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Changing Tribal Policy, 1860-1934

James Thayer's Legal Categories.

In 1891, Harvard Law Professor James Thayer, author of several books on legal subjects as well as editor of the twelfth edition of Chancellor Kent's *Commentaries on American Law*, published a lengthy review of U.S. tribal policy. Thayer began by distinguishing "different sorts of Indians." By this he meant different sorts of *legal statuses* in which "Indians" could be found. Thayer's focus was on law, and he made clear that the cultural characteristics of individuals were not necessarily correlated to their legal status.

Thayer distinguished four legal categories, each having various subdivisions. Thayer's first category was analytical, and consisted of individual U.S. citizens who just happened to have some "Indian" ancestry. In Thayer's words,

When an Indian has detached himself from his own people, and adopted civilized ways of life, and resides among us, he at once becomes, by our present law, a citizen like the rest of us. There are many Indians in the country who have done this.

Secondly, noted Thayer,

There are even many Indians in tribes who are our fellow-citizens. In the language of Judge Curtis in the Dred Scott case, "By solemn treaties large bodies of Mexican and North American Indians have been admitted to citizenship of the United States." The pueblo Indians, for instance, have been judicially declared by the courts of New Mexico to be, in this way, citizens of the United States, although, oddly enough, we keep agents among them. In such cases, the tribal relation, while it is of course a matter of much social importance, is of no legal significance at all; it is like being a Presbyterian, or a member of the Phi Beta Kappa, or a Freemason; and each Indian, however little he knows it, holds a direct relation of allegiance to the United States.

Thayer's second category included groups who were "Indian" not only in ancestry but in many

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on-going cultural respects. Though distinct communities, and sometimes corporate entities, their members were also U.S. citizens.

In Thayer's third category were tribes under ordinary state jurisdiction. Like pueblo dwellers, these tribes were culturally distinct from mainstream U.S. society. But unlike pueblo dwellers these tribes had been placed in a separate legal category. As Thayer explained,

there are Indians in the separate States, as in Massachusetts, Maine, and New York, who, although in tribes, have never held any direct relations with the United States, but have been governed as subjects by these States. The problem of this class of people has been slowly and quietly working out under the control of the separate States, without any interference from the general government, until, in some cases, politically and legally speaking, they are not Indians. In Massachusetts, in 1869, every Indian in the States was made a citizen of the State, and it is supposed, I rather think correctly, that they have thus become citizens of the United States. It would not have been so if the general government had entered into relations with them before this declaration. Then the assent of the United States would have been required to make them citizens of that government. But whether citizens of the United States or not, they are citizens and voters in Massachusetts, and might determine the election of a President of the United States by their votes. In the States of Maine and New York the courts still call them the "wards of the State," and as such the States govern them as they think proper, as being subjects, and not citizens.

States were inconsistent in their ways of dealing with such tribes. But Thayer believed that issues related to their civil disabilities were being gradually resolved.

Thayer described the process by which such tribes had originally come under colonial British jurisdiction, and how these tribes had been impacted by the American Revolution:

As time went on, in some colonies...state reservations were established along the border, on which friendly Indians were induced to settle, acting at once as a precaution and a buffer against the shock of hostile attack. During this process other things had happened. Individual Indians had settled among the whites, and had sunk into the mass of the people, and were governed like the rest. To some extent, also, tribes of Indians had been caught and surrounded by the flood of the new civilization, and remained islanded permanently as a separate people in the midst of it, yet governed more or less under the laws of the colonies. It was such cases as these, probably, that were referred to in the first permanent statute of our present national government, passed in 1802, to regulate

“commerce with the Indians tribes.” The sixteenth section of that act begins, “Nothing in this act shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual States.” It is owing, very likely, to this relegation to the States of the affairs of such Indians as are here described that we may trace the circumstance, often not understood, that some States, like New York, Massachusetts, and Maine, have continued to deal freely with Indian tribes within their borders. These tribes, in the language of the statute of 1802, had come to be “surrounded by settlements of the citizens of the United States, and...within the ordinary jurisdiction of the...States.” As a dry question of power, Congress might at any time have taken control of them. But while Congress was staying its hand, it might happen, and has happened in Massachusetts, that the tribal relation had been dissolved. It has happened in the case of individual Indians, whose separation from their tribe has been recognized by the States, and in the case of whole tribes. In such instances, the “Indian tribe,” in the sense of the Constitution of the United States, that is in the sense of a separate political community, has ceased to exist before it was ever recognized by the general government; and therewith the power of Congress has gone, because, as regards these persons, there exists no longer the opportunity to exercise it.

All tribes within the United States, argued Thayer, were ultimately subject to the jurisdiction of the federal government. But because of local historical circumstances and the respective competences of federal and state governments, ordinary state jurisdiction had been established in many instances, and maintained with federal acquiescence.

Direct federal regulation was sometimes imperative. In Thayer’s fourth and final category were tribes

with whom the United States government holds relations under the clause of the Constitution which gives to Congress the right to “regulate commerce...with the Indian tribes,”---the people with whom we carry on war, and who live mainly on reservations secured to them by treaties or otherwise.¹

Thayer considered direct federal regulation necessary for tribes that retained political independence and the capacity to wage war, and whose lands were held by right of aboriginal

¹ “A People Without Law,” *Atlantic Monthly*, October and November, 1891, 68:540-551, 676-

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“Indian Title.” Many of these tribes were still routinely dealt with by the U.S. Army. In Thayer’s view, the legal status of most such federally regulated tribes was anachronistic, and ought to be remedied at once. Thayer called for immediate improvement in the treatment of federally regulated tribes, tribes that he considered far worse off than those possessing at least some secure rights under ordinary state jurisdiction.

Tribes under direct federal regulation were with few exceptions what Thayer labeled “A People Without Law”---non-citizens with very limited rights. Members of state-regulated tribes had more rights, but were also not usually accorded citizenship. While members of all tribes could certainly look forward to citizenship, actually obtaining it meant ceasing to be *legally* a member of a tribe, whether regulated by a state or the federal government. Thus, even though pueblos were culturally tribal, members of pueblos could not be *legally* members of a tribe because they were citizens. Thayer’s 1891 review of U.S. tribal policy concluded that uniformity was not an imminent prospect, given the number of jurisdictions involved. All one could reasonably hope for were miscellaneous improvements, as various states wrestled with issues such as citizenship for state-regulated tribal groups, and the federal government tried to come to terms with tribes that were still politically independent.

Citizenship for New York Oneidas and North Carolina Cherokees.

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The issue of citizenship for members of New York’s State-regulated tribes had been impacted by the Civil War and the enfranchisement in its aftermath of former African American slaves. This caused many to question the continuing denial of citizenship to members of New York tribes. In 1843, the New York Legislature had for example passed a law outlining new rights for all the State’s resident “Indians” as follows:

Any native Indian may, after the passage of this act, purchase, take, hold and convey lands and real estate in this state, in the same manner as a citizen: and whenever he shall have become a freeholder, to the value of one hundred dollars, he shall be liable on contracts, and subject to taxation and to the civil jurisdiction of the courts of law and equity of this state, in the same manner and to the same extent as a citizen thereof.²

Conferring on New York’s “native Indians” so many of the rights and duties of citizens begged the question whether they might now actually *be* citizens; and if not, why not? To find out, an Oneida named Abraham Elm voted in the 1876 election.

Arrested and charged with illegal voting, Elm was vindicated in U.S. District Court for the Northern District of New York. On December 24, 1877, in *U.S. v. Elm*, Judge Wallace ruled that the 1843 State law had conferred sufficient rights on the Oneidas to qualify them for citizenship, *at least under the new rules for citizenship established nationwide in 1866 by the Fourteenth Amendment*. Perpetuating the Constitutional distinction, the Fourteenth Amendment had excluded from enfranchisement “Indian not taxed” but since Elm was an “Indian taxed” by New York State Judge Wallace believed he met both State and U.S. requirements for citizenship.

In reviewing the circumstances of the Oneidas’ State/federal legal situation, Judge Wallace concluded that there was an Oneida tribe in Wisconsin, and that the Oneidas living in

their ancestral homelands near Oneida Lake were simply New York citizens:

It is true those remaining here have continued to designate one of their number as chief, but his sole authority consists in representing them in the receipt of an annuity which he distributes among the survivors. The twenty families which constitute the remnant of the Oneidas reside in the vicinity of their original reservation. They do not constitute a community by themselves, but their dwellings are interspersed with the habitations of the white. In religion, in customs, in language, in everything but the color of their skins, they are identified with the rest of the population.

The New York Oneidas did have self-awareness as a community, and a contractual business relationship with the federal government, but their pride in their distinctive history and the fact that they continued to choose a “chief” did not add up, in Wallace’s view, to tribal political existence. If the New York Oneidas were not members of a tribe, Wallace concluded, then they must be citizens.

A partially parallel situation had been created by the Removal of the Cherokee tribe from North Carolina. As with the Oneidas of New York State, some Cherokees had remained in North Carolina, posing questions about their legal relationship to the emigrating tribe. These questions were addressed by the U.S. Supreme Court in *Eastern Band of Cherokee v. U. S.*, decided March 1, 1886. In his Opinion, Justice Stephen Field described the Eastern Band of Cherokee as an entity that while not a “political organization” had retained coherence as a community, and had even incorporated in response to federal encouragement under North Carolina law:

The Cherokees in North Carolina dissolved their connection with their Nation when they refused to accompany the body of it on its removal, and they have had no separate political organization since. Whatever union they have had among

2 Chapter 87 of 1843, Section Four.

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themselves has been merely a social or business one. It was formed in 1868, at the suggestion of an officer of the Indian office, for the purpose of enabling them to transact business with the Government with greater convenience. Although its articles are drawn in the form of a Constitution for a separate civil government, they have never been recognized as a separate Nation by the United States; no Treaty has been made with them; they can pass no laws; they are citizens of that State [North Carolina] and bound by its laws. As well observed by the Court of Claims, in its exhaustive opinion, they have been in some matters fostered and encouraged by the United States, but never recognized as a Nation in whole or in part.

Nor is the band, organized as it now is, the successor of any organization recognized by any treaty or law of the United States.

The Eastern Band of Cherokee had been appropriately “fostered and encouraged” as a “social or business” group by the federal government. But these Cherokees were U.S. citizens subject to the ordinary jurisdiction of North Carolina, under which they were of course free to incorporate.

Because of Removal, the Cherokees and the Oneidas had become split into state-regulated and federally-regulated sections. The Oneidas of New York State, once wholly state-regulated, generated a federally-regulated tribe in Wisconsin. Cherokees remaining in North Carolina, once wholly federally regulated, came under ordinary state jurisdiction as the politically-organized Cherokee tribe moved west.

In 1823, Chancellor Kent had affirmed that New York State was fully competent to regulate a tribe such as the Oneidas that was culturally distinct and preserved many customs at odds with the surrounding society, but which was not politically independent. Exercising discretion, Kent reasoned, a state could exempt such a tribe from many rights and responsibilities elsewhere enforced, and *allow* the tribe to regulate its internal affairs in distinctive ways.³ In 1830, Congressman John Bell had further elaborated this theme, describing state regulation of

autonomous but not politically independent tribes by what he called “simple”---i.e., basic--- regulations

intended rather for the protection than the restraint of the Indians. The tribes thus brought within the ordinary jurisdiction of the States, are indulged in the enjoyment of their ancient usages, so far as such a license is found compatible with the peace and good order of society; and whatever restraints have been imposed for any purpose, seem, in general, to have been adapted to their condition, with a human discrimination.

Bell likened state regulation of tribes that were not politically independent but still culturally distinct to state regulation of other culturally distinct groups within states, such as the Pietist George Rapp’s German-speaking, celibacy-observing settlement at Harmonie, Indiana, which was later taken over and renamed New Harmony by the Utopian British reformer Robert Owen:

The exercise of entire freedom in the regulation of every internal and domestic interest of a community, is not believed to be inconsistent with the most absolute subjection in every thing which concerns its external relations and connexions with the rest of society. The communities founded by Rapp and Owen...in which it is understood, property was enjoyed, and many usages established and respected among themselves, wholly different from the practice and customs of the surrounding society, do not seem to have been inconsistent with the sovereignty of the States in which they were located. The States had the right, whenever the practices of those communities became offensive to public morals, or dangerous to the public peace and welfare, to suppress them. A State is not

3 See above, pages 412-413.

obliged to exercise all its rights of sovereignty at once.⁴

Both Kent and Bell stressed that while states were competent to regulate culturally distinct but not politically independent tribes, states were in turn subordinate to federal authority, and obliged to respect all federal interventions on behalf of tribes, whenever made. Disagreements were inevitable in such a situation of overlapping responsibility, but there was no disagreement that states did have a role in the regulation of many tribes. The Supreme Court's 1886 decision in *Eastern Band of Cherokee* had thus simply reaffirmed the basic parameters of a century of U.S. tribal policy, according to which states and the federal government divided responsibility for direct regulation of tribes. Yet new currents of thought were already becoming influential that would lead in the twentieth century to a massive expansion in the federal government's responsibilities toward all tribally-descended groups, including the Oneidas of New York State and North Carolina's Eastern Band of Cherokees, both of which had by 1886 functioned for decades under ordinary state jurisdiction.

Pueblos of the Southwest.

As Professor Thayer pointed out in 1891, perhaps the greatest anomaly in the division of responsibility for tribal regulation between states and the federal government was the legal situation of the tribal pueblos of the southwest, whose members were U.S. citizens holding fee title and who therefore were considered to be exempt from direct federal regulation under the 1834 Indian Trade and Intercourse Act. By the 1848 Treaty of Guadalupe Hidalgo that ended the Mexican War, the United States had agreed to honor all positive land grants of the Mexican government and its predecessors in territories then acquired by the United States. Pursuant to this

4 21st Cong., 1st Sess., Report 227, 8-9.

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commitment, Congress on December 22, 1858, confirmed fee title to “the pueblo of Taos, in the county of Taos.” Meanwhile, on July 27, 1851, Congress had extended all laws now in force regulating trade and intercourse with the Indian tribes...over the Indian tribes in the Territories of New Mexico and Utah.” In 1876, in *United States vs. Joseph* (94 U.S. 614), the Supreme Court confronted the question of whether Taos Pueblo’s fee title land came under the land sale provisions of the 1834 Trade and Intercourse Act.

Justice Samuel Miller’s Opinion in *Joseph* concluded that Taos Pueblo held their land by virtue of a positive grant from the government of Mexico, and therefore did not hold aboriginal “Indian Title” land protected by the land sale provisions of the 1834 Indian Trade and Intercourse Act. Justice Miller noted that,

At the time the act of 1834 was passed there were no such Indians as these in the United States, unless it be one or two reservations or tribes, such as the Senecas or Oneidas of New York, to whom, it is clear, the eleventh section of the Statute could have no application. When it became necessary to extend the laws regulating intercourse with the Indians over our new acquisitions from Mexico, there was ample room for the exercise of those laws among the nomadic Apaches, Comanches, Navajoes, and other tribes whose incapacity for self-government required both for themselves and for the citizens of the country this guardian care of the general government.

The pueblo Indians, if, indeed, they can be called Indians, had nothing in common with this case. The degree of civilization which they had attained centuries before, their willing submission to all the laws of the Mexican government, the full recognition by that government of all their civil rights, including that of voting and holding office, and their absorption into the general mass of the population (except that they held their lands in common) all forbid the idea that they should be classed with the Indian tribes for whom the intercourse acts were made, or that in the intent of the act of 1851 its provisions were applicable to them. The tribes for whom the act of 1834 was made were those semi-independent tribes whom our government has always recognized as exempt from our laws, whether within or without the limits of an organized State or Territory, and, in regard to their domestic government, left to their own rules and traditions; in whom we have recognized the capacity to make treaties, and with whom the governments, state and national, deal, with a few exceptions only, in their national or tribal character, and not as individuals.

If the pueblo Indians differ from the other inhabitants of New Mexico in

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holding lands in common, and in a certain patriarchal form of domestic life, they only resemble in this regard the Shakers and other communistic societies in this country, and cannot for that reason be classed with the Indian tribes of whom we have been speaking....

Turning our attention to the tenure by which these communities hold... land...we find that it is wholly different from that of the Indian tribes to whom the act of Congress applies. The United States have not recognized in these latter any other than a passing title with right of use, until by treaty or otherwise that right is extinguished. And the ultimate title has been always held to be in the United States, with no right in the Indians to transfer it, or even their possession, without the consent of the government....The pueblo Indians, on the contrary, hold their lands by a right superior to that of the United States. Their title dates back to grants made by the government of Spain before the Mexican revolutionCa title which was fully recognized by the Mexican government, and protected by it in the treaty of Guadalupe Hidalgo...[The 1858 Act pursuant to this Treaty] was a recognition of the title previously held by these people, and a disclaimer by the government of any right of present or future interference, except such as would be exercised in the case of a person holding a competent and perfect title in his individual right.

Justice Miller did not elaborate on the similarities he thought might exist in the situations of Taos Pueblo-dwellers and the Oneidas and Senecas of New York State, but the fact that the Oneidas held land by New York State grant antedating the federal government did parallel the situation of Taos Pueblo. Justice Miller was confident that the land sale provisions of the 1834 Indian Trade and Intercourse Act did not apply to either, because these provisions applied only to “Indian Title” land, that is, land on which tribes possessed only a “right of use” and to which the federal government possessed fee title. Miller was not averse to the idea that the New York Oneidas or Taos Pueblo-dwellers might be describable in some sense as “tribes.” Miller noted for example that Taos Pueblo had cultural distinctiveness as well as material needs that the federal government might wish to assist with, but even so “their *status* is not, in the face of the facts we have stated, to be determined solely by the circumstance that some officer of the

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government has appointed for them an agent.” The “peaceable” pueblo-dwellers “live in villages...each having its own municipal or local government....In every pueblo is erected a church....Their names, their customs, their habits, are similar to those of the people...in the midst of whom their pueblos are situated.” The pueblos seemed to be *legally* well-integrated parts of the Hispanic society in which they were located, although they preserved distinctive aboriginal customs that had survived the Hispanic conquest.

Thirty-seven years later, in *U.S. v. Sandoval* (1913, 231 U.S. 28), the Court came to a quite different conclusion but, as the Opinion by Justice Willis Van Devanter noted, this was because the Court was construing a quite different law of Congress. *Joseph* had been concerned with the land sale section of the Indian Trade and Intercourse Act, a general law of national application. In *Sandoval*, the Court was concerned with Congress’s 1910 New Mexico Enabling Act, whose limited purpose was to “enable” New Mexico statehood. Section Eight of this Act declared that “the terms ‘Indian’ and ‘Indian Country’ shall include the Pueblo Indians of New Mexico and the lands now owned or occupied by them.” The issue was therefore not whether the Court should reverse what it had said in 1876 about the default definitions of “Indians” and “Indian Country” intended by the 1834 Indian Trade and Intercourse Act but whether Congress had the power to *expand* those definitions. The *Sandoval* Court found that Congress did indeed have such power. The fact that the pueblos owned their lands in fee could not bar Congress from declaring them to be federally protected “Indian Country.” As precedent, Justice Van Devanter cited Oklahoma’s Five Civilized Tribes, who had been moved to Oklahoma from the southeast, and whose Oklahoma lands “although owned in fee under patents from the United States, were

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adjudged subject to the legislation of Congress enacted in the exercise of the Government's guardianship over those tribes and their affairs.”

Congress in other words had the power to extend its protective regulatory authority over pueblos if these were deemed by the federal government to be occupied by “Indians” in need of federal guardianship. “Of course,” observed Van Devanter,

it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts.

In 1910, Congress had declared that New Mexico's pueblo-dwellers, even though found by the Supreme Court in 1876 to be not “Indians” as defined by the 1834 Indian Trade and Intercourse Act, would *henceforth be* federally regulated “Indians,” and that their lands, even though owned in fee derived from Mexican grants, would be considered to be in federal “Indian Country.” In 1913, the Court concluded that in doing so Congress had not exceeded its power.

Although the *Sandoval* Court emphasized that the federal government could not arbitrarily declare any group whatsoever to be a federally recognized tribe, or any tract of land owned by such a tribe in fee to be “Indian Country,” it also made clear that the federal government could exercise wide discretion. Equally important, the Court suggested that cultural “Indianness” rather than political independence could be used by the federal government in deciding whether protection should be extended to a particular community. A tribe declared subject to direct federal regulation might be simply a culturally “Indian” community in need of temporary guidance.

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Because the pueblos had been recognized for some time to be anomalous, it was not immediately apparent how consequential this 1913 Supreme Court decision would be. But since the Court, in declaring that pueblos had been appropriately deemed tribes deserving of direct federal supervision, had not stripped pueblo-dwellers of citizenship, this inevitably highlighted the continuing denial of citizenship to members of other tribes directly regulated by the federal government. Before long, in the aftermath of World War One during which many members of tribes enlisted in the U.S. Army, Congress granted citizenship to members of all federally regulated tribes. This 1924 grant of citizenship eliminated a distinction between federal tribes and state-regulated tribally descended groups whose members were already citizens.

To the pueblos, the Supreme Court's 1913 ruling in *Sandoval* had been far from satisfactory, because the Court justified its approval of temporary federal regulation by denouncing the pueblos' "Indianness" which the Court expected federal regulation would wipe out. The *Sandoval* Court had recommended for example that federal officers should discourage practices such as the "secret dance, from which all whites are excluded." The pueblo-dwellers' desire "to live apart and be independent and have nothing to do with the white race" qualified them for direct federal regulation, but the goal of such regulation, the Court suggested, ought to be to destroy all such reclusiveness.

Countering the anti-pueblo cultural bias evinced by the Court in *Sandoval* became the prime objective of pueblo leaders and of a group of dedicated pueblo admirers, prominent among whom was John Collier. A social reformer who had been inspired by the thought of the Russian

anarchist Prince Peter Kropotkin,⁵ Collier became convinced during a 1920 Christmas visit to Taos Pueblo that the pueblos preserved archaic values tragically lost in mainstream U.S. society.

Collier thought he had found on the New Mexico frontier a solution to the question of whether materialism and selfish individualism would dominate and destroy man. He concluded that Pueblo culture offered a model for the redemption of American society because it concerned itself very little with the material aspects of life; its goals were beauty, adventure, joy, comradeship, and the connection of man with God. To Collier, Pueblo life held the secrets to social education and personality formation urgently needed by the white world.⁶

Following his Taos conversion, Collier committed himself to helping the pueblos preserve their cultures, as the best way of saving the United States from competitive individualism. Collier urged the federal government to encourage the revitalization of the pueblos as Kropotkinesque islands of communal harmony in a greed-infested capitalist sea. Collier moreover became convinced that any trace of a surviving pueblo-like entity merited federal nurturance. Following his appointment in 1933 by President Franklin Roosevelt as Commissioner of Indian Affairs, Collier succeeded in establishing the pueblos, which the Supreme Court in 1876 had concluded were not tribes at all, as the new paradigm of what a federally recognized tribe ought to be.

The 1934 Indian Reorganization Act.

During Collier's tenure as Commissioner of Indian Affairs from 1933 until 1945, a

⁵ Kropotkin's best-known work is his 1902 tract *Mutual Aid*.

⁶ Kenneth R. Philp, *John Collier's Crusade for Indian Reform*, Tucson: University of Arizona Press, 3.

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radically revised course was set for federal tribal policy. The cornerstone of this tribal New Deal was the Indian Reorganization Act, approved on June 18, 1934. Section Seven of the Act authorized the Secretary of the Interior to “proclaim new Indian reservations on lands acquired...or to add such lands to existing reservations...for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.” By Section Twelve, the Interior Secretary was

directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian office, in the administrations, functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

Both tribes and the federal Agency that principally dealt with tribes were preferably to embody an “Indian” value system distinct from mainstream American individualistic competitiveness.

Section Sixteen of the 1934 Act provided that “Any Indian tribe...shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on...[its] reservation....” Any constitution thus adopted was to “vest in such tribe or its tribal council the...power...to negotiate with the Federal, State, and local Governments.” The Act’s final section included these definitions:

The term “Indian” as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any reservation, and shall further include all other persons of one-half or more Indian blood. For purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term “tribe” wherever used in this Act shall be construed to refer to any

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Indian tribe, organized band, pueblo, or the Indians residing on one reservation. Each such entity was assured a government-to-government relationship with the federal government. Tribal “sovereignty” would inhere even in a pueblo, which meant literally a village. By extension, any village throughout the United States with an “Indian” character might arguably claim a government-to-government relationship with the federal government. In an attempt to provide some manageable limits to this new policy of federal preference for “Indian” culture, a blood quotient was employed. Henceforth blood and culture would determine what tribal entities the federal government would have direct responsibility for regulating. Moreover, the federal agenda in tribal regulation was not to be the transfer of tribes to ordinary state jurisdiction but rather the strengthening of tribes as counterweights to mainstream American values. Systematic efforts were undertaken to eradicate aspects of the pre-1934 legal situation of federally regulated tribes that made their status disadvantageous, aspects that had been originally instituted as inducements to members of federally regulated tribes to abandon political independence and accept rights, duties and privileges under ordinary state jurisdiction. Now the objective of federal tribal policy was to make it possible for members of tribes to participate in culturally distinct independent polities without having to forego the rights and privileges of U.S. citizens.

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