

The effect of this legislation upon the rights of Indians<sup>135</sup> and Indian tribes<sup>136</sup> is elsewhere discussed.

A remarkable enactment of this period was that requiring Indian creditors of the United States to perform useful labor as a condition of receiving payments of money or goods which the United States was pledged to make. Such a provision, constituting permanent legislation, appears in section 3 of the Appropriation Act of June 22, 1874,<sup>137</sup> and again in section 3 of the Appropriation Act of March 3, 1875.<sup>138</sup>

An appropriation act of the following year consolidates power over Indian traders in the hands of the Commissioner of Indian Affairs, in the following terms:

And hereafter the Commissioner of Indian Affairs shall have the sole power and authority to appoint Traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians.<sup>139</sup>

<sup>135</sup> See Chapter 8, sec. 7.

<sup>136</sup> See Chapter 14, sec. 5.

<sup>137</sup> 18 Stat. 146, 176. See Chapter 12, sec. 1, Chapter 15, sec. 23A.

<sup>138</sup> 18 Stat. 420, 449.

<sup>139</sup> Sec. 5, Act of August 15, 1866, 19 Stat. 176, 200, 25 U. S. C. 261.

During this period legislation was enacted requiring each agent having supplies to distribute

to make out, at the commencement of each fiscal year, rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not to the heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance.<sup>140</sup>

While these successive grants of power were being made to the administrative officers of the Indian department, a series of complaints against the abuses of power was leading to the multiplication of specific prohibitions against various administrative practices. Most of these prohibitions are comparatively unimportant, but mention should be made of provisions prohibiting Government employees from having any personal interest in various types of Indian trade and commercial activities relating thereto.<sup>141</sup>

<sup>140</sup> Sec. 4, Act of March 3, 1875, 18 Stat. 420, 449, 25 U. S. C. 133.

<sup>141</sup> Sec. 10, Act of June 22, 1874, 18 Stat. 146, 177, 25 U. S. C. 87. Cf. fn. 90, *supra*. And see Chapter 2, sec. 2B, fn. 141 and sec. 3B, fn. 335.

## SECTION 11. LEGISLATION FROM 1880 TO 1889

The decade of the 1880's was marked by the rapid settlement and development of the West. As an incident to this process, legislation providing for acquisition of lands and resources from the Indians was demanded. Ethical justification for this was found in the theory of assimilation. If the Indian would only adopt the habits of civilized life he would not need so much land, and the surplus would be available for white settlers. The process of allotment and civilization was deemed as important for Indian welfare as for the welfare of non-Indians.

The first general statutory provision relating to disposition of Indian resources, other than land itself, is found in a paragraph of section 2 of the Act of March 3, 1883,<sup>142</sup> which declares:

The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the five civilized tribes, and not the result of the labor of any member of such tribe, shall be covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe; and the Secretary shall report his action in detail to Congress at its next session.

For some peculiar reason, this fund came to be known as "Indian moneys, proceeds of labor." The present status of funds so classified is dealt with elsewhere.<sup>143</sup>

A few years later this provision was supplemented by the Act of February 16, 1889,<sup>144</sup> authorizing the sale of dead timber on Indian reservations under such regulations as the President might prescribe.

Meanwhile the process of assimilation, on its moral side, was demanding congressional attention. Shocked by the *Crow Dog* case,<sup>145</sup> Congress appended to the Appropriation Act of March 3, 1885, a section<sup>146</sup> specifying seven major crimes over which the federal courts were henceforth to exercise jurisdiction, even though both the offender and the victim were Indians and therefore subject only to tribal jurisdiction in the absence of congressional statute.<sup>147</sup>

<sup>142</sup> 22 Stat. 582, 590, 25 U. S. C. 155.

<sup>143</sup> See Chapter 5, sec. 10; Chapter 15, sec. 23.

<sup>144</sup> 25 Stat. 673, 25 U. S. C. 196. See Chapter 15, sec. 15.

<sup>145</sup> See Chapter 7, sec. 2.

<sup>146</sup> Sec. 9, 23 Stat. 362, 385, later incorporated, with amendments, in 18 U. S. C. 548.

<sup>147</sup> See Chapter 7, sec. 9.

The same act that contained the "seven crimes" provision embodied a comprehensive attempt to deal with the problem of Indian depredations by providing for a general investigation by the Secretary of the Interior into depredation claims where treaties with Indian tribes authorized the United States to pay damages out of moneys due to the tribes.<sup>148</sup>

The most important statute of the decade is, of course, the General Allotment Act,<sup>149</sup> frequently referred to as the Dawes Act. The objectives of this legislation and the legal problems which it raised are elsewhere discussed.<sup>150</sup> For the sake of the general historical picture, a brief summary of the provisions of this act may be offered.

The first section authorizes the President to allot tribal lands in designated quantities to reservation Indians.<sup>151</sup> The second section provides that the Indian allottees shall, so far as practicable, make their own selections of land so as to embrace improvements already made.<sup>152</sup> Section 3 provides that allotments shall be made by agents, regular or special.<sup>153</sup> Section 4 allows "any Indian not residing upon a reservation, or for whose tribe no reservation has been provided" to secure an allotment upon the public domain.<sup>154</sup>

Section 5 provides that title in trust to allotments shall be held by the United States for 25 years, or longer if the President deems an extension desirable. During this trust period encumbrances or conveyances are void. In general, the laws of descent and partition in the state or territory where the lands are situate apply after patents have been executed and delivered. If any surplus lands remain after the allotments have been made, the Secretary is authorized to negotiate with the tribe for the purchase of such land by the United States, purchase money to be

<sup>148</sup> Act of March 3, 1885, 23 Stat. 362, 376. Authorization to continue this investigation is found in the Appropriation Act of May 15, 1886, 24 Stat. 29, 44.

<sup>149</sup> Act of February 8, 1887, 24 Stat. 388.

<sup>150</sup> See Chapter 11, sec. 1, and Chapter 13, sec. 3B.

<sup>151</sup> See 25 U. S. C. 331.

<sup>152</sup> 24 Stat. 388, 25 U. S. C. 332.

<sup>153</sup> 24 Stat. 388, 389. See 25 U. S. C. 333.

<sup>154</sup> 24 Stat. 388, 389, 25 U. S. C. 334.

held in trust for the sole use of the tribes to whom the reservation belonged but subject to appropriation by Congress for the education and civilization of such tribe or its members. This section also contains an important provision for the preference of Indians in employment in the Federal Government.<sup>155</sup>

Section 6 of the act sets forth the nonpecuniary benefits which the Indians are to receive in view of the destruction of tribal property and tribal existence which the act contemplates.<sup>156</sup>

Section 7 of the act provides the basic law upon which water rights to allotments have been measured.<sup>157</sup>

The remainder of the act contains sections which exempt from the allotment legislation various tribes of the Indian Territory, the reservations of the Seneca Nation in New York, and an Executive order reservation in the State of Nebraska, and which authorize appropriations for surveys. In addition, the act contains various saving clauses for the maintenance of then existing congressional and administrative powers.

<sup>155</sup> 24 Stat. 388, 389, 25 U. S. C. 348. See Chapter 6, sec. 2A, and Chapter 8, sec. 4B(3)(b).

<sup>156</sup> 24 Stat. 388, 390. See 25 U. S. C. 349. And see Chapter 8, sec. 2A(3).

<sup>157</sup> 24 Stat. 388, 390, 25 U. S. C. 381. See Chapter 11, sec. 3.

In the following year the process of amending the Allotment Act began. Section 2 of the Act of October 19, 1888,<sup>158</sup> authorizes the Secretary of the Interior to accept surrenders of patents by Indian allottees. A proviso permits the Indian allottee, if he so chooses, to make a lieu selection.

A critical point in the process of assimilation arose in the intermarriage of white men and Indian women. The so-called "squawmen" were in many cases individuals who took unto themselves at least a proportionate share of tribal property and tribal control. Section 1 of the Act of August 9, 1888,<sup>159</sup> provided, that, with the exception of the Five Civilized Tribes, intermarried whites should not by such marriage acquire "any right to any tribal property, privilege, or interest whatever to which any member of such tribe is entitled." Section 2 provided that an Indian woman married to a white man shall by such marriage become a citizen of the United States, without detriment to her rights of participation in tribal property.<sup>160</sup> The third section of the act<sup>161</sup> dealt with evidence required to show marriage.

<sup>158</sup> 25 Stat. 611, 612, 25 U. S. C. 350.

<sup>159</sup> 25 Stat. 392, 25 U. S. C. 181.

<sup>160</sup> 25 U. S. C. 182.

<sup>161</sup> 25 U. S. C. 183.

## SECTION 12. LEGISLATION FROM 1890 TO 1899

The decade of the 1890's shows no sweeping legislation comparable in scope to the General Allotment Act, but rather embodies piecemeal development of earlier statutes. This development proceeds along four main lines: (1) Amendments to the Allotment Act, particularly for the purpose of permitting leases of allotments; (2) the development of a body of law governing Indian education; (3) increased protection for individual Indian rights; and (4) the clearing up of Indian depredation claims.

Under the first heading may be listed the Act of February 28, 1891.<sup>162</sup> The first two sections modified those provisions of the General Allotment Act relating to the amounts of land to be allotted. Section 3 of the act<sup>163</sup> permits the leasing of individual allotments, under rules prescribed by the Secretary of the Interior, wherever the Secretary finds that the allottee, "by reason of age or other disability," cannot "personally and with benefit to himself occupy or improve his allotment or any part thereof."

A proviso of this section permits leasing of tribal lands, where such lands are occupied by Indians who have bought and paid for them, "by authority of the Council speaking for such Indians," but "subject to the approval of the Secretary of the Interior."

Section 4 of the act supplements previous legislation on homestead allotments.<sup>164</sup> Section 5 of the act provides that for purposes of descent, cohabitation "according to the custom and manner of Indian life" shall be considered valid marriage.<sup>165</sup>

Further amendments to the allotment system adopted during this decade include provisions extending leasing privileges,<sup>166</sup> conferring jurisdiction upon the federal courts to adjudicate suits for allotments,<sup>167</sup> and authorizing the Secretary of the Interior to correct errors in patents, and particularly in cases of "double allotment."<sup>168</sup>

Of the numerous statutes on Indian education enacted during the decade of the 1890's the earliest confer a large measure of

authority upon the administrative officials, and the later statutes proceed to limit that authority. The Appropriation Act of July 13, 1892,<sup>169</sup> includes a provision<sup>170</sup> authorizing the Commissioner of Indian Affairs to make and enforce regulations to secure the attendance of Indian children "at schools established and maintained for their benefit."

The Appropriation Act of March 3, 1893,<sup>171</sup> contains a provision<sup>172</sup> authorizing the Secretary of the Interior to

\* \* \* prevent the issuing of rations or the furnishing of subsistence either in money or in kind to the head of any Indian family for or on account of any Indian child or children between the ages of eight and twenty-one years who shall not have attended school during the preceding year in accordance with such regulations.

This tactic apparently created considerable Indian and public resentment, as did the parallel practice of taking children from their parents and sending them to distant nonreservation boarding schools.<sup>173</sup> Section 11 of the Appropriation Act of August 15, 1894,<sup>174</sup> prohibits the sending of children to schools outside the state or territory of their residence without the consent of their parents or natural guardians, and forbids the withholding of rations as a technique for securing such consent. This provision is reenacted in the Appropriation Act of March 2, 1895,<sup>175</sup> and, again, the Appropriation Act of June 10, 1896,<sup>176</sup> provides "That hereafter no Indian child shall be taken from any school in any State or Territory to a school in any other State against its will or without the written consent of its parents."<sup>177</sup>

A further limitation upon the broad authority of administrative officers over Indian education is found in a provision of the Appropriation Act of June 7, 1897<sup>178</sup> declaring it to be the

<sup>169</sup> 27 Stat. 120.

<sup>170</sup> 27 Stat. 120, 143, 25 U. S. C. 284.

<sup>171</sup> 27 Stat. 612.

<sup>172</sup> 27 Stat. 612, 628, 25 U. S. C. 283.

<sup>173</sup> See Tucker, *Massacring the Indians*, 1927, *American Indian Life* (October-November 1927 Supplement) 6, 9.

<sup>174</sup> 28 Stat. 286, 313-314.

<sup>175</sup> 28 Stat. 876, 906, 25 U. S. C. 286.

<sup>176</sup> 29 Stat. 321, 348.

<sup>177</sup> 25 U. S. C. 287.

<sup>178</sup> 30 Stat. 62, 79, 25 U. S. C. 278. See Chapter 12, sec. 2D.

<sup>162</sup> 26 Stat. 794.

<sup>163</sup> See 25 U. S. C. 395.

<sup>164</sup> See 25 U. S. C. 336.

<sup>165</sup> 25 U. S. C. 371.

<sup>166</sup> Act of August 15, 1894, 28 Stat. 286, 305, 25 U. S. C. 402.

<sup>167</sup> Act of August 15, 1894, 28 Stat. 286, 305, 25 U. S. C. 345.

<sup>168</sup> Act of January 26, 1895, 28 Stat. 641, 25 U. S. C. 343.

policy of Congress to "make no appropriation whatever for education in any sectarian school."

The role which these various statutes on Indian education have had in the development of the present law governing that subject is elsewhere discussed.<sup>170</sup>

Concern for the protection of individual Indian rights was one of the more constructive consequences of the allotment legislation. The Appropriation Act of March 3, 1893,<sup>180</sup> contains a provision, elsewhere discussed,<sup>181</sup> requiring United States district

attorneys to render legal services to Indians. Further concern for individual Indian rights is indicated by section 10 of the Appropriation Act of August 15, 1894,<sup>182</sup> requiring the Interior Department to employ Indians in all employments in the Indian Service wherever practicable.

The final subject of importance covered in the legislation of the 1890's is the subject of Indian depredations. The Act of March 3, 1891,<sup>183</sup> established a comprehensive basis upon which all pending depredation claims were, in a comparatively short time, disposed of by the Court of Claims.<sup>184</sup>

<sup>170</sup> See Chapter 12, sec. 2.

<sup>180</sup> 27 Stat. 612, 631, 25 U. S. C. 175.

<sup>181</sup> See Chapter 12, sec. 8.

<sup>182</sup> 28 Stat. 286, 313, 25 U. S. C. 44. See Chapter 8, sec. 4B.

<sup>183</sup> 26 Stat. 851.

<sup>184</sup> See Chapter 14, sec. 1.

### SECTION 13. LEGISLATION FROM 1900 TO 1909

Legislation of the decade from 1900 through 1909, like that of the preceding decade, consists almost entirely of piece-meal additions to and modifications of past legislation. The center of gravity is throughout the decade almost entirely in the problem of how Indian lands or interests therein may be transferred from Indian tribe to individual Indian or from individual Indian to individual white man.

Authorization for individual leasing of allotments is contained in the Appropriation Act of May 31, 1900.<sup>185</sup>

The Act of February 6, 1901<sup>186</sup> amplifies prior legislation allowing the Indian a day in court to prove his right to an allotment.

The Appropriation Act of March 3, 1901, contains a provision authorizing the Secretary of the Interior to grant rights-of-way in the nature of easements across tribal and allotted lands for telephone and telegraph lines and offices.<sup>187</sup> The same section contains a provision subjecting allotted lands to condemnation under the laws of the state or territory in which they are located.<sup>188</sup>

The Appropriation Act of May 27, 1902, established a procedure whereby the adult heirs of a deceased allottee may convey lands in heirship status with the approval of the Secretary of the Interior.<sup>189</sup>

The Appropriation Act of June 21, 1906, contains three important provisions of substantive law.<sup>190</sup> In the first place it permits the President to continue the trust period or period of restriction during which allotted land is inalienable.<sup>191</sup> Another provision of this statute provides that:

No lands acquired under the provisions of this Act shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor.<sup>192</sup>

A third item of general legislation in this appropriation act declares:

That no money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior.<sup>193</sup>

While a provision in the foregoing act had established an administrative powers to continue restrictions on Indian land beyond

the point at which they were to have ceased, a provision in the Appropriation Act of March 1, 1907,<sup>194</sup> extended administrative discretion and flexibility in the opposite direction. Under this legislation sale of restricted land was to be permitted prior to the time when such restriction was to have expired "under such rules and regulations as the Secretary of the Interior may prescribe" and the proceeds might be used for the benefit of the vendor "under the supervision of the Commissioner of Indian Affairs."<sup>195</sup>

The Act of March 2, 1907,<sup>196</sup> entitled "An Act Providing for the allotment and distribution of Indian tribal funds," applies to the realm of funds the principles applied to land in the General Allotment Act. Under section 1 of this act,<sup>197</sup> the Secretary of the Interior was authorized to designate Indians deemed capable of managing their own affairs and to allot to such Indians a pro rata share of tribal funds, upon the application of the Indian. Section 2 of this act,<sup>198</sup> authorized payment, under direction of the Secretary of the Interior, of their pro rata share of tribal funds to Indians mentally or physically disabled.<sup>199</sup>

The Act of May 29, 1908, extended the authority to sell allotted lands, permitting the Secretary to make such sales upon the death of the original allottee and permitting and authorizing the issuance of a patent to the vendee of such Indian heirship lands.<sup>200</sup>

The Appropriation Act of March 3, 1909, authorizes the grant of Indian lands to railroads for various designated purposes.<sup>201</sup>

The same statute authorizes leasing of allotted lands for mining purposes<sup>202</sup> under terms approved by the Secretary of the Interior.

A third substantive item contained in this appropriation act authorizes the Secretary of the Interior to make such arrangements as he deems to be "for the best interest of the Indians" in connection with irrigation projects affecting Indian reservation lands.<sup>203</sup>

In general it may be said that these provisions introduce an element of administrative discretion and flexibility into a system which when originally proposed had been considered a means of releasing the Indian from dependence upon administrative authorities.

<sup>185</sup> 31 Stat. 221, 229. See fn. 163, *supra*.

<sup>186</sup> 31 Stat. 760.

<sup>187</sup> Sec. 3, 31 Stat. 1058, 1083, 25 U. S. C. 319.

<sup>188</sup> Sec. 3, 31 Stat. 1058, 1084, 25 U. S. C. 357.

<sup>189</sup> Sec. 7, 32 Stat. 245, 275, 25 U. S. C. 379. And see Chapter 11 sec. 6C.

<sup>190</sup> 34 Stat. 325.

<sup>191</sup> 34 Stat. 325, 326, 25 U. S. C. 391.

<sup>192</sup> 34 Stat. 325, 327, 25 U. S. C. 354.

<sup>193</sup> 34 Stat. 325, 327, 25 U. S. C. 410.

<sup>194</sup> 34 Stat. 1015.

<sup>195</sup> 34 Stat. 1015, 1018, 25 U. S. C. 405.

<sup>196</sup> 34 Stat. 1221.

<sup>197</sup> 25 U. S. C. 119. See Chapter 10, sec. 4.

<sup>198</sup> See 25 U. S. C. 121.

<sup>199</sup> See Chapter 10, sec. 4.

<sup>200</sup> 35 Stat. 444, 25 U. S. C. 404. Also see Chapter 5, sec. 11.

<sup>201</sup> 35 Stat. 781, 25 U. S. C. 320.

<sup>202</sup> 35 Stat. 781, 783, 25 U. S. C. 396. See Chapter 11, sec. 5.

<sup>203</sup> 35 Stat. 781, 798, 25 U. S. C. 382.

## SECTION 14. LEGISLATION FROM 1910 TO 1919

During the decade from 1910 through 1919, two trends dominated Indian legislation. In the first place, the allotment system was rendered more flexible and administrative powers in connection with the allotment system are greatly expanded. In the second place, the attempt to wind up tribal existence reaches a new high point and various powers formerly vested in the tribes are transferred by Congress to administrative officials.

Except for the single act of June 25, 1910,<sup>204</sup> which constitutes a comprehensive revision of the allotment law,<sup>205</sup> all the significant general legislation of this period is tucked away in provisions of appropriation acts.

The first such measure is found in a proviso of the Appropriation Act of April 4, 1910,<sup>206</sup> which makes specific the powers conferred upon the Secretary of the Interior the year before<sup>207</sup> with regard to irrigation projects on Indian reservations.<sup>208</sup>

The Act of June 25, 1910,<sup>209</sup> constitutes what is probably the most important revision of the General Allotment Act that has been made. Based on 23 years of experience in the administration of the act, it seeks to fill gaps and deficiencies brought to light in the course of that period. These relate particularly (a) to the administration of estates of allottees, (b) to the making of leases and timber contracts for allotted lands, and (c) to the cancellation or relinquishment of trust patents.

Section 1 of this act<sup>210</sup> sets forth a comprehensive plan for the administration of allottees' estates, conferring plenary authority upon the Secretary of the Interior to administer such estates and to sell heirship lands. Section 2<sup>211</sup> authorizes testamentary disposition of allotments with the approval of the Secretary of the Interior and the Commissioner of Indian Affairs. Section 212 permits relinquishment of allotments by allottees in favor of unallotted children, who had been completely ignored in the original scheme of allotment to living Indians, and sale of surplus lands to whites.

Section 4 of the act<sup>213</sup> permits leasing of Indian allotments held by trust patent for periods not to exceed 5 years in accordance with regulations of the Secretary of the Interior, and confers upon the Secretary power to supervise or expend for the Indians benefit the rentals thereby received. Section 5<sup>214</sup> makes unlawful to induce an Indian to execute any conveyance of land held in trust, or interests therein, thus taking account of a practice which had resulted in large losses of Indian land through fraudulent or semifraudulent means. Section 6<sup>215</sup> contains various provisions for the protection of Indian timber against trespass and fire. Section 7<sup>216</sup> contains a general authorization for the sale of timber on unallotted lands under regulations prescribed by the Secretary of the Interior. Section 8<sup>217</sup> contains a similar authorization for timber sales on restricted allotted lands.

Section 13 of the act<sup>218</sup> authorizes the Secretary of the Interior to reserve from entry Indian power and reservoir sites,

and the following section<sup>219</sup> authorizes the Secretary of the Interior to cancel patents covering such sites upon making allotment of other lands of equal value and reimbursing the Indian for improvements on the cancelled allotment. Other sections contain minor amendments to the General Allotment Act and related legislation.<sup>220</sup>

The provision of this act relating to testamentary disposition of allotments was amended and amplified by the Act of February 14, 1913.<sup>221</sup> As amplified, the privilege of testamentary disposition subject to departmental approval is extended not only to Indians possessed of allotments, but also to Indians having individual Indian moneys or other property held in trust by the United States.<sup>222</sup>

The Appropriation Act of June 30, 1913, declares:<sup>223</sup>

No contract made with any Indian, where such contract relates to the tribal funds or property in the hands of the United States, shall be valid, nor shall any payment for services rendered in relation thereto be made unless the consent of the United States has previously been given.

The Appropriation Act of August 1, 1914, contains provisions of substantive law authorizing quarantine of Indians afflicted with contagious diseases,<sup>224</sup> and gives recognition to the existence of agency jails by requiring reports of confinements therein.<sup>225</sup>

Contained in the Appropriation Act of May 18, 1916, is a provision authorizing the leasing of allotted lands susceptible of irrigation where the Indian owner, by reason of age or disability, cannot personally occupy or improve the land.<sup>226</sup>

The same appropriation act includes a mandate to the Secretary of the Interior to make a comprehensive report of the use to which tribal funds have been put by administrative authorities. A proviso to this mandate which has become an important part of existing Indian law declares that following the submission of such report, in December 1917—

no money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect: *Provided further*, That this shall not change existing law with reference to the Five Civilized Tribes.<sup>227</sup>

The Appropriation Act of May 25, 1918, contains a number of "economy" provisions, the most important of which is that prohibiting the use of appropriations, other than those made pursuant to treaties—

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.<sup>228</sup>

Another provision of this appropriation act contains a reminder of the recent admission of the states of New Mexico and Arizona

<sup>204</sup> 36 Stat. 855.

<sup>205</sup> See H. Rept. No. 1, 135, 61st Cong., 2d sess., April 24, 1910, for a comprehensive outline of the purposes of the act (H. R. 24992).

<sup>206</sup> 36 Stat. 269, 270.

<sup>207</sup> Act of March 3, 1909, 35 Stat. 781, 798. See fn. 203, *supra*.

<sup>208</sup> 36 Stat. 269, 270, 271, 25 U. S. C. 383-385. See Chapter 12, sec. 7.

<sup>209</sup> 36 Stat. 855.

<sup>210</sup> 36 Stat. 855, 25 U. S. C. 372.

<sup>211</sup> 36 Stat. 855, 856, 25 U. S. C. 373.

<sup>212</sup> 36 Stat. 855, 856, 25 U. S. C. 408.

<sup>213</sup> 36 Stat. 855, 856, 25 U. S. C. 403.

<sup>214</sup> 36 Stat. 855, 857, 18 U. S. C. 115.

<sup>215</sup> 36 Stat. 855, 857, 18 U. S. C. 104, 107.

<sup>216</sup> 36 Stat. 855, 857, 25 U. S. C. 407.

<sup>217</sup> 36 Stat. 855, 857, 25 U. S. C. 406.

<sup>218</sup> 36 Stat. 855, 858, 43 U. S. C. 148.

<sup>219</sup> 36 Stat. 855, 859, 25 U. S. C. 352.

<sup>220</sup> See sec. 16, 36 Stat. 855, 859 (incorporated in 25 U. S. C. 312) (rights-of-way); sec. 17, 36 Stat. 855, 859 (incorporated in 25 U. S. C. 331) (amending secs. 1 and 4 of the original allotment act); sec. 31, 36 Stat. 855, 863, 25 U. S. C. 337 (allotments within national forests).

<sup>221</sup> 37 Stat. 678. See 25 U. S. C. 373.

<sup>222</sup> See Chapter 10, sec. 10; Chapter 11, sec. 6. See also Sen. Rept. No. 720, 62d Cong. 2d sess., May 9, 1912, on H. R. 1332.

<sup>223</sup> 38 Stat. 77, 97, 25 U. S. C. 85. See Chapter 8, Sec. 7.

<sup>224</sup> 38 Stat. 582, 584, 25 U. S. C. 198.

<sup>225</sup> 38 Stat. 582, 586, 25 U. S. C. 200.

<sup>226</sup> 39 Stat. 123, 128, 25 U. S. C. 394. See Chapter 11, sec. 5.

<sup>227</sup> 39 Stat. 123, 158-159, 25 U. S. C. 123.

<sup>228</sup> 40 Stat. 561, 564, 25 U. S. C. 297.

to the Union, in the form of a prohibition against the executive creation of further Indian reservations in those two states.<sup>230</sup>

Section 28 of this act represents what is perhaps the culmination of the tendency to break up Indian tribes and tribal property. This section<sup>231</sup> authorizes the Secretary of the Interior to withdraw from the United States Treasury and segregate all tribal funds held in trust by the United States, apportioning a pro rata share of such funds to each member of the tribe. This provision for the dividing up of tribal funds required a final roll

<sup>230</sup> 40 Stat. 561, 570, 25 U. S. C. 211.

<sup>231</sup> 40 Stat. 561, 591, 25 U. S. C. 162, repealed by Act of June 24, 1938, sec. 2, 52 Stat. 1037, so far as the former statute authorized distribution of tribal funds. See Chapter 9, sec. 6; Chapter 10, sec. 4; Chapter 15, sec. 23.

of persons entitled to participate in the division. Such authorization was conferred by the Appropriation Act of June 30, 1919.<sup>232</sup>

This same act included a comprehensive scheme for the granting of leases and prospecting permits on tribal lands of nine far western states by the Secretary of the Interior, under such regulations as he might prescribe.<sup>233</sup> This statute, probably stimulated by wartime demand for minerals, completely disregards any tribal voice in the disposition of tribal property. It is of a piece with legislation, already noted, looking to the complete dissolution of the Indian tribes and the division of tribal funds, as well as tribal lands, among the members thereof.

<sup>232</sup> 41 Stat. 3, 9, 25 U. S. C. 163.

<sup>233</sup> Sec. 26, 41 Stat. 3, 31, 25 U. S. C. 399, amended by Act of December 16, 1926, 44 Stat. 922, and Act of May 11, 1938, 52 Stat. 347, 25 U. S. C. 396A-396F. See Chapter 15, secs. 14 and 19.

## SECTION 15. LEGISLATION FROM 1920 TO 1929

The decade from 1920 through 1929 is singularly devoid of basic Indian legislation. In fact, the decade marks a lull between the legislative activity in which the development of the allotment system was realized and the new trends towards corporate activity and the protection of Indian rights which were to take form in the following decade.

Seven statutes embodying permanent general legislation adopted during this decade deserve notice.

The Appropriation Act of February 14, 1920, contains a direction to the Secretary of the Interior to require owners of irrigable land under Indian irrigation projects to make payments for costs of construction.<sup>234</sup> The same statute contains a proviso authorizing the Secretary of the Interior to make and enforce regulations to secure regular attendance of "eligible Indian children who are wards of the government" in federal or state schools.<sup>235</sup>

The Appropriation Act of March 3, 1921, contains general authorization for the leasing of restricted allotments for farming and grazing purposes, subject to departmental regulations.<sup>236</sup>

By the Act of May 29, 1924,<sup>237</sup> Congress authorized the execution of oil and gas leases "at public auction by the Secretary of the Interior, with the consent of the council speaking for such Indians," wherever such lands were subject to mining leases under the Act of February 28, 1891.<sup>237</sup>

Perhaps the most significant legislation of the decade is the Act of June 2, 1924, which made "all non-citizen Indians born within the territorial limits of the United States" citizens of the United States.<sup>238</sup> The title of this act as given in the Statutes at Large, "An Act to authorize the Secretary of the Interior to issue certificates of citizenship to Indians" is the result of a clerical error which has been a source of considerable misunderstanding. The bill as originally introduced contemplated a procedure whereby the Secretary of the Interior was to issue such certificates. The act as finally passed, however, acted of its own force to confer citizenship upon the Indian and in fact as passed by both houses the title of the bill reads: "A bill granting citizenship to Indians, and for other purposes."<sup>239</sup> This act

brought to completion a process whereby various classes of Indians had successively been granted the status of citizenship.<sup>240</sup>

By the Act of May 17, 1926,<sup>241</sup> Congress acted to regularize the handling of "Indian moneys, proceeds of labor," making such moneys

available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by section 27 of the Act of May 18, 1916 (Thirty-ninth Statutes at Large, page 159).<sup>242</sup>

The status of these funds is elsewhere discussed.<sup>243</sup>

A comprehensive statute on oil and gas mining upon unallotted lands within Executive order reservations is the Act of March 3, 1927.<sup>244</sup> Section 1 of this act<sup>245</sup> extends to Executive order reservations the leasing privileges already applicable to other reservations under the Act of May 29, 1924, noted above.<sup>246</sup>

Section 2 of this act<sup>247</sup> provides for the deposit of rentals, royalties, and bonuses in the Treasury of the United States to the credit of the Indian tribe concerned, such funds to be available for appropriation by Congress. This section contains a significant proviso indicating a new trend in Indian legislation:

*Provided*, That said Indians, or their tribal council, shall be consulted in regard to the expenditure of such money, but no per capita payment shall be made except by Act of Congress.

Section 3 of the act<sup>248</sup> subjects proceeds and operations under the act to state taxation.<sup>249</sup> Section 4 contains general legislation not restricted to the matter of oil and gas leases:

\* \* \* hereafter changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be

bridge the present gap and provide means whereby an Indian may be given citizenship without reference to the question of land tenure or the place of his residence \* \* \*

The Senate amended the bill so as to eliminate all departmental discretion in its application. See Sen. Rept. No. 441, 68th Cong., 1st sess., April 21, 1924; and see 65 Cong. Rec. 8621-8622, 9303-9304.

<sup>240</sup> See Chapter 8, sec. 2.

<sup>241</sup> 44 Stat. 560. See 25 U. S. C. 161b.

<sup>242</sup> See H. Rept. No. 897, 69th Cong., 1st sess., April 15, 1926, on H. R. 11171.

<sup>243</sup> Chapter 5, sec. 10.

<sup>244</sup> 44 Stat. 1347.

<sup>245</sup> 44 Stat. 1347, 25 U. S. C. 398a.

<sup>246</sup> 43 Stat. 244. See fn. 236, *supra*.

<sup>247</sup> 44 Stat. 1347, 25 U. S. C. 398b.

<sup>248</sup> 44 Stat. 1347, 25 U. S. C. 398c.

<sup>249</sup> See Chapter 13, sec. 2.

<sup>233</sup> 41 Stat. 408, 409, 25 U. S. C. 386. See Chapter 12, sec. 7.

<sup>234</sup> 41 Stat. 408, 410. See Chapter 12, sec. 2.

<sup>235</sup> 41 Stat. 1225, 1232, 25 U. S. C. 393. See Chapter 11, sec. 5.

<sup>236</sup> 43 Stat. 244, 25 U. S. C. 398.

<sup>237</sup> 26 Stat. 794, 795, 25 U. S. C. 397.

<sup>238</sup> 43 Stat. 253, 8 U. S. C. 3. See Chapter 8, sec. 2.

<sup>239</sup> See H. Rept. No. 222, 68th Cong., 1st sess., February 22, 1924, on H. R. 6355, wherein the Committee on Indian Affairs said:

At the present time it is very difficult for an Indian to obtain citizenship without either being allotted and getting a patent in fee simple, or leaving the reservation and taking up his residence apart from any tribe of Indians. This legislation will

made except by Act of Congress: *Provided*, That this shall not apply to temporary withdrawals by the Secretary of the Interior.<sup>250</sup>

This limitation of a basic executive power in the field of Indian affairs is the precursor of a series of limitations upon executive authority enacted in the following decade.

The unfavorable comparisons drawn by the Meriam report<sup>251</sup> 1928 between the service standards of the Indian Bureau and those of state agencies<sup>252</sup> led to a series of statutes looking

<sup>250</sup> 44 Stat. 1347, 25 U. S. C. 398d. See Sen. Rept. No. 1240, 69th Cong., 2d sess., January 11, 1927, on S. 4893.

<sup>251</sup> Meriam, *Problem of Indian Administration* (1928).

<sup>252</sup> See Chapter 2, sec. 2F, *supra*.

to the transfer of power over Indian affairs from the Interior Department to the states. A first step in this devolution of power was taken by the Act of February 15, 1929,<sup>253</sup> which directs the Secretary of the Interior to permit the agents and employees of any state to enter upon Indian lands.<sup>254</sup>

\* \* \* for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or to enforce compulsory school attendance of Indian pupils, as provided by the law of the State, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe.

<sup>253</sup> 45 Stat. 1185, 25 U. S. C. 231.

<sup>254</sup> See H. Rept. 2135, 70th Cong., 2d sess., January 17, 1929, on H. R. 15523.

## SECTION 16. LEGISLATION FROM 1930 TO 1939

The decade from 1930 to 1939 is as notable in the history of Indian legislation as that of the 1830's or the 1880's. Through a series of general and permanent laws enacted in the field of Indian affairs during this decade there runs the motive of righting past wrongs inflicted upon a nearly helpless minority. The sense of these wrongs owed much to the labors that went to the Meriam report,<sup>255</sup> much to the investigations conducted by the Senate,<sup>256</sup> and much to the volunteer labors of individuals and organizations willing to assume the thankless task of critiquing the workings of our governmental institutions.<sup>257</sup>

The first of these attempts to remedy past wrongs was the so-called Leavitt Act of July 1, 1932.<sup>258</sup> Both the Meriam report and the special subcommittee of the Senate Committee on Indian Affairs had made it clear that in the development of irrigation projects on Indian reservations, Indians had been charged with enormous costs for construction work which they had never requested and which brought them little or no benefit. The Leavitt Act authorized the Secretary of the Interior

to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: \* \* \*

such action was to be subject to congressional rescission by concurrent resolution.

A further provision of this act deferred the collection of construction charges against Indian-owned lands until the Indian debt thereto should have been extinguished. The place of the Leavitt Act in current Indian irrigation work is elsewhere discussed.<sup>259</sup> Legislation along similar lines was later extended to private users of water on Indian irrigation projects.<sup>260</sup>

The first legislative result of the depression in the field of Indian affairs was an act designed to meet the problem of defaults on timber contracts. The Act of March 4, 1933, permitted the Secretary of the Interior, with the consent of the Indians involved, expressed through a regularly called general council, composed of the purchasers, to modify the terms of uncompleted contracts of sale of Indian tribal timber.<sup>261</sup> Similar provision was made with respect to allotted timber.<sup>262</sup> In all such modified contracts Indian labor was to be given preference.<sup>263</sup> The insist-

ence upon Indian consent marks a trend that was to continue through the remainder of the decade.<sup>264</sup>

General emergency legislation, such as the National Industrial Recovery Act,<sup>265</sup> with its public works provisions, and the Emergency Appropriation Act of June 19, 1934,<sup>266</sup> under which the Indian Division of the Civilian Conservation Corps was established, made a very significant impression upon the economic situation of the Indian reservations.

An important item of general and permanent legislation was the so-called Johnson-O'Malley Act<sup>267</sup> of April 16, 1934,<sup>268</sup> authorizing (sec. 1) the Secretary of the Interior to enter into contracts with states or territories—

\* \* \* for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the qualified agencies of such State or Territory.

Federal moneys and federal facilities might be turned over to such state or territorial agencies.<sup>269</sup> This legislation constituted a response to the criticism made by the Meriam report that the standards of social service in the Indian Bureau were in large part inferior to those of parallel state agencies.<sup>270</sup>

Next in the list of Indian grievances to be corrected was the provision in the law governing sales of Indian heirship lands requiring the Indian to refund moneys paid by a defaulting purchaser. Fall of real-estate values and widespread defaults on uncompleted contracts made this provision particularly onerous to the Indians. By the Act of April 30, 1934,<sup>271</sup> the usual rule of law that instalments on a defaulted contract inure to the benefit of the vendor was applied to the Indians.<sup>272</sup>

The next attempt to right old wrongs was embodied in the Act of May 21, 1934,<sup>273</sup> an act which repealed 12 sections of the United States Code that laid peculiar restrictions upon civil liberties in the Indian country.<sup>274</sup> This statute marked the first step in a process of freeing the Indians and the Indian Service from the burden of obsolete laws enacted to fit long-outgrown

<sup>254</sup> See H. Rept. No. 1302, 72d Cong., 1st sess., May 13, 1932; Sen. Rept. No. 1281, 72d Cong., 2d sess., February 21, 1933, on H. R. 6684.

<sup>255</sup> Act of June 16, 1933, 48 Stat. 195.

<sup>256</sup> Act of June 19, 1934, 48 Stat. 1021, 1056. For a continuous account of these activities see the publication of the Office of Indian Affairs, "Indians at Work."

<sup>257</sup> When originally introduced it was known as the Swing-Johnson bill.

<sup>258</sup> 48 Stat. 596. See 25 U. S. C. 452.

<sup>259</sup> See Sen. Rept. No. 511, 73d Cong., 2d sess., March 20, 1934, on S. 2571.

<sup>260</sup> See Chapter 2, sec. 2F, and Chapter 12, secs. 2 and 3.

<sup>261</sup> 48 Stat. 647. See 25 U. S. C. 372 (Supp.).

<sup>262</sup> See H. Rept. No. 825, 73d Cong., 2d sess., February 21, 1934, on H. R. 5075.

<sup>263</sup> 48 Stat. 787.

<sup>264</sup> For a discussion of the sections repealed see Chapter 8, sec. 10A(2).

<sup>255</sup> See Chapter 2, sec. 2F.

<sup>256</sup> See Chapter 1, sec. 1. See also H. Rept. No. 951, 72d Cong., 1st sess.

<sup>257</sup> See particularly *American Indian Life*, Bulletins 10 (1927) to 24 (1934).

<sup>258</sup> 47 Stat. 564, 25 U. S. C. 386a.

<sup>259</sup> See Chapter 12, sec. 7.

<sup>260</sup> Act of June 22, 1936, 49 Stat. 1803, 25 U. S. C. 389 *et seq.*

<sup>261</sup> Act of March 4, 1933, sec. 1, 47 Stat. 1568, 25 U. S. C. 407a.

<sup>262</sup> Sec. 2, 47 Stat. 1568, 25 U. S. C. 407b.

<sup>263</sup> Sec. 3, 47 Stat. 1568, 1569, 25 U. S. C. 407c.



conditions.<sup>275</sup> The statutes repealed constitute only a small part of the mass of such obsolete laws.

The most comprehensive measure of the decade, probably equaled in scope and significance only by the legislation of June 30, 1834,<sup>276</sup> and the General Allotment Act of February 8, 1887,<sup>277</sup> is the Act of June 18, 1934.<sup>278</sup> Although the various provisions of this act are discussed in other chapters, an outline sketch of the entire act may show the context and perspective in which each of these provisions has to be viewed.

The general purposes of the legislation are set forth at length in Hearings before the House Indian Affairs Committee<sup>279</sup> and in briefer form in Hearings before the Senate Indian Affairs Committee.<sup>280</sup> In a series of conferences held throughout the Indian country the purposes of the proposed legislation as envisioned by officials of the Interior Department and the views voiced by Indians which were embodied in the act as finally passed are set forth in some detail.<sup>281</sup>

More briefly the objectives of the legislation are summed up in the report presented by Senator Wheeler, one of the co-sponsors of the measure, on behalf of the Committee on Indian Affairs, of which he was chairman. The report recommending enactment of the measure<sup>282</sup> declared:

The purposes of the bill, briefly stated, are as follows:

- (1) To stop the alienation, through action by the Government or the Indian, of such lands, belonging to ward Indians, as are needed for the present and future support of these Indians.
- (2) To provide for the acquisition, through purchase, of land for Indians, now landless, who are anxious and fitted to make a living on such land.
- (3) To stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations.
- (4) To permit Indian tribes to equip themselves with the devices of modern business organization, through forming themselves into business corporations.
- (5) To establish a system of financial credit for Indians.
- (6) To supply Indians with means for collegiate and technical training in the best schools.
- (7) To open the way for qualified Indians to hold positions in the Federal Indian Service.

Section 1<sup>283</sup> prohibits further allotment of Indian lands. This provision embodied a considered judgment that the allotment system was incapable of contributing to the economic advancement of the Indians. As was stated in the House report,<sup>284</sup>

The bill now under consideration definitely puts an end to the allotment system through the operation of which the Indians have parted with 90,000,000 acres of their land in the last 50 years. (P. 6.)

<sup>275</sup> See Sen. Rept. No. 634, 73d Cong., 2d sess., March 28, 1934, on S. 2671, wherein it is stated " \* \* \* it appears that the only use now made of these obsolete sections is as an excuse for arbitrary abuses by bureaucratic officials."

<sup>276</sup> See sec. 6, *supra*.

<sup>277</sup> See sec. 11, *supra*.

<sup>278</sup> 48 Stat. 984, 25 U. S. C. 461, *et seq.*

<sup>279</sup> Readjustment of Indian Affairs, Hearings, H. Comm. on Ind. Aff., on H. R. 7902, 73d Cong., 2d sess. (1934).

<sup>280</sup> Hearings, Sen. Comm. on Ind. Aff., on S. 2755 and S. 3645, 73d Cong., 2d sess. (1934).

<sup>281</sup> See, for example, Minutes of the Plains Congress, March 2-5, 1934 (Rapid City Indian School); Minutes of All-Pueblo Council, Santo Domingo Pueblo, March 15, 1934; Report of Southern Arizona Indian Conference, Phoenix, Arizona, March 15-16, 1934 (Phoenix Indian School); Proceedings of the Conference for the Indians of the Five Civilized Tribes of Oklahoma, Muskogee, Oklahoma, March 22, 1934.

<sup>282</sup> Sen. Rept. No. 1080, 73d Cong., 2d sess. (May 10 (calendar day, May 22), 1934).

<sup>283</sup> 48 Stat. 984, 25 U. S. C. 461. See Chapter 11, sec. 1.

<sup>284</sup> H. Rept. No. 1804, 73d Cong., 2d sess., on H. R. 7902 (May 28, 1934).

Section 2<sup>285</sup> extends, until otherwise directed by Congress, existing periods of trust and restrictions on alienation placed on Indian lands.

Section 3,<sup>286</sup> apart from the lengthy provisos relating to the Papago Reservation,<sup>287</sup> authorized the Secretary of the Interior "to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal \* \* \*."<sup>288</sup> Commenting on this section, the Senate Committee Report declares:

When allotment was carried out on various reservations, tracts of surplus or ceded land remained unallotted and were placed with the Land Office of the Department of the Interior for sale, the proceeds to be paid to the Indians. Some of these tracts remain unsold and by section 3 of the bill they are restored to tribal use. (P. 2.)

Section 4 of the act<sup>289</sup> constitutes a rather complicated amalgam of differing Senate and House drafts on the subject of alienation of Indian land. The scope and effect of this section are elsewhere explored.<sup>290</sup> In general, it may be said that the section prohibits *inter vivos* transfers of restricted Indian land except to an Indian tribe and limits testamentary disposition of such land to the heirs of the devisee, to members of the tribe having jurisdiction over the land, or the tribe itself.

Section 5<sup>291</sup> authorizes the acquisition of lands for Indians<sup>292</sup> and declares that such lands shall be tax exempt.

Section 6<sup>293</sup> directs the promulgation of various conservation regulations.

Section 7<sup>294</sup> gives the Secretary authority to add newly acquired land to existing reservations and extends federal jurisdiction over such lands.

Section 8<sup>295</sup> leaves scattered Indian homesteads on the public domain out of the scope of this measure.

The first eight sections of the law as finally enacted correspond to the provisions of the bills considered and reported by the House and Senate Committees. In the remaining sections of the measure as finally enacted, various combinations and compromises were made between two different drafts which passed the two houses and, therefore, the House and Senate debates and committee reports must be read with caution.

Section 9<sup>296</sup> authorizes an appropriation for the expenses of organizing Indian chartered corporations and other organizations created under the act.

Section 10<sup>297</sup> authorizes the establishment of a \$10,000,000 revolving credit fund from which loans may be made to incorporated tribes. Loans had been made by the Indian Service for many years to individual Indians but the experience with such loans had not been satisfactory. The individual Indian receiving money or goods from a federal official was apt to place the trans-

<sup>285</sup> 48 Stat. 984, 25 U. S. C. 462.

<sup>286</sup> 48 Stat. 984, 25 U. S. C. 463.

<sup>287</sup> Later amended by Act of August 28, 1937, 50 Stat. 862.

<sup>288</sup> See Chapter 15, Secs. 1, 7, 21.

<sup>289</sup> 48 Stat. 984, 985, 25 U. S. C. 464.

<sup>290</sup> See Chapter 11, sec. 4; Chapter 15, sec. 18.

<sup>291</sup> 48 Stat. 984, 985, 25 U. S. C. 465.

<sup>292</sup> "The title to land thus acquired will remain in the United States. The Secretary may permit the use and occupancy of this newly acquired land by landless Indians; he may loan them money for improvements and cultivation, but the continued occupancy of this land will depend on its beneficial use by the Indian occupant and his heirs." (H. Rept. No. 1804, 73d Cong., 2d sess. (May 28, 1934), p. 7.)

<sup>293</sup> 48 Stat. 984, 986, 25 U. S. C. 466.

<sup>294</sup> *Ibid.*, 25 U. S. C. 467.

<sup>295</sup> 48 Stat. 984, 986, 25 U. S. C. 468.

<sup>296</sup> 48 Stat. 984, 986, 25 U. S. C. 469.

<sup>297</sup> 48 Stat. 984, 986, 25 U. S. C. 470.

action in the context of goods received under treaty or agreement or by way of charity, and the urge to repayment was slight. The new legislation precluded loans from the Federal Government to individual Indians. Henceforth the individual Indian was to be responsible in the matter of repayment to his own tribe.<sup>298</sup>

Section 11<sup>299</sup> authorized "loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools," and "loans to Indian students in high schools and colleges."

Section 12<sup>300</sup> reenacted a promise of Indian employment which had been made in several earlier statutes during the preceding century.<sup>301</sup> Specifically, it directed the Secretary of the Interior to establish standards for appointment "without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe," and provided that Indians meeting such non-civil-service standards "shall hereafter have the preference to appointment to vacancies in any such positions." The administration of this provision is elsewhere discussed.<sup>302</sup>

Sections 13,<sup>303</sup> 14,<sup>304</sup> and 15<sup>305</sup> of the act dealt with the exemption of various tribes from all or some of the provisions of the act, provided for the continuance of "Sioux benefits,"<sup>306</sup> and put forward a promise

that no expenditures for the benefit of Indians made out of appropriations authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

Sections 16<sup>307</sup> and 17<sup>308</sup> deal with the problem of tribal organization and tribal incorporation. Since these sections were the work of a conference committee which took phrases from the bill that had passed the House and other phrases from the bill that had passed the Senate, the House and Senate committee reports and legislative history prior to the conference report must be used with extreme circumspection, in aiding the interpretation of these two sections. The scope of these two sections and the interpretations placed thereon are elsewhere discussed.<sup>309</sup>

Section 18<sup>310</sup> provided that the act as a whole should not apply to any reservation wherein a majority of the Indians voted against its application.<sup>311</sup>

Section 19<sup>312</sup> of the act includes definitions of "Indians," "tribes," and "adult Indians." Of these definitions the definition of the term "Indian" is of particular importance:

The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood.

Although many provisions of the act as originally enacted did not apply to the Territory of Alaska or the State of Oklahoma, which together accounted for approximately one-half of the Indian population of the United States, experience in the administration of the act and intensive discussion of its provisions in the exempted areas led to the adoption of legislation extending the main provisions of the act, with minor modifications, to Alaska<sup>313</sup> and to Oklahoma.<sup>314</sup>

An analysis of the workings of the Act of June 18, 1934, was published in 1938 by a committee of students of Indian affairs.<sup>315</sup> The conclusions reached by this committee after an analysis of concrete experiences on typical reservations are worth quoting:

\* \* \* these concrete experiences point dramatically to the new world of opportunity that has been opened to all Indian tribes by the development of three cardinal principles of present-day Indian administration: Indian self-government, the conservation of Indian lands and resources, and socially directed credit. On almost every reservation today, even on reservations that voted to reject the Indian Reorganization Act, one finds a deep and growing concern for these basic principles, a conscious striving to secure their application to local problems, the beginnings of constructive achievement, and hope for the future where there was once only hopeless regret for the past.

#### INDIAN SELF-GOVERNMENT

The first major move of the present administration in the direction of Indian self-government was a provision in the Pueblo Relief Act of May 31, 1933, prohibiting the Secretary of the Interior from spending moneys appropriated under that act for the various Pueblos "without first obtaining the approval of the governing authorities of the Pueblo affected."

The same principle was established on a broader scale by the Indian Reorganization Act of June 18, 1934, which gave to all Indian tribes organizing under its terms the final power of approval or veto over the disposition of all tribal assets.

<sup>298</sup> 48 Stat. 984, 988, 25 U. S. C. 479. For definition of Indians see Chapter 1, sec. 2.

<sup>299</sup> Act of May 1, 1936, 49 Stat. 1250, 48 U. S. C. 362, 358a, discussed in Chapter 21.

<sup>300</sup> Act of June 26, 1936, 49 Stat. 1967, 25 U. S. C. 501-509, discussed in Chapter 23.

<sup>301</sup> The New Day for the Indians: A survey of the Working of the Indian Reorganization Act of 1934 (1938), edited by Jay B. Nash, Oliver LaFarge, and W. Carson Ryan; sponsored by Pablo Abelta, Louis Bartlett, Ruth Benedict, Bruce Bliven, Leonard Bloomfield, Franz Boas, Ray A. Brown, Fay Cooper-Cole, John M. Cooper, George P. Clements, Harold S. Colton, Byron Cummings, William A. Durant, Ben Dwight, Herbert R. Edwards, Haven Emerson, Edwin R. Embree, Howard S. Gans, Robert Gessner, Rev. Philip Gordon, John J. Hannon, John P. Harrington, M. Raymond Harrington, Melville J. Herskovits, Frederick W. Hinrichs, Jr., F. W. Hodges, Edgar Howard, Ales Hrdlicka, Albert Ernest Jenks, A. V. Kidder, Charles iKe, Oliver LaFarge, Robert Lansdale, Ralph T. Linton, Charles T. Loram, John Joseph Mathews, William Gibbs McAdoo, Margaret McKittrick, H. Scudder Mekeel, Jay B. Nash, William F. Ogburn, Father Bona Ventura Oblasser, Robert Redfield, W. Carson Ryan, Lester F. Scott, Elizabeth Shepley Sergeant, Ernest Thompson Seton, Guy Emery Shipley, Frank G. Speck, Vilhjalmur Stefansson, Fred M. Stein, Huston Thompson, George C. Vaillant, Wilson D. Wallis, James P. Warbasse, and B. D. Weeks.

<sup>302</sup> See Chapter 14.

<sup>299</sup> 48 Stat. 984, 986, 25 U. S. C. 471.

<sup>300</sup> 48 Stat. 984, 986, 25 U. S. C. 472.

<sup>301</sup> See Chapter 8, sec. 4B.

<sup>302</sup> See Chapter 8, sec. 4B(3)(b).

<sup>303</sup> 48 Stat. 984, 986, 25 U. S. C. 473.

<sup>304</sup> 48 Stat. 984, 987, 25 U. S. C. 474.

<sup>305</sup> 48 Stat. 984, 987, 25 U. S. C. 475. This provision, insofar as it promised that appropriations authorized by the act should not be considered offsets in Indian claim suits against the United States, was later repudiated in large part, by a rider to the Appropriation Act of August 12, 1935, 49 Stat. 571, 596, 25 U. S. C. 475a.

<sup>306</sup> See Act of March 2, 1889, sec. 17, 25 Stat. 888, 894; Act of June 10, 1896, 29 Stat. 321, 334.

<sup>307</sup> 48 Stat. 984, 987, 25 U. S. C. 476.

<sup>308</sup> 48 Stat. 984, 988, 25 U. S. C. 477.

<sup>309</sup> See Chapter 7, sec. 3; Chapter 14, sec. 4.

<sup>310</sup> 48 Stat. 984, 988, 25 U. S. C. 478.

<sup>311</sup> For a holding that the right to reject the entire act included the right to reject the special provisions dealing with the Papago Reservation, see 38 Op. A. G. 121 (1934). Under the original act, elections had to be called on the act within 1 year after its approval. By the Act of June 15, 1935, 49 Stat. 378, this period was extended another year. Under the original act a majority of all the Indians entitled to vote was required to render the act inapplicable to a particular reservation. Unreported Op. A. G., April 19, 1935. The amendment above referred to modified this rule so as to require only a majority of those voting in an election in which not less than 30 percent of those entitled to vote actually vote.



The Indian Reorganization Act further authorized the various Indian tribes to take over positive control of their own resources and to carry on tribal enterprises as membership corporations under a gradually vanishing federal supervision.

The law as finally enacted, left to the future many grants of power included in the original bill, for which it was felt that the Indians were not yet ready. Thus the power to remove undesirable employees from a reservation, the power to appropriate tribal funds held in the United States Treasury, and the power to take over services now rendered by the Interior Department to individual Indians—such services, for instance, as are connected with education, health, the probate and sale of allotments, and the handling of individual Indian moneys—all were deleted from the original bill.

What was perhaps more important than the specific powers which the act, as finally passed, conferred upon organized Indian tribes was the solemn pledge contained in the act that never again would the Federal Government tear down the municipal and economic organizations that should establish themselves under the protection of the act, and that powers vested in the tribes under past laws and treaties would not be diminished without tribal consent.

The principle of Indian self-government was carried to a new phase when the Indians themselves were asked to vote on whether or not the law establishing self-governing powers should apply on the different reservations. The great majority of the Indians voting on the question voted in favor of the Indian Reorganization Act. In accordance with the expressed desires of tribes originally excluded from the act, its essential principles were extended to Alaska by the act of May 1, 1936, and to Oklahoma by the act of June 26, 1936. Indians numbering 252,211 are now under the act. They are grouped into tribes or bands numbering 206. They represent 68.8 percent of the total of Indians in the United States and Alaska.

As of September 1, 1938, 85 tribes, with a population of 99,813, had already adopted constitutions and by-laws under the Indian Reorganization Act. Fifty-nine of these have already received charters of incorporation. No tribe or group which adopted the act, or which was brought within the terms of the act without formal vote, as in Oklahoma and Alaska, has asked by vote or by majority petition to be relieved of the terms of the act. On the other hand, a number of groups in tribes which once rejected the act have petitioned for a second chance to vote on the ground that their original adverse vote was influenced by misinformation. What the adoption of Indian constitutions has meant in the spiritual regeneration of the Indians concerned is illustrated more forcefully by the concrete experiences related in the first part of this report than by any statistical figures.

One significant change in the direction of Indian self-government can best be put in negative terms. During the century from 1833 to 1933 hundreds of laws affecting Indian tribes were enacted and a great part of these laws, perhaps a majority of them, in some way deprived the Indian tribes of rights or possessions they had once enjoyed. Since 1933 no law has been enacted which took from any Indian tribe, against its will, any of its liberties or any of its possessions.

#### CONSERVATION OF NATURAL RESOURCES

During the years from the passage of the General Allotment Act of 1887 until the beginning of the present administration, Indian land holdings were reduced from approximately 137,000,000 acres to less than 50,000,000 acres. Of the area that remained in Indian ownership a large part was desert or mountainside. The grazing land and farming land still owned by the Indians had seriously deteriorated as a result of overgrazing, the plowing of sod that should never have been broken, reckless timber-cutting and the emigration of the topsoil by various water and aerial routes to points east and west.

These figures represented stark tragedy for a people whose economy was rooted in the soil, whose reverence for the soil was so deep that they never fully grasped the white man's concept of buying and selling land. Little groups of Indians for whom the process of land-loss had

gone to its final end, the advance guard of an army moving towards landlessness, could be found in rural slums and town garbage-dumps, living in the depths of squalor and hopelessness.

Against this background the government's present conservation policies stand out in sharp relief. The loss of Indian lands through sales to whites was stopped, except for a few emergency cases, by an order of Commissioner Collier, approved by Secretary Ickes August 14, 1933, and by the general prohibition against further allotments and against sales of restricted land which is contained in the Indian Reorganization Act. Guarantees against alienation of tribal lands have been written into every tribal constitution and charter.

Between March 1933 and December 1937 the total of Indian land holdings increased by approximately 2,780,000 acres. The Indian Reorganization Act authorized an appropriation of \$2,000,000 a year for land purchase. In the four years following the passage of the act a total of \$2,950,000 was actually appropriated and contracts involving an additional \$500,000 were authorized. This money was used to acquire 246,110 acres (as of December 1, 1937) for Indian use. During the same period an additional 349,207 acres was added to Indian reservations, under the authority which the Indian Reorganization Act confers upon the Secretary of the Interior to restore lands which have been taken away from the Indian tribes as "surplus" lands, wherever such lands are still held by the Federal Government. Restitution of a total area of approximately 5,000,000 acres is under consideration. Special legislation enacted under the present administration accounts for the addition of another 1,203,808 acres to the Indian domain. An additional area of approximately a million acres has been included in submarginal land purchases for Indians made by the Resettlement Administration in consultation with the Interior Department.

Meanwhile, vigorous measures were being taken to stop overgrazing. The soil of the Indian country was being rebuilt through an extensive program of water development and flood control, a program which was carried out by the Indians themselves on the basis of financial aid from the Public Works Administration, the Soil Conservation Service, the Civil Works Administration, and the Indian Division of the Civilian Conservation Corps. All timber-cutting on Indian lands (except in a small problem area in Washington State) was being put upon a perpetual yield basis. Oil development on a score of reservations where oil has been found was being strictly controlled in the interests of a national conservation policy. In short, the Indian estate that a few years ago was being dissipated and destroyed is today being conserved, amplified, and improved for the benefit of the Indian people today and for the unborn Indian generations.

#### ECONOMIC PLANNING

Economic planning is no new thing on Indian reservations. The Blackfeet adopted a five-year development plan in 1921, and it was later copied on many other reservations. What is new in the economic planning under the present administration is that whereas formerly the Indian Service planned for Indians and dealt with Indians as individuals, the Indian Service now yields to the tribes that have incorporated under the Indian Reorganization Act a large share of responsibility for developing and administering a reservation economic plan. On several reservations new tribal enterprises, suited to the resources of the reservation and the interests of the Indians, form an integral part of the reservation plan. On several reservations cooperative cattle associations, cooperative stores, and other forms of cooperative enterprise have been developed. On most reservations economic planning is still entirely in terms of individual programs, but even here the control of credit, upon which economic planning depends, has become a collective responsibility of the tribe.

Under the Reorganization Act \$4,000,000 has already been appropriated for loans to incorporated Indian tribes. These credit funds are being expended almost entirely for capital investment, in the form of agricultural machinery, farm buildings, and other improvements, live-

stock, saw mills, and fishing equipment. This credit program, if it is supplemented by a sound land program, and if it does not become too deeply entangled in departmental red tape and remote control, is likely to establish for the first time a stable basis of economic independence for tribes some of which have lived in the depths of poverty, or are kept alive on the edge of starvation by income from annuities, land sales, and leases of land.

#### WHAT REMAINS TO BE DONE

One who seeks to achieve a just appraisal of the record in the field of Indian affairs must conclude that substantial progress has been made in the removal of injustices and anachronisms that have characterized our national Indian policy. The progress achieved is particularly creditable when one realizes the obstacles that were met: the opposition of vested interests, the well-earned suspicion or hostility among the Indians themselves in the face of new promises of better life, the entrenched habits of a civil service trained in disrespect for Indians and Indian ways, and the tremendous inertia which governmental institutions, financial, legal, and procedural, always offer against fundamental reforms.

Taking account of these obstacles and appreciating at their full value the gains achieved, we must nevertheless recognize that the administration of Indian affairs is not yet something of which white Americans can be proud. The achievements of the present policy represent only the beginning of a liberal Indian program.

Progress in the direction of Indian self-government has been striking. Unfortunately this progress remains for the most part in its promissory stages. The vital question is: "Will the promises of self-government embodied in the Indian Reorganization Act and in the tribal constitutions and charters actually be fulfilled or will these promises be treated like so many earlier promises of the United States embodied in solemn treaties with the Indian tribes?"

Already Congress has cut down the appropriations which the Indian Reorganization Act authorized for land purchase, for credit, for loan funds, and for the expenses of tribal organization. Already Congress has shown a disposition to ignore the veto power which it conferred upon organized tribes in the expenditure of tribal funds.

Finally, it is important that the measures of self-government already achieved be regarded as a beginning and an earnest of good faith rather than as a final goal. The organized Indian tribes, in carrying through the program they have begun, will meet situations in which additional powers, legal and financial, are essential to success. They need sympathy and understanding in their struggle to achieve these further powers of self-government.

The problem of land is still the greatest unsolved problem of Indian administration. The condition of allotted lands in heirship status grows more complicated each year. Commissioner Collier supplied the House Appropriations Committee a year ago with examples showing probate and administrative expenditures upon heirship lands totaling costs seventy times the value of the land; and under existing law these costs are destined to increase indefinitely. Responsibility lies with Congress and the administration to work out a practical solution to this problem, either in terms of corporate ownership of lands, or through some modification of the existing inheritance system. (Pp. 26-34.)

Following the passage of the Wheeler-Howard or Indian Reorganization Act, Congress made another effort to remedy old wrongs in the Act of August 27, 1935,<sup>216</sup> dealing with the problem of Indian arts and crafts. For decades the Indian Bureau had discouraged the practices and conditions out of which Indian

arts and crafts had emerged. The substitution of store products for native products, outside of the field of agricultural production, had been a continuing strand of Indian Service policy for more than a century. By the act establishing the Indian Arts and Crafts Board, Congress gave encouragement and protection to a movement already started by traders, artists, and Indians for the revival of native forms of artistic and craft production. The board established by this measure was authorized to engage in research and experimentation, to establish market contacts, to aid in securing financial assistance for the production and sale of Indian products, and to create government trade-marks for Indian products. A full measure of control over the use of such trade-marks was conferred upon the Indian Arts and Crafts Board, and criminal penalties were provided for those imitating or counterfeiting such marks, or advertising products as Indian products without justification.<sup>217</sup>

Another effort by Congress to remedy an established wrong is found in the Act of June 20, 1936.<sup>218</sup> This act exempted from taxation restricted Indian lands which had been purchased out of trust or restricted Indian funds on the understanding that such lands would be nontaxable<sup>219</sup>—an understanding which came to grief when earlier court decisions on the subject were reversed.<sup>220</sup>

The Act of May 11, 1938,<sup>221</sup> superseded earlier legislation which had given the Secretary of the Interior wide powers to dispose of minerals on Indian reservations to prospectors and lessees and established a comprehensive system of mineral leasing on Indian tribal lands, giving primary power to lease to the Indian council or government, subject to departmental approval except where provision has been made, by the terms of tribal charters, for dispensing with requirements of departmental approval.<sup>222</sup>

Finally, the legislation already commented upon<sup>223</sup> looking to the break-up and distribution of tribal funds in the United States Treasury was repealed by section 2 of the Act of June 24, 1938.<sup>224</sup> Section 1 of this act recodified the laws under which tribal funds may be deposited by administrative officials.<sup>225</sup>

The foregoing summary of legislation enacted during the decade from 1930 to 1939 covers, of course, only the more important measures of general and permanent application. It is fair to say, however, that the principles embodied in these measures were at the same time applied in a much larger mass of legislation dealing with particular tribes and areas.

<sup>217</sup> See Sen. Rept., No. 900, 74th Cong., 1st sess., May 13, 1935, and Rept. Comm. on Indian Arts and Crafts to Hon. Harold L. Ickes on S. 2203, incorporated therein.

<sup>218</sup> 49 Stat. 1542, amended by Act of May 19, 1937, 50 Stat. 188, 25 U. S. C. 412a.

<sup>219</sup> See H. Rept., No. 2398, 74th Cong., 2d sess., April 13, 1936, on H. R. 7764. See also Sen. Rept., No. 332, 75th Cong., 1st sess., April 12, 1937, on S. 150, amending the Act of June 20, 1936, wherein it is said:

The said act \* \* \* was designed to bring relief and reimbursement to Indians who by failure to pay taxes have lost or now are in danger of losing lands purchased for them under supervision, advice, and guidance of the Federal Government, which losses were not the fault of the Indians, but were purchased with the understanding and belief on their part and induced by representations of the Government that the lands be nontaxable after purchase.

<sup>220</sup> See Chapter 13, sec. 3D.

<sup>221</sup> 52 Stat. 347, 25 U. S. C. 396 *et seq.* See Chapter 15, sec. 19.

<sup>222</sup> See Sen. Rept., No. 985, 75th Cong., 1st sess., July 22, 1937, on S. 2689.

<sup>223</sup> See sec. 14, *supra*.

<sup>224</sup> 52 Stat. 1037, 25 U. S. C. 162a.

<sup>225</sup> See Sen. Rept., No. 531, 75th Cong., 1st sess., May 10, 1937, on S. 2163.

<sup>216</sup> 49 Stat. 891, 25 U. S. C. 305, *et seq.*

## SECTION 17. INDIAN APPROPRIATION ACTS: 1789 TO 1939

Appropriation legislation plays a peculiar role in Indian law. Not only does one find a large part of the substantive law governing Indian affairs hidden away in the interstices of appropriation acts, but frequently the actual appropriations and the conditions prescribed for the expenditure of money are given considerable weight, at least administratively, in determining the rights and powers of administrative officials. Thus, for example, the fact that Congress has for many decades appropriated money for Indian judges and Indian policemen, has commonly been viewed as providing congressional authorization for the activities of these officials, although there is no substantive federal law expressly recognizing or conferring such authority.

We have already noted in the preceding sections of this chapter the more important of the provisions of general and permanent legislation which are found among the sections and provisos of appropriation laws. In other chapters attention is paid to the significance of appropriations in various specific problems of federal Indian law.<sup>326</sup> For the present it will be enough to offer a few suggestions as a guide to those who, in tracking down some problem of federal Indian law, must go through the relevant appropriation acts.

Appropriations affecting Indian affairs are found in appropriation acts for the Interior Department, for the War Department, the Department of Commerce, the Treasury Department, the Department of Agriculture, the Department of State, the Department of Justice, and various other agencies. Among the regular departments, only those of Labor and Navy appear to be immune from provisions affecting Indians. However, the main stream of Indian appropriation legislation has followed a narrower course. It begins with appropriations "for defraying the expenses of the Indian department." The first such general appropriation appears in the Appropriation Act of February 28, 1793,<sup>327</sup> entitled "An Act making appropriations for the support of Government for the year one thousand seven hundred and ninety-three." A year later the item reappears in "An Act making appropriations for the support of the Military establishment of the United States, for the year one thousand seven hundred and ninety-four."<sup>328</sup> Thereafter the annual appropriation act for the military establishment, or in some cases, for the military and naval establishments, contains a regular appropriation, increasing year by year, "for the Indian department."

Apart from these appropriations for the Indian department, separate appropriations were made, from time to time, for the expenses of wars against Indians,<sup>329</sup> the expenses of treaties with

Indians<sup>330</sup> (which frequently included considerable gifts), and expenses of carrying into effect treaty provisions.<sup>331</sup>

At first these appropriation acts for the carrying out of treaty promises made permanent appropriations, either for a term of years or "forever."<sup>332</sup> Later, the practice of making annual appropriations to carry out the terms of Indian treaties was substituted.<sup>333</sup>

In 1826 Congress began to enact special appropriation acts for the Indian department.<sup>334</sup> This practice continued until 1909. After 1826 one finds in the appropriations for the military establishment only incidental references to expenses involved in the management of Indian affairs, such as, for example, the expense of maintaining Indian prisoners, the salaries of Indian scouts and other strictly military matters. The last regular appropriation act for the "Indian department" was the act of March 3, 1909.<sup>335</sup> In the following year the appropriation act<sup>336</sup> refers in its title to the "Bureau of Indian Affairs," a name which had indeed been used for nearly a century. Regular appropriation acts for the Bureau of Indian Affairs continued until the Act of March 3, 1921.<sup>337</sup> Since the Appropriation Act of May 24, 1922,<sup>338</sup> appropriations for Indian affairs have been made within the regular Interior Department appropriation act.

Although the practice of inserting the year's crop of Indian legislation at the end of annual Indian appropriation acts was abandoned during the first decade of the century,<sup>339</sup> and parliamentary efforts have been made to bar the inclusion of items of substantive permanent legislation in appropriation acts during recent years, such items continue to crop up from time to time.<sup>340</sup> Even when completely stripped of provisions of general substantive legislation, the Indian provisions of the current Interior Department appropriation acts present so complicated a picture of layer upon layer of residues left by the treaties and laws of the past that it is difficult to read one of these statutes intelligently without a comprehensive historical prospective upon the course of Indian legislation. Efforts in recent years to simplify the form of these appropriation acts have been vigorous but unavailing.<sup>341</sup>

<sup>326</sup> See, for instance, Act of August 20, 1789, 1 Stat. 54; Act of July 22, 1790, 1 Stat. 136; Act of March 2, 1793, 1 Stat. 333.

<sup>327</sup> See, for example, Act of March 3, 1805, 2 Stat. 338.

<sup>328</sup> See, for example, Act of March 3, 1805, 2 Stat. 338; Act of April 21, 1806, 2 Stat. 407; Act of March 3, 1817, 3 Stat. 393; Act of March 3, 1819, 3 Stat. 517; Act of May 20, 1826, 4 Stat. 181.

<sup>329</sup> See, for example, Act of March 2, 1827, 4 Stat. 232; Act of May 24, 1828, 4 Stat. 300; Act of March 2, 1829, 4 Stat. 361.

<sup>330</sup> See, for example, Act of March 25, 1826, 4 Stat. 150; Act of March 2, 1827, 4 Stat. 217; Act of May 9, 1828, 4 Stat. 267.

<sup>331</sup> 35 Stat. 781.

<sup>332</sup> Act of April 4, 1910, 36 Stat. 269.

<sup>333</sup> 41 Stat. 1225.

<sup>334</sup> 42 Stat. 552.

<sup>335</sup> See, for example, the Act of June 21, 1906, 34 Stat. 325.

<sup>336</sup> See, for example, fn. 305, *supra*.

<sup>337</sup> See the Act of March 2, 1933, 47 Stat. 1422 (providing for "alternate budget").

<sup>326</sup> See particularly Chapter 12.

<sup>327</sup> 1 Stat. 325, 328.

<sup>328</sup> Act of March 21, 1794, 1 Stat. 246.

<sup>329</sup> See, for instance, Act of February 11, 1791, 1 Stat. 190.