

The role that was played by missionary groups through *their teachers and schools was clearly stated by Commissioner Medill :

In every system which has been adopted for promoting the cause of education among the Indians, the Department has found its most efficient and faithful auxiliaries and laborers in the societies of the several Christian denominations * * *

Commissioner, Orlando Brown, in addition to various reports on the status of removal, including a full report on the proposed removal of the Seminoles to be " * * * conducted by the military alone . . . *,"⁸⁸ made recommendations for various changes in policy: That. (1) " * * * in all treaties hereafter to be made with the Indians, the policy of giving goods, farming utensils, provisions, etc., in lieu of money, be insisted on * . . . * as far as practicable;"⁸⁹ that (2) Congress take steps for the ultimate participation in the national legislation of those Indians qualified or soon to be so;⁹⁰ that (3) there be made various changes in personnel: the number of superintendents be increased from 6 to 7,⁹¹ the duties of agent and superintendent, and superintendent and governor of a Territory be separated,⁹² the position of subagent (salary \$750 per annum, with duties often equal to those of agent) be abolished⁹³ and that of minor agent, with a salary lower than that of agent (\$1,500 per annum) where the responsibilities and Indians are fewer, be established."

B. THE PERIOD FROM 1351 TO 1367

The question of the status of the Indian, and the technique by which he might be civilized, had not been answered satisfactorily in 1851 when Commissioner Luke Lea wrote :

On the general subject of the civilization of the Indians many and diversified opinions have been put forth; but unfortunately, like the race to which they relate, they are too wild to be of much utility. The great question, How shall the Indians be civilized? yet remains without a satisfactory answer. The magnitude of the subject, and the manifold difficulties inseparably connected with it, seem to have bewildered the minds of those who have attempted to give it the most thorough investigation. * * * I therefore leave the subject for the present, remarking only, that any plan for the civilization of our Indians will in my judgment, be fatally defective, if it do not provide in the most efficient manner, first, for their concentration secondly, for their domestication; and, thirdly, for their ultimate incorporation into the great body of our citizen population."⁹⁴

Commissioner Lea's recommendation that the Indians be concentrated "was effectuated through the gradual diminution of the size of most Indian reservations. The plea for domestication had appeared in earlier reports, and was, in fact, the accepted practice of the Bureau of Indian Affairs at that time. The recommendation that Indians be ultimately incorporated into the citizenry of the country may mark a new departure from the theory and practice of removal and segregation. It apparently bore fruit in the Allotment Act,⁹⁵ with its provisions for citizen ship and fee simple tenure of land.

precision the ratio of increase or decrease among the aboriginal population. * * *

(Excerpt. Report of Secretary of the Interior. 1869. p. 4. In Rep. Comm Ind. ha., 1859.)

⁸⁸ Rep. Comm. Ind. Aff., 1847. p. 749.

⁸⁹ Rep. Comm. Ind. Aff., 1849. pp. 939-941.

⁹⁰ Ibid., p. 958.

⁹¹ Ibid.

⁹² Ibid., p. 953.

⁹³ Ibid., pp. 952, 953.

⁹⁴ Ibid., pp. 954, 955.

⁹⁵ This would circumvent the limitation to 11, of full agents authorize by law (Rep. Comm. Ind. Aff., 1849. pp. 954, 956).

⁹⁶ Rep. Comm. Ind. Aff., 1851, pp. 12-13.

⁹⁷ Act of February 8, 1887. 24 Stat. 388. See Chapter 11.

In 1853, Commissioner Manypenny objected to the practice of admitting Indian tribes, engulfed in the stream of western migration, to retain portions of their tribal domains as reservations.

With but few exceptions, the Indians were opposed to selling any part of their lands, as announced in their replies to the speeches of the commissioner. Finally, however, many tribes expressed their willingness to sell, but on the condition that they could retain tribal reservations on their present tracts of land. * . . *⁹⁸ The idea of retaining reservations, which seemed to be generally entertained, is not deemed to be consistent with their true interests, and every good influence ought to be exercised to enlighten them on the subject. If they dispose of their lands, no reservations should, if it can be avoided, be granted or allowed. There are some Indians in various tribes who are occupying farms, comfortably situated, and who are in such an advanced state of civilization, that if they desired to remain, the privilege might well, and ought perhaps to be granted, and their farms in each case reserved for their homes. Such Indians would be qualified to enjoy the privileges of citizenship. But to make reservations for an entire tribe on the tract which it now owns, would, it is believed, be injurious to the future peace, prosperity, and advancement of these people. The commissioner, as far as he judged it prudent, endeavored to enlighten them on this point, and labored to convince them that it was not consistent with the true interest of themselves and their posterity that they should have tribal reservations within their present limits."⁹⁹

Commissioner Manypenny further urged the revision of the intercourse Act of 1334¹⁰⁰ and the regulations promulgated thereunder, to meet changing conditions in Indian relations.

* * * A new code of regulations is greatly needed for this branch of the public service. That now in force was adopted many years since, and, in many particulars, has become obsolete or inapplicable, especially in our new and distant territories. The regulations now existing are based upon laws in force respecting Indian affairs, and the President has authority, under the act of June 30, 1834,¹⁰¹ providing for the organization of the department of Indian Affairs, to prescribe such rules as he may think fit for carrying into effect its provisions."¹⁰²

That plea is repeated by succeeding commissioners.

In his second annual report,¹⁰³ Commissioner Manypenny foresaw a crisis in the whole removal policy, and urged its abandonment in favor of fixed and permanent settlements "thereafter not to be disturbed."

* * * By alternate persuasion and force, some of these tribes [in Kansas territory] have been removed, step by step, from mountain to valley, and from river to plain, until they have been pushed half-way across the continent. They can go no further; on the ground they now occupy the crisis must be met, and their future determined."¹⁰⁴

The wonderful growth of our distant possessions, and the rapid expansion of our population in every direction, will render it necessary, at no distant day, to restrict the limits of all the Indian tribes upon our frontiers, and cause them to be settled in fixed and permanent localities, thereafter not to be disturbed. The policy of removing Indian tribes from time to time, as the settlements approach their habitations and hunting-grounds, must be abandoned. The emigrants and settlers were formerly content to remain in the rear, and thrust the Indians before them, into the wilderness; now the white population, overlaps the reservations and homes of the Indians, and is beginning

⁹⁸ Rep. Comm. Ind. Aff., 1853, p. 249.

⁹⁹ Ibid., p. 250. See Commissioner Denver's report (1857), *infra*, of Indians being permitted to retain such tribal land.

¹⁰⁰ Act of June 30, 1834, 4 Stat. 729.

¹⁰¹ Act of June 30, 1834, 4 Stat. 735.

¹⁰² Rep. Comm. Ind. Aff., 1853, pp. 261-262.

¹⁰³ Rep. Comm. Ind. Aff., 1854.

¹⁰⁴ Ibid., p. 10.

to inhabit the valleys and the mountains beyond; hence removal must cease, and the policy abandoned. * * *

To protect Indian funds from fraud, Commissioner Manypenny recommended that—

* * * All executory contracts of every kind and description, made by Indian tribes or bands with claim agents, attorneys, traders, or other persons, should be declared by law null and void, and an agent, interpreter, or other person, employed in or in any way connected with the Indian service, guilty of participation in transactions of the kind referred to, should be instantly dismissed and expelled from the Indian country; and all such attempts to injure and defraud the Indians, by whomsoever made or participated in, should be penal offences, punishable by fine and imprisonment. We have now penal laws to protect the Indians in the secure and unmolested possession of their lands, and also from demoralization by the introduction of liquor into their country, and the obligation is equally strong to protect them in a similar manner from the wrongs and injuries of such attempts to obtain possession of their funds.¹⁰⁶

Secretary of the Interior McClelland in 1854, apropos of treaty obligations, reiterates :

* * * The duty of the government is clear, and justice to the Indians requires that it should be faithfully discharged. Experience shows that much is gained by sacredly observing our plighted faith with these poor creatures, and every principle of justice and humanity prompts to a strict performance of our obligations.¹⁰⁶

Commissioner Denver, in 1857,¹⁰⁷ tells of the successful extinguishing of title to all lands owned by Indians west of Missouri and Iowa " * * * except such portions as were reserved for their future homes * * * ."

Of Indians who have removed to

* * * large reservations of fertile and desirable land, entirely disproportioned to their wants for occupancy and support, * * *. Their reservations should be restricted so as to contain only sufficient land to afford them a comfortable support by actual cultivation, and should be properly divided and assigned to them, with the obligation to remain upon and cultivate the same.¹⁰⁸

Commissioner Denver urged discontinuance of the practice of distributing funds due to tribes in per capita payments to individual members. This practice, he thought, tended to break down the authority of the chiefs, and thus

* * * disorganizes and leaves them without a domestic government * * *. The distribution of the money should be left to the chiefs, so far at least as to enable them to punish the lawless and unruly by withholding it from them * * *.¹¹⁰

Commissioner Denver tells of the attempt by the Government to suppress the practice in California of kidnapping Indian children and selling them for servants.¹¹¹

¹⁰⁴ *Ibid.*, p. 17.

¹⁰⁶ *Ibid.*, pp. 21-22. See also extract from Report of Secretary of Interior, 1862, p. 13, in Rep. Comm. Ind. Aff., 1862.

AR contracts with them should be prohibited, and all promiser or obligations made by them should be declared void.

Legislation along the lines urged was enacted in 1871. See Chapter 14 sec. 5.

¹⁰⁸ Extract from Annual Report of the Secretary of Interior, 1854, p. 41, in Rep. Comm. of Ind. Aff., 1854.

¹⁰⁷ Rep. Comm. of Ind. Aff. 1857.

¹⁰⁹ *Ibid.*, p. 3. See Commissioner Manypenny's Report for 1853. *supra*, pp. 249, 250 for opposition to such a policy.

¹¹⁰ *Ibid.*, p. 4.

¹¹¹ *Ibid.*, p. 7.

¹¹² *Ibid.*, p. 10.

He concludes his report with a plea for a recodification of Indian law :

* * * I urgently repeat the recommendation of my immediate predecessor, that there be an early and complete revision and codification of all the laws relating to Indian affairs, which, from lapse of time and material changes in the location, condition, and circumstances of the most of the tribes, have become so insufficient and unsuitable as to occasion the greatest embarrassment and difficulty in conducting the business of this branch of the public service.¹¹²

In 1858, Commissioner Mix estimated the number of Indians to be about 350,000,¹¹³ approximately the same number as it is estimated exists today.¹¹⁴ He further estimated that about 393 treaties had been signed since the adoption of the Constitution; and that approximately 581,163,188 acres had been acquired through cession at a cost of \$49,816,344.¹¹⁵

The principle upon which treaty-making with the Indians for land cessions rested was thus Stated:

that the Indian tribes possessed the occupant or usufruct right to the lands they occupied, and that they were entitled to the peaceful enjoyment of that right until they were fairly and justly divested of it.¹¹⁶

However, that principle was apparently not adhered to in the Territories of Oregon and Washington.

* * * strong inducements were held out to our people to emigrate and settle there, without the usual arrangements being made, in advance, for the extinguishment of the title of the Indians who occupied and claimed the lands.¹¹⁷

According to Commissioner Mix, past Government policy had been in error in at least three respects: (1) Removal from place to place prevented the acquiring of " * * * settled habits and a knowledge of and taste for civilized pursuits * * *";¹¹⁸ (2) assignment of too large a country to be held in common resulted in improper use and failure to acquire " * * * a knowledge of separate and individual property * * *";¹¹⁹ (3) annuities resulted in indolence among Indians and fraudulent practices by whites.¹²⁰

The policy of concentrating the Indians on small reservations of land, and of sustaining them there for a limited period, until they can be induced to make the necessary exertions to support themselves, was commenced in 1853, with those in California. It is, in fact, the only course compatible with the obligations of justice and humanity.¹²¹

The military appears to have been used in the vicinity of reservations "to prevent the intrusion of improper persons upon them [the Indians], to afford protection to the agents, and to aid in controlling the Indians and keeping them within the limits assigned to them."¹²²

In 1859, Secretary of the Interior Thompson reports progress in the shift of Government policy from that of removal to that of fixed reservations.¹²³

¹¹² *Ibid.*, p. 12.

¹¹³ Rep. of Comm. of Ind. Aff., 1858, p. 1.

¹¹⁴ See Chapter 1, sec. 2, fn. 4.

¹¹⁵ Rep. Comm. of Ind. Aff., 1858, p. 1.

¹¹⁶ *Ibid.*, p. 6.

¹¹⁷ *Ibid.*, p. 7.

¹¹⁸ *Ibid.*, p. 7. He notes the difference in development between the northern tribes and those of the South who were permitted to remain for long periods in their original locations (pp. 6-7).

¹¹⁹ *Ibid.*, p. 6.

¹²⁰ *Ibid.*, p. 6.

¹²¹ *Ibid.*, p. 9.

¹²² *Ibid.*, p. 10.

¹²³ See Commissioner Manypenny's recommendation for such a shift in 1854, *supra*.

The policy heretofore adopted of removing the Indians from time to time, as the necessities of our frontier population demanded a cession of their territory, the usual consideration for which was a large money annuity to be divided among them *per capita* had a deleterious effect upon their morals, and confirmed them in their roving, idle habits. This policy, we are now compelled by the necessity of the case to change. At present, the policy of the government is to gather the Indians upon small 'tribal reservations, within the well-defined exterior boundaries of which small tracts of land are assigned; in severalty, to the individual members of the tribe, with all the rights incident to an estate in fee-simple, except the power of alienation. This system, wherever it has been tried, has worked well, and the reports of the superintendents and agents give a most gratifying account of the great improvement which it has effected in the character and habits of those tribes which have been brought under its operation.

Alfred B. Greenwood, Commissioner of Indian Affairs, under Secretary Thompson,¹²⁰ recommended that the reservation policy, as it had been pursued in California, be abandoned.

* * * neither the Government nor California recognizes any right in the Indians of that State to one foot of land within her borders. An unnecessary number of reservations and separate farms have been established; the locations of many of them have proved to be unsuitable, and have not been sufficiently isolated; * * *

Under these circumstances, and being desirous to initiate a policy for California which will secure our own citizens from annoyance, and, at the same time, save the Indians from the speedy extinction with which they are threatened, I feel constrained to recommend the repeal of all laws authorizing the appointment of superintendents, agents, and sub-agents for California, and the abandonment of the present, and the substitution of a somewhat different plan of operations. * * * the State should be divided into two districts, and an agent appointed for each * * *. The agents should give the Indians in their respective districts to understand that they are not to be fed and clothed at government expense; but that they must supply all their wants by means of their own labor.¹²¹

Should Congress authorize a change in the present system, and new reservations be established, great care should be taken so as to isolate the Indians from contact with the whites. Fertile lands should be selected which will repay the efforts to cultivate them * * *

During the Civil War period, when defections from the Federal Government occurred and tribes were concluding treaties with the Confederate Government,¹²² the movement to terminate the practice of dealing with Indian tribes by treaty and, to deal with them instead as objects of national charity, lacking legal rights, gained momentum.

Secretary of the Interior. Caleb B. Smith clearly stated the new policy.

It may well be questioned whether the government has not adopted a mistaken policy in regarding the Indian tribes as quasi-independent nations, and making treaties with them for the purchase of the lands they claim to own. They have none of the elements of nationality; they are within the limits of the recognized authority of the United States and must be subject to its control. The rapid progress of civilization upon this continent will not permit the lands which are required for cultivation to be surrendered to savage tribes for hunting grounds. In-

deed, whatever may be the theory, the government has always demanded the removal of the Indians when their lands were required for agricultural purposes by advancing settlements. Although the consent of the Indians has been obtained in the form of treaties, it is well known that they have yielded to a necessity which they could not resist.¹²³

* * * A radical change in the mode of treatment of the Indians should, in my judgment, be adopted. Instead of being treated as independent nations they should be regarded as wards of the government, entitled to its fostering care and protection. Suitable districts of country should be assigned to them for their homes, and the government should supply them, through its own agents, with such articles as they use, until they can be instructed to earn their subsistence by their labor.¹²⁴

Under the Lincoln administration, Commissioner Dole concerned himself with the legal disadvantage under which Indians labor, in the conflict between state and federal jurisdiction.¹²⁵

* * * they find themselves amenable to a system of local and federal laws, as well as their treaty stipulations, all of which are to the vast majority of them wholly unintelligible. If a white man does them an injury, redress is often beyond their reach; or, if obtained, is only had after delays and vexations which are themselves cruel injustice. If one of their number commits a crime, punishment is sure and swift, and oftentimes is visited upon the whole tribe. * * *

Better cooperation between the Federal Government and the states was recommended, with state legislation leading to ultimate citizenship the goal to be pursued.

Very much of the evil attendant upon the location of Indians within the limits of States might be obviated, if some plan could be devised whereby a more hearty co-operation with government on the part of the States might be secured. It being a demonstrated fact that Indians are capable of attaining a high degree of civilization, it follows that the time will arrive, as in the case of some of the tribes it has doubtless now arrived, when the peculiar relations existing between them and the federal government may cease, without detriment to their interests or those of the community or State in which they are located; in other words, that the time will come when, in justice to them and to ourselves, their relations to the general government should be identical with those of the citizens of the various States. In this view, a more generous legislation on the part of most of the States within whose limits Indians are located, looking to a gradual removal of the disabilities under which they labor, and their ultimate admission to all the rights of citizenship, as from time to time the improvement and advancement made by a given tribe may warrant, is earnestly to be desired, and would, I doubt not, prove a powerful incentive to exertion on the part of the Indians themselves.¹²⁶

At the end of the Civil War, Secretary of the Interior Harlan reported the terms of a negotiated peace with those Indians who had joined forces with Confederate soldiers.¹²⁷

* * * Such preliminary arrangements were made as, it is believed, will result in the abolition of slavery among them, the cession within the Indian territory of lands for the settlement of the civilized Indians now residing on reservations elsewhere, and the ultimate establishment of civil government, subject to the supervision of the United States.¹²⁸

-Extract from Report of the Secretary of the Interior, 1859, pp. 4-5 to Rep. Comm. Ind. Aff., 1859.

¹²⁰ Rep. Comm. Ind. Aff., 1859.

¹²¹ *Ibid.*, p. 22.

¹²² *Ibid.*, p. 23.

¹²³ *Ibid.*, p. 24.

¹²⁴ See Chapter 3, sec. 4H and Chapter 8, sec. 11.

¹²⁵ Extract from Report of the Secretary of the Interior, 1862, p. 7. in Rep. Comm. Ind. Aff., 1862.

¹²⁶ *Ibid.*, p. 9.

¹²⁷ See Chapter 8, sec. 10.

¹²⁸ Rep. Comm. Ind. Aff., 1862, p. 12.

¹²⁹ *Ibid.*, p. 12.

¹³⁰ See Chapter 3, sec. 4I and Chapter 8, sec. 11.

¹³¹ Extract from Report of the Secretary of the Interior, 1865, p. III, in Rep. Comm. Ind. Aff., 1865.

Apparently, even at this late date the policy of complete extermination of the Indian was advocated by "gentlemen of, high position, intelligence, and personal character."¹³⁷

Financial considerations forbid the inauguration of such a policy. * * * It is estimated that the maintenance of each regiment of troops engaged against the Indians of the plains costs the government two million dollars per annum. * * * Such a policy is manifestly as impracticable as it is in violation of every dictate of 'humanity and Christian duty.'¹³⁸

Secretary Harlan, in urging Congressional action for the necessary reforms in the administration of justice on Indian reservations, stated:

It is earnestly recommended that the superintendents, and also agents of a suitable grade, be empowered to act as civil magistrates within the limits of reservations where the tribal relations are maintained, and also on the plains remote from the jurisdiction of civil authorities. The want of an acceptable and efficient provision for the administration of justice has been sensibly felt in cases arising between members of the tribes, or between Indians and the white men who have been permitted to reside among them.¹³⁹

Commissioner Cooley¹⁴⁰ recommended various radical reforms in Indian Service personnel, particularly with regard to traders and agents. To eliminate collusion between them, he urged Congress to make it a penal offense for

* * * any agent or other officer in the Indian service to be in any manner, directly or indirectly, interested in the profits of the business of any trader, or in any contract for the purchase of goods, or in any trade with the Indians, at their own or any other agency; the same penalties to apply to the licensing of any relative to trade, or to purchasing goods or provisions for the use of the Indians of any firm in which they or any relative may be partners or in any way interested. * * *¹⁴¹

In urging, as commissioners had done before, increase in agents' salary above the \$1,500 they had received since 1834,¹⁴² as a means of securing more thoroughly qualified persons, Commissioner Cooley held:

* * * The fact that innumerable applicants stand ready to take any places which are vacated is not, in my judgment, an argument against an increase of pay; it is simply a proof of the commonly received idea of the outside profit of the business. * * *¹⁴³

He noted progress in the civilization of the Indian:

Another evidence of progress in the right direction is the request made by several agents, on behalf of the Indians, that the kind of goods furnished to them may be changed from the blankets, bright-colored cloths, and various gewgaws, which have from time immemorial gone to make up invoices of Indian goods, to substantial garments, improved agricultural implements, etc.¹⁴⁴

¹³⁷ *Ibid.*, p. III.

¹³⁸ *Ibid.*, pp. III, IV.

¹³⁹ *Ibid.*, p. IV. See Chapter 7, sec. 9.

¹⁴⁰ Rep. Comm. Ind. Aff., 1865.

¹⁴¹ *Ibid.*, p. 2. Legislation along the lines proposed was enacted in 1874. Act of June 22, 1874, sec. 10, 18 Stat. 146, 177, 26 U. S. C. 87. This, in effect, strengthened the restrictions contained in section 14 of the Act of June 30, 1834, 4 Stat. 735, 738, R. S. § 2078, 25 U. S. C. 68. The Act of June 19, 1939, 53 Stat. 840, 25 U. S. C. 87a, modified these two prohibitory statutes to permit purchases for personal use by federal employees.

¹⁴² By Act of April 20, 1818, 3 Stat. 461, agents' salaries varied from \$1,200 to \$1,800, and subagents' were fixed at \$500. By Act of June 30, 1834, 4 Stat. 735, agents' salaries were fixed at \$1,500, and subagents at \$750.

¹⁴³ Rep. Comm. Ind. Aff., 1865, pp. 2-3.

¹⁴⁴ *Ibid.*, p. 4.

In 1867, Acting Commissioner Mix summarized the obstacles to Indian civilization as he saw them, and the means to overcome them.

* * * mainly * * * his almost constant contact with the vicious, unscrupulous whites, who not only teach him their base ways, but defraud and rob him, and, often without cause, with as little compunction as they would experience in killing a dog, take even his life.¹⁴⁵

Further

* * * the Indian has no certainty as to the permanent possession of the land he occupies, and which he is urged to improve, for he knows not how long he may be permitted to enjoy it. * * *¹⁴⁶ Evidently the remedy for these evils lies in securing to the Indians a permanent home in a country exclusively set apart for them, upon which no whites or citizens, except government agents and employees, shall be permitted to reside or intrude; in the granting to them allotments of land as individual property, to cultivate and improve; in the appointment of moral, honest, and efficient agents, with a fair compensation for services; and in the prompt fulfillment by the government of its treaty and other obligations, furnishing the necessary aid required for teaching, and placing them in the way of becoming self-sustaining and eventually independent of the government.¹⁴⁷

He recommended to the Secretary the repeal of section 4 of the Act of July 26, 1866,¹⁴⁸ allowing any citizen "of proper character" to trade with Indians, since the Department had no authority to restrict the numbers, nor discretion to determine the fitness or ability of a trader.¹⁴⁹

C. THE PERIOD FROM 1868 TO 1876

For the next few years, with Indians largely in the process of being settled or resettled on western reservations, commissioners concerned themselves primarily with problems of permanent policy and administration. Should treaty-making be abandoned? What was the proper role of the military? Should the Bureau of Indian Affairs be transferred back to the War Department?¹⁵⁰ How should the Indian Service be reorganized so as to overcome charges of dishonesty and inefficiency? What was the best technique for individualizing and controlling the Indian? What were the present rights and future prospects of the Indian?

Although Commissioner Parker in 1869 urged that treaties when in force be "promptly and faithfully executed," nevertheless he recommended, as Secretary Smith had in 1862,¹⁵¹ that he whole policy of treaty-making be abandoned.

* * * A treaty involves the idea of a compact between two or more sovereign powers, each possessing sufficient authority and force to compel a compliance with the obligations incurred. The Indian tribes of the United States are not sovereign nations, capable of making treaties, as none of them have an organized government of such inherent strength as would secure a faithful obedience of its people in the observance of compacts of this character. They are held to be the wards of the government, and the only title the law concedes to them to the lands they occupy or claim is a mere possessory one. But, because treaties have been made with them, generally for the extinguishment of their supposed absolute title to land inhabited by them, or over which they roam, they have

¹⁴⁵ Rep. Comm. Ind. Aff., 1867, p. 1.

¹⁴⁶ *Ibid.*, p. 1.

¹⁴⁷ *Ibid.*, p. 2.

¹⁴⁸ 14 Stat. 255, 280. R. S. § 2123.

¹⁴⁹ Rep. Comm. Ind. Aff., 1867, pp. 5-6.

¹⁵⁰ See sec. 1B, *supra*, for a discussion of that problem, and the recommendations of various commissioners and the Indian Peace Commission of 1887.

¹⁵¹ See Rep. Comm. Ind. Aff., 1862, p. 7, and *supra*.

become falsely "impressed with the notion of national independence. It is time that this idea should be dispelled, and the government cease the cruel farce of thus dealing with its helpless and ignorant wards. Many good men, looking at this 'matter only from a Christian point of view, will perhaps say, that the poor Indian has been greatly wronged and ill treated; that this whole country was once his; of which he has been despoiled, and that he has been driven from place to place until he has hardly left to him a spot where to lay his head. This indeed may be philanthropic and humane, but the stern letter of the law admits of no such conclusion, and great injury has been done by the government in deluding this people into the belief of their being independent 'sovereignties, while they were at the same time recognized only as its dependents and wards. As civilization advances and their possessions of land are required for settlement, such legislation should be granted to them 'as a wise, liberal, and just government ought to extend to subjects holding their dependent relation. * * * 152

By the Act of March 3, 1871,¹⁵³ treaty-making was abandoned. However, agreements; approved by both Senate and House of Representatives, continued to be made. In 1873 Commissioner Edward P. Smith. urged that even agreements cease.

* * * We have in 'theory over sixty-five independent nations within our borders, with whom we have entered into treaty relations as being sovereign peoples; and, at the same time the white agent is sent to control and supervise these foreign powers; and care for them as wards of the Government. This double condition of sovereignty and wardship involves increasing difficulties and absurdities, as the traditional chieftain, losing his hold upon his tribe, ceases to be distinguished for anything except for the lion's share, of goods and moneys which the Government endeavors to send, through him, to his nominal subjects, and, as the necessities of the Indians, pressed on every side by civilization, require more help and greater discrimination in 'the manner of distributing the tribal funds. So far, and as rapidly as possible, all recognition of Indians in any other relation than strictly as subjects of, the Government should cease. To provide, for this, radical 'legislation will be required.=

On the use of the military, official opinion varied. Commissioner Taylor (1868)¹⁵⁴ was strongly opposed; Commissioner Parker (1869)¹⁵⁵ himself a general, believed in its use, particularly for those Indians who failed to remove. In his 1870 report¹⁵⁷ he lamented the passage by Congress of an act¹⁵⁸ which " * * * prohibited the employment of army officers in any civil capacity * * * " Commissioner Francis A. Walker (also a general), in 1872¹⁵⁹ urged the use of the military to effect the "peace policy."¹⁶⁰

* * * Such a use of the military constitutes no abandonment of the "peace policy," and involves no disparagement of it. It was not to be 'expected-it was not in the nature of things that the entire body of wild Indians should submit to be restrained in their Ishmaelish proclivities without a struggle on the part of the more audacious to maintain their traditional freedom. * * * 161

¹⁵³ Rep. Comm. Ind. Aff., 1869, p. 6.

¹⁵⁴ 16 Stat. 544, 566, R. S. § 2079, 25 U. S. C. 71; See Chapter 3.

¹⁵⁵ Rep. Comm. Ind. Aff., 1873, p. 3.

¹⁵⁶ Rep. Comm. Ind. Aff., 1868, pp. S-10.

¹⁵⁷ Rep. Comm. Ind. Aff., 1869, p. 5.

¹⁵⁸ Rep. Comm. Ind. Aff., 1870, pp. 9-10.

¹⁵⁹ Act of July 15, 1870, 16 Stat. 315, 319. See fn. 41, *supra*. By Act of July 13, 1892, c. 164, sec. 1, 27 Stat. 120; and Act of July 1, 1898, c. 545, sec. 1, 30 Stat. 571, 673, the President was given the power to detail Army officers for duty to Indian agencies. 25 U. S. C. 27.

¹⁶⁰ Rep. Comm. Ind. Aff., 1872.

¹⁶¹ In 1867 (Act of July 24 1867, 15 Stat. 17) the Indian Peace Commission was authorized by Congress to study the cause and cure for Indian wars. Their recommendations in 1868 (Report of January 7, 1868 to the President, in Rep. Comm. Ind. Aff., -1868; pp. 26-50) were the basis for the new "peace Policy" of the Government. See discussion sec. 1, *supra*.

¹⁶² Rep. Comm. 'of Ind. AU., 1872, p. 6.

Commissioner Walker complained that his policy had been widely misunderstood and criticized by the press.

* * * This misunderstanding in regard to the occasional use of force in making effective and universal the policy of peace, has led no small portion of the press of the country to treat the more vigorous application of the scourge to refractory Indians which has characterized the operations of the last three months as an abandonment of the peace policy itself, whereas it is, in fact, a legitimate and essential part of the original scheme which the Government has been endeavoring to carry out, with prospects of success never more bright and hopeful than to-day.¹⁶²

In 1873, Commissioner Edward P. Smith urged that a military force be set up among the Sioux, notwithstanding treaty assurances to the contrary.

Hitherto the military have refrained from going on this reservation because of the express terms of the treaty with the Sioux, in which it is agreed that no military force shall be brought over the line. I respectfully recommend that provision be made at once for placing at each of the Sioux reservations a military force sufficient to enable the agents to enforce respect for their authority, and to conduct agency affairs in an orderly manner.¹⁶³

After many years of charges against Indian Service field personnel of dishonesty and inefficiency,¹⁶⁴ a new system of choosing agents was inaugurated in 1869 under President Grant.¹⁶⁵ Their nomination was for the most part delegated to various religious bodies active in missionary work, particularly the Society of Friends. The remaining agencies were filled by Army officers detailed for such duty,¹⁶⁶ until the Appropriation Act of July 15, 1870,¹⁶⁷ caused them to relinquish civil posts.

Commissioner Parker in 1869 and in 1870 reported the plan working well.¹⁶⁸ However, it was gradually abandoned and completely discontinued by the early eighties.¹⁶⁹

On the question of the techniques for individualizing and controlling the Indians, commissioners differed somewhat, although all agreed basically on allotment of land in severalty as one of the major methods.

* * * The policy of giving to every Indian a home that he can call his own is a wise one, as it induces a strong incentive to him to labor and make every effort in his power to better his condition. By the adoption, generally, of this plan on the part of the Government, the Indians would be more rapidly advanced in civilization than they would if the policy of allowing them to hold their land in common were continued.¹⁷⁰

* * * A fundamental difference between barbarians and a civilized people is the difference between a herd and an individual. * * * The starting-point of indi-

¹⁶³ *Ibid.*, p. 6.

¹⁶⁴ Rep. Comm. Ind. Aff., 1873, p. 6.

¹⁶⁵ Rep. Comm. Ind. Aff., 1869, p. 5.

¹⁶⁶ 1st Annual Message to Congress, December 6, 1869.

I have attempted a new policy towards these wards of the nation * * * The Society of Friends is well known as having succeeded in living in peace with the Indians in the early settlement of Pennsylvania, while their white neighbors of other sects in other sections were constantly embroiled. They are also known for their opposition to all strife, violence, and war, and are generally noted for their strict integrity and fair dealings. These considerations induced me to give the management of a few reservations of Indians to them and to throw the burden of the selection of agents upon the society itself * * *. For superintendents and agents not on the reservations, officers of the Army were selected. (Richardson: Messages and Papers of the Presidents, 1897, Vol. IX, pp. 3992-3993.)

According to Schmeckebier this policy was inaugurated by Grant to insure against opposition to his appointments by the Senate. (Schmeckebier, *op. cit.*, p. 54.)

¹⁶⁸ Rep. Comm. Ind. Aff., 1869, p. 5.

¹⁶⁹ 16 Stat. 315, 319. See fn. 157, *supra*.

¹⁷⁰ Rep. Comm. Ind. Aff., 1869, p. 5; Rep. Comm. Ind. Aff., 1870, pp. 9-10.

¹⁷¹ Schmeckebier, *op. cit.*, p. 55, fn. 92.

¹⁷² Rep. Comm. Ind. Aff., 1870, p. 9. See Chapter 11, sec. 1.

vidualism for an Indian is the personal possession of his portion of the reservation."¹⁷¹

In 1870, Commissioner Parker reported, as an indication of Indian progress, that many were asking to have their land surveyed and allotted.¹⁷²

In 1872 Commissioner Walker defended the "feeding" policy which had been in effect for 3 years.

The Indian policy, so called, of the Government, is a policy, and it is not a policy, or rather it consists of two policies, entirely distinct, seeming, indeed, to be mutually inconsistent and to reflect each upon the other: the one regulating the treatment of the tribes which are potentially hostile, that is, whose hostility is only repressed just so long as, and so far as, they are supported in idleness by the Government; the other regulating the treatment of those tribes which, from traditional friendship, from numerical weakness, or by the force of their location, are either indisposed toward, or incapable of, resistance to the demands of the Government. * * * ¹⁷³ It is, of course, hopelessly illogical that the expenditures of the Government should be proportioned not to the good but to the ill desert of the several tribes; that large bodies of Indians should be supported in entire indolence by the bounty of the Government simply because they are audacious and insolent, while well-disposed Indians are only assisted to self-maintenance, since it is known they will not fight. * * * And yet, for all this, the Government is right and its critics wrong: and the "Indian policy" is sound, sensible, and beneficent, because it reduces to the minimum the loss of life and property upon our frontier, and allows the freest development of our settlements and railways possible under the circumstances.¹⁷⁴

There is no question of national dignity, be it remembered, involved in the treatment of savages by a civilized power. With wild men, as with wild beasts, the question whether in a given situation one shall fight, coax, or run, is a question merely of what is easiest and safest.¹⁷⁵

Commissioner Walker discussed the function of the reservation as he saw it.

* * * the Indians should be made as comfortable on, and as uncomfortable off, their reservations as it was in the power of the Government to make them: that such of them as went right should be protected and fed, and such as went wrong should be harassed and scourged without intermission. * * * Such a use of the strong arm of the Government is not war, but discipline.¹⁷⁶

* * * The reservation system affords the place for thus dealing with tribes and bands, without the access of influences inimical to peace and virtue. It is only necessary that Federal laws, judiciously framed to meet all the facts of the case, and enacted in season, before the Indian! begin to scatter, shall place all the members of this race under a strict reformatory control by the agents of the Government. Especially is it essential that the right of the Government to keep Indians upon the reservation: assigned to them, and to arrest and return them whenever they wander away, should be placed beyond dispute. * * * ¹⁷⁷

The problem of the consolidation and sale of surplus land on reservations had already appeared in 1872

The reservations granted heretofore have generally been proportioned, and rightly so, to the needs of the Indians in a roving state, with hunting and fishing as their chief means of subsistence, which condition implies the occupation of a territory far exceeding what could possibly be

cultivated. As they change to agriculture, however rude and primitive at first, they tend to contract the limits of actual occupation. With proper administrative management the portions thus rendered available for cessation or sale can be so thrown together as in no way to impair the integrity of the reservation. Where this change has taken place, there can be no question of the expediency of such sale or cession. The Indian Office has always favored this course, and notwithstanding the somewhat questionable character of some of the resulting transactions, arising especially out of violent or fraudulent combinations to prevent a fair sale, it can be confidently affirmed that the advantage of the Indians has generally been subserved thereby.¹⁷⁸

The present rights and the future prospects of the Indian appears to have concerned many commissioners.

Commissioner Taylor, in 1868, asked the question:

Shall our Indians be civilized, and how?

* * * Assuming that the government has a right, and that it is its duty to solve the Indian question definitely and decisively, it becomes necessary that it determine at once the best and speediest method of its solution, and then, armed with right, to act in the interest of both races.

If might makes right, we are the strong and they the weak; and we would do no wrong to proceed by the cheapest and nearest route to the desired end; and could, therefore, justify ourselves in ignoring the natural as well as the conventional rights of the Indians, if they stand in the way, and, as their lawful masters, assign them their status and their tasks, or put them out of their own way and ours by extermination with the sword, starvation, or by any other method.

If, however they have rights as well as we, then clearly it is our duty as well as sound policy to so solve the question of their future relations to us and each other, as to secure their rights and promote their highest interest, in the simplest, easiest, and most economical way possible.

But to assume they have no rights is to deny the fundamental principles of Christianity, as well as to contradict the whole theory upon which the government has uniformly acted towards them; we are therefore bound to respect their rights, and, if possible, make our interests harmonize with them. * * * ¹⁷⁹

Commissioner Walker, in 1872, answered the question in one way.

It belongs not to a sanguine, but to a sober view of the situation, that three years will see the alternative of war eliminated from the Indian question, and the most powerful and hostile bands of to-day thrown in entire helplessness on the mercy of the Government. * * *

No one certainly will rejoice more heartily than the present Commissioner when the Indians of this country cease to be in a position to dictate, in any form or degree, to the Government: when, in fact, the last hostile tribe becomes reduced to the condition of suppliants for charity. * * * ¹⁸⁰

Commissioner John Q. Smith in 1876 answered the question in another way.

* * * No new hunting-grounds remain, and the civilization or the utter destruction of the Indians is inevitable. The next twenty-five years are to determine the fate of a race. If they cannot be taught, and taught very soon, to accept the necessities of their situation and begin in earnest to provide for their own wants by labor in civilized pursuits, they are destined to speedy extinction."¹⁸¹

* * * We have despoiled the Indians of their rich hunting-grounds, thereby depriving them of their ancient means of support. Ought we not and shall we not give them at

¹⁷¹ Rep. Comm. Ind. AU., 1873, p. 4.

¹⁷² Rep. Comm. Ind. AU., 1370, p. 9.

¹⁷³ Rep. Comm. Ind. AU., 1872, p. 3.

¹⁷⁴ *Ibid.*, p. 4.

¹⁷⁵ *Ibid.*, p. 5.

¹⁷⁶ *Ibid.*, p. 6.

¹⁷⁷ *Ibid.*, pp. 11-12.

¹⁷⁸ *Ibid.*, p. 13.

¹⁷⁹ Rep. Comm. Ind. AU. 1868, p. 16.

¹⁸⁰ Rep. Comm. Ind. AU., 1872, p. 0.

¹⁸¹ Rep. Comm. Ind. AU., 1876, p. VI.

least a secure home, and the cheap but priceless benefit of just and equitable laws?¹⁸²

Along with the broad problems of administration and policy, were the problems of specific reform in legislation as inadequacies became apparent in laws governing intercourse and trade with the Indians, and in the extension of United States law and the jurisdiction of the courts over Indians. These specific reforms had been recommended for many years, the revision of the Inter-course 'Act of 1834¹⁸³ since 1853,¹⁸⁴ and law and order reform since at least 1862.¹⁸⁵

In 1871 Acting Commissioner Cium wrote that the laws regulating trade

* * * are so defective as to fail to secure the Indians against the encroachments of the whites * * *. A revision of these laws is very much to be desired to meet the changed circumstances now surrounding the Indians, arising out of the building of railroads through their lands, the rapid advance of white settlements, and the claims and rights of squatters, miners, and prospecting parties.¹⁸⁶

The request for reform in the administration of justice over the Indians was made in the report of the Board of Indian Commissioners for 1871;¹⁸⁷ it was reiterated in 1873¹⁸⁸ by Commissioner Edward P. Smith, who urged that agents and superintendents be given magisterial powers, and again in 1875, when he urged that authority be given

* * * to the Secretary of the Interior to prescribe for all tribes prepared, in his judgment, to adopt the same, 'an elective government, through which shall be administered all necessary police regulations of the reservation.'¹⁸⁹

Commissioner John Q. Smith recommended, the

* * * Extension over them [the Indians] of United States law and the jurisdiction of United States courts.¹⁹⁰

D. THE PERIOD FROM 1877 TO 1904

In 1877 Commissioner Hayt made seven specific recommendations for policy, that of a system of compulsory common schools being particularly noteworthy: (1) A code of laws for reservations and means for dispensing justice; (2) Indian police under which shall be vested in individuals and inalienable for twenty of land " * * * into farms, of convenient size, the title to which shall be vested in individuals and inalienable for twenty years * * *"; (4) The establishment of a compulsory common school system, including industrial schools; (5) Free access to Indians of missionaries; (6) Insistence on labor in return for food and clothing; and (7) A steady concentration of the smaller bands on larger reservations.¹⁹¹

In 1880, Acting Commissioner Marble included statistical tables of population and amount and types of work accomplished during the year.¹⁹² He reported extensively on educational advances,

particularly the opening of new boarding schools.¹⁹³ "The importance of having at least one good boarding-school at each agency need not be argued."¹⁹⁴

The system of Indian police, in operation less than 3 years, was reported to be working admirably with a force of 162 officers and 353 privates.¹⁹⁵

The plea for a "uniform and perfect title to their lands, as a measure conducive in the highest degree to their present and future welfare" was again urged for the Indians.¹⁹⁶

Commissioner Price, as a business man, was concerned with Indian administration and personnel.

* * * Within the last year seven entire months were consumed in making such a change at one of the agencies, where any correct business man transacting his own business would have made the change in less than seven days. This is the fault of the law, and ought to be changed.¹⁹⁷

I give it as my honest conviction as a business man after one year and a half of close observation, in a position where the chances for a correct knowledge of this question are better than in any other, that the true policy of the government is to pay Indian agents such compensation and place them under such regulations of law as will insure the services of first-class men. It is not enough that a man is honest; he must, in addition to this, be capable. He must be up to standard physically as well as morally and mentally. Men of this class are comparatively scarce, and as a rule cannot be had unless the compensation is equal to the service required. Low-priced men are not always the cheapest. A bad article is dear at any price. Paying a man as Indian agent \$1,200 or \$1,500, and expecting him to perform \$3,000 or \$4,000 worth of labor, is not economy, and in a large number of cases has proven to be the worst kind of extravagance.¹⁹⁸

He urged increased appropriations for education, particularly for industrial schools.

* * * If one million of dollars for educational purposes given now will save several millions in the future, it is wise economy to give that million at once, and not dole it out in small sums that do but little good.¹⁹⁹

Commissioner Price departed from the accepted theory in Indian education of the superiority of boarding over day schools.²⁰⁰

* * * It is as common a belief that the boarding schools supersede the day school as it is that training schools remote from the Indian country ought to be substituted for those located in the midst of the Indians. But I trust that the time is not far distant when a system of district schools will be established in Indian settlements, which will serve not only as centers of enlightenment for those neighborhoods, but will give suitable employment

¹⁸² *Ibid.*, pp. V-VI.

¹⁸³ *Ibid.*, p. VI.

¹⁸⁴ *Ibid.*, p. IX. Act of May 27, 1878, 20 Stat. 63.86. Their duties involved discovery and arrest of thieves, action as truant officers, protection of annuities and property, prevention of depredations to timber and of the introduction of liquor, action as messengers and census takers, etc. (p. X).

¹⁸⁵ *Ibid.*, p. XVI.

¹⁸⁶ Rep. Comm. Ind. Aff., 1882, p. V.

¹⁸⁷ *Ibid.*, pp. V, VI. Commissioner E. P. Smith in his report for 1873 (pp. 9-10) had urged that salaries be increased to \$2,000 or \$2,500, depending on the remoteness of the reservation; Commissioner John Q. Smith in his report for 1876 (pp. III, IV) to \$3,000; Commissioner E. A. Hayt in his report for 1877 (pp. 6-7) that salaries be scaled according to the number of Indians under an agent's jurisdiction. Recommendations for increasing agents' salaries appear constantly in Commissioners' reports.

¹⁸⁸ *Ibid.*, p. VII.

¹⁸⁹ See Chapter 12, sec. 2.

¹⁸² *Ibid.*, p. XI. Commissioner Smith commends, as " * * * The only thing yet done by the Government * * * permanent and far-reaching * * * the dedication of the Indian Territory as the final home for the race." (P. XI.) See Chapter 23, sec. 5, on the throwing open of Indian Territory lands for settlement.

¹⁸³ Act of June 30, 1834, 4 Stat. 729. See Chapter 18. *

¹⁸⁴ See Rep. Comm. Ind. Affairs, 1853, pp. 261-262, and *supra*.

¹⁸⁵ See Rep. Comm. Ind. Affairs, 1862, p. 12, and *supra*.

¹⁸⁶ Rep. Comm. Ind. AU., 1871, p. 6.

¹⁸⁷ Third Annual Report of the Board of Indian Commissioners, in Rep. Comm. Ind. AU., 1871, p. 16.

¹⁸⁸ Rep. Comm. Ind. AU., 1873, pp. 4-5.

¹⁸⁹ Rep. Comm. Ind. Aff., 1875, p. 16.

¹⁹⁰ Rep. Comm. Ind. AR, 1876, p. VII. See Chapter 7, sec. 0; Chapters 18 and 10.

¹⁹¹ Rep. Comm. Ind. AU., 1877, pp. 1-2.

¹⁹² Rep. Comm. Ind. Aff., 1880, pp. III-IV.

to returned, 'students.. -especially the young women, for whom it is specially difficult to provide.?'

* * *

'The cost of maintaining an Indian pupil in a reservation boarding school may be set down as a little over \$150 per annum; in a day school at about \$30 per. annum.²⁰²

In the matter of health, also, Commissioner Price had specific recommendations.

When the length of time (three or four years,) which is required for the physician to familiarize himself with the language, habits, and mental peculiarities of Indians is taken into consideration, and also the diplomacy which is required to obtain and maintain their confidence, it is obvious that it is specially desirable to procure efficient and, if possible, permanent medical officers of pronounced moral and temperate habits, of great will power, capable of making good and enduring impressions on the Indians. It is detrimental to the service to "be continually changing medical-officer."

In connection with permanent medical officers, a system should be inaugurated 'of caring for the blind, insane, and destitute aged Indians?'

The problem of freedmen in Indian Territory, pressing since the close of the Civil War,, had not been solved by 1882.

The rights guaranteed, to the freedmen in the Indian Territory by treaty stipulations have been ignored,' and so far as their interests are involved the treaties themselves have been virtually set aside, both by the Indians and by the government.'

* * *

In this report of. January 26, 1882, Agent Tufts states that—

It is unpopular in the Cherokee Nation to advocate a measure that provides for placing the colored man on an equality with Cherokees; and 'the politicians are civilized enough to do nothing that might lessen their chances for political success; hence until the sentiment shall undergo a revolution there will be no favorable action.

From the hesitancy heretofore shown by the nation to carry out in good faith toward the colored people simply what has been granted them by the treaty; I am convinced that the nation will not fix and settle the status of the colored people until a more peremptory demand is made on the nation, to execute the conditions of their treaty respecting them.,

Many of the colored people speak the Cherokee-language, and having been brought up among Cherokees and accustomed to their ways, it would be a hardship. to remove them from that country', and remaining in the nation, they should be accorded all their rights. Agent Tufts recommended the appointment of a commission to visit the agency with authority to hear evidence and determine the question whether the claimants were freedmen liberated by voluntary act of owner, or by, law, or whether they were free colored persons and in the country at the commencement of the rebellion; and 'whether they were residents of the nation at the time of the treaty, or returned within six months thereafter-the findings of the commission to be submitted to the department for approval.²⁰³

With the discovery of valuable coal deposits in an Indian reservation in Arizona Territory, arose the problem of its extraction and removal. Commissioner Price felt that the Indians could not be prevailed. upon to remove again, that the Government could not undertake to work the mines, that the Indians themselves were not capable technically of doing so, and even were they, they could not dispose of the coal since

* * * under existing. law there is no authority for permitting the severance and removal from an Indian reservation, for purposes of sale or speculation, of any material attached to or forming a part of the realty, such as timber, coal, or other minerals.-

Commissioner Price therefore recommended a system of leasing.

I

After carefully considering the questions involved, this office became convinced that the most practicable solution of the matter would be the adoption of a system of leasing upon a royalty plan; and accordingly a draft of a joint resolution was prepared in this office and submitted to the department in April last with a view to securing the needful legislation therefore. It was believed that by this means a very large part of the annual expenditure for the support and care of the Indians of Arizona and New Mexico might be reimbursed to the government from the profit of the mines without hardship to consumers, and that the Indians themselves would be greatly benefited, not only by the example of industry set, but through the opportunity that would be afforded them to earn wages by their own labor.²⁰⁷

According to Commissioner Atkins's report for 1886,²⁰⁸ the system of leasing grazing land had been tried on the Cheyenne and Arapaho Reservation unsuccessfully. By Presidential proclamation²⁰⁹ the leases were declared null and void, and the cattle and cattlemen removed, much to the satisfaction of the Indians who

* * * no longer contemplate the monopoly of nine tenths of their reservation by outsiders, but in place thereof they view with satisfaction their own fields of corn, and farms inclosed with fences, put up by their own labor, * * *²¹⁰

The system of leasing Indian lands was further. complicated by a decision of the Attorney General to the effect that—

* * * the system of leasing Indian lands which has hitherto prevailed is illegal without the consent of Congress * * *²¹¹

Commissioner Atkins recommended that the leasing system either be legalized, as his predecessor had recommended before him,²¹² or abolished.²¹³

If Congress would authorize Indians to dispose of their grass, or would take any definite action as to the policy which this office can legally pursue. in regard to Indian grazing lands, it would materially lessen the perplexities and confusion which now pertain to the subject. Moreover, if some way could be adopted by which, under proper restrictions, the surplus grass on the several Indian reservations could be utilized with profit to the Indians, the annual appropriations needed to care for the Indians-could be correspondingly and materially reduced.²¹⁴

Of the general allotment bill, which had passed the Senate and was favorably reported in the House, 'Commissioner Atkins reported:

* * * As there seems to be no substantial opposition to this bill, it is hoped that it will become a law during the coming winter. Its passage will relieve this office of much embarrassment and enable it to make greater progress in

²⁰² Rep. Comm. Ind. Aff., 1882, p. XLIX. See Chapter 15, sec. 19.

²⁰³ *Ibid.*, p. XLIX.

²⁰⁴ Rep. Comm. Ind. Aff., 1886.

²⁰⁵ See Sen. Ex. Doc. 17, 48th Cong., 2d sess., vol. I, pt. I, 1885.

²¹⁰ Rep. Comm. Ind. Aff., 1886, p. XVIII.

²¹¹ *Ibid.*, p. XIX. 18 Op. A. G. 235 (1885).

²¹² See Rep. Comm. Ind. Aff. (Hiram Price) 1882, p. XLIX, and *supra*.

²¹³ Rep. Comm. Ind. Aff., 1886, p. XIX.

²¹⁴ *Ibid.*, p. XIX.

"Rep. Comm. Ind. Aff., 1882, p. XXXV.

²⁰² *Ibid.*, p. XL.

²⁰³ *Ibid.*, p. XLVIII. See Chapter 12, sec. 3.

²⁰⁴ Rep. Comm. Ind. Aff., 1882, p. LV.

²⁰⁵ Rep. Comm. Ind. Aff., 1882, p. LVII.

the important work of assisting the Indians to become individual owners of the soil by an indefeasible title.²¹⁵

Of courts of Indian offenses which had been instituted at various agencies to try minor offenses, Commissioner Atkins wrote:

These courts are also unquestionably a great assistance to the Indians in learning habits of self-government and in preparing themselves for citizenship. I am of the opinion that they should be placed upon a legal basis by an act of Congress authorizing their establishment, under such rules and regulations as the Secretary of the Interior may prescribe. Their duties and jurisdiction could then be definitely determined and greater good accomplished.=

Commissioner Atkins expressed a hope with regard to traders which has not yet been realized.

But it is earnestly hoped that the necessity for white traders upon the reservations will soon be superseded. Under the law the full-blood Indian is guaranteed the right to trade with the Indians of his tribe, without the restrictions imposed upon half-breeds and white traders. It is the constant aim and effort of the Indian Office to make the Indian self-reliant and self-sustaining, and if this policy is persevered in with the aid of the educational advantages available at almost every agency, I cannot but believe that the Indians will at an early day acquire sufficient ability to manage the trading posts themselves and supply their people with such goods as they may need.²¹⁷

In the report of the Commissioner of Indian Affairs for 1888 one notes the beginnings of a problem which grew into major proportions in later years—the problem of the annuity roll.

In this connection, I would suggest that action should be taken by Congress to confine the benefits arising under Indian treaties to those justly entitled thereto, by excluding from participation therein whites hereafter enrolled as Indians by adoption and also the descendants of whites and Indians beyond a certain degree.²¹⁸

Of the application of the Allotment Act," which had been in force for more than a year, Commissioner Oberly reports slow progress,= and considerable opposition.

Considerable opposition to the allotment policy has been developed from two sources. Those who believe in the wisdom of tribal ownership, and in the policy of continuing the Indian in his aboriginal customs, habits, and independence, oppose it because it will eventually dissolve his tribal relations and cause his absorption into the body politic. On the other hand, those who expected that the severalty act would immediately open to public settlement long-coveted Indian lands, oppose it because they have learned that these expectations will not be realized.

There is a third class of persons who are heartily in favor of allotting Indian lands, but who are apprehensive that, under the flexible terms of the allotment act, allot-

ments may be forced upon Indians before they are ready to receive, use, and hold them. . * * ²¹⁹

Commissioner Oberly presents a detailed analysis of the status of Indian health²²⁰—the diseases prevalent among Indians, the scarcity of physicians²²¹ and nurses, and the need for a hospital at every agency.

In his report on the operation of the contract system of purchasing Indian supplies, whereby numerous contractors submit samples which the Government is forced to examine, he recommends that the Indian Office fix the standard sample on which bids are to be received, thus assuring uniformity of quality, saving time, and eliminating charges of favoritism.²²²

Since Commissioner Oberly had been United States Civil Service Commissioner²²³ as well as Superintendent of Indian Schools,²²⁴ he was particularly interested in incorporating school employees under Civil Service, to correct the "party spoils system" method of appointment and dismissal.

* * * for no matter how desirous the Commissioner of Indian Affairs and the Superintendent of Indian Schools may be to obtain good material for the service, and no matter how conscientiously both may endeavor to improve its condition, they will, so long as this system is endured, be obstructed in all such efforts by clamorous demands that the places on Indian reservations, and in the schools not on reservations, shall be dispensed as rewards for partisan activity. In short, the Commissioner and Superintendent, with 1,200 places (exclusive of Indians) at their disposal, can not give to the agency and the school competent employees until after they shall have secured protection from partisan pressure and personal solicitation; and such protection can be afforded to them only by the provisions of the civil-service act of 1883. As United States Civil Service Commissioner I gave to this subject much consideration, and I have no doubt that the provisions of that act could be applied to the Indian service, and, that by their application thereto, under wise rules promulgated by the President, the cause of Indian civilization would be advanced many years.
* * * ²²⁵

Commissioner Thomas J. Morgan entered upon his duties on July 1, 1889, and made his first report in October of that year. He offers, until such time as he may acquaint himself

* * * by personal observation with the practical workings of the Indian field-service * . * a few simple, well-defined, and strongly cherished convictions:

First.—The anomalous position heretofore occupied by the Indians in this country can not much longer be maintained. The reservation system belongs to a "vanishing state of things" and must soon cease to exist.

Second.—The logic of events demands the absorption of the Indians into our national life, not as Indians, but as American citizens.

Third.—As soon as a wise conservatism will warrant it, the relations of the Indians to the Government must rest solely upon the full recognition of their individuality. Each Indian must be treated as a man, be allowed a man's rights and privileges, and be held to the performance of a man's obligations. Each Indian is entitled to his proper share of the inherited wealth of the tribe, and to the protection of the courts in his "life, liberty, and

²¹⁵ *Ibid.*, p. XX. In an earlier report (1885) Commissioner Atkins had recommended that "When the Indians have taken their lands in severalty in sufficient quantities . . . , the remainder should be purchased by the Government and thrown open for homesteading.

The money paid by the Government for their lands should be held in trust in 5 percent bonds, to be invested as Congress may provide for the education, civilization, and material development and advancement of the red race, reserving for each tribe its own money. (Rep. Comm. Ind. Aff., 1885, p. IV.)

This became part of the General Allotment Act of February 8, 1887, 24 Stat. 388, 25 U. S. C. 331 et seq. and was the basis of trust-fund reports of succeeding commissioners. For a discussion of the background of the allotment system, see Chapter 11, sec. 1.

²¹⁶ *Aid.*, p. XXVII. The courts of Indian offenses were established in 1882 according to the Report of the Commissioner of Indian Affairs for 1889 (p. 26).

²¹⁷ *Ibid.*, p. XL. See Chapter 16.

²¹⁸ Rep. Comm. Ind. Aff. (John A. Oberly), 1888, p. XXXIII.

²¹⁹ Act of February 8, 1887, 24 Stat. 388, 25 U. S. C. 331, et seq.

²²⁰ Rep. Comm. Ind. Aff., 1888, p. XXXVII. The necessity for surveying prior to allotment, and the late date at which the appropriation bill passed are the reasons given.

²²¹ *Ibid.*, pp. XXXVIII-XXXIX. Of report of the previous commissioner, Atkins, in 1886, *supra*, p. 22. " . . . no substantial opposition to this bill . . . " (P. XX.)

²²² Rep. Comm. Ind. Aff., 1888, pp. XXXIV-XXXV.

²²³ There were 81 physicians for more than 200,000 Indians—approximately 1 for every 2,500 Indians.

²²⁴ Rep. Comm. Ind. Aff., 1888, pp. LXXXI, LXXXII.

²²⁵ *Ibid.*, p. LXXXV. From April 17, 1886, to October 10, 1888, according to the Civil Service Commission official files.

²²⁶ *Ibid.*, p. LXXXIV. From 1880 to 1886, according to Indian Office Library files.

²²⁷ *Ibid.*, p. LXXXV.

pursuit of happiness." He is not entitled to be supported in idleness.

Fourth.—The Indians must conform to "the white man's ways," peaceably if they will, forcibly if they must. They must adjust themselves to their environment, and conform their mode of living substantially to our civilization. This civilization may not be the best possible, but it is the best the Indians can get. They can not escape it, and must either conform to it or be crushed by it.

Fifth.—The paramount duty of the hour is to prepare the rising generation of Indians for the new order of things thus forced upon them. A comprehensive system of education modeled after the American public-school system, but adapted to the special exigencies of the Indian youth, embracing all persons of school age, compulsory in its demands and uniformly administered, should be developed as rapidly as possible.

Sixth.—The tribal relations should be broken up, socialism destroyed, and the family and the autonomy of the individual substituted. The allotment of lands in severalty, the establishment of local courts and police, the development of a personal sense of independence, and the universal adoption of the English language are means to this end.

Seventh.—In the administration of Indian affairs there is need and opportunity for the exercise of the same qualities demanded in any other great administration—integrity, justice, patience, and good sense. Dishonesty, injustice, favoritism, and incompetency have no place here any more than elsewhere in the Government.

Eighth.—The chief thing to be considered in the administration of this office is the character of the men and women employed to carry out the designs of the Government. The best system may be perverted to bad ends by incompetent or dishonest persons employed to carry it into execution while a very bad system may yield good results if wisely and honestly administered.

In 1890, Commissioner Morgan made a very detailed report (144 pp.) of the duties, difficulties, hopes, and improvements of his administration.²²⁹ One of the chief difficulties was lack of personnel. A chief clerk, solicitor, and medical expert for the office were urged, in addition to other clerical help.²³⁰ Agents' salaries were still too low for adequate performance.*

Another difficulty was the whole reservation policy.

The entire system of dealing with them [the Indians] is vicious, involving, as it does, the installing of agents with semi-despotic power over ignorant, superstitious, and helpless subjects; the keeping of thousands of them on reservations practically as prisoners, isolated from civilized life and dominated by fear and force; the issue of rations and annuities, which inevitably tends to breed pauperism; the disbursement of millions of dollars worth of supplies by contract, which invites fraud; the maintenance of a system of licensed trade, which stimulates cupidity and extortion, etc.²³¹

Commissioner Morgan looked with hope on

* * * the settled policy of the Government to break up reservations, destroy tribal relations, settle Indians upon their own homesteads, incorporate them into the national life, and deal with them not as nations or tribes or bands, but as individual citizens. The American Indian is to become the Indian American. * * *

The rapid process of individualizing the Indian, Commissioner Morgan felt, was best indicated by the reduction of reserva-

tions.²³⁴ More than 17,400,000 acres, or about one-seventh of all Indian land had been acquired by the Government during the year.²³⁵

Commissioner Morgan reported:

* * * the growing recognition on the part of Western people that the Indians of their respective States and Territories are to remain permanently and become absorbed into the population as citizens. * * *

There is also a growing popular recognition of the fact that it is the duty of the Government, and of the several States where they are located, to make ample provision for the secular and industrial education of the rising generation, * * *

Commissioner Morgan refused to grant further licenses for Indians to leave the reservation for the purpose of travel with "Wild West" shows on the grounds of the demoralizing influence.²³⁷

"* * * I consider the payment of cash to Indians," Commissioner Morgan wrote, "except in return for service rendered or labor performed for themselves or their people, as of very little real benefit in a majority of cases * * *."²³⁸

In the matter of traders, the policy of the office was to permit at least two on every reservation.

Competition within the reservation, in addition to that growing up outside, is fostered by licensing on each reserve as many traders as practicable.²³⁹

Commissioner Browning, in 1895, reports progress, particularly in the education and the employment of the Indians.

* * * a large increase has been made in the number of Indian employees, and in filling positions at agencies and schools Indians have been given the preference for appointment when found competent to do the work required.²⁴⁰

In education, opposition from the older Indians appears to have lessened.²⁴¹ Enrollment and school attendance increased

* * * without resort to coercion even to the extent allowed by law. * * * I have refrained from using such means, preferring the better course of moral suasion and convincing arguments, and finding them ultimately effective. It gives me pleasure to note the success of such methods, * * *

²³⁴ *Ibid.*, p. VI.

²³⁵ *Ibid.*, p. XXXIX. Of the reduction of Indian-owned lands Commissioner Morgan felt constrained to say:

This might seem like a somewhat rapid reduction of the landed estate of the Indians, but when it is considered that for the most part the land relinquished was not being used for any purpose whatever, that scarcely any of it was in cultivation, that the Indians did not need it and would not be likely to need it at any future time, and that they were, as is believed, reasonably well paid for it, the matter assumes quite a different aspect. The sooner the tribal relations are broken up and the reservation system done away with the better it will be for all concerned. If there were no other reason for this change, the fact that individual ownership of property is the universal custom among the civilized people of this country would be a sufficient reason for urging the handful of Indians to adopt it. (P. XXXIX.)

²³⁶ *Ibid.*, pp. VI-VII.

²³⁷ *Ibid.*, p. VIII, LVII. By letter of August 4, 1890, the Secretary of the Interior directed that no more licenses be granted. (*Ibid.*, p. LVII.) On the issuance of passes to Indians leaving a reservation, see Chapter 8, sec. 10A (2).

²³⁸ Rep. Comm. Ind. AC. 1890, p. CXVIII.

²³⁹ *Ibid.*, p. LX. However, Commissioner Morgan felt the whole license system was archaic. "a relic of the old system of considering an Indian as a ward, a reservation as a corral, and a tradership as a golden opportunity for plunder and profit." (*Ibid.*, p. LIX.)

²⁴⁰ Rep. Comm. Ind. AU., 1895, p. 1.

²⁴¹ *Ibid.*, p. 3.

²⁴² *Ibid.*, p. 4.

²²⁸ Rep. Comm. Ind. Aff., 1889, pp. 3-4.

²²⁹ Rep. Comm. Ind. Aff., 1890.

²³⁰ *Ibid.*, pp. IV-V. See sec. 3B *infra*.

²³¹ *Ibid.*, pp. CXVIII-CXIX. Salaries ranged from \$800 to \$2,200, and averaged \$1,533. See fn. 142, *supra*.

²³² *Ibid.*, p. V.

²³³ Rep. Comm. Ind. Aff., 1890, p. VI. For an index of prevailing policy on allotment versus tribal ownership, see the Act of March 3, 1893 27 stat. 657, 561 (Klickapoo).