Riding the Paper Tiger

ROBERT L. BEE

For years accepted analytical practice has tried to fit reservation-federal relations into a series of general models or types: colonialism throughout the nineteenth century and into the twentieth; assimilation as a fellow traveller after the mid-1800s and extending into today's vocational training and urban relocation programs; "development," both as heavy-handed paternalism and client-centered therapy, for Indians as a special group and as part of the growing underclass; and the metropolitan-satellite model as a distinctive subset of both the colonial and "development" models.

Yet the past three decades, 1960-90, seem the most difficult to portray with a single analytical model or theory. One of the reasons is the increasing complexity of the issues, partly a residue of both intended and unintended effects of past policies. But there is also a lack of policy focus compared with earlier periods. The various components of the Indian policy apparatus leap from issue to issue, and policy has become increasingly ad hoc (Deloria 1985b:254).

This is not necessarily an unhappy situation for Indian rights. The most disastrous policy periods have featured a single-minded policy cant: removal, termination, assimilation. But although most Indian communities are relatively better off now than in 1960, the 1987 revelations in the Arizona Republic and the ensuing congressional investigations underscore two urgent needs: a comprehensive, informed, systematic rearticulation of basic policy; and a major effective effort to implement and enforce it.1

Ironically, the period since 1960 has not wanted for informed recommen-
ondomination

Key to Weber's analytical technique is the careful description of ideal types of social structures and belief systems (ideal in this essay meaning "what is expected," not "what is most desirable"). Once developed, these ideal types are then compared with actual structures and belief systems. The discrepancies between the ideal and the real draw attention to important causal variables and provide a means for comparing one case with another.

The concept of domination is a subset of the broader concept of power. Power is simply "the possibility of imposing one's will upon the behavior of other persons" (Weber 1968, 3942). Weber described two basic types of domination: domination by authority—that is, the power of command and obedience—and domination by constellations of interest, in which parties not bound together by coercion or statute voluntarily agree to follow orders or an agenda because they perceive it is in their best interest or advantage to do so (Weber 1968, 3943). For our purposes it is more helpful to view the two as referring generally to "official dominance" and "dominance by influence," respectively. Congress, for example, is officially endowed with plenary power over Indian affairs and is capable of issuing "commands" that are binding on other elements in the policy apparatus. Within the executive, the official hierarchy of domination is helpfully drawn out on flowcharts that grace office walls—lest someone forget. Indian tribes, of course, are not always in an official position to "command" any federal office to do anything. Instead they, along with (but decided not in concert with) private corporations and the various states, attempt domination through influence. Policy analysts have described "power clusters" that subordinate their separate interests to the larger one of influencing the legislative process to some common end (Ogden 19715; cf. Taylor 1984:123).

Both of these pure types of domination are involved in actual policy dynamics, and the distinction between them becomes blurred in the behavior within and between the various groups or components of the policy process. Each component uses both the official structure of power relations and the informal leverage of common interest to obtain the upper hand in making decisions that affect the others.

Weber subdivided domination by authority into three subtypes: traditional domination, charismatic domination, and legal domination. Each rests on a different principle of justification or legitimation for the exercise of power. The most relevant for considering relations between the tribes and the government is the legal type of domination, whose legitimation is based on written laws, statutes, and regulations (Weber 1968, 3954). But I will
argue later that the traditional basis of authority and legitimacy has had an important effect on those relations as well (cf. Nelson and Sheley 1985:182, 187).

Within the legal type of domination by authority Weber distinguished two basic traditions: the formal (or bureaucratic) and the substantive (or political; Weber 1968, 3:960). Their relationship is dialectical. Each depends on the other's existence in the complexity of modern state governance; but within the legal system each struggles with the other for ascendency in the power hierarchy, even though the official relations between them may be spelled out by statute—as is the case between the executive branch and Congress in handling Indian affairs. The interests of each come from different bases and involve distinctive behavior patterns. The best interests of those in the bureaucracy or administration are served by following orders and procedures articulated by those higher in the chain of domination. These orders and procedures, and thus the bases of judgment by the higher-ups, are ideally fixed, unchanging, and routine; innovation is soft-pedaled. The best interests of the politicians, on the other hand, ideally are met by catering to the demands of those outside the formal structure of power: the constituents who put them into office. These demands tend to shift, and meeting them (so as to remain in office) often requires innovative solutions. Ultimately bureaucrats look upward in the chain of power for their support and security; politicians look downward to the voters—or to some of them, at least (Weber 1968, 3:960).

In struggles for dominance with the administration, the politicians of Congress wield the two powerful weapons of legislation and appropriation. As preludes to brandishing either of these, they can also conduct investigations of bureau activities, typically capped with command performances by administrators before congressional committees.6

The bureaucracy's greatest weapon in the struggle for domination is its alleged expertise. Weber insisted that there is no other possible structure ideally as rational or efficient at handling the details of running the state. Politicians' interests and expertise must shift to keep pace with changes in their constituents' concerns. Typically they do not have the time to acquire in-depth knowledge of a single area,7 and thus must rely on the information and procedures supplied by the bureaucrats. The bureaucracy maintains The Files, the source of the accumulated information and knowledge basic to its power, and stresses the keeping of written records to augment its power base.

But knowledge is merely a prerequisite to the bureaucracy's power. Above all, knowledge must be managed effectively, which means not only retaining and retrieving it, but keeping it away from others who might be competitors in the power struggle. Hence the bureaucracy's emphasis on secrecy and its reluctance to supply information that supports positions contrary to its own (Weber 1968, 3:992). Secrecy can also be used to conceal a lack of expertise or an inability to control certain types of knowledge.

Bureaucratic structures are not only inevitable, they are essentially indestructible because of their role in the governance process. They can be prodded, investigated, publicly chastised, shifted, and renamed, but never obliterated, because of the administrative chaos that would result.

According to Weber's version of the politics-bureaucracy dialectic, the key to effective, enlightened governance lies in keeping a balance of power between the two. Without close supervision and direction the bureaucracy will come to dominate the relationship and create a system throughout government based on its own hierarchical, uninnovative worldview.8 Weber portrayed politicians as the primary source of enlightened policy innovation juxtaposed to fundamental bureaucratic tendencies.

Still, when focusing on the dynamic of the relationship between bureaucracy and politics, a third element—the courts—is easily overlooked. Congress cannot sue on Indian issues except for land claims; but officials in the administration can be and have been sued for alleged violations of policy or regulations. This vulnerability acts as a check on bureaucratic domination when and if the legislative branch cannot or will not act as the brake.

This brief ideal-typological prelude shapes the following discussion of relations between the tribes and the federal government over the past three decades. The basic task is to portray the nonprogressive meandering in policy articulation and implementation as a result of dynamics of power relationships within and between the various components of the policy process. The major components in this discussion include Congress, the Bureau of Indian Affairs, the federal courts, and the Indian tribes. States, non-Indian commercial interests, and an assortment of Indian-oriented constellations of interest intrude now and then as relevant components. Of course, there is a discrepancy between the reality as here described and the ideal as drawn by Weber; the point is to understand why the discrepancy exists and what it implies for the future.

Congress

Characteristically, Congress waits for a crisis to erupt in Indian country before flexing its plenary muscle (cf. Taylor 1984:107). Constituents and
special interest groups (i.e., constellations of interest) either favoring or opposing Indian positions in the crisis bombard members of Congress with grievances and demand redress. The legislators, as politicians, must pay attention to these demands and take action on some of them—ideally, meaningful and innovative action. In their position of power legitimized by statute they can compel executive agencies such as the Bureau of Indian Affairs to change their procedures, restructure, or even to self-destruct in keeping with demands of constituents and the results of congressional investigations. Alternatively, they can create significantly new policy directions by passing new laws.

Arguably the most significant legislative measures affecting tribal-federal relations during the last three decades were the Area Redevelopment and Economic Opportunity acts of 1961 and 1964, the Indian Self-Determination and Education Act of 1975, the creation of a permanent Senate Select Committee on Indian Affairs in 1984, and an explicit congressional repeal of the termination resolution in 1988. Otherwise, "policy" measures were preoccupied with services to be provided to and by Indian communities and rights or domain to be restored to specific tribes. The contradictory principles of tribal sovereignty and federal trust protection were continually invoked without being systematically articulated or integrated into legislative reform. And major investigations by Congress in 1973–75 and again in 1988–89 showed that while conditions in Indian communities have generally improved since 1960, the dismal poverty, along with flagrant mismanagement and fraud, still prevail. Congress had a hand in redirecting the Bureau of Indian Affairs toward a "technical services" role, but it has repeatedly been unable to coerce the bureau into major restructuring for the sake of efficiency. In both legislation and in oversight on Indian affairs Congress has assumed a minimalist, reactive posture, thereby abdicating much of its potential power for constructive reform. That this posture is in legislators’ best political interest is the Weberian point, but it must be substantiated.

Given the need of members of Congress to appeal to the widest (or most powerful) constituency so as to be reelected, being active on issues of Indian policy is considered risky. This is the basic observation from which others related to the wielding of substantive or political power proceed. To come down strongly for or against either Indian sovereignty or federal trust protection is bound to bring on the wrath of some vociferous constituency. In an era when a single-issue mentality dominates much of the voter sensibility, what politician needs another source of polarized pressure?

Add to this risk the fact that one and a half million Indians are scattered widely over the fifty states, with only a few areas having concentrations that could affect election outcomes. The chances are that a representative or senator has a politically insignificant Indian constituency, so why take the time to become active in Indian issues? In a 1988 interview Representative Ben Nighthorse Campbell, a Northern Cheyenne representing a district in Colorado, declared: "I’d like to have a few other Indian people back here [in Congress] to spread the burden, because we get a lot of referrals. An Indian guy will go into some congressman’s office from New York and they tell him, ‘Oh, go talk to Ben.’ Wonderful. I’ll help him if I can, but some [members] are taking a hike on Indian problems and pushing them over on us . . . .[T]he thing I obviously have to be worried about is that I can’t be perceived in my own district as just being an Indian congressman for Indians and for Indian problems, or I can’t get re-elected” (Darcy 1988).

Then there is perhaps the major development in tribal-federal relations since 1960: the significant threat of costly court action against the government for failing to adhere to declared Indian policy; that is, to tribal sovereignty or protection of the trust. Given the prevailing obscurity of these concepts, plus the record of past court encounters, precipitous action to meddle more with either issue without intensive and comprehensive preparation would most likely spark a series of protracted court battles that would benefit only the attorneys involved. (Although Congress cannot be sued without its consent, suits can cost constituent taxpayers money and hamstring key administrators with preparations for court appearances.) Best to let sleeping dogs lie, to move only as far and as quickly as is necessary to cope with immediate problems having fairly restricted scope.

In 1978 a legislator from a Western state summarized the situation neatly to one of his staff: “Indian affairs are a no-win issue” (Bee, unpublished notes, 1978). An oft-cited manifestation of this conviction: in the mid-1970s no representative could be found to chair the Indian affairs subcommittee of the House Committee on Interior and Insular Affairs. At first the subcommittee was joined—like hens and foxes—with the subcommittee on public lands. Later, the chair of the full committee, Representative Morris Udall of Arizona, placed all Indian issues before the full committee directly, drastically curtailting the staff and committee time they received (Bee 1982:74; cf. Taylor 1984:120). The Indian affairs subcommittee on the Senate side was abolished earlier (an indication of the low priority of Indian issues but billed as a "streamlining" move). The fact that the Senate Select Committee on Indian Affairs since has become a perma-
The American Indian Policy Review Commission (AIPRC) of the mid-1970s was certainly an involved first step in what was supposed to become a major overhaul of federal policy. But the ensuing scenario unfolded in a familiar pattern: the report was published, the congressional lament of the prevailing conditions was dutifully delivered, the members of the executive branch covering that aspect of federal activities were hauled before congressional committees for grilling and chastisement, and little else has happened since. Again, the inference is that Indian issues do not have high priority and major reform of Indian policy is best avoided.

On the other hand, Congress cannot simply let go of the Indian tribes: the offensive termination resolution is off the books. Various bills to revive it, no matter how deceptively titled, have not been able to marshal the support for passage. Then there is the memory of the terminationiasco itself. Unless they represent Wisconsin or Oregon, legislators might forget; but Indian tribal leaders will always be pleased to remind them (cf. Prucha 1984, 2:1099). Finally, the financial costs of such a move may well be intimidating, both for pretermination upgrading and for the lawsuits and shifted social program burdens that would surely follow. Accurate estimates of the cost of a termination phoenix are difficult to generate. But compared with what this would likely be, the $3 billion now annually spent on federal Indian programs seems an appropriate budgetary counterpart to the make-no-waves minimalist stance on Indian legislative reform.

So for its own best political interests Congress cannot completely ignore Indian relations, but it has not done much fundamentally to reform them. If "abdicating" of policy power seems too harsh a characterization, certainly Congress has put the initiative for systematic reform up for grabs by one of the other components in the policymaking process. According to Weber's view, the administrative bureaucracy is the most likely to seize it.

THE INTRACTABLE, TERMINAL BUREAUCRACY

Perhaps Congress ought to expect major Indian policy initiatives to come from the Bureau of Indian Affairs (BIA), like those launched by Commissioner John Collier and his associates in the mid-1930s. But this expectation assumes the Weberian notion of a rational, efficient bureaucracy, which by virtually all measures the BIA is not. And surely Collier himself stood much closer to the "politician" than to the "bureaucrat" pole of Weber's spectrum.

A disgruntled ex-BIA staffer in the late 1970s declared that the BIA was like "a mindless, spastic zombie" in administering Indian affairs (Bee, unpublished notes, 1978). More recently the BIA's top official dubbed it "an intractable bureaucracy," then resigned in the midst of the 1989 Senate investigation of mismanagement in Indian affairs. For most of the past thirty years the BIA has been incapable of seizing the policy initiative—partly because it is a bureaucracy and partly because it is an ineffective one.

Back to Weber's bureaucracy-politics dialectic: the BIA's power versus Congress comes from its control of important information about Indian life and from its daily involvement in administrative detail. The BIA, or something like it, must exist if Congress is to fulfill its statutory obligations to Indian tribes. But continued dependence on the bureau's administrative effectiveness threatens Congress's ability to meet its statutory obligations.

In the 1960s at least two potentially significant policy initiatives came out of the executive. One was the so-called Indian Omnibus Bill which Secretary of the Interior Stewart Udall sent to Congress in 1967. Indians viewed it as placing too much authority in the hands of the executive, yet paving the way for eventual termination. It expired in committee. The other initiative was the creation of a presidential task force on Indian policy in 1966. To tribal leaders its report also smacked of termination, so it was buried (Prucha 1984, 2:1097–98). But for most of the rest of 1960s, and increasingly in the 1970s and 1980s, the bureau was reactive, dodging this way and that to protect its power.

The BIA's direct and largely exclusive control of Indian community development was undermined by the massive antipoverty campaign of the late 1960s. The new programs brought an enthusiastic deluge of new money, new people with new operating styles, and new channels of authority in the relationship between the tribes and Washington (see, e.g., Officer 1971:51–53; Bee 1981:122–59; cf. Castile 1974:221–22, 1976). This deluge with its self-help ideology helped to increase congressional and higher-level executive pressure on the bureau to change its administrative role: direct control of reservation programs was out; technical service for tribally run programs was in. Bureau bashing was in by the late 1960s as well. As an apparent response to the criticism there was another flurry of what looked like policy initiative from the administration in President Richard Nixon's policy statement of 1970.

And there was an effort by the executive to reorganize the BIA. In 1969
Louis Bruce was brought in as commissioner from outside the bureaucracy to clean house at the uppermost BIA levels (Forbes 1981:53). This sparked a power struggle between Bruce’s reformers and a group of career administrators within the bureau who felt that their power was threatened. The battle raged through 1971, with most of Nixon’s suggested reforms being subverted by Interior and BIA people (Forbes 1981:53), giving strength to the argument that they were never intended to be effectively implemented.

The reform proposals were further subverted by the Indians themselves: a watershed in power manipulation came in November 1972 when the Trail of Broken Treaties reached Washington. The ensuing occupation and sacking of the BIA building were taken as a most public signal that the bureau—already in internal disarray—was at best an administratively and politically embarrassing (Burnette and Koster 1974; Deloria 1974; Forbes 1981). Whatever the previous doubts about its efficiency, there was now no way the bureau could be trusted to handle its administrative chores effectively. Now more than ever, the bureau was incapable of effective power manipulation as unfavorable attention from superiors and the public was more deeply into make-no-waves, resist-all-change behavior.

Yet no other agency had the accumulated information necessary to deal with the daily issues of federal-Indian relations. Even though the Indians in the takeover had taken or destroyed some of this all-important lifeline, the bureau’s continued—if very much flawed—access to The Files allowed its survival.

By 1977 Congress had issued explicit and strident demands for BIA reorganization (SSCIA 1978:127–28). This was partly the legacy of the angry confrontations with Indians in 1972–73 and the resulting AIPRC recommendations, and partly the continuing effort to transform the bureau into a technical service agency. The AIPRC version of reorganization was more sweeping than that proposed in 1969–70, which is to say even more threatening to the bureau. The new contracting process would put more authority into the hands of the tribes and would cut both personnel and funding for the bureau itself. In particular the control over tribes by the twelve BIA area offices would be cut back (AIPRC 1976:8).

The bureau behaved accordingly. There was a great deal of planning with a minimum of actual reorganization (SSCIA 1978:127, 1984). Plans called for replacing the twelve area offices with five or six regional service centers, two special programs offices, and three field offices.13 By 1989—almost fifteen years after they were proposed—these changes still had not been implemented. The area office structure was still intact, although area directors had been removed from line authority in BIA education programs in 1978 (SSCIA 1984:40). The charade produced at least one classic example of dialectical symbiosis: when the BIA was finally ready to implement a plan for “realignment” (not reorganization) in 1982, the tribes reversed their earlier position and vehemently opposed elimination of the area offices. 14

By 1978–79 the contracting system with tribes was hitting a snag after another, threatening to scuttle the process entirely. One of the major problems was the lack of BIA funding for contract support (indirect costs). There was little the bureau could do, it declared, unless it received more resources (see GAO 1978; Bee 1982:95–110, 232). Some tribes believed that the contract support controversy was partly an effort to resist the reorganization’s perceived threat to bureau power (GAO 1978; Prucha 1984, 2:1161). Nevertheless, some of the BIA’s other sources of power have been eroding. Between 1976 and 1988 the bureau lost about 3,500 personnel positions (despite strident objections by civil service lobby groups [e.g., SSCIA 1984:59–63]). In the 1980s BIA funding increased virtually every year, but these increases were wiped out by inflation, leaving a net—if relatively small—funding loss for the decade (see, e.g., RN 1986:7). Neither of these trends can be traced exclusively or largely to the technical services shift, however. The BIA sustained cuts along with other federal agencies in keeping with the Reagan administration’s antipathy to big government.

In the wake of the 1980 Senate hearings into the poor management of Indian and federal mineral resources, members of the special investigating committee issued tough-sounding orders to the secretary of the interior: “Go in there [into the BIA and other resource management agencies] and kick butt” (McAllister 1989:A22). At least two outcomes were predictable: Interior would want more money and people to strengthen its resources administration, and there would be a call for major BIA reorganization.

The bureau for the past three decades, then: no major initiatives for policy reform, inefficiency and credibility crises, but nonetheless surviving, largely because no other agency has as much information and experience and Congress has been unwilling to risk the consequences of starting over with a new administrative structure. Weber emphasized that a bureaucracy is capable of endless adaptive adjustments necessary to sustain its existence. It is thus not only inevitable but indestructible (see, e.g., Weber 1968, 1:224).

Within the Department of the Interior itself the BIA is legendary for its lack of power (e.g., Cahn 1969, chap. 2). Certainly there is a continuing conflict of interest between the agencies that control the entire federal portion of mineral and petroleum wealth and the one that handles the social
and material needs of about 600,000 Indians. Not only are the resources a higher priority, but the other agencies in the department are not about to yield any measure of their control (and thus power) to rival bureaucracies.

All administrative departments are subordinate to the Office of Management and Budget (OMB), which screens each executive department’s proposals to be certain they are in keeping with the basic politics of the White House and the maintenance of the maximum amount of political power by the executive branch versus that of Congress. Ultimately, then, the major decisions by the administrative agencies, unlike Weber’s ideal-typical bureaucracy, are not objective at all but must run a hierarchical gauntlet of political jockeying. To turn Karl Mannheim’s comment around, administrative decisions have a way of becoming political decisions (Mannheim 1936:118).

The dialectic of politics-bureaucracy power relations is manifest not only in the BIA’s relations with Congress and executive agencies but within the BIA itself. At this more specific level, too, its dynamics have helped to stifle BIA initiatives for policy reform. As in the case of Louis Bruce, the executive branch’s typical reaction to the bureau’s administrative lapses is to appoint new BIA leadership to shape things up. Notably, these are political appointees who serve only as long as they please those who appointed them; they are without the protection of civil service regulations—a way of ensuring that personal loyalty will prevail over the best interests of BIA longevity. Because these appointees also look upward in the hierarchy rather than downward, they do not fit Weber’s “politician” type neatly. They are touted as the “idea people” in charge of developing long-range policy. Both ideally and typically they come from outside the ranks of the BIA; that is, they are not career administrators and owe those beneath them no long-standing favors. Ideally and typically (for the past thirty years, anyway), they also know something about Indian affairs and are themselves of Indian blood. And this sets the stage for conflict between the political newcomers and the career administrators within the bureau; the running battle between Commissioner Bruce and the administrative careerists in the months prior to the BIA takeover is a well-documented example (Forbes 1981:49).

Theodore Taylor, a former BIA official, described the impacts of political appointments on bureau operations (1984:127–29). Since 1969 there have been at least eighteen appointed or acting assistant secretaries and commissioners, each with a new agenda for shaping up bureau operations. This choppym tenure means that the direction Weber found so crucial to enlightened administration has been missing within the bureau. For the rank-and-file bureaucrats, routines never become established and guidelines and procedures are temporary. For the higher-level career administrators, the frequent changes are demoralizing because there is little incentive to hone their skills and expertise; why bother? A glass wall rises between the career administrators and the top bureau officials. The political appointees move on while a few of the higher-level career bureaucrats move around from job to job in the bureau’s operations, showing up at congressional hearings to whisper facts to the commissioner or assistant secretary of the moment, or occasionally filling in as an acting luminary. The two elements of bureau operations never get a chance to know one another and to work together on any long-range program. As a result, the career civil servants’ best interests are served by trying to keep a low profile, to be reactive instead of innovative, and all the while to protect the span of control over people and resources.

Thus, while according to Weber’s typology bureaucrats are always looking upward in the power hierarchy for direction and commands, thereby in essence linking their professional existence to that hierarchy regardless of who commands it, their obedience to politician superiors is assured only as long as it perpetuates the system. Among Washingtonians, converting administrative positions into political appointments is considered a quick fix for administrative embarrassments (Taylor 1984:129). But with their high turnover, the ever-widening networks of political appointments have accomplished exactly the opposite of their anticipated effect: they have actively interfered with policy reform.

Increasing the numbers of political appointments can also lead to a subversion of all administrative objectivity for the sake of personal loyalty. This would be at least as threatening to Weber’s version of democracy as the prospect of politicians being dominated by bureaucrats.

If Congress has generally failed to use a greater measure of its available power for policy initiatives, and the BIA has used most of its own power simply to exist, then conceivably Indians’ power for seizing the policy initiative has become relatively greater in the past three decades.

**INDIAN POWER**

The federally recognized Indian tribes’ leverage in the system comes ultimately from their unique sovereign status, the ramifications and limitations of which are fleetingly sketched in the Constitution and have been evolving in court findings since the 1790s. From time to time in the history of policy, public appeals to the sad plight of Indian peoples have had some influence (e.g., the late 1920s), but mostly this is an intermittent and
unreliable lever. In the past three decades, mass public confrontations between Indians and state and federal authorities have generated some legislative or administrative actions, but the long-term results so far have been mixed and generally disappointing.

Because Indians occupy no formal position in the power structure of Washington, they must wage a kind of guerrilla warfare to exercise what power they have. Their strongest weapon is the threat of court action against administrative officials, states, or corporations for violating the evolved principles of tribal sovereignty, federal trust protection, or both. Several factors have combined to help them wield this threat with increasing effectiveness since 1965. The first is money. Land claims settlements and the proceeds from tribal enterprises and resources have put money into some tribal governments’ hands. This allows them to hire lawyers and, in some cases, Washington-based consulting firms whose primary purpose is to influence relevant legislation. The second factor, partly related to the first, is a series of federal court decisions reaffirming the special legal status of tribes, tribal sovereignty, and the federal trust responsibility. Among the most important of these are the reaffirmation of the Boldt decision on Indian treaty fishing rights and the Passamaquoddy-Penobscots’ right to sue states for the violation of the 1790 Trade and Intercourse Act. The third factor is sophistication. The antipoverty programs of the 1960s and 1970s promoted firsthand contact between tribal officials and Washington, giving them direct knowledge of how things get done in the capital city. Some tribes have been able to continue this contact despite personnel changes and heavy cuts in so-called social programs spending. And the fourth factor, also related to the other factors, is the availability of effective advocates outside the formal federal network. This includes the influence-for-hire consultants in the city, nonprofit advocacy groups such as the American Friends Service Committee and the Friends Committee on National Legislation, and, most important, the nonprofit legal advocacy groups such as the Native American Rights Fund and various state-level legal services offices.

In power struggles with the BIA, tribes are confronted by the irony that affects all bureaucracies bound to provide services for subordinate clients: the bureau cannot be responsive to Indians’ wishes unless ordered to do so by its own superiors in the hierarchy of power. There is also the bureau’s inevitable need to present a united front to rivals for power. So the Indians move on to Congress to try to induce it to compel the BIA or some other administrative agency to yield to the Indians’ wishes.

Although the tribes and the BIA are rivals for power, they obviously depend on each other. Thus, they will operate to limit or reduce each other’s power vis-à-vis Congress, but will join forces against any move to erode the bureau or end the special legal status of the tribes. And because of the bureau’s statutory administrative power, they will join forces to increase the resources of the bureau for eventual redistribution to the individual tribes. Most fundamentally, the Indians—like Congress—are forced to depend on the bureau because of its administrative apparatus and information. The linkage between many tribal governments and the bureau can be even tighter: the tribal incumbents use the administrative protection and inside information offered by the bureau to bolster their power over rival factions. The situation at Pine Ridge in 1972–73 is an example of this (see Forbes 1981:116–18; also Burnette and Koster 1974:239, 242).

Mention of factionalism prompts a crucial caution. In speaking so far of “tribes” or “the Indians” there has been the implication that the Indians are united on basic issues of power relations; that is, that there is not only a constellation but a consensus of interest. This is not the case. While most tribes would agree that there should be a maximum of tribal sovereignty along with maintenance of the federal trust relationship, there are real differences both between and within tribes about the tactics and philosophy involved. There is no universal Indian voice whispering in Congress’s ear.

Because tribal leaders of recognized tribes are elected, they fall into the “political” element of Weber’s legal authority. This means that the concerns of their constituency (not necessarily the majority of the tribal members) must dominate their strategies. In most cases the constituents’ major concerns are localized and immediate: need for money for a continuing agricultural program, more water for the crops, getting more land back for the reservation; more general issues of federal Indian policy are of less concern. It is these local issues that are most likely to bring tribal leaders to the lawyers and to Washington. And this means that localized issues dominate congressional and executive actions. This tends to deflect attention from the issues of general policy articulation and reform. The closest approach to a broader assessment may well come from the appropriations process, which, of course, ignores all important policy issues that cannot be expressed in dollars.

The major national-level Indian organizations that marshal tribal support for or against various moves by Washington reflect some of the fundamental cleavages in the Indian population across the country: the elected tribal leaders versus their opposing factions, the “progressives” versus the “traditionalists” (frequently overlapping with the first-named split), urban versus reservation Indians, and federally recognized versus non—federally
recognized tribes. At the national level the most persistent cleavage for the past thirty years has been between the National Tribal Chairmen’s Association, the National Congress of American Indians, and the American Indian Movement (AIM). The diverse pressures leveled by these groups on Congress and the executive branch have strengthened the tendency to concentrate on localized, immediate issues at the expense of more generalized policy.

The Indians’ most effective tactic for instigating broad policy initiatives by Congress or the executive since 1960 has been militant confrontation, in which the legitimacy of the federal power itself is ignored by Indians for the sake of their own bid for influence. The takeover of Alcatraz in 1969, the takeover of the BIA building in 1972, and the second Wounded Knee confrontation four months later are the primary examples. The outcomes, however, were not those intended by the Indians themselves. The crackdown on BIA operations following the takeover was decidedly not an Indian objective; and the AFPRC promised more than it delivered.

By contrast, The Longest Walk of 1978, organized as a broad-based Indian counter to a series of backlash bills introduced in both houses of Congress, was much less effective at instigating action. Once in Washington the marchers kept the peace and created only a minimal stir in the city—which by then was jaded after massive marches on the Capitol by angry farmers, schoolteachers, and antiabortion groups (Bee 1982:148). Congress is more responsive when threatened than when approached.

The government’s willingness in the 1960s and early 1970s to see Indian issues as primarily issues of poverty represented a threat to the tribes’ power in federal relations (Deloria 1969:168–96, 1985b:251; Bee 1982:210–11). The antipoverty enthusiasm tended to ignore the special legal status of Indian tribes as distinct from all other minorities. (Ironically, for this brief period it was as powerful for Indians to join forces in a constellation of interest with the poor, or with other ethnic or racial minorities, so as to gain specific rights for Indians only. This is why Vine Deloria has made an effort to distinguish the situation of Indians from that of blacks and Hispanics in this country (Deloria 1969:168–96). Of course, broad-based social programs have helped Indians, as noted earlier. But the tribes dare not allow the impression to surface that these programs alone will meet the full measure of the government’s statutory commitment to them.

The Indians have learned how to operate as effectively as possible within the legal power structure, using the same rules and the same bases of legitimation used by policymakers in Washington. AIM members have never operated according to those rules, however, and by the mid-1970s had changed their tactics to emphasize a more “traditional,” more “spiritual” approach to power manipulation. This probably helped to create a broader age range among AIM supporters, but it also perpetuated the discontinuity between legal and traditional types of authority.

In some reservation communities, such as Pine Ridge or Taos, this traditional-legal discontinuity has been a long-term issue in tribal political factionalism. Tribal governments have become microcosms of the national government, with burgeoning bureaucracies and political battles over who will control them. Those favoring the traditional authority operate according to different system, typically not hierarchical but consensual, expressing dissatisfaction by avoidance rather than by angry confrontation. To the extent that it persists as an issue in political conflict on some reservations, and to the extent that the traditional pattern spreads among tribal governments, federal authorities may once again be confronted by a power system much different from their own. The presence of this and other sources of intratribal factional conflict also threatens the constancy and intensity of tribal pressure placed on government, and the high turnover of Indian leaders caused by factionalism affects the directions the pressure favors—exactly as high turnover of political appointees has affected the BIA.

But the threat of legal action remains the most effective way for tribes to wield authority. Secretaries of the interior such as the late Rogers Morton have been named personally as defendants in tribes’ suits over failed federal trust protection. Lawsuits against the Department of the Interior were filed by 17,000 Navajos and by 7,000 Oklahoma Indians for dereliction of the trust obligation in handling their mineral leasing arrangements with private corporations (Arizona Republic, October 4, 1987, A20). States such as Maine and Connecticut agreed to negotiate settlements of tribal land claims once they were convinced that the Indians meant business and had a case that could well hold up in court. That the negotiated settlement procedure has become so pervasive in relations between tribes, states, Congress, and executive agencies since the 1970s clearly means that a good many tribes have the potential power to be even more hurtful to their opponents’ best interests should the issue go to court (cf. McGuire, this volume).

In a way, both the negotiated settlement process and the courtroom battles alter the fragmentary, tribe-specific tendencies of policymaking in Congress and the executive branch, and reinforce the tribes’ sense that each of them is a special policy case. It is that tribe, after all, that goes to the expense and time and endures the anticipatory waiting as the case moves along. To be sure, other tribes or the policy process itself may be affected by any precedent set in the settlement, but the conditions of the exercise of the
tribes' legal power contribute to Indians' inability to launch sweeping policy initiatives.

If for diverse reasons the initiative does not come from Congress, or from the executive, or from the tribes themselves, by default it passes to the courts. Charles Wilkinson, an expert on Indian law, wrote in 1987: 'Congress has virtually unfettered power over Indian policy and . . . has adopted statutes dealing with some aspects of Indian policy. Major issues, however, have not been addressed by Congress. The result is that the task of crafting Indian law has been left in significant measure to the courts' (1987:9).

THE COURTS

On Indian issues the Supreme Court has been neither consistently liberal nor conservative over the last thirty years. Those who in 1978 were distressed at what they saw as a conservative cant in the Oliphant decision were cheered only sixteen days later by the Court's ruling in the Wheeler case (Wilkinson 1987:61–62). This is to some extent traceable to a heritage of lower court findings that similarly shifted between conservative and liberal interpretations of the rights of tribes versus the other types of sovereignty (federal, state; see Wilkinson 1987:29).

Wilkinson argued that the improvement of Indians' conditions of life since 1960—and even since 1980—is predominantly due to favorable findings in the courts. Despite the apparently contradictory opinions rendered, the overall trend has been in the direction of upholding the concept of Indian sovereignty in its increasingly complex ramifications. And the persistence of those favorable findings is due to a general judicial unwillingness to cave in to realpolitik and a tendency to uphold principles and laws that were entered into in good faith in the past. Thus, he argued, the courts are not apparently or universally responsive—on this issue, at least—to the political-economic interests of the powerful majority. Congress by definition must be; administrative agencies ideally should not be but are. That is why the existing laws, the precipitate of court decisions, and the resulting threat of court action remain the most effective source of power available to the tribes. Without the law they are virtually powerless against federal, state, and private interests opposed to their own. This is one of the fundamental reasons why the status of Indian communities today cannot be sufficiently explained by their economic subordination and exploitation.

The current fuzziness of the definition and extent of the concepts of sovereignty and federal trust protection has precipitated much of the court action (Barsh and Henderson 1980:255–56). It is reasonable to expect that the clarification of these concepts will not come from some sweeping action by Congress, or bold policy initiatives from the executive branch, or a protracted, united effort by tribes, but from a step-by-step refinement based on successive court findings in cases launched by local, specific disputes (cf. Deloria 1985b:254–56). This is so partly because of the formal structure of power in policy issues and partly because of the way various components of that structure have wielded what power they enjoy—which is in turn the result of each operating according to its own best interest.

GENERAL IMPLICATIONS AND CONCLUSIONS

The past three decades of tribal-federal relations have necessarily centered on the issue of best interests and power manipulations aimed at preserving and enhancing them. It is expedient for Congress to shy away from general policy reform; it is expedient for the Bureau of Indian Affairs and other federal agencies to react passively to orders imposed on them by those above them in the power hierarchy. And it is expedient for Indian tribes to take their most strenuous actions on issues that concern them most directly rather than to band together for the extensive process of hammering out more lofty policy reform goals agreeable to all—assuming such goals could ever be found. The expediency has been traced here as an interplay of several sets of symbiotic yet contradictory factors: political and bureaucratic-administrative tendencies, tribal sovereignty and federal trust protection, the tribes and the BIA. And each set is clearly interrelated with the other two.

Weber's politics-bureaucracy dichotomy does not neatly fit the reality of the Indian policy process, of course. The reality is more typically a mixture of typologies and ideal tendencies. Members of Congress must be as concerned with hierarchies of power within their houses as with the sensibilities of their constituents, for example. In particular, political appointees as a type fit neatly into neither tendency. Like their subordinate bureaucrat-administrators, they are looking up, not down the power hierarchy. They are to this extent compromised politicians. They are also compromised as bureaucrats. Whether the bureau would be better able to seize the policy initiative were these appointees to stay in position longer is questionable; it is more probable that the short tenure is not a temporary aberration but rather a manifestation of an inherent bureaucratic nature. From this view, John Collier's decade as commissioner was an aberration.

Weber concluded that any bureaucracy has the power edge over political bodies under ideal conditions. The BIA has used most of its power merely to
stay alive. Yet Weberian comparative analysis directs the analytical focus to
the more fundamental issue of why the bureau has been unable to manage
its power sources effectively. Although I discussed some of the important
power-structural factors bearing on BIA inefficiency, I did not mention
inadvertent or deliberate collusion between BIA or other agency employees
and non-Indian commercial interests. The Senate investigations and Ariz-
ona Republic essays described such collusion (see SSCIA 1989); it can only
flourish under the immortal, organizational, procedural, and personnel
status quo. Like angry public confrontations, headline acts of individual
and corporate greed can be effective goals to policy overhaul, even though
policy overhaul was manifestly necessary years before the press became
involved.

Word of the BIA’s demise is always premature. Still, the most recent
great exposé of bureaucratic inefficiency and alleged fraud may finally do it
in, because it is both an active perpetrator and a convenient scapegoat (SSCIA
1989). In the Senate’s overhaul plan, federally recognized tribes would be
allowed to secede from the BIA and Indian Health Service bureaucracies by
negotiated agreements with a proposed Office of Federal-Tribal Relations
(OFTR; see SSCIA 1980:213). The OFTR would negotiate agreements and
oversee their implementation. It would require money, people, offices, and
regulations. An administrative department having something like the BIA’s
present functions is, to be Weberian about it, inevitable. And just as
inevitable is the effort of any new department to enhance its own power
and growth at the expense of potential rivals—including the BIA. At best it
would be another bureaucracy under a different name. By fall 1990 the
OFTR’s proposal was being ignored in favor of yet another plan for reorganiz-
ing the BIA (Joint Task Force 1991). By spring 1991 the BIA had been coerced
into allowing tribes to participate in the planning.

The interplay of political and bureaucratic tendencies is to a degree
informed and constrained by the implications of tribal sovereignty and trust
protection. Trust protection implies bureaucracy; sovereignty implies po-
itical entrepreneurship. Again the extremes overstate the reality. But if
there is a search for a reasonable balance between one of the two pairs, it
must necessarily involve creation of an optimal balance between the other
pair.

NOTES

1. A series of investigative articles alleging fraud, waste, and incompetence in
the handling of Indian resources and administration appeared in the Arizona Re-

public, October 4–11, 1987. The Senate appointed an investigative subcommittee
of the Select Committee on Indian Affairs to look into the allegations. After staff
investigations, public hearings were held in late January and February and in May
and June 1989.

2. For example, President Nixon’s 1970 message on executive policy toward
Indians is still hailed as a sensitive and realistic statement; the American In-
Indian Policy Review Commission’s comprehensive report and recommendations in
1976–77 remain unequaled in scale. But for a variety of reasons these hopeful
proclamations have not been followed by systematic policy reform (Prucha 1984,
2:1167, 1170).

3. I should emphasize a point often made about Weber: although his work is
typically juxtaposed to that of Marx, he took care to stress the material basis for
much of the domination he saw in social action.

4. Weber’s full definition of domination through authority reads: “[T]he situa-
tion in which the manifested will (command) of the ruler or rulers is meant to
influence the conduct of one or more others (the ruled) and actually does influence it
in such a way that their conduct to a socially relevant degree occurs as if the ruled
had made the content of the command the maxim of their conduct for its own
sake. Looked upon from the other end, this situation will be called obedience” (1968,
3:942).

5. Traditional authority is based on the principle that the orders and the
obedience are matters of ageless truths, while charismatic authority is based on the
conviction that the leader is personally and specially endowed with grace or wisdom
that compels obedience.

6. In Weber’s view, similar inquiry was not possible in the German parliament
of 1917, a condition strengthening the control of the bureaucracy in the govern-
ance process at that time (Weber 1968, 3:1418).

7. In-depth here is a relative term; many members of Congress develop real (as
distinct from publicly proclaimed) expertise in issues of special interest to them,
and it would be inappropriate to refer to them as “ dilettantes” without this qualifi-
cation.

8. A case in point, he caustically observed in 1917, was the German govern-
ment of his time. “Since the resignation of Prince Bismarck Germany has been
governed by ‘bureaucrats,’ a result of his elimination of all political talent.” What
was needed, Weber declared, was direction by a politician, “not by a political
genius, to be expected only once every few centuries, not even by a great political
talent, but simply a politician” (Weber 1968, 3:1403–5).

9. It could be argued that much—if not all—of the then-hopeful movement
toward Indian policy reform of the mid-1970s was due to the efforts of Senator
James Abourezk of South Dakota. Significantly, he was effective because he under-
stood how to wield power and apparently didn’t give a damn about his political best
interests. This political kamikaze, a vegetarian in a beef-growing state, did not run
for reelection. See Stroud 1978 for a lively account.
organization, one that is efficient, effective, and humane" (SCIA 1978:129). Four years later, after more study (including another area office review in 1979), the BIA's 1982 "realignment" plan called for a consolidation of the twelve area offices into five regional service centers, two special program offices, and three field offices. In the plan there was no call for eventual withering away of this structure in favor of tribal self-determination.

14. The Senate Select Committee on Indian Affairs reported "overwhelming" tribal approval for changing the area office system in 1978 (SCIA 1978:1:30). By 1982 the tribes were concerned that the BIA's plan for doing so would end up costing them more money and provide a lower level of service. They also were angered at what they considered a lack of adequate consultation between them and the BIA before the "realignment" plan was floated. The tribes and members of the civil service employees' union charged that the BIA's 1982 scheme was in no way the culmination of a long, careful planning and consultation process, but was instead prompted by OMB demands that the bureau cut its operating costs by $1.6 million per year (SCIA 1984:60, 65). In fact, the tribes' reversal may not have been inconsistent; whether they would turn down a more reasoned plan for elimination of the area offices remains moot.

15. In an interview with the author and others on February 17, 1978, Assistant Secretary Forrest Gerard portrayed his ideal role in those terms but lamented the fact that he had thus far been unable to get beyond the day-to-day issues of administrative detail. Thirteen years later this problem had still not been resolved (Joint Task Force 1991:5).

16. In the midst of a crisis over the unseemly authority being assumed by some BIA area directors in 1978, Indian Affairs Assistant Secretary Forrest Gerard suggested converting all area directorships from civil service positions to political appointments (Bee, unpublished notes, February 1978).

17. As long as he remained the elected tribal chairman, the BIA steadfastly supported the incumbent, Richard Wilson, against the challenges of Russell Means and others. Excessive treatment of political rivals by Wilson's armed supporters helped spark the angry confrontation at Wounded Knee in 1973 and subsequent events on the Pine Ridge reservation.

18. The backlash bills died, but they may well have expired even if the Walk had not been organized. However, this is not to minimize the positive fallout of the Walk on communities where it paused in its way across the country, or the real—if temporary—political and strategic alliances formed among Indian groups and between them and the government.

19. Oliphant v. Suquamish Indian Tribe declared that the tribe lacked jurisdiction over crimes committed on its reservation by non-Indians. The wording of the justices' opinion was viewed as a very narrow interpretation of the concept of tribal sovereignty. United States v. Wheeler found that an Indian could be tried by both tribal and federal courts for crimes committed on an Indian reservation. The wording of the decision this time featured a strong endorsement of tribal so-
ereignty, declaring it to be an inherent right of tribal governments (Wilkinson 1987:63). In 1991 Court watchers were dismayed by further apparent loss of tribal sovereignty in the Duro v. Reina decision.

20. The OPRF would coexist with the BIA and Indian Health Service conceivably for as long as a significant number of tribes chose to remain under the old system. The Senate recommendations did not mention non-federally recognized tribes, nor did they address programs for Indians in urban areas.

21. Tribal leaders were outraged that the bureau had drafted a plan without meaningful consultation with them, so they went to Congress to protest. As a result, the Fiscal Year 1991 Appropriations Act stipulated that the BIA could allocate none of its money for reorganization planning until the plan had been reviewed by a task force including tribal representatives (Joint Task Force 1991:7).

REFERENCES


Indian Sign: Hegemony and Symbolism in Federal Indian Policy

GEORGE PIERRE CASTILE

The study of the Native American peoples has long been a major focus of American anthropology, but until recently very few anthropologists have concerned themselves with analyzing the legal-political relationship between the United States government and these enslaved peoples or the federal policy mechanisms that have defined it. With a few exceptions, study of the formation and administration of federal Indian policy, so critical to the understanding of the lives of the reservation peoples and so little in their control, has been relegated by default to political scientists and historians, who have showed little more interest (some exceptions are Bee 1982; Kelly 1983; Hoxie 1984; and Philp 1986).

While Indian policy would logically seem a subset of broader national "ethnic" policy, in fact the quasi-autonomous system of "reservations" in the United States is a unique structural arrangement between the political state and this single group of peoples. Though frequently reflecting the broader currents of federal policy, particularly the omnipresent assimilation theme, Native American policy, especially since 1930, often seems anomalous, even opposed, to the general trends in ethnic matters. Accounting for this uniqueness, a policy enigma, is the primary focus of this essay.

As with any policy, understanding the sources and direction of ethnic policy is a complex problem amounting to a sociopolitical version of vector analysis. Most models of state-ethnic group relations involve a more or less rational analysis of costs, benefits, and balances between dominant and subordinate groups and forces in the state (Despres 1975; Hechter 1975; Connor 1984). A complete chart of the course of Indian policy would