

CHAPTER 12

FEDERAL SERVICES FOR INDIANS

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SECTION 1. INTRODUCTION

Federal services which the United States provides for Indians are frequently viewed as a matter of charity. The erroneous notion is widely prevalent that in their relationship with the Federal Government the Indians have been the regular recipients of unearned bounties. In reality, federal services were, in earlier years, largely a matter of self-protection for the white man or partial compensation to the Indian for land cessions or other benefits received by the United States. In recent years such services have been continued, partly as a result of the failure of the states to render certain essential public services to the Indians, because of their special relation to the Federal Government.

In the treaty period¹ of our Indian relations, in order to induce the Indian to cease active resistance to further encroachment upon his domain, it was thought wise to educate him in the white man's culture. The Indian's white neighbors would instruct him to seek paths of peace rather than the ways of war, to replace the tomahawk with a religion of love for his fellow man. To obviate responsibility for his support, or the alternative of slow starvation, they would instruct him in the ways of the farm, in the arts of the fireside, and in means of earning a livelihood on his greatly reduced land.² This offered a practical alternative to a policy of warfare which, it has been estimated, cost the Federal Government in the neighborhood of one million dollars for each dead Indian.

Reservations were located in the vicinities of army posts. In the panic of an epidemic of smallpox, as a matter of protection to prevent the spread of this disease through the entire population, a statute³ was enacted which provided for vacci-

nation of Indians by army surgeons.⁴ This statute is illustrative of the way in which the Indian health service and other federal services originated.

In making treaties with the Indian tribes, the United States generally offered a more or less substantial *quid pro quo* for land ceded by the Indian tribes in such treaties and for other promises contained in such treaties that were advantageous to the United States.⁵ This *quid pro quo* might be, and generally was, defined in terms of money, although in some cases the United States undertook to furnish specified supplies or services for a designated period of years. The Indians had little use for money. The practice therefore arose of placing the money in trust in the United States Treasury and expending either the principal or the interest of such funds, in accordance with the wishes of the Indians, for food, clothing, livestock, farm implements, and the pay of blacksmiths, teachers, physicians, and other skilled employees. To this day tribal funds are expended for these purposes.⁶

When treaty and tribal funds of a given tribe came to an end, the Federal Government might have discharged the teachers, physicians, blacksmiths, and other employees maintained by it pursuant to treaty obligation; but many factors, some of them humanitarian, combined to prevent the abandonment of these services. Instead, an increasing amount of what were called "gratuity appropriations," as distinct from treaty appropriations and tribal fund appropriations, was devoted to the maintenance of these various federal services in the Indian country. According to contemporary critics, and according to subsequent official investigations, these funds were in many

¹ See Chapter 3.

² 8 Am. State Papers (Indian Affairs, class II, vol. 2) 1815-27, pp. 150-151.

³ Act of May 5, 1832, 4 stat. 514.

⁴ Appropriations for this service have since been regularly enacted. See Chapter 4, sec. 17.

⁵ See Chapter 3, sec. 3C(3).

⁶ See Chapter 15, sec. 23.

cases extravagantly and wastefully disbursed. Irrigation projects, for example, frequently were launched without the benefit of expert technical advice and were consequently improperly constructed and ill-advised.⁷

With the increase of gratuity appropriations, the picture of the Indian as a charity ward came to loom large in the public eye. In 1875 Congress provided that Indians receiving supplies from the Federal Government might be required to perform useful labor as a condition precedent,⁸ quite ignoring the fact that many Indians were no more "charity wards" than were holders of federal bonds or other, legal obligations, of the Federal Government.

In an effort to remove federal services to Indians from a gratuity basis, Congress has frequently provided that various expenditures made for the benefit, or, supposed benefit, of Indians should be "reimbursable," that is to say, repaid to the United States Treasury out of the future income of the tribes concerned. Even where Congress has not so provided, the rule has been developed in many jurisdictional acts and court cases that appropriations which were supposed to be gratuities when made are to be reimbursed out of judgments rendered in favor of an Indian tribe.⁹

More recently the effort to remove federal Indian services from a charitable basis has taken the form of legislation authorizing the Secretary of the Interior to assess fees for various acts and services benefiting Indians.¹⁰

⁷ See Hearings, Sen. Subcom. of Comm. on Ind. Aff., 71st Cong., 2d sess., Survey of Conditions of the Indians in the United States, pt. 6, Engle Report, January 21, 1930, p. 2285.

⁸ Act of March 3, 1875, 18 Stat. 420, 449, 25 U. S. C. 137.

⁹ On *We Tribe of Indians v. United States*, 66 C. Cls. 64 (1928), app. dism. 279 U. S. 811, 68 C. Cls. 788; *Choctaw Nation v. United States*, 81 C. Cls. 1 (1935), cert. den. 296 U. S. 643; Act of June 7, 1924, 43 Stat. 537 (*Choctaw and Chickasaw*); *Fort Berthold Indians v. United States*, 71 C. Cls. 308 (1930); Act of February 11, 1920, 41 Stat. 404.

¹⁰ Section I of the Act of May 9, 1938, 52 Stat. 291, 312, 313, as amended by the Act of May 10, 1939, 53 Stat. 708, 25 U. S. C. 561, provides:

In the discretion of the Secretary of the Interior, and under such rules and regulations as may be prescribed by him, fees may be collected from individual Indians for services performed for them, and any fees so collected shall be covered into the Treasury of the United States.

Of. Act of January 24, 1923, 42 Stat. 1174, 1185, 25 U. S. C. 377 relating to probate fees, and Act of February 14, 1920, 41 Stat. 408, 415, amended March 1, 1933, 47 Stat. 1417, 25 U. S. C. 413, relating to various management fees for Indian forestry work.

In recent years, and particularly since 1924, when citizenship was granted to all Indians not already citizens,¹¹ the states have assumed a larger role in supplying the Indians with essential public services. In 1929¹² the Secretary of the Interior was authorized to permit state agents to make inspections of health and educational conditions on the reservations and to enforce sanitation and quarantine regulations or to enforce compulsory school attendance of Indian pupils, as provided by the law of the state, and since 1934¹³ the Secretary has been authorized to enter into contracts with state or other bodies for education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians, and to authorize the state to utilize existing federal school buildings, hospitals, and other facilities.

Some states have taken kindly to their added responsibility; others have continued to discriminate against the Indian, as, for instance, those states which deny the Indian services available under the Social Security Act.¹⁴

The year 1934 marked a momentous change in Indian policy. The then prevalent economic conditions brought on by the depression emphasized the desperate plight of the Indian. The Wheeler-Howard Act¹⁵ was passed. A program was launched, with the assistance of federal and tribal funds, to organize and incorporate Indian tribes, to launch tribal enterprises, to enable tribes and tribal members to become self-sufficient by their own efforts in lines of endeavor congenial to native tastes and talents, and to make possible the transfer to the organized tribes of responsibility for services hitherto performed by the Federal Government.

This program is still too close to its inception to warrant estimation of its success. It may be said, however, that the prevailing tendency today is to turn over to the organized tribes, or to the states, where such tribes and states are willing to accept such burdens, an increasing measure of responsibility for the performance of services which have historically been rendered to the Indians by the Federal Government.¹⁶

¹¹ See Chapter 8, sec. 2.

¹² Act of February 15, 1929, 45 Stat. 1185, 25 U. S. C. 231. See Chapter 6, sec. 2.

¹³ Act of April 16, 1934, 48 Stat. 596, amended June 4, 1936, 49 Stat. 1458, 25 U. S. C. 452, 454.

¹⁴ Act of August 14, 1935, 49 Stat. 620. See sec. 5, *infra*, and see Chapter 8, sec. 5.

¹⁵ Act of June 18, 1934, 48 Stat. 984, 25 U. S. C. 461 *et seq.* See Chapter 4, sec. 16.

¹⁶ See Chapter 2, sec. 3C.

SECTION 2. EDUCATION

A. DEVELOPMENT OF FEDERAL POLICY

"Father," requested Cornplanter, speaking for the Senecas in 1792. "you give us leave to speak our minds concerning the tilling of the ground. We ask you to teach us to plough and to grind corn; * * * that you will send smiths among us, and, above all, that you will teach our children to read and write, and our women to spin and to weave."¹⁷ With equal

¹⁷ 7 American State Papers (Indian Affairs, class II, vol. 1) (1789-1815) p. 144.

That such was not always the attitude of all Indians is clear in an excerpt from Benjamin Franklin's "Remarks Concerning the Savages of North America." In 1744, after the Treaty of Lancaster in Pennsylvania between the government of Virginia and the Six Nations, the Virginia Commissioners offered to the chiefs to educate six of their sons at a college in Williamsburg, Va. They received this reply:

Several of our young people were formerly brought up at the colleges of the Northern Provinces: they were instructed in all your sciences; but when they came back to us, they were bad runners; ignorant of every means of living in the woods; unable

warmth George Washington replied, through the Secretary of War, that the Senecas might be sure of his willingness and desire to impart to them "the blessings of husbandry, and the arts" and that a number of their children would be received to be educated either at the time of the treaty, or at such a time and place as they might agree upon.¹⁸

in such a fashion did the President of the United States and a chief of an Indian tribe first discuss the possibility of governmental assistance in bringing to the red man the advan-

to bear either cold or hunger; knew neither how to build a cabin, take a deer, or kill an enemy; spoke our language imperfectly; were therefore neither fit for hunters, warriors, or counsellors; they were totally good for nothing. We are however not the less obliged by your kind offer, though we decline accepting it: And to show our grateful sense of it, if the Gentlemen of Virginia will send us a dozen of their sons, we will take great care of their education, instruct them in all we know, and make men of them. (Benjamin Franklin, *Two Tracts* etc. (2d ed., 1794), pp. 28-29.)

¹⁸ *Ibid.*, p. 166.

tages of a European civilization.²⁰ Although this particular arrangement was destined not to materialize, the interest it aroused quickened, and on December 2, 1794, educational provisions were included in a treaty negotiated with the Onëida, Tuscarora, and Stockbridge Indians.²¹ This was followed in 1803 by a treaty with the Kaskaskia Indians which provided an annual contribution for 7 years for a Roman Catholic priest who, among other things, was to instruct in literature.²² Thus began the practice, which persisted up to the end of treaty-making in 1871, of including educational provisions in treaties.²³ The provisions covered technical education in agriculture and the mechanical arts,²⁴ support of reservation schools,²⁵ boarding

²⁰ For additional examples see Bureau of Education, Special Report on Indian Education and Civilization (1888), Sen. Ex. Doc. No. 95, 48th Cong., 2d sess. pp. 161-197. The annual reports of the Commissioners of Indian Affairs throw considerable light on the development of the federal educational policies regarding the Indians. See Chapter 2, sec. 2.

²¹ 7 Stat. 47, 48. These provisions allowed for the employment of one or two persons for 3 years to instruct in the arts of the miller and Sawyer.

²² Treaty of August 13, 1803, 7 Stat. 78, 79.

²³ The educational provisions of the various treaties are analyzed and summarized in the following government documents: Industrial Training Schools for Indian Youths, H. Rept. No. 29, 46th Cong., 1st sess. (1879); Industrial Training Schools for Indians, H. Rept. No. 752, 46th Cong., 2d sess. (1889); Treaty Items, Indian Appropriation Bill, H. Doc. No. 1030, 63d Cong., 2d sess. (1914).

²⁴ Treaty of August 18, 1804, with Delaware Tribe, 7 Stat. 81; Treaty of August 29, 1821, with Ottawa, Chippewa, and Pottawatamie, 7 Stat. 218; Treaty of February 12, 1825, with Creek Nation, 7 Stat. 237; Treaty of February 8, 1831, with the Menomonee Indians, 7 Stat. 342; Treaty of September 21, 1833, with the Otoes and Missourias, 7 Stat. 429; Treaty of March 28, 1836, with the Ottawa and Chippewa, 7 Stat. 491; Treaty of September 17, 1836, with the Sacs and Foxes, etc., 7 Stat. 511; Treaty of October 15, 1836, with the Otoes, etc., 7 Stat. 524; Treaty of January 4, 1845, with the Creeks and Seminoles, 9 Stat. 821, 822; Treaty of October 13, 1846, with the Winnebago Indians, 9 Stat. 878; Treaty of August 2, 1847, with the Chippewas, 9 Stat. 904; Treaty of October 18, 1848, with the Menomonee Tribe, 9 Stat. 952; Treaty of July 23, 1851, with the Sioux, 10 Stat. 949; Treaty of August 5, 1851, with the Sioux Indians, 10 Stat. 954; Treaty of May 12, 1854, with the Menomonee, 10 Stat. 1064; Treaty of December 26, 1854, with the Nisqually, etc., Indians, 10 Stat. 1132; Treaty of October 17, 1855, with the Blackfoot Indians, 11 Stat. 657; Treaty of September 24, 1857, with the Pawnees, 11 Stat. 729; Treaty of January 22, 1855, with the Dwamish, etc., 12 Stat. 927; Treaty of January 26, 1855, with the Sklallams, 12 Stat. 933; Treaty of January 31, 1855, with the Makah Tribe, 12 Stat. 939; Treaty of July 1, 1855, with the Qui-nai-elt, etc., Indians, 12 Stat. 971; Treaty of July 16, 1855, with the Flathead, etc., Indians, 12 Stat. 975; Treaty of December 21, 1855, with the Motels, 12 Stat. 981; Treaty of October 18, 1864, with the Chippewa Indians, 14 Stat. 657; Treaty of June 14, 1866, with the Creek Nation, 14 Stat. 785; Treaty of February 18, 1867, with the Sac and Fox Indians, 15 Stat. 495; Treaty of February 19, 1867, with the Sisseton, etc., Sioux, 15 Stat. 505.

²⁵ Treaty of May 6, 1828, with the Cherokee Nation, 7 Stat. 311; Treaty of New Echota, December 29, 1835, with the Cherokee, 7 Stat. 478 (provides for common schools and " . . . a literary institution of a higher order . . . "); Treaty of June 5, and 17, 1846, with the Pottawatamie Nation, 9 Stat. 853; Treaty of September 30, 1854, with the Chippewa Indians, 10 Stat. 1109; Treaty of November 18, 1854, with the Chastas, etc., Indians, 10 Stat. 1122; Treaty of April 19, 1858, with the Yancton Sioux, 11 Stat. 743; Treaty of June 9, 1855, with the Walla-Wallaa, etc., Tribes, 12 Stat. 945; Treaty of June 11, 1855, with the Nez Percés, 12 Stat. 957; Treaty of March 12, 1858, with the Poncas, 12 Stat. 997; Treaty of October 14, 1865, with the Lower Brule Sioux, 14 Stat. 699; Treaty of February 23, 1867, with the Senecas, etc., 15 Stat. 513; Treaty of October 21, 1867, with the Kiowa and Comanche Indians, 15 Stat. 581; Treaty of October 21, 1867, with the Kiowa, Comanche, and Apache Indians, 15 Stat. 589; Treaty of October 28, 1867, with the Cheyenne and Arapahoe Indians; 15 Stat. 593; Treaty of March 2, 1868, with the Ute Indians, 15 Stat. 619; Treaty of April 29 et seq., 1868, with the Sioux Nation, 15 Stat. 635; Treaty of May 7, 1868, with the Crow Indians, 15 Stat. 649; Treaty of May 10, 1868, with the Northern Cheyenne and Northern Arapahoe Indians, 15 Stat. 655; Treaty of June 1, 1868, with the Navajo Tribe, 15 Stat. 667; Treaty of July 3, 1868, with the Eastern Band Shoshones and Bannock Tribe of Indians, 15 Stat. 673.

schools,²⁶ or schools and teachers generally,²⁷ and contributions for educational purposes.²⁸

On March 30, 1802, Congress made provision for the expenditure of a sum of money not to exceed \$15,000 per annum to promote civilization among the aborigines.²⁹ For another decade this action stood as the sole indication that Congress had recognized responsibility for Indian education; then, in his first message to Congress, President Monroe called for additional efforts to preserve, improve, and civilize the original inhabitants.³⁰ This recommendation was acted upon 2 years later when Congress enacted a provision which still stands as the organic legal basis for most of the educational work of the Indian Service. As embodied in the United States Code, the law declares:

* * * The President may, in every case where he shall judge improvement in the habits and conditions of such

An unusual educational provision appears in the Treaty of May 6, 1828, with the Cherokee Nation, *supra*. Art. 5 reads in part:

* * * It is further agreed by the United States, to pay two thousand dollars, annually, to the Cherokees, for ten years, to be expended under the direction of the President of the United States in the education of their children, in their own country, in letters and the mechanic arts; also, one thousand dollars towards the purchase of a Printing Press and Types to aid the Cherokees in the progress of education; and to benefit and enlighten them as a people, in their own, and our language. (P. 313.)

²⁶ Treaty of November 15, 1827, with the Creek Nation, 7 Stat. 307; Treaty of September 15, 1832, with the Winnebago Nation, 7 Stat. 370; Treaty of May 24, 1834, with the Chickasaw Indians, 7 Stat. 450; Treaty, of June 9, 1863, with the Nez Perce Tribe, 14 Stat. 647; Treaty of March 19, 1867, with the Chippewa of Mississippi, 16 Stat. 719.

²⁷ Treaty of October 18, 1820, with the Choctaw Nation, 7 Stat. 210; Treaty of June 3, 1825, with the Kansas Nation, 7 Stat. 244; Treaty of August 5, 1826, with the Chippewa Tribe, 7 Stat. 290; Treaty of October 21, 1837, with the Sac and Fox Indians, 7 Stat. 543; Treaty of March 17, 1842, with the Wyandott Nation, 11 Stat. 581; Treaty of May 15, 1846, with the Comanche, etc., Indians, 9 Stat. 844; Treaty of June 5, 1854, with the Miami Indians, 10 Stat. 1093; Treaty of November 15, 1854, with the Rogue Rivers, 10 Stat. 1119; Treaty of November 29, 1854, with the Umpqua, etc., Indians, 10 Stat. 1125; Treaty of July 31, 1855, with the Ottowas and Chippewas, 11 Stat. 621; Treaty of February 5, 1856, with the Stockbridge and Munsee Tribes, 11 Stat. 663; Treaty of June 9, 1855, with the Yakama Indians, 12 Stat. 951; Treaty of June 25, 1855, with the Oregon Indians, 12 Stat. 963; Treaty of June 19, 1858, with Sioux Bands, 12 Stat. 1031; Treaty of July 16, 1859, with the Chippewa Bands, 12 Stat. 1105; Treaty of February 18, 1861, with the Arapahoes and Cheyenne Indians, 12 Stat. 1163; Treaty of March 6, 1861, with the Sacs, Foxes and Iowas, 12 Stat. 1171; Treaty of June 24, 1862, with the Ottawa Indians, 12 Stat. 1237; Treaty of May 7, 1864, with the Chippewas, 13 Stat. 693; Treaty of August 12, 1865, with the Snake Indians, 14 Stat. 683; Treaty of March 21, 1866, with the Seminole Indians, 14 Stat. 755; Treaty of April 28, 1866, with the Choctaw and Chickasaw Nation, 14 Stat. 769; Treaty of August 13, 1868, with the Nez Perce Tribe, 15 Stat. 693.

²⁸ Treaty of October 16, 1826, with the Potawatamie Tribe, 7 Stat. 295; Treaty of September 20, 1828, with the Potawatamie Indians, 7 Stat. 317; Treaty of July 15, 1830, with the Sacs and Foxes, etc., 7 Stat. 328; Treaty of September 27, 1830, with the Choctaw Nation, 7 Stat. 333; Treaty of March 24, 1832, with the Creek Tribe, 7 Stat. 366; Treaty of February 14, 1833, with the Creek Nation, 7 Stat. 417; Treaty of January 14, 1846, with the Kansas Indians, 9 Stat. 842; Treaty of April 1, 1850, with the Wyandot Tribe, 9 Stat. 987; Treaty of March 15, 1854, with the Ottoo and Missouri Indians, 10 Stat. 1038; Treaty of May 6, 1854, with the Delaware Tribe, 10 Stat. 1048; Treaty of May 10, 1854, with the Shawnees, 10 Stat. 1053; Treaty of May 17, 1854, with the Ioway Tribe, 10 Stat. 1069; Treaty of May 30, 1854, with the Kaskaskia, etc., Indians, 10 Stat. 1082; Treaty of January 22, 1855, with the Willamette Bands, 10 Stat. 1143; Treaty of February 22, 1855, with the Chippewa Indians of Mississippi, 10 Stat. 1165; Treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, 11 Stat. 611; Treaty of August 2, 1855, with the Chippewa Indians of Saginaw, 11 Stat. 633; Treaty of August 7, 1856, with the Creeks and Seminoles, 11 Stat. 699; Treaty of June 28, 1862, with the Kickapoo Tribe, 13 Stat. 623; Treaty of October 2, 1863, with the Chippewa Indians (Red Lake and Pembina Bands), 13 Stat. 667; Treaty of September 29, 1865, with the Osage Indians, 14 Stat. 687.

²⁹ Act of March 30, 1802, 2 Stat. 139, 143.

³⁰ XXXI Annals of Congress, 15th Cong., 1st sess. (1817-18), p. 12.

* Act of March 3, 1819, 3 Stat. 516, R. S. § 2071, 26 U. S. C. 271.

Indians practicable, and that the means of instruction can be introduced with their own consent, employ capable persons of good moral character to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic, and performing such other duties as may be enjoined according to such instructions and rules as the President may give and prescribe for the regulation of their conduct, in the discharge of their duties. A report of the proceedings adopted in the execution of this provision shall be annually laid before Congress.

This statute carried with it a permanent annual appropriation of \$10,000 "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 expenditure of this fund occasioned no little difficulty. The President, anxious to apply it in the most effective manner possible, addressed a circular letter to those societies and individuals—usually missionary organizations—that had been prominent in the effort to civilize the Indians, offering the cooperation of the Government in their various enterprises.³² Soon the \$10,000 was apportioned among them, and later, as treaty funds became available for this purpose, these, too, generally were disbursed to such establishments.³³

A significant development in the history of Indian education was the establishment by a number of Indian tribes of their own schools. As early as 1805, the Choctaw chieftains maintained a school with annuity funds.³⁴ In 1841 and 1842, before a number of states had provided for public schools, the Cherokee and Choctaw nations had put into operation a common-school system.³⁵

In 1855, the Commissioner of Indian Affairs, George W. Manypenny, noted that total expenditures for education among the Indian tribes during the 10-year period ending January 1, 1855, exceeded \$2,150,000. Apparently only a small portion of this sum was contributed directly by the Government, for the Commissioner's report shows that while \$102,107.14 had been furnished by the United States, \$324,160.61 had been added from Indian treaty funds, over \$400,000 had been paid out by Indian nations themselves, and \$830,000 had come from private benevolence.³⁶

After the Civil War a more liberal policy for participation of the Government in the education of the Indians was pursued. In 1870, \$100,000 was set aside for this purpose,³⁷ and in succeeding years the sums allocated were sufficiently liberal to permit a definite expansion of activities.

By 1878, several nonreservation boarding schools had been opened. Indian youths from all parts of the country attended the United States Indian Training and Industrial School at Carlisle, Pennsylvania. Other schools were located at Chemawa, Oregon; Lawrence, Kansas (Haskell Institute); Genoa, Nebraska; and Chilocco, Indian Territory.³⁸

³² Act of March 3, 1819, 3 Stat. 516. The repeal of this permanent appropriation was contemplated several times and finally accomplished in the Act of February 14, 1873, c. 138, 17 Stat. 437, 461. This appropriation became known as the "civilization fund." *Blauch, Educational Service for Indians. Staff Study No. 18, prepared for the Advisory Committee on Education (1939), p. 32.*

³³ 8 Am. State Papers (Indian Affairs, class II, vol. 2) 1815-27, pp. 200-201.

³⁴ *Blauch, op. cit.*, p. 33.

³⁵ Treaty of October 18, 1820, with the Choctaw Nation, Arts. 7 and 8, 7 Stat. 210.

³⁶ *Blauch, op. cit.*, p. 33.

³⁷ Report of the Secretary of the Interior, Sen. Ex. Doc. No. 1, pt. 1, 34th Cong., 1st sess. (1865), p. 561.

³⁸ Act of July 15, 1870, 16 Stat. 335, 359.

³⁹ *Blauch, op. cit.*, p. 34.

By the Act of July 31, 1882,³⁹ it was provided that abandoned military posts might be turned over to the Interior Department for the purpose of conducting therein Indian schools.

Government participation increased when, in 1890, the Indian Service

began to use public schools for the instruction of Indian children. Individual Indians had attended public schools before, but under the policy adopted in 1890 the Office of Indian Affairs reimbursed public schools for the actual increase in cost incurred by instructing the Indian children. The practice was in accordance with the ultimate plan of the Office of turning over the Indian day schools to the States as soon as white settlers and taxpayers were present in sufficient numbers to justify the establishment of local systems of schools. However, the use of public schools for educating Indian children did not become a common practice until after 1900, when it developed rapidly.⁴⁰

The recent course of federal activity with respect to Indian education is charted in the following excerpt from a recent study prepared under the auspices of the President's Advisory Committee on Education:

The period since 1900 is marked by a number of changes. In 1906 the schools—several hundred day schools and a number of boarding schools—of the Five Civilized Tribes in Oklahoma, previously operated by the tribal governments, were placed in charge of the Office of Indian Affairs. At first they were operated under contract but later by the Office of Indian Affairs. . . . A uniform course of study for the Indian schools now hardly to be regarded as a progressive step was provided in 1916. In order to increase the efficiency of the teachers, provision was made in 1912 for educational leave not to exceed 15 days a year to attend teachers' institutes or training schools, and in 1922 this leave was increased to 30 days. A provision in 1928 permitted 60 days of educational leave in any 2-year period.

Some of the changes which occurred are reflected in the data on enrollment of Indians in schools. . . . From 1900 to 1926 the enrollment increased from 26,451 to 69,892 or 164 percent. . . .⁴¹

Since then, a number of other changes have taken place, largely in response to criticism voiced by the Report of the Institute for Government Research, in 1928,⁴² and the Report of the National Advisory Committee on Education in 1931.⁴³ These changes are summarized in additional passages from the 1939 Advisory Committee study:

. . . A material change has occurred in the point of view of the education of Indians, and a program is being developed which seeks to relate instruction to the needs and interests of children as well as to develop initiative and independence. Much of the deadening routinization has been eliminated. Increased emphasis has been placed on community day schools, there has been a notable decrease in the enrollments of Government boarding schools, and the programs of the boarding schools have been improved to serve primarily the need for secondary education. Vocational education adapted to the needs of Indian children has received some attention. Provision has been made for the higher and technical education of Indian youth. Child labor in the schools has been reduced, although there is still too much of it in the elementary boarding schools. Improvement has been made in the educational personnel through higher requirements and increases in salaries. Congress has also made larger

⁴⁰ 22 Stat. 181.

⁴¹ *Blauch, op. cit.*, pp. 34, 35.

⁴² *Blauch, op. cit.*, pp. 37, 38.

⁴³ Meriam, *The Problem of Indian Administration* (1928), c. IX.

. . . a Federal Relations to Education (1931). The National Advisory Committee on Education was organized in 1929 by the Secretary of the Interior acting for the President.

appropriations to provide for larger expenditures per child in the schools. Educational management has been somewhat decentralized, more control being given to the regional and, local superintendents.⁴⁴

Another innovation is the Act of April 16, 1934,⁴⁵ commonly known as the Johnson-O'Malley Act providing for federal-state cooperation. Under the terms of this legislation, moneys appropriated, by Congress for Indian education may be turned over to "any State or Territory, or political subdivision thereof" or to "any State university, college, or school" or "any appropriate State, or private, corporation, agency, or institution" under a contract by which the recipient of federal funds undertakes to provide educational facilities in accord with standards established by the Secretary of the Interior to a specified number of Indian students. So far contracts in accordance with this act have, been made., with Arizona, California, Minnesota, and Washington.

In line with the foregoing tendency towards decentralization of federal educational activities it should be noted that in a long series of special statutes Congress has appropriated money directly to various counties and school districts for the maintenance of public schools attended by Indians.⁴⁶ Generally such statutes contain some such provision as the following:

* * * That there is hereby authorized to be appropriated, out of any moneys * * * for the purpose of cooperating with school district * * * in the improvement and extension of public-school buildings: *Provided*, That the schools * * * shall be available to both Indian and white children without discrimination, except that tuition may be paid for Indian children attending in the discretion of the Secretary of the Interior * * *.

From these varying treaty stipulations, statutory provisions and governmental policies have emerged a number of problems concerning education of the Indian. Are all Indians eligible to attend federal schools; state schools? Can Indians be compelled to attend schools? What are the limitations upon the use of funds for Indian education? At various times these and other questions have been dealt with judicially and the substance and application of these decisions must be examined.

B. ELIGIBILITY FOR SCHOOL ATTENDANCE

The most important restriction imposed on the Indian's right to attend federal schools is found in the provision that

* * * No appropriation, except appropriations made pursuant to treaties, shall be used to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they live and where there are adequate free school facilities provided.

This restriction, contained in the Appropriation Act of May 25, 1918⁴⁷ has been embodied in title 25 of the United States Code as section 297.

⁴⁴ *Blauch, op. cit.*, p. 44.

⁴⁵ Act of April 16, 1934, c. 147, 48 Stat. 596, amended by Act of June 4, 1936, 49 Stat. 1458, 25 U. S. C. 452-456.

⁴⁶ Act of June 7, 1935, c. 188, 49 Stat. 327; Act of June 7, 1935, c. 189, 49 Stat. 327; Act of June 7, 1935, c. 190, 49 Stat. 328; Act of June 7, 1935, c. 191, 49 Stat. 328; Act of June 7, 1935, c. 192, 49 Stat. 328; Act of June 7, 1935, c. 193, 49 Stat. 329; Act of June 7, 1935, c. 195, 49 Stat. 329; Act of June 7, 1935, c. 196, 49 Stat. 330; Act of June 7, 1935, c. 197, 49 Stat. 330; Act of June 7, 1935, c. 198, 49 Stat. 331; Act of June 7, 1935, c. 199, 49 Stat. 331; Act of June 7, 1935, c. 204, 49 Stat. 333; Act of June 7, 1935, c. 205, 49 Stat. 333; Act of June 11, 1935, c. 215, 49 Stat. 336; Act of June 11, 1935, c. 216, 49 Stat. 336; Act of August 30, 1935, c. 827, 49 Stat. 1013; Act of August 30, 1935, c. 828, 49 Stat. 1014.

⁴⁷ Act of June 7, 1935, c. 190, 49 Stat. 328, *supra*.

⁴⁸ C. 36, 40 Stat. 561, 564; Act of May 24, 1922, c. 199, 42 Stat. 552, 576; Act of May 13, 1916, c. 125, 39 Stat. 123, 125.

The Appropriation Act of May 18, 1916, declared that "the facilities of the Indian schools are needed for pupils of more than one-fourth

At a time when allotment was considered a step towards the termination of governmental obligations, Congress thought it proper to enact a specific statute which declares that the fact of allotment shall not be construed as a reason for excluding the children of allottees from the benefit of federal appropriations for education.⁴⁹

The eligibility of Indians to attend state schools is primarily a matter of state law, and therefore need not be considered at this point. The existence of various federal statutes designed to induce the states to offer educational facilities to Indians has already been noted,⁵⁰ and the constitutional issues involved; in state discrimination are elsewhere analyzed.⁵¹

Under certain conditions non-Indian children have the right to attend Indian schools.⁵²

C. COMPULSORY EDUCATION

The Secretary of the Interior is authorized at the present time to make and enforce regulations necessary to secure regular attendance of Indian children at Indian or public schools.⁵³

Several treaties contained provisions for compulsory school attendance for children between specified ages and for a specified part of the year.⁵⁴ Failure to comply with those provisions might involve penalties.⁵⁵ However, compulsory education was not a common feature of treaties up to the cessation of treaty-making in 1871.

At least as early as 1877, common schools and compulsory education were urged by the Commissioner of Indian affairs as a general policy.⁵⁶

In 1891,⁵⁷ Congress provided for regulations to enforce, by proper means, the regular attendance of Indian children of suitable age and health at schools established for their benefit. In 1893 much stronger methods were adopted. In the discretion of the Secretary of the Interior, parents were given the alternative of sending their children to school or losing their portion of the annual rations or subsistence.⁵⁸

A year later, Congress made it clear that compulsory attendance was not to apply to nonreservation schools, enacting legislation⁵⁹ which forbade the removal of Indian children to reservations outside the state or territory in which they resided without the consent of parents or next of kin, and, further declared:

* * * And it shall be unlawful for any Indian agent or other employe of the Government to induce, or seek to induce, by withholding rations or by other improper

Indian blood." (*Davis v. Sitka School Board*, 3 Alaska 481, 491 (1908).) See also Chapter 21, sec. 7.

⁴⁹ Act of August 15, 1894, 28 Stat. 286, 311.

⁵⁰ See fn. 45; *supra*.

⁵¹ See Chapter 8, sec. 10.

⁵² Act of March 1, 1907, 34 Stat. 1015; 1018, 25 U. S. C. 288; Act of March 3, 1909, 35 Stat. 781, 783; 25 U. S. C. 289.

⁵³ Act of February 14, 1920, 41 Stat. 408, 410, 25 U. S. C. 282. For regulations regarding education of Indians, see 25 C. F. R. 41.1-47.7.

⁵⁴ E. g., Treaty of April 19, 1858, with the Yancon Tribe, Art. 4, sec. 4, 11 Stat. 743; Treaty of March 12, 1858, with the Ponca Tribe, Art. 2, sec. 4, 12 Stat. 997; Treaty of April 29, 1868, *et seq.*, with the Sioux Tribes, 15 Stat. 635, Art. 7.

⁵⁵ *Treaties of April 19, 1858, 11 Stat. 743, and March 12, 1858, 12 Stat. 997*, carried the definite penalty for failure to comply with withholding annuities by the Secretary of the Interior. The Treaty of April 29, 1868, *et seq.*, 15 Stat. 635, contained a pledge to comply. See fn. 72, *infra*.

⁵⁶ Report of the Commissioner of Indian Affairs, 1877, p. 1.

⁵⁷ Act of March 3, 1891, 26 Stat. 989, 1014, 25 U. S. C. 284. The Commissioner of Indian Affairs was authorized to make regulations to secure attendance by the Act of July 13, 1892, 27 Stat. 120, 143, 25 U. S. C. 284.

⁵⁸ Act of March 3, 1893, 27 Stat. 612, 623, 635, 25 U. S. C. 283.

⁵⁹ Act of August 15, 1894, c. 290, sec. 11, 28 Stat. 286, 313.

means, the parents or next of kin of any Indian to consent to the removal of any Indian child beyond the limits of any reservation.

This provision was reenacted a year later,⁶⁰ and has been incorporated in title 25 of the United States Code as section 286.

Under this statute it has been suggested that a writ of habeas corpus will be issued to compel the release of an Indian child placed in a nonreservation school without parental consent.⁶¹

The Indian Service sought to evade the force of this statute by having a local Indian agent apply in the courts of the state to be appointed the guardian of the persons of the Indian children. His application was granted and he was directed to place the children at the industrial school, which was done. Later this proceeding was declared invalid by the federal court, which declared that if a county court could appoint a guardian of Indian children and could direct the placing of these children in any of the schools of the state, then the tribal condition of the Indians could be speedily broken up, not in pursuance of the acts of the National Government, but through the enforcement of the laws of the state acting upon the persons and property of the Indians.⁶²

Consent of parents, guardians, or next of kin is not required to place Indian youths in an "Indian Reform School."⁶³

No Indian pupil under the age of 14 may be transported at Government expense beyond the limits of the state or territory where its parents reside or of the adjoining state or territory.⁶⁴

In 1913 an act was passed which authorized retention of annuities due Osage minors from parents who refused to send their children to some established school.⁶⁵

After Indians became citizens and responsibility for the Indian devolved to some extent at least upon the states, state agents and employees, under regulations of the Secretary of the Interior, were authorized to enter reservations as truant officers to enforce laws of states requiring regular school attendance.⁶⁶

D. USE OF FUNDS FOR INDIAN EDUCATION

From time to time Congress has placed certain restrictions on its appropriations for the support of Indian schools.

⁶⁰ Act of March 2, 1895, 28 Stat. 876, 906. See also Act of June 10, 1896, 29 Stat. 321, 348, 25 U. S. C. 287.

⁶¹ See *In re Lelah-puc-ka-chee*, 98 Fed. 429 (D. C. N. D. Iowa, 1899).

⁶² *Peters v. Mallin*, 111 Fed. 244 (C. C. N. D. Iowa 1901). *Of. State v. Wolf*, 145 N. C. 440, 59 S. E. 40 (1907) (state law compelling school attendance applied to Indian children and federal Indian school). In an Alaskan case, *In re Can-ah-couqua*, 29 Fed. 687 (D. C. Alaska 1887), the question of continued attendance at school was at issue. It is interesting to note that the decision was put on a quasi-contract basis, the Alaska district court holding the mother of the child could not reclaim him from the custody of a Presbyterian mission school because she had agreed to allow him to attend for 5 years, and unless a clear breach or abuse of the child or a failure to educate and provide for and properly superintend its moral training was shown, it would be presumed that the best interests of the child would be served by continuance at school. Contrast with this the accepted view that when a white parent agrees to transfer custody of the child to another not *in loco parentis*, he may ordinarily repudiate that agreement and the courts will return custody to him unless a reciprocal affection has grown up between the custodian and child. The primary concern in these situations is still the best interest of the child, but the court ordinarily hold that when the parents are alive and competent it is to the best interest of the child to return him to the parents. *Sandr v. Villapiano*, 81 F. 2d 255 (App. D. C. 1936).

⁶³ Act of June 21, 1906, 34 Stat. 325, 328, 25 U. S. C. 302.

⁶⁴ Act of March 3, 1909, 35 Stat. 781, 783; 25 U. S. C. 290.

⁶⁵ Act of June 30, 1913, 38 Stat. 77, 96, 25 U. S. C. 285. *Of. fns. 54-55, supra.*

It is no longer the practice to withhold annuities to compel attendance.

⁶⁶ Act of February 15, 1929, 45 Stat. 1185, 25 U. S. C. 231.

In 1897, Congress declared it to be the policy of the government thereafter to make no appropriation whatever for education in any sectarian school.⁶⁷ In 1905,⁶⁸ contracts were made with mission schools, the money being taken from treaty and trust funds (tribal funds) on request of Indians. This use of tribal funds was challenged as being contrary to the policy stated in the appropriation act for 1897. The Supreme Court held, in 1908,⁶⁹ that both treaty and trust funds to which the Indians could lay claim as a matter of right, were not within the scope of the statute and could be used for sectarian schools.

In 1917, a statute was enacted which provided that "no appropriation whatever out of the Treasury of the United States" could be used "for education of Indian children in any sectarian school."⁷⁰ The effect of the newly added phrase "out of the Treasury of the United States" is not clear. At the present time money is appropriated for the institutional care⁷¹ of Indian children in sectarian schools rather than for their instruction.

Controversies in the Court of Claims involve educational provisions of treaties and the use of tribal funds for educational purposes.⁷²

Legislation⁷³ limiting the annual per capita cost in Indian schools has been repealed.⁷⁴

All expenditures of money appropriated for school purposes among Indians are under the direction of the Commissioner of Indian Affairs, subject to the supervision of the Secretary of the Interior.⁷⁵

Tribal and gratuity funds are made available for advances to worthy Indian youth to enable them to take educational courses, including special courses in nursing, home economics, forestry, and other industrial subjects in colleges, universities, or other institutions, the advances to be reimbursed in not to exceed 8 years.⁷⁶

The status of Indian Service educational personnel involves problems of Indian Office structure and policy, which are separately treated.⁷⁷

⁶⁷ Act of June 7, 1897, 30 Stat. 62, 79, 25 U. S. C. 278. And see Act of June 10, 1896, 29 Stat. 321, 345.

⁶⁸ Act of March 3, 1905, 33 Stat. 1048, 1055.

⁶⁹ *Quick Bear v. Leupp*, 210 U. S. 50, 80 (1908).

⁷⁰ Act of March 2, 1917, 39 Stat. 969, 988, 25 U. S. C. 278.

⁷¹ The Act of June 21, 1906, 34 Stat. 325, 326, 25 U. S. C. 279, provided for receipt of rations by mission schools for children enrolled in such schools who were entitled to rations under treaty stipulations.

⁷² See fns. 22-27, fns. 54 and 55, *supra*.

The educational provisions of the Treaty of April 29, *et seq.*, 1868, with the Sioux Tribe of Indians, 15 Stat. 635, formed the basis of a petition filed May 7, 1923, in the Court of Claims, under authority of the Act of June 3, 1920, 41 Stat. 738 (Sioux). The petitioner alleged that treaty provisions for a teacher and schoolhouse for every 300 children were unfulfilled and asked compensatory damages. The Court in dismissing the petition held that the treaty imposed an obligation upon the Indian parents to compel attendance which had not been discharged and that, moreover, there existed no logical basis for computing damages. *Stouff v. United States*, 84 C. Cls. 16 (1936), cert. den. 302 U. S. 740. Other Court of Claims cases concern the possibility of a counterclaim by the United States for gratuitous expenditures for education against Indian tribal claims. The language of pertinent jurisdictional acts on this point varies. *Osage Tribe of Indians v. United States*, 66 C. Cls. 64 (1928), app. dism. 279 U. S. 811, 68 C. Cls. 788; *Fort Berthold Indians v. United States*, 71 C. Cls. 308 (1930); *Blackfeet et al. Nations v. United States*, 81 C. Cls. 101 (1935). *Of. Chickasaw Nation v. United States*, 87 C. Cls. 91 (1938), cert. den. 307 U. S. 646.

⁷³ Act of April 30, 1908, 35 Stat. 70, 72; Act of June 30, 1919, 41 Stat. 3, 6; Act of February 21, 1925, 43 Stat. 958; 25 U. S. C. 296.

⁷⁴ Act of March 2, 1929, 45 Stat. 1534.

⁷⁵ Act of April 30, 1908, 35 Stat. 70, 72, 25 U. S. C. 295.

⁷⁶ See sec. 6, *infra*.

⁷⁷ See Chapter 2.

SECTION 3. HEALTH SERVICES ⁷⁸

When the Federal Government assumed the education of Indians, some degree of responsibility for their health was incidentally involved, and the first expenditures for Indian health were made from funds appropriated for education and civilization.⁷⁹ Early expenditures for health and medical care were made from tribal funds under treaties and from general appropriations for education or incidentals.⁸⁰ These appropriations were allotted among various religious and philanthropic societies already active in educational and missionary work among the various Indian tribes.⁸¹

While the superintendency of Indian Affairs was under the War Department,⁸² the Indians were for the most part in the vicinities of military posts. It was a natural and convenient thing that dispensation of medical care and sanitary regulation be assumed by members of the army medical staff located on the nearby posts.

In 1832, Congress⁸³ authorized the Secretary of War to provide vaccination against smallpox for the Indians and made an appropriation for that purpose.

In 1849,⁸⁴ when the Department of the Interior was established, medical care of the Indian under the Bureau of Indian Affairs passed from military to civil control. Under this department, agency physicians on the reservation at first gave little attention to the Indians and acted more in the capacity of doctors for the government employees, or in connection with Indian schools.⁸⁵ Treaties⁸⁶ entered into included provisions for physicians and hospitals. In 1873, measures were taken towards furnishing organized medical facilities and an educational and medical

division which continued until 1877.⁸⁷ By 1874,⁸⁸ about one-half of the Indian agencies were each supplied with a physician. After 1878⁸⁹ physicians on Indian reservations were required to be graduates of medical colleges. Between 1880 and 1890,⁹⁰ several hospitals were established. In 1909,⁹¹ prevalence of trachoma among the Indians had become so devastating that funds were appropriated for investigation, treatment, and prevention of this disease, and in 1912⁹² money was allotted to the Public Health and Marine Service for a survey of trachoma and tuberculosis.

After 1911,⁹³ appropriations under the heading "relief of distress and prevention of contagious diseases" were greatly increased and were spent on correspondingly increased medical care and hospital facilities.⁹⁴ Since 1921,⁹⁵ when the Bureau of Indian Affairs was authorized to expend funds for the conservation of health, funds have been appropriated specifically for that purpose. In 1924, a special division of health was established in the Office of Indian Affairs.

Fees may be charged for medical, dental, and hospital services under such rules and regulations as the Secretary of the Interior may prescribe.⁹⁶ Other regulations⁹⁷ in force relative to health activities of the Indian Service, briefly summarized, state that health personnel is subject to civil service regulations; physicians may not engage in outside practice; they are responsible for health conditions on the reservation, prevention of diseases and are required to treat and medically instruct Indians at established offices, clinics, or in their homes; they are required to make reports of all contagious diseases, inoculations, immunizations, vital statistics; cooperate with state officials and otherwise enforce necessary quarantine regulations and sanitary inspections; immunize and inoculate against contagious diseases.⁹⁸ All admissions and discharges to and from hospitals are upon order of physician. Adults leaving the hospital against the advice of physician in charge must give a written release of all liability to the Indian Service. Parents or guardians must give written permission for hospitalization of a minor or incompetent person and consent for surgical operations must be obtained from

⁷⁸ For regulations concerning hospital and medical care of Indians, see 25 C. F. R. 84.1-85.15.

⁷⁹ See sec. 2. *supra*.

⁸⁰ Sen. Ex. Doc. 48th Cong., 2d sess., vol. 2, pt. 2, Special Report of 1888 on Indian Education and Civilization, p. 168.

⁸¹ American Board of Foreign Missions, Moravians, Baptist Board of Foreign Missions, Society of Friends. The reports of religious and educational societies even in prerevolutionary days refer to health and medical care for students. Mass. Hist. Coll., 1st series, vol. I (1792 ed.) p. 173. Regarding two Indian students at Cambridge, Mass. in 1654: "The other called Caleb, not long after took his degree . . . died of a consumption at Charlestown, where he was placed . . . under the care of a physician . . . where he wanted not for the best: means the country could afford, both of food and physick . . ." Accounts of the Superintendent of Indian Affairs of 1820-21 include items for medical service and supplies. 8 Am. State Papers (class II, Indian Affairs, vol. 2) 1815-27, p. 299.

⁸² Act of May 25, 1824, 4 Stat. 35.

⁸³ Act of May 5, 1832, 4 Stat. 514. "For vaccine matter and vaccination of Indians" was a regular item in appropriation bills.

⁸⁴ Act of March 3, 1849, 9 Stat. 395.

⁸⁵ Speech of Dr. James Townsend before Western Branch, American Public Health Ass'n., July 24, 1939 "Government and Indian Health."

⁸⁶ Treaty of January 22, 1855, with the Dwyamish, etc., Indians, 12 Stat. 927, 929; Treaty of January 26, 1855, with the Skallam Indians, 12 Stat. 933, 935; Treaty of January 31, 1855, with the Makahs, 12 Stat. 939, 941; Treaty of June 9, 1855, with the Walla-Wallas, Cayuses, and Umatilla Bands, 12 Stat. 945, 947; Treaty of June 9, 1855, with the Yakama Nation, 12 Stat. 951, 953; Treaty of June 11, 1855, with the Nez Perce Indians, 12 Stat. 957, 959; Treaty of June 25, 1855, with the Indians in Middle Oregon, 12 Stat. 963, 965; Treaty of July 1, 1855, and January 25, 1856, with the Qui-nai-elts and Quil-eh-ute, 12 Stat. 971, 973; Treaty of July 16, 1855, with the Flatheads, etc., 12 Stat. 975, 977; Treaty of October 21, 1867, with the Kiowa and Comanche Tribes, 15 Stat. 581, 584; Treaty of October 28, 1867, with the Cheyenne and Arapahoe Tribes, 15 Stat. 593, 597; Treaty of April 29, 1868, *et. seq.*, with the Sioux, 15 Stat. 635, 638; Treaty of May 7, 1868, with the Crow Tribe, 15 Stat. 649, 652; Treaty of May 10, 1868, with the Northern Cheyenne and Arapahoe Tribes, 15 Stat. 655, 658; Treaty of July 3, 1868, with the Eastern Band of Shoshones and Bannock Tribes, 15 Stat. 673, 676.

⁸⁷ Sen. Ex. Doc., 48th Cong., 2d sess., vol. 2, pt. 2, Special Report of 1888 on Indian Education and Civilization, p. 168. Annual Report of the Commissioner of Indian Affairs, 1885, p. LXXVI.

⁸⁸ Speech of Dr. Townsend, *op. cit.*,

⁸⁹ *Ibid.*

⁹⁰ Annual Reports of the Commissioner of Indian Affairs, 1887, pp. 227, 264; 1888, p. XXXV.

⁹¹ Act of February 20, 1909, 35 Stat. 642.

⁹² Act of August 24, 1912, 37 Stat. 518, 519.

⁹³ Act of March 3, 1911, 36 Stat. 1058.

⁹⁴ Specific appropriations for health work among Indians: 1911, \$40,600; 1912, \$60,000; 1913, \$90,000; 1914, \$200,000; 1915, \$300,000; 1916, \$300,000; 1917, \$350,000; 1918, \$350,000; 1919, \$350,000; 1920, \$375,000; 1921, \$350,000; 1922, \$375,000; 1923, \$370,000; 1924, \$370,000; 1925, \$596,270; 1926, \$700,000; 1927, \$756,000; 1928, \$948,000; 1929, \$1,514,000; 1930, \$2,658,000; 1931, \$3,074,110; 1932, \$4,050,000; 1933, \$3,213,000; 1934, \$2,996,200; 1935, \$2,981,040; 1936, \$3,534,620; 1937, \$4,062,360; 1938, \$4,595,690; 1939, \$5,024,000; 1940, \$5,088,170. See appropriation acts listed in Chapter 4.

⁹⁵ Act of November 2, 1921, 42 Stat. 208, 25 U. S. C. 13.

⁹⁶ Act of May 9, 1938, 52 Stat. 291, 312, 25 U. S. C. 562.

⁹⁷ 25 C. F. R. 84.1-85.15. Regulations apply to tribes organized pursuant to the Reorganization Act of June 18, 1934, 48 Stat. 984, amended, Act of June 15, 1935, 49 Stat. 378, and the Oklahoma Welfare Act of June 26, 1936, 49 Stat. 1967, 25 U. S. C. 500, 501, except where inconsistent with tribal constitutions or bylaws, in case of conflict, tribal law provisions supersede regulations.

⁹⁸ Act of August 1, 1914, 38 Stat. 582, 584, 25 U. S. C. 198.

the patient. if an adult ; if a minor or incompetent. from parents or guardians.⁹⁰

Under regulations¹⁰⁰ relating to hospitals, indigent Indians recognized as tribal members are admitted without cost. In tribal hospitals supported by tribal funds, all tribal members are entitled to free hospitalization. Priority of admission is based on necessity for hospitalization and degree of Indian blood. White wives of Indians. Indian children from Government schools. Indian widows of whites or of nonrestricted Indians, if residing on reservations, are eligible for admission. Indian wives and children of white men are not admitted unless residents on reservations and participants in tribal affairs.

Indians as citizens of the states in which they reside frequently claim and sometimes obtain the public health protection of the various states. To facilitate cooperation between the state and Federal Government, the Secretary of the Interior in 1929¹⁰¹ was authorized to permit agents and employees of any state to enter on tribal land, reservation, or allotment therein for the purpose of making inspections of health and enforcing sanitation and quarantine regulations

In 1934, the Johnson-O'Malley Act¹⁰² became law and provided that the Secretary of the Interior might enter into contracts with states or territories for medical attention to Indians

In 1935, under the Social Security Act, increased health benefits were made available to the Indians.¹⁰³

In 1936,¹⁰⁴ the President, by Executive order, provided that officials and employees of the Indian Service serving in a medical or sanitary capacity could hold state, county, or municipal positions of similar character without additional compensation, with the consent of the Secretary of the Interior.

In the enforcement of public health regulations the Secretary of the Interior has been authorized to impose quarantine and when necessary to confine persons afflicted with infectious diseases.¹⁰⁵

⁹⁰ 25 C. F. R. 84, 85.

¹⁰⁰ *Ibid.*

¹⁰¹ Act of February 15, 1929. 45 Stat. 1185, 25 U. S. C. 231.

¹⁰² Act of April 16, 1934. 48 Stat. 596, amended June 4, 1936. 49 Stat. 1458, 25 U. S. C. 452-454.

¹⁰³ See sec. 5 of this Chapter.

¹⁰⁴ Executive Order 7369. May 13, 1936.

¹⁰⁵ Act of August 1, 1914. 38 Stat. 582, 584.

Care of insane Indians has for many years been considered within the powers of the Secretary.¹⁰⁶ Payment for their care is made to various hospitals for the insane including St. Elizabeths Hospital in the District of Columbia, which is a federal institution.¹⁰⁷

Commitment of an Indian to a hospital for the insane requires a sanity hearing to insure due process.¹⁰⁸ The laws of the states where reservations are located are conformed to in the commitment of insane Indians to state mental hospitals or state institutions for the insane. An insane Indian residing on an Indian reservation under the jurisdiction of the United States may be committed to St. Elizabeths Hospital by order of the Secretary of the Interior. A certificate of insanity made by two reputable physicians who have conducted an examination of the Indian is required before issuance of an order of the Secretary. Notice of the time and place of such examination must be personally served upon the alleged insane Indian, the spouse, parent, or other next of kin known to be residing on the reservation. The Indian alleged to be insane has the right to present witnesses and to submit evidence of his sanity.¹⁰⁹

In any case in which an Indian is alleged to be insane or of unsound mind, and such Indian has displayed homicidal tendencies or has otherwise demonstrated that if permitted to remain at large or to go unrestrained, the rights of persons and of property will be jeopardized or the preservation of the public peace imperiled and the commission of crime rendered-probable, the superintendent has authority to take such Indian into custody and to detain him temporarily in some suitable place pending proper legal adjudication of his insanity.

¹⁰⁶ 25 U. S. C. 13. derived from Act of November 2, 1921. 42 Stat. 208, grants the Bureau of Indian Affairs power to expend money for relief of distress and conservation of health.

¹⁰⁷ Act of April 28, 1904. 33 Stat. 539. directs that insane Indians in Indian Territory be cared for at the asylum for insane Indians at Canton, S. Dak. The Appropriation Act of May 10, 1939. 53 Stat. 685, 736. provides for the admission to St. Elizabeths Hospital of "insane Indian beneficiaries of the Bureau of Indian Affairs."

¹⁰⁸ *Cf. Barry v. Hall*, 98 F. 2d 222 (App. D. C. 1938). This case requires all persons admitted to St. Elizabeths Hospital to have been determined insane upon hearing with an opportunity for defense. Memo. Sol. I. D., July 27, 1939.

¹⁰⁹ 25 C. F. R. 84.

SECTION 4. RATIONS, RELIEF, AND REHABILITATION

The common belief that Indians, as such, receive rations from the Federal Government is not in accord with the facts.¹¹⁰

As noted in the introduction to this chapter, frequently in sales of Indian land¹¹¹ supplies were used instead of cash as the *quid pro quo* offered to compensate the Indian for value received by the United States. Later, as the Indians advanced sufficiently in the knowledge of white man's civilization to purchase their own supplies and clothing, the value of promised supplies was frequently commuted and paid in money per capita to the members of various tribes.¹¹²

As a matter of hospitality, a law¹¹³ authorizing food for Indians visiting at army posts has remained on the statute book for over a hundred years. Relief, frequently dispensed in the form of food, has been authorized in general appropriations¹¹⁴ for indi-

gent Indians. The charitable nature of these limited appropriations, however, has been mistakenly attributed generally to all provisions relating to rations. The failure to recognize that issuance of rations may be a form of payment of obligations to Indians resulted in the provision in the Act of March 3, 1875,¹¹⁵ that able-bodied male Indians give service and labor in return for supplies distributed to them.

At the present time, when relief is given in the form of food and supplies, labor is required of recipients of relief rations wherever possible. Such rations may not be sold or exchanged. They can be shared only with dependents of the recipients.¹¹⁶

Under recent appropriation acts¹¹⁷ tribal funds have been made available for relief purposes.

¹¹⁰ 18 Stat. 420, 449. 25 U. S. C. 137.

¹¹¹ 25 C. F. R. 251.2, 251.3.

¹¹² Act of May 9, 1938. 52 Stat. 291, 314. Tribal funds are appropriated for relief of Indians. "in need of assistance, including cash grants; the purchase of subsistence supplies . . . and household goods; . . . transportation, and all other necessary expenses, \$100,000, payable from funds on deposit to the credit of the particular tribe concerned."

¹¹³ 25 C. F. R. 251.1. Also see 251.2-251.8.

¹¹⁴ For example, see treaties of February 19, 1867, with the Sisseton and Warpeton, 15 Stat. 505; October 21, 1867, with the Kiowa and Comanche, 15 Stat. 581; May 7, 1868, with the Crow, 15 Stat. 649.

¹¹⁵ Act of July 1, 1898. 30 Stat. 571, 596, 25 U. S. C. 136.

¹¹⁶ Act of May 13, 1900. 2 Stat. 85; R. S. § 2110. 25 U. S. C. 141.

¹¹⁷ See appropriation acts, Chapter 4.

Allotments are made to the superintendents of the various agencies for the relief of indigent Indians under their supervision. These allotments are spent chiefly for supplies, food, and clothing; ¹²⁵ a limited amount being spent also for work relief and for subsistence grants when unusual circumstances warrant such procedure. Rarely is relief given in the form of cash.

¹²⁴ Relief situations are often of an emergency nature and purchases for relief dispensation are permitted without usual advertisement required by R. S. § 3709. Compliance is apparently required with the provisions of the Act of May 27, 1930, 46 Stat. 391, requiring purchases of shoes or other articles available from prison manufacture to be made through the Federal Prison Industries, Inc.—Hearings, H. Subcomm. of

A chief object of recent rehabilitation work has been to provide landless Indians with land, houses, outbuildings, fencing, water supply, etc., so that with equipment and livestock provided from other sources they may be enabled to work the land in a self-supporting manner. ¹²⁶ Aid to individual Indians in this field has generally taken the form of loans rather than grants, and is therefore considered under section 6 of this Chapter.

Comm. on Appropriations, Interior Dept., 76th Cong., 3d sess., pt. II, p. 502.

¹²⁵ *Ibid.* The National Resources Board, as the result of a survey of Indian homes in 1935, has reported that some 70 percent of Indian dwellings are probably below a reasonable living standard.

SECTION 5. SOCIAL SECURITY BENEFITS

In 1936 ¹²⁷ the Solicitor of the Interior Department rendered an opinion which held that the Social Security Act ¹²⁸ was applicable to the Indians; The act contemplates three types of direct aid by states in cooperation with the Government to their needy citizens, that is, aid to needy aged individuals, to needy dependent children, and to needy individuals who are blind.

In connection with these three types of direct aid, it was determined that as a state plan must be "in effect in all political subdivisions of the State," and as Indian reservations are included within states, counties, and other political subdivisions, Indians are entitled to aid under state plans.

Other provisions of the Social Security Act provide federal assistance in the care of crippled children, maternal health service and public health service, special attention being given to rural areas and areas suffering from severe economic distress. One of the bases for allotment of federal funds was population of states. Statistics relating to population included Indians. Their inclusion in the compilation would seem to

prohibit any implication that Indians were to be deprived of the benefits of the act. To quote the Solicitor,

In computing these statistics no omission is made of the Indians and official registration and census rolls have been used which, of course, include the Indian population. It would be manifestly contrary to the intention of the act that funds allotted to cover a certain number of people should be used only for a chosen group to the exclusion of others included in the count;

Furthermore it was held that, as citizens, Indians were entitled to social security benefits, all Indians who were not already citizens having become so by the Act of June 2, 1924. ¹²⁹

In view of these considerations, the Solicitor held that no distinction is justified between the Indian and other state citizens, and that the law requires that social security benefits be distributed without discrimination against the Indians.

According to Dr. James Townsend, ¹³⁰ Director of Health, Office of Indian Affairs, most states are actively assisting in the application of the Social Security Act to Indians, others are assisting to a lesser degree, and still others resist expenditure of state and local funds for Indians, even to the point of failure to accept Indian applications.

¹²⁶ Memo. Sol. I. D., April 22, 1936.

¹²⁷ Act of August 14, 1935, 49 Stat. 620.

¹²⁸ 43 Stat. 253. See Chapter 8, sec. 2.

¹²⁹ Speech by Dr. Townsend. *Op. cit.*

SECTION 6. FEDERAL LOANS

Loans advanced by the Federal Government to the Indians are financed from gratuity appropriations, ¹³¹ appropriations from tribal funds, ¹³² and revolving credit funds established under the Indian Reorganization Act ¹³³ and the Oklahoma Welfare Act. ¹³⁴ The Klamath Indians may borrow from a revolving credit fund specifically set up for that tribe. ¹³⁵

In addition, loans and grants have been made available to the tribe and their members under emergency relief appropriation acts beginning in 1935 for financing rehabilitation of families in stricken agricultural areas. ¹³⁶ It is also possible for Indian tribes to borrow from other federal agencies funds appropriated for such purposes in promotion of the general welfare of the nation as low-rent housing development, when the tribes meet the eligibility requirements of the controlling federal legislation. ¹³⁷

A. LOANS UNDER SPECIAL INDIAN LEGISLATION

Since 1912, Congress has appropriated ¹³⁸ gratuity funds for reimbursable loans direct from the Government to individual

Indians. Prior to 1938 loans were made in the form of property, but since that year Indians have received cash loans. These loans were designed to establish Indians in self-supporting individual enterprises including farming, stock raising, and other industries. Loans have been granted also to assist old and indigent Indians who have land they cannot use.

A limited number of qualified Indians are able to obtain loans from gratuity and tribal funds for educational purposes, for payment of tuition, and other expenses in recognized vocational and trade schools. ¹³⁹

Recipients of loans from gratuity funds are for the most part members of tribes not organized under the Indian Reorganization Act, ¹⁴⁰ who therefore are not eligible to borrow funds under that act. With the exception of members of the Osage Tribe, loans from gratuity funds are not made to residents of the State of Oklahoma.

Congress has also made available for loans to the members of certain tribes a part of their tribal funds. These are handled as tribal revolving credit funds under which loans are made to

¹³¹ 25 U. S. C. 13; annual appropriation acts.

¹³² 25 U. S. C. 123; annual appropriation acts.

¹³³ Act of June 18, 1934, sec. 10, 48 Stat. 984, 986, 25 U. S. C. 470.

¹³⁴ Act of June 26, 1936, sec. 6, 49 Stat. 1967, 1968, 25 U. S. C. 506.

¹³⁵ Act of August 28, 1937, 50 Stat. 872.

¹³⁶ See subsection B, *infra*.

¹³⁷ See subsection B, *infra*.

¹³⁸ 25 U. S. C. 13, 123. And see annual appropriation acts. Chapter 4

¹³⁹ Hearings, A. Subcomm. of Comm. on Appropriations, Interior Dept., 76th Cong. 3d sess., pt. II, p. 175.

¹⁴⁰ Act of June 18, 1934, 48 Stat. 984, 986, 25 U. S. C. 470. Under sec. 11 of the Indian Reorganization Act similar provisions are made for loans for educational purposes.