the United States had pretty well cleared the eastern states of the former Indian allies.

On reviewing the record of the United States in its Indian treaties, it seems humorous to Indian people to hear the outraged cries against Communist domination and infidelity. Indeed, Czechoslovakia and Hungary got off easier with Russia than did America's allies in the War of 1812. And few Communist satellites have been treated as have the Five Civilized Tribes whose treaty rights were declared in the Supreme Court and yet who were powerless against the perfidy of Andrew Jackson.

Perhaps the greatest betrayal of Indian people was the treatment accorded the Choctaws. Treaty after treaty was signed with the Choctaws, one of the so-called Five Civilized Tribes (because they were so like white men), until the final treaty of Dancing Rabbit Creek forced them across the Mississippi to the parched plains of Oklahoma. The Choctaws stubbornly resisted each encroachment but were finally forced to make the long trek westward.

In an earlier treaty, ten years prior to Dancing Rabbit Creek, the Choctaws had asked for a provision guaranteeing that the United States would never apportion the lands of the tribe, as they preferred to hold their lands in common. So in the Treaty of January 20, 1825, Article VII, the United States provided that "the Congress of the United States shall not exercise the power of apportioning the lands."

Just prior to the admission of Oklahoma as a state, the lands of the Choctaw were allotted, although a minority opinion in the report on the Dawes Allotment Act stated that perhaps the Choctaw method of holding land in common was superior to

that of the white man because there was so little poverty among the members of the Five Civilized Tribes.

Today the Choctaws and people of the other "Civilized" Tribes are among the poorest people in America. Their little allotments have been subdivided and grown smaller. As they are sold the people move into friends' and neighbors' allotments, huddling there in absolute destitution.

During the drive to sever federal services in the 1950's the Choctaws were talked into agreeing to terminate the federal responsibilities. Over the last ten years they have waged a continual fight to postpone the time when they must surrender all lands, rights, and services. The condition of the people is so bad that only a massive crash program of development can save the tribe from its poverty. Yet in the ten years since termination was proposed the tribe and its members have even been denied the use of loan funds from the Interior Department which could be used to develop projects that would employ Choctaws.

There has been another side to the machinations of the United States government against the Indian tribes, however, and that was the unilateral action of the Congress. Paralleling treaty negotiations, throughout history statutes were continually passed by Congress to regulate Indian Affairs. Although a treaty would promise one thing, subsequent legislation, designed to expand the treaty provisions, often changed the agreements between tribe and federal government completely.

Continual infringement on treaty rights by statute rarely reached the ears of the tribesmen in time to remedy the situation either by further agreements or appeals to conscience. Some actions were outright thefts of land, such as the wholesale giveaway to railroads for construction purposes. Other detrimental laws were overtly philanthropic and seemed to reflect just dealings between the Congress and the tribes. But in all respects, the beneficial aspects of Congressional actions affecting Indian tribes have been so minute that they are irrelevant.

Congress has passed a number of important pieces of legisla-

tion which pertain to the relationships between the United States government and the various Indian tribes. Some of these stand out over the years as landmarks in the ever-changing federal policy.

Even prior to the Constitution, the Northwest Ordinance, passed by the Congress of the Articles of Confederation, outlined a lofty attitude and policy for dealing with Indian people:

The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in the property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

It was just a short time later that the Treaty with the Delawares, discussed above, was signed and the big push westward over the prostrate bodies of slaughtered Indians was begun.

Subsequent policies have generally referred to the policy of humanity and justice initially outlined by the Northwest Ordinance. Many a land steal has been covered up with the generalities of the Northwest Ordinance.

Certain influential white men knew quite early that the shores of the Great Lakes, particularly Lake Superior, contained immense deposits of copper and other minerals. And there was a desperate need for copper in early America. On April 16, 1800, a Joint Resolution was passed in Congress authorizing the President to determine whether Indian title to copper lands adjacent to Lake Superior was still valid and, if so, the terms on which Indian title could be extinguished.

In the Treaty of August 5, 1826, almost as if it were an afterthought, an article (III) stated:

The Chippewa tribe grant to the government of the United States the right to search for, and carry away, any metals or minerals from any part of their country. But this grant is not to affect the title of the land, nor the existing jurisdiction over it.

The Chippewas, in the dark as to the importance of their mineral

wealth, signed the treaty. This was the first clear-cut case of fraudulent dealings on the part of Congress. Certainly no one could have accused the Congress of "utmost good faith."

Close examination of subsequent Congressional dealings shows a record of continued fraud covered over by pious statements of concern for their *wards*.

The basis for Congressional interference into the realm of Indian activities was originally the third clause in section 8 of Article I of the Constitution, which declared that Congress had the "power to regulate Commerce . . . with the Indian tribes. . . ." From this obscure phrase—which if we reread the early Delaware treaty was to provide the Delaware with modern utensils they needed—came the full-blown theory of the incompetency of the Indian, his wardship, and the plenary power of Congress to exercise its whim over Indian people.

The next important statute referring to the Indian people was the Act of March 3, 1819 (3 Stat 679), which was entitled "An act making provision for the civilization of the Indian tribes adjoining the frontier settlements." This act stipulated that:

. . . for the purpose of providing against the further decline and final extinction of the Indian tribes adjoining the frontier settlements of the United States, and for introducing among them the habits and arts of civilization, the President of the United States shall be, and he is hereby authorized, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, to employ capable persons' of good moral character, to instruct them in the mode of agriculture suited to their situation . . .

In essence, although the treaties read that the United States would *never disturb* the tribes on the land they had reserved to themselves, Congress determined that it had the right to make Indians conform to their idea of civilization and outlined the great legislative attempt to make them into farmers.

Practically all subsequent legislation has revolved around the Congressional desire to make Indians into white farmers. Most laws passed to administer Indian lands and property have re-

flected the attitude that, since Indians have not become successful white farmers, it is perfectly correct to take their land away and give it to another who will conform to Congressional wishes.

One of the two most important laws passed in the last century was the Indian Trade and Intercourse Act of June 30, 1834 (4 Stat 729). This act concentrated mainly on the trade aspect of Indian Affairs and was supplemented by a companion act outlining the Bureau of Indian Affairs and its duties. From these two acts came the immense power of the Department of the Interior over the lives and property of the Indian people.

The other important law of the last century was the General Allotment Act, or the Dawes Act, passed in 1887 and amended in 1891, 1906, and 1910 until it included nearly every tribe in the country. The basic idea of the Allotment Act was to make the Indian conform to the social and economic structure of rural America by vesting him with private property.

If, it was thought, the Indian had his own piece of land, he would forsake his tribal ways and become just like the white homesteaders who were then flooding the unsettled areas of the western United States. Implicit in the ideology behind the law was the idea of the basic sameness of humanity. Just leaving tribal society was, to the originators of the law, comparable to achieving an equal status with whites.

But there was more behind the act than the simple desire to help the individual Indian. White settlers had been clamoring for Indian land. The Indian tribes controlled nearly 135 million acres. If, the argument went, that land were divided on a per capita basis of 160 acres per Indian, the Indians would have sufficient land to farm and the *surplus* would be available to white settlement.

So the Allotment Act was passed and the Indians were allowed to sell their land after a period of twenty-five years during which they were to acquire the management skills to handle the land. However, nothing was done to encourage them to acquire these skills and consequently much land was immediately leased to

non-Indians who swarmed into the former reservation areas.

By 1934 Indians had lost nearly 90 million acres through land sales, many of them fraudulent. The basic device for holding individual lands was the trust, under which an Indian was declared to be incompetent. Indians were encouraged to ask for their papers of competency, after which land was sold for a song by the untutored Indian who had never heard of buying and selling land by means of a paper.

Many Indians sold their land for a mere fraction of its value. Others received title to their land and lost it through tax sales. In general the policy was to encourage the sale of Indian lands, as it was believed that this process would hasten the integration of Indians into American society.

The churches strongly supported the Dawes Allotment Act as the best means available of Christianizing the tribes. Religion and private property were equated in the eyes of many churchmen. After all, these were the days when J. P. Morgan used to take entire trainloads to the Episcopal conventions and John D. Rockefeller had his Baptist advisor helping him distribute his wealth. Wealth was an index of sainthood.

Bishop William H. Hare, noted missionary bishop of the Episcopal Church, is said to have remarked that the Allotment Act would show whether the world or the church was more alert to its opportunity. In other words, it was to be a race between the stealers of men's land and the stealers of men's souls for two unrelated goals—90 million acres of land and the Christianizing of some of the feathered friends who lived on those lands.

It was, of course, no contest. The church came in a dead last. Indians were not magically turned into white, churchgoing farmers by their little plot of ground. Sharper white men than the missionaries, representing the Christians' traditional opponent, easily won the contest. And the American Indians were the losers. But at least they had the comfort of hearing the missionaries' sermons against greed.

Gone apparently was any concern to fulfill the articles of

hundreds of treaties guaranteeing the tribes free and undisturbed use of their remaining lands. Some of the treaties had been assured by the missionaries. The Indians had not, however, been given lifetime guarantees.

Perhaps the only bright spot in all of Indian-Congressional relations came at the beginning of the New Deal. Backed by a sympathetic President and drawn up by scholar John Collier—probably the greatest of all Indian commissioners—the Indian Reorganization Act was passed in 1934.

This act, known popularly as the Wheeler-Howard Act, provided for self-government of the reservations by the Indian residents. Written into the law was a prohibition on further allotment of Indian lands and provisions for land consolidation programs to be undertaken by the tribal councils in order to rebuild an adequate land base.

In many cases the Indian Bureau was authorized to buy land for landless Indians and to organize them as recognized tribal groups eligible for governmental services. Programs for rehabilitation were begun, Indians were given preference in hiring within the Bureau of Indian Affairs, and a revolving loan fund for economic development was created. Overall the IRA was a comprehensive piece of legislation which went far beyond previous efforts to develop tribal initiative and responsibility, but one provision was unfortunate. Once having voted down the acceptance of the provisions of the act, a reservation was forbidden from considering it again.

Unfortunately, Indian tribes were given only a short ten years under this act to bring themselves to an economic and social standard equal with their white neighbors. Following World War II the Congressional policy toward Indian self-government was to change radically. But that story deserves a special chapter in this book.

In looking back at the centuries of broken treaties, it is clear that the United States never intended to keep any of its promises. Like other areas of life, the federal government adapted its

policies to the expediency of the moment. When the crisis had passed, it promptly proceeded on its way without a backward glance at its treachery.

Indian people have become extremely wary of promises made by the federal government. The past has shown them that even the most innocent-looking proposal is often fraught with implications the sum total of which is loss of land.

Too often the attitude of the white man was, "Tell the Indians anything to keep them quiet. After they are settled down we can do what we want to do." Alvin Josephy brings this attitude out magnificently in his book *The Nez Perce Indians and the Opening of the Northwest*.

"What," people often ask, "did you expect to happen? After all, the continent had to be settled, didn't it?"

We always reply, "Did it?" And continue, "If it did, did it have to be settled in that way?" For if you consider it, the continent is now settled and yet uninhabitable in many places today.

There were many avenues open for the government besides wholesale theft. In Canada, for example, there are Indian reservations in every province. Indians have not had their basic governmental forms disturbed. They still operate with chiefs and general councils. Nor were they forced to remove themselves whenever and wherever the white man came. Nor did they have their lands allotted and then stolen piece by piece from under them.

It would have been fairly simple for the federal government to have provided a special legal status whereby Indian rights would have vested while keeping their original sovereignty and entitlements of self-government. There was no need for the government to abruptly change from treaty negotiations to a program of cultural destruction, as it did in 1819 with its Indian assimilation bill. And when the Five Civilized Tribes had adapted to a semi-white political structure the government could have supported the great experiment of the Cherokees instead of removing them to Oklahoma.

Even in the closing years of the last century, when the tribes

had by and large adapted from hunters to ranchers, the government could have kept its promises and left the tribes alone. There was no reason for it to allot the lands of the Choctaw. The United States had promised never to do so. Yet, in large measure, if there is Indian poverty today—and Indians rank lowest of any group in every conceivable statistic used to measure poverty—it is the fault of the United States government.

The betrayal of treaty promises has in this generation created a greater feeling of unity among Indian people than any other subject. There is not a single tribe that does not burn with resentment over the treatment it has received at the hands of an avowedly *Christian* nation. New incidents involving treaty rights daily remind Indian people that they were betrayed by a government which insists on keeping up the facade of maintaining its commitments in Vietnam.

The complicity of the churches too is just beginning to be recognized. After several hundred years of behind-the-scenes machinations, the attempt of the churches to appear relevant to the social needs of the 1960's is regarded as utter hypocrisy by many Indian people. If, they argue, the churches actually wanted justice, why haven't they said or done anything about Indian rights? Why do they continue to appear in bib-overalls at the Poor People's March? Why do they wait until a problem is nearly solved and then piously proclaim from the pulpits that they have discovered that the movement is really God's will?

Even today Indian rights are stuck in a legalistic limbo from which there is apparently no escape. When a tribe tries to get its rights defined it is politely shunted aside. Some tribes have gone to the Supreme Court to seek relief against the United States by claiming a violation of their rights as wards. They have been told in return that they are not wards but "dependent domestic nations." And when other tribes have sought relief claiming that they are dependent domestic nations, they have been told they are "wards of the government."

Under the laws and courts of the present there is no way for Indian people to get the federal government to admit they have

rights. The executive branch of the government crudely uses Indian lands as pawns in the great race to provide pork-barrel agencies with sufficient dam-building projects to keep them busy.

Until America begins to build a moral record in her dealings with the Indian people she should not try to fool the rest of the world about her intentions on other continents. America has always been a militantly imperialistic world power eagerly grasping for economic control over weaker nations.

The Indian wars of the past should rightly be regarded as the first foreign wars of American history. As the United States marched across this continent, it was creating an empire by wars of foreign conquest just as England and France were doing in India and Africa. Certainly the war with Mexico was imperialistic, no more or less than the wars against the Sioux, Apache, Utes, and Yakimas. In every case the goal was identical: land.

When the frontier was declared officially closed in 1890 it was only a short time before American imperialistic impulses drove this country into the Spanish-American War and the acquisition of America's Pacific island empire began. The tendency to continue imperialistic trends remained constant between the two world wars as this nation was involved in numerous banana wars in Central and South America.

There has not been a time since the founding of the republic when the motives of this country were innocent. Is it any wonder that other nations are extremely skeptical about its real motives in the world today?

When one considers American history in its imperialistic light, it becomes apparent that if morality is to be achieved in this country's relations with other nations a return to basic principles is in order. Definite commitments to fulfill extant treaty obligations to Indian tribes would be the first step toward introducing morality into American foreign policy.

Many things can immediately be done to begin to make amends for past transgressions. Passage of federal legislation acknowledging the rights of the Indian people as contained in the treaties can make the hunting and fishing rights of the Indians a reality.

Where land has been wrongfully taken—and there are few places where it has not been wrongfully taken—it can be restored by transferring land now held by the various governmental departments within reservation boundaries to the tribes involved. Additional land in the public domain can be added to smaller reservations, providing a viable land base for those Indian communities needing more land.

Eastern tribes not now receiving federal services can be recognized in a blanket law affirming their rights as existing communities and organized under the Indian Reorganization Act. Services can be made available to these communities on a contract basis and the tribes can be made self-sufficient.

Mythical generalities of what built this country and made it great must now give way to consideration of keeping contractual obligations due to the Indian people. Morality must begin where immorality began. Karl Mundt, in commenting on the passage of the Indian Claims Commission Bill in 1946, stated:

. . . if any Indian tribe can prove that it has been unfairly and dishonorably dealt with by the United States it is entitled to recover. This ought to be an example for all the world to follow in its treatment of minorities.

The Indian Claims Commission opened a special commission for tribes that had been swindled in land transactions in the last century. But a great many cases have not been heard and a great many others which have been heard produced exceedingly harsh decisions against the tribes. In addition, eastern tribes were not allowed to press claims at all. And since the termination policy has been in effect, additional moral claims of tribes who were severely hurt by that policy have arisen.

The Indian Claims Commission is, or should be, merely the first step in a general policy of restitution for past betrayals. Present policy objectives should be oriented toward restitution of Indian communities with rights they enjoyed for centuries before the coming of the white man.

The world is indeed watching the behavior of the United States. Vietnam is merely a symptom of the basic lack of integrity

of the government, a side issue in comparison with the great domestic issues which must be faced—and justly faced—before this society destroys itself.

Cultural and economic imperialism must be relinquished. A new sense of moral values must be inculcated into the American blood stream. American society and the policies of the government must realistically face the moral problems created by the roughshod treatment of various segments of that society. The poverty program only begins to speak of this necessity, the Employment Act of 1946 only hinted in this direction. It is now time to jump fully into the problem and solve it once and for all.