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Filling in the Blank Spots on Powell’s and Stegner’s Maps: The Role of Modern Indian Tribes in Western Watersheds

Charles Wilkinson*

This April is a busy time in Indian country, and future Aprils promise to be even busier. At Hopi, the kachinas are getting ready to come down from San Francisco Peaks, and tribal members are preparing to welcome them with dances, songs, and prayers for rain and a good growing season. Yet Black Mesa is getting drier and it is not due to lack of rain. Once-flowing springs are down or dead—due to Peabody Coal’s pumping, so the Hopis believe, though Peabody publicly denies it. The Hopi want to shut down the pumping and, now that the traditional tribe is an actor in the energy-and-water mega-politics of the Southwest, the Hopi tribal council is making it clear that it no longer needs Peabody Coal. The tribe may build its own dry-cooled, closed-loop power plant, using tribal coal and much less water.\(^1\) South and east of Black Mesa, the Zuni Pueblo, which also will be doing ceremonies for rain, is contesting in court the pollution from the Tucson Electric’s Springerville Power Plant.

With winter over, Navajo grandfathers will not be telling the coyote stories right now, but the ever-present concern with the youth continues. Navajo has seen some gang activity and the tribal government is working hard on the problem through counseling and the court system’s widely admired peacemaker’s process. Over in Death Valley, the Timbisha Shoshone Tribe, its people hardy residents of that terrain for 12,000 years or more, is rebuilding its nationhood. The Timbisha achieved federal recognition in 1983 and the then-landless tribe put a land-return statute through Congress in 2000, receiving a 300-acre reservation inside the national park and 7,000 acres outside of it.\(^2\) Now tribal leaders are making plans for housing, a community center with tribal offices, and a mid-sized desert inn.

In the high country of eastern Arizona, the White Mountain Apache Tribe just expanded its casino so that revenues exceed $10 million annually, typical of most tribal casinos in that it is enough to help support tribal government but not nearly enough to eliminate poverty, much less make anyone rich. The highly traditional tribe, with the language still healthy, has set aside most of the

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* Distinguished University Professor, Moses Lasky Professor of Law, University of Colorado. This paper was originally presented as The Wallace Stegner Lecture at the Annual Conference of the Wallace Stegner Center for Land, Resources, and the Environment of the University of Utah College of Law on April 12, 2002. I give thanks to my assistants, Monte Mills, Cynthia Carter, and Michelle Roche.


western slope of Mount Baldy as a sacred area. It is run somewhat like wilderness, but more conservatively. Here in Utah, the Northern Utes of the Uintah and Ouray Reservation persuaded the federal government to return 84,000 acres of former tribal land, until recently designated Naval Oil Shale Reserve No. 2. This event, like that of the Timbisha Shoshone, is an example of the aggressive campaign of tribal governments to regain land by purchase, litigation, or federal grant. Since the mid-1950s the Indian land base, outside of Alaska, has expanded from 48 million acres to nearly 60 million today. Indian tribes now own five percent of the West.

Neither John Wesley Powell nor Wallace Stegner expressed the view that tribal governments would be vital participants in the dryland democracy that Powell envisioned or the society to match the scenery for which Stegner yearned. In one important sense, this is not surprising. Few if any Americans in Powell's lifetime expected a tribal resurgence and the Native American revival began late in Stegner's life. At the same time, we—I surely include myself—think of the two men as visionaries, by which we mean people who have a deep understanding of current and emerging societal trends, of the probable consequences from our choices, and of the truest, immutable impulses of our society over time so that they can gauge, at least in rough terms, some of the courses of future events, of how past might be prologue. It may be worth mentioning that in Stegner's case, though not in Powell's, this visionary business is something we laid on them. I remember fifteen years ago, when Wally came to the CU campus and I accompanied him to several seminar-type sessions with students and faculty. After the last one, as we were walking across campus he sighed in frustration, "I wish these people would stop asking me so many questions about the future of the West. I'm just a novelist and maybe an historian. It would be one thing if they asked me what Lyman Ward might do in the future. I created him. But who am I to try to predict what westerners will do?" Of course, if I had been making that walk with John Wesley Powell, his remark might have been, "Well, those folks sure asked those questions of the right guy."

Nonetheless, Powell and Stegner, for all their wisdom, seem to have had blind spots when it came to Indians. They both, especially Powell, knew quite a lot about them but failed accurately to foresee or articulate the tribes' significant roles in the future of the western landscape. As I say, given that their views reflected those of their contemporaries, their lack of foresight may say little about Stegner and Powell. But it says a great deal about the staying power of Indian tribes, for virtually no one, Powell and Stegner included, expected them to emerge at the beginning of the twenty-first century as viable governments and productive participants in the modern West. I'll address some of the ways in which Powell and Stegner viewed Indian tribes and then return to a
fuller discussion of the roles that twenty-first-century Indian tribal govern-
ments play in western watersheds.

There can be no doubting Powell’s contributions to the academic study of
Native Americans. He became the founding director of the Bureau of Ameri-
can Ethnology in 1879 and held that post, even after he resigned from the U.S.
Geological Survey, until his death in 1902. Fearful that Indian cultures would
soon die out, he labored hard, especially in linguistics, and inspired loads of
studies by the Bureau, including the annual reports—full volumes—that re-
main standard anthropological sources today. Just as he was one of the pio-
neering geologists, so too was he one of America’s first leading anthropolo-
gists. Powell was widely regarded as the most knowledgeable person about
Native Americans, at least in the non-Indian society.

An assessment of Powell’s political positions on Indian matters is much
more complicated. While he felt kindly toward the Indian individuals he met in
the field, his view of Native tribalism was very different. Most basically, he
believed not only that Indian tribes would vanish, but that they should. “Sav-
gagery is not inchoate civilization,” he wrote, but “a distinct status of society,
with its own institutions, customs, philosophy and religion; and all these must
necessarily be overthrown before new institutions, customs, philosophy, and
religion can be introduced.”3 In his essay, “Are our Indians Becoming Ex-
tinct?” Powell discussed the remaining Indian population of just 200,000 in the
late nineteenth century—the all-time low point, it would turn out—and argued
that the “Indian problem” could be resolved quite quickly through full assim-
lation. “[W]e may properly conclude that the Indian tribes are not to be extin-
guished by war and degradation, and that we have already reached the point
where we may hope to save the remnant, to be absorbed into modern civiliza-
tion.”4 Powell then proposed that the upcoming years should be dedicated to
what he called a “period of tutelage.” “How long,” Powell asked, “must this
state of tutelage continue?”5 “Let us not,” he concluded, “vigorously crowd the
Indians to abandon tribal organization . . . . If such a policy [of slower assim-
lation] is maintained for two generations more, the problem will be solved; the
remnant of the Indians will be saved and absorbed in modern enlightenment.”6

The legislative engine for assimilation was the General Allotment Act of
1887, which Powell ardently supported and which dominated Indian policy
between the end of the Indian wars and the reforms of the Franklin Delano
Roosevelt (FDR) years in 1934. Allotment arose from mixed motives. A child
of the broad-shouldered westward expansion, allotment derived much of its

3 BRIAN W. DIPPIE, THE VANISHING AMERICAN: WHITE ATTITUDES AND U.S. INDIAN POLICY 168
4 John W. Powell, Are our Indians Becoming Extinct?, 15 FORUM 343, 352 (1893).
5 Id. at 353.
6 Id. at 354.
force from the boomers who wanted western land, including Indian land. A proponent argued that tribal ownership could not prevent the nation's drive west, which was as "irresistible as that of Sherman's to the sea." But a House committee minority report asserted "[t]he real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indian are but the pretext to get at his lands and occupy them." Beneficent attitudes, however paternalistic they may have been, also played a key role in the adoption of allotment. This was the era of the "Friends of the Indian," a group of self-professed advocates for Indians, with a significant Christian influence, that met annually in the rarified atmosphere of a resort on Lake Mohonk in upstate New York. They drew inspiration from Helen Hunt Jackson's A Century of Dishonor, published in 1881, and Ramona, which came out three years later. Her work drew comparisons with Uncle Tom's Cabin, and the Lake Mohonk reformers regularly made the comparison to the struggle of blacks.

The Friends of the Indian saw allotment as a chance for Natives to participate in the fruits of American society. The Jeffersonian ideal still burned brightly and agrarianism held great, if idealized, appeal. The reformers also thought they could improve on the traditional communal tribal ways. The provision to each tribal member of a plot of farmland (or in some cases range or forest land), though it would diminish or eliminate the tribal land estate, fit nicely with the individualistic tone of American society and the assimilationist views held by the evangelical Christians who were then so active in Indian policy. Idealism aside, the Indian reformers also believed that allotment would be the most that the tribes could get. The alternative, they feared, was a wholesale expropriation of Indian lands.

It was a strange idea, really, to turn Indians into farmers. How many of us could rise to the command "You shall now become a farmer"—or, for that matter, teacher, plumber, doctor, or salesperson? Yet most of the policymaking community proceeded on that basis, whether out of straight-faced subterfuge, sincerely-held belief, or inattentiveness. Henry Lauren Dawes, for example, a respected Congressman from Massachusetts who carried the General Allotment Act (it is often called "the Dawes Act"), was by every account well-meaning and genuinely committed to minority rights. In addition to his sympathy for Indians, Dawes—like Powell an abolitionist—strongly opposed slavery and earlier in his career broke with his fellow Republican, President Andrew

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7 10 CONG. REC. 1, 178 (1880) (Statement of Rep. Springer).
Johnson, over his veto of the Freedmens Bureau and other issues during Re-
construction.9 Powell used his considerable influence to push for the allotment legis-
lation and his stature helped give it credibility.10 As early as 1881, in a report to
interior department officials that was submitted to Congress, he argued for al-
лотment.11 His advocacy had a hard edge to it. He exaggerated the facts, saying
that many tribes are “comparatively wealthy and nearly all are well-to-do”12 and that “few” retained their traditions.13 He wrote letters to senators,14 includ-
ing Henry Teller, whom he exhorted to support allotment on the basis that
wrenching Indians from their ancestral land would in time eliminate their cul-
ture:

The Indian religion is localized. Every spring, creek and river,
every valley, hill, and mountain as well as the trees that grow
upon the soil are made sacred by the inherited traditions of their
religion. These are all homes of their gods. When an Indian clan
or tribe gives up its land it not only surrenders its home as under-
stood by civilized people but its gods are abandoned and all its
religion connected therewith, and connected with the worship of ancestors buried in the soil; that is, everything most sacred to In-
dian society is yielded up. Such a removal of the Indians is the
first step to be taken in their civilization . . . .15

In allotment, Congress launched a policy that, every bit as much as the
Indian wars, every bit as much as the initial treaties and the “renegotiated”
treaties, changed the lives of Indian people across the country.

The idea behind the General Allotment Act of 1887 was deceptively sim-
ple and seemingly innocuous: To make Indians into farmers by carving lands
out of the tribal reservation and providing every tribal member with an individ-
ual allotment—a plot of land, usually 160 acres. Not so incidentally, on

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9 See Leonard Schlup, Henry Laurens Dawes, in 6 AMERICAN NATIONAL BIOGRAPHY 250–52 (John
A. Garraty & Mark C. Carnes eds., 1999). See also Henry L. Dawes, The Indian Territory, Presented at the
&images=images/modeng&data=text/english/modeng/parsed&tag=public&part=1&division=div1 (last vi-
sited July 15, 2002).
10 Two leading authorities on the allotment policy have referred to Powell’s impact on the legislative
process leading up to the 1887 Act. See FREDERICK E. HOXIE, A FINAL PROMISE: THE CAMPAIGN TO AS-
11 DIPPIE, supra note 3, at 168–69.
12 John W. Powell, Proper Training and the Future of the Indians, 18 FORUM 622, 622–29 (1895). See
13 Id. at 271 (quoting letter from John W. Powell to Senator Henry Teller (Feb., 1880) (File 3751)
(Powell Papers, National Anthropological Archives)).
14 See, e.g., OTIS, supra note 8, at 38–39.
15 WORSTER, supra note 12, at 271 (quoting letter from John W. Powell to Senator Henry Teller, cited
in note 13, supra).
many reservations much of the tribal land not allotted would be declared "surplus" and opened for settlement by non-Indians. "Surplus Indian land" is the ultimate euphemism—meaning that, since Indians would soon become farmers, the tribal hunting lands and sacred sites would be "surplus to their needs."

Allotment remade Indian Country once again. When Congress enacted the statute in 1887, Indian land holdings nationally totaled about 140 million acres. By 1934, when Congress abandoned the allotment policy, tribal land holdings had plummeted to less than 50 million acres, a loss of 90 million acres, an area nearly the size of Utah and Idaho combined. Teddy Roosevelt called the Byzantine workings of allotment "a mighty pulverizing machine to break up the tribal mass."

In 1894, James Earle Fraser, the artist for the Indian head nickel, sculpted a small clay model of an Indian brave on horseback that would come to symbolize the deadening effect of allotment, and all that had gone before, on the American Indian. In time Fraser worked up the image in durable plaster on an even larger scale, two and a half times life size, mounted it on an eight-foot-high pedestal, and renamed it The End of the Trail. Fraser grew up in the West and knew the depths to which Indian people had fallen. Fraser's brave sat on his mount utterly despondent, head bowed and shoulders slumped. His spear symbolically pointed down and, in sympathy with its rider, his pony's head hung low. The sculptor wanted to convey the "idea of a weaker race being steadily pushed to the wall by a stronger."

By the time Fraser made his original models in the mid-1890s, it had become the era of "The Vanishing American." The notion that Indians would simply die out had long held sway; early in the nineteenth century politicians orated of the tribes' "inexorable destiny" and William Cullen Bryant and Sir Walter Scott wrote poems evoking the Natives' inevitable demise. After the turn of the century, the effects of allotment, perhaps especially the brutal dismembering of the lands of the Five Civilized Tribes in order to pave the way

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16 On the General Allotment Act (the Dawes Act) and the passage thereof, see generally Otis, supra note 8; Francis Paul Prucha, American Indian Policy in Crisis: Christian Reformers and the Indian, 1865–1900, at 248–57 (1976); Hoxie, supra note 10.
17 Dippie, supra note 3, at 314–15.
18 President Theodore Roosevelt, Message to the Senate and House of Representatives (Dec. 3, 1901), reprinted in A Supplement to a Compilation of the Messages and Papers of the Presidents, 1789-1902, at 348 (James D. Richardson ed.) (1903).
20 Id.
21 Id.
22 On "The Vanishing American," see generally Dippie, supra note 3.
23 See, e.g., William Cullen Bryant, "An Indian at the Burial Place of his Fathers" (1824); Sir Walter Scott, "The Lady of the Lake" (1810).
for oil exploration and Oklahoma statehood, made "The Vanishing American" a household phrase.

With allotment’s constriction of the reservations and compulsory assimilation fully installed as federal policy, the suffocating of Indian societies proceeded full tilt. By the 1890s, Indian reservations, with their vigilant government and church keepers, became the places that have so often been compared to prisons and concentration camps. The Indian agents laid down the law. The missionaries, having secured increased government funding, expanded their Christianizing activities and their attacks on Indian religions. Bureau of Indian Affairs (BIA) officials pressured Indian parents to send their children off to BIA boarding schools where the young people’s braids would be cut off, the traditional clothing would be prohibited, and their mouths washed out with yellow lye soap for speaking their native languages.24

Say that Powell’s regular use of words like “savagery” and “barbarism” were the language of the day, and that the idea that Indian tribes would go extinct was the notion of the day, so that Major Powell can be excused on those points. Say that allotment was inevitable; that the inexorable force of the western expansion was bound to overwhelm Indian lands. But we cannot say that the rush of allotment and assimilation benefited Indian people, that it was good for them. Just look at the record. Just ask any Indian person.

Would we not wish for more from Powell, expert of the nation on American Indians and their perceived advocate? Would we not wish that he had stood firm against the winds of inevitability as he did so often, as he did in daring to dream of western watersheds as they ought to be, as he did in his epic struggle against Big Bill Stewart and his land-grabbing senatorial cohorts? Not everyone, after all, caved in to allotment. Senator Henry Teller of Colorado, one of the Washington figures Powell lobbied for his support of allotment, spoke his own mind. Teller dared to predict the future and announce it a grievous wrong against the humanity of Indian people. Would we not wish that Powell had joined in Teller’s words? He said:

If I stand alone in the Senate, I want to put upon the record my prophecy in this matter, that when thirty or forty years shall have passed and these Indians shall have parted with their title, they will curse the hand that was raised professedly in their defense to secure this kind of legislation, and if the people who are clamoring for it understood Indian character, and Indian laws, and Indian morals, and Indian religion, they would not be here clamoring for this at all.25

25 11 CONG. REC. 1, 783 (1881).
Wallace Stegner dedicated a much smaller part of his work to Indian matters. I wish he had done more and believe that—to the extent one aspect of his writing was to portray the West as it was, is, and might be—Stegner underrepresented the importance of Indians and their tribalism. Still, on the too few occasions that he did bring Indians onto his pages, Stegner did well. And though Stegner was inspired and influenced by Powell, we are reminded through a comparison of their treatment of Indians that Powell was fundamentally a scientist and that Stegner was fundamentally a humanist. Powell looked at Natives clinically and through the lens of a social evolution that would lead to their extinction. Stegner saw much more of their spirit.

In Wolf Willow, Stegner offers a memory, a recounting of childhood experiences in Saskatchewan. "Real Indians we saw perhaps once a year, when a family or two in a rickety democrat wagon came down from somewhere and camped for a few days in the river brush." He and his friends, he realized in his later introspection, were racist toward those Indians, just as they were toward Jew Meyer and the Chinese cook, Mah Li. From the distance of many decades, he recalled the Indians’, who were probably Crees, reaction to the boys’ catcalls: "With what I now recognize was either helplessness or dignity they ignored us ...

Wolf Willow also included a rich history and in furthering his explicit objective of giving their history back to the people of southern Saskatchewan, Stegner did a superb job of portraying the Métis, a borderland tribe of mixed Indian and French stock. "[I]n those years after 1868," he wrote, "they were no shuffling remnant. They were as colorful a crowd as ever hit the Plains—and the Plains, perhaps because of their own tawny monotony, have specialized in colorful people." Although the Métis drank too much and some of their villages were "filthy," Stegner admiringly described their efficient and durable dry-axed Red River carts, so well designed for plains travel; their dancing and singing; and their resourcefulness as multi-lingual traders, fighters, and hunters.

Without either denigration or romanticism, Stegner placed the Métis in the history of the region. He recognized their political power and explicitly addressed their national status. "They might,” he believed, “have developed into a people and a nation, with a life and land of their own. Or they might, if American annexationists had had their way [in 1869 and 1870], have become a vast northern extension of the United States. . . . The cards fell otherwise.

26 WALLACE STEGNER, WOLF WILLOW 49 (1962).
27 Id. at 50.
28 Id. at 63.
29 Id. at 65.
30 See, e.g., id. at 63–65. On the Métis, see also JOSEPH KINSEY HOWARD, STRANGE EMPIRE (1994).
31 STEGNER, supra note 27, at 57–58.
After their abortive revolution, and the Canadians hung their leader, Louis Riel, individual Métis would endure, but "[a]s a race, a tribe, a possibility, the [M]étis had ceased to exist."\(^{32}\)

Stegner put forth his commitment to dispossessed peoples most fully in his 1945 book, One Nation. A reader startles at how far ahead of its time this passionate defense of racial and religious minorities was. In the case of Indians, Stegner staunchly advocated the reform agenda of the FDR administration, which sought to revitalize tribal governments. The book as a whole carries what is now a traditional civil rights flavor, but Stegner showed appreciation for Native Americans’ special concern of preserving their own selfgoverning status. Thus, One Nation decried discrimination against Indians but also examined several successful tribal programs and in the end became a brief for tribalism and against allotment and assimilation. "[F]orced Americanization, through a hundred years or so, succeeded only in pauperizing and demoralizing the Indian, because at the bottom of all that teaching was the feeling that an Indian should be ashamed to be what he was . . . . [T]he prospect that the Indian cultures might survive along with the Indian people should hardly cause alarm."\(^{33}\)

After reading One Nation, one might expect that Stegner would have addressed issues of tribalism when Indians, in the 1960s, began to emerge from their long deadening time. Yet other than the material mentioned here, and passing references to Winters water rights and some individual Indians, Indian country is blank in Stegner’s map of the West. It wasn’t that he was insensitive. He took pride in supporting the writing of Jim Welch and Scott Momaday. One Nation leaves no doubt about his passion and Wolf Willow shows a willingness and ability to take on tough, tangled Native episodes. Wally and I served on the Governing Council of The Wilderness Society together and at one board meeting, the council voted to extend an offer to an Indian. Wally pointedly observed, “I hope we’re not going to stop there” and we didn’t: The council soon added three additional Indian board members.

I don’t fully understand why he didn’t do more. Perhaps he held back because he hadn’t grown up around many Indians and he always felt most comfortable writing with first-hand experience. He may have felt he would be intruding. Maybe he intended to get around to it, but just never did. In any event, his failure to integrate more fully into his writing the complex and distinctive matter of tribalism in the American West amounts to a notable gap in his remarkable body of work.

I’d like to take a few minutes to discuss the modern Indian movement and the place of modern Indian tribes in contemporary western life, especially with regard to water and land, to show what Powell ruled out and Stegner left out. I

\(^{32}\) \textit{Stegner}, supra note 27, at 57.

\(^{33}\) \textit{Wallace Stegner}, \textit{Editors of Look Magazine}, \textit{One Nation} 143 (1945).
don't intend this as criticism by hindsight but rather to underscore the profound- 
dity of what modern tribes have accomplished: Everyone, including the best, 
had written them off.

The middle of the twentieth century marked the all-time low point for 
tribal existence on this continent. Never had the age-old specter of the Vanish-
ing Indian come so close to reality. Yet, in the ensuing fifty years, as a result of 
an improbable and stirring movement, Indian people stemmed the inevitable 
and revived their homelands.

As of the early 1950s, American Indians faced four overbearing and 
seemingly intractable problems. First, they had to endure the worst economic 
and social conditions of any identifiable group in the country. The desperate 
economic plight far outstripped any national depression. Income was low and 
unemployment rampant: It was a rare tribe with a jobless rate below forty per-
cent and some reached ninety.34 Hardly any Indian homes had electricity or 
indoor plumbing—and family housing usually meant a one–room tarpaper 
shack or, for some, the husk of an abandoned automobile. Infant mortality was 
more than twice the national average and life expectancy two decades less than 
for other Americans.35 Large numbers of Native people depended on govern-
ment rations to survive.36

Second, Indians suffered a relentless political oppression at mid-century.37 
The BIA, working hand-in-glove with the churches, ran the reservations with 
an iron grip. For those tribes with mineral deposits or commercial timber, the 
system was even more elaborate and treacherous: Decisions made by the BIA 
in league with company executives and tribal lawyers were only vaguely faith-
ful to their clients. The law, going all the way back to classic opinions by Chief

34 For the most detailed survey of Indian economic and social conditions in the early post-World War 
II years, see HOUSE COMM. ON PUB. LANDS, SUBCOMM. ON INDIAN AFFAIRS, 81ST CONG. 2D SESS., COMPI-
LATION OF MATERIAL RELATING TO THE INDIANS OF THE UNITED STATES AND THE TERRITORY OF ALASKA, 
INCLUDING CERTAIN LAWS AND TREATIES AFFECTING SUCH INDIANS (1950). See also Alan L. Sorkin, 
Trends in Employment and Earnings of American Indians, in JOINT CONG. ECON. COMMITTEE, SUBCOMM. ON 
ECON. IN GOVT, 91ST CONG. 1ST SESS., TOWARD ECONOMIC DEVELOPMENT FOR NATIVE AMERICAN COM-
Reports, “Characteristics of the Nonwhite Population by Race,” Table 10, p. 32, Table 21, p. 72 (Washington 

35 On infant mortality, see DAVID H. GETCHES, ET AL., CASES AND MATERIALS ON FEDERAL INDIAN 
LAW 17 (4th ed. 1998). On life expectancy, see Hearing Before the Subcommittee on Indian Affairs of the 
Comm. on Interior and Insular Affairs, 88th Cong., 1st Sess., A Review of the Indian Health Program 24 
(May 23, 1963) (statement of Dr. C.J. Wagner, Chief Division of Indian Health).

36 See, e.g., THOMAS BIOLSI, ORGANIZING THE LAKOTA: THE POLITICAL ECONOMY OF THE NEW 

37 See generally, KENNETH R. PHILP, TERMINATION REVISITED: AMERICAN INDIANS ON THE TRAIL TO 
SELF-DETERMINATION, 1933–1953 (1999); ALVIN M. JOSEPHY JR., NOW THAT THE BUFFALO’S GONE 217– 
58 (1982); OUR BROTHER’S KEEPER, 141–73 (Edgar S. Cahn ed., 1969); FRANCIS PAUL PRUCHA, THE 
GREAT FATHER 3–8 (1986); see generally R. PIERCE BEAVER, CHURCH, STATE, AND THE AMERICAN INDI-
ANS: TWO AND A HALF CENTURIES OF PARTNERSHIP IN MISSIONS BETWEEN PROTESTANT CHURCHES AND 
GOVERNMENT (1966).
Justice John Marshall, recognized tribes as governments with the right of self-
determination. But the law was paper, nothing more.

Third, the concerted campaign of the BIA and the churches included not
just reservation governance but also the suppression of tribal religions and tra-
ditions. Indian language, dress, and ceremonies all were backward and un-
civilized, and all subject to explicit assimilationist policies in the name of
"civilizing" Native Americans. The BIA and mission schools prohibited the
old languages and enforced strict dress codes. Church attendance was manda-
tory. Traditional dances, songs, and rituals violated BIA regulations, enforce-
able in administrative courts. The totality of it—the daily challenge to self-
identity, to self-worth—was emotionally and spiritually debilitating. Would
our country have tolerated even the smallest measure of this broad-scale perse-
cution if it were levied against Catholics, Jews, Seventh-Day Adventists, or the
Amish?

Further, on August 1, 1953, the situation became more dire still when
Congress undertook the most extreme Indian program ever adopted. House
Concurrent Resolution 108 officially announced the termination policy, a "fi-
nal solution" that would lead to a sell-off of tribal lands, the withdrawal of all
federal support, and the rapid assimilation of Indian people into the majority
society. The premise for termination was that many tribes were self-sufficient
(and thus ready for termination) and that the others would be ready within a
relatively short period of time.

This theory had no basis in the reality of Indian country. Far from being
self-sufficient, poverty-stricken Indian people hung on mainly because of mea-
ger federal support and the sustenance they could gain from the land. And for
Indian tribes, as place-based peoples, virtually nothing could be more threaten-
ing than the expropriation of their land. The early 1950s—especially since
termination now cast its shadow—was a time of hopelessness, confusion, and
fear in Indian country.

Indian leaders gradually responded and, by the mid-1960s, set daunting
goals: Reverse the termination policy; break the BIA's paternalistic hold, and
reestablish tribes as sovereign governments within reservation territory; and at
once achieve economic progress and preserve ancient traditions in a modern
technological age. It amounted to a last stand for Indian people. As Vine
Deloria, Jr., put it: "If we lose this one, there won't be another."

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40 On termination, see generally DONALD L. FIXICO, TERMINATION AND RELOCATION: FEDERAL INDIAN POLICY, 1945-1960 (1986); see generally PHILIP, supra note 38.
41 STAN STEINER, THE NEW INDIANS 270 (1968).
Against all odds, over the course of two generations, Indian leaders achieved their objectives to a stunning degree. Conditions have improved on every reservation, and in most instances the changes are dramatic. The progress is broad and deep: The standard of living is up; major advances have been made in health, housing, and education; traditional practices have been revitalized; the tribal land base has been expanded; and the great majority of decisions on the reservations are made by tribal governments, not federal or state officials. To be sure, many problems remain. Economic conditions on most reservations, while significantly improved, continue to lag behind national indicators. Alcoholism rates have been reduced but remain at unacceptable levels. Diabetes has become an even greater curse. Yet the dominant fact is the revival: Even on the Pine Ridge Sioux Reservation of South Dakota, in the Upper Great Plains where Indian poverty has been the hardest to crack, the Oglala people once again govern themselves by their own laws, the language lives on, and each year the Sun Dance has ever more adherents.

The gains will always be fragile—it could not be otherwise for a small racial minority—but tribes have established truly significant footholds in the nation’s political, economic, and legal systems. Indian people appear to have accomplished what would have seemed unthinkable in the dark days of the 1950s: The creation of viable, permanent Indian-governed homelands.\(^4\) The Indian revival of the second half of the twentieth century is a major episode in American history.

The success of the tribes presents a fascinating saga. The idea that Indian people have achieved so much is counterintuitive to most contemporary Americans, who think of reservations as dead-end streets. Within that general conundrum lies the fact that it really has been tribal action that created the deep change. Tribal leaders learned how to use the political and legal system to create a framework within which progress could be made. Then they put those laws and policies to work by painstakingly building creative and effective institutions and programs at home, on the reservations. The modern Indian movement has put on grand display America’s truest nobility—its commitment to give dispossessed peoples the chance to thrive—but it took the passionate and informed determination of Indians themselves to activate that impulse.

Another surprise, at a time when the popular conception links Indians to casino lights, is that the progress in Indian country is not due to gaming. To be sure, gaming has brought significant—and in a few cases enormous—financial returns to some tribes.\(^4\) Yet the modern tribal movement had already accomplished much of its program by the time gaming came on the scene in the

1990s. Further, gaming is organic with the system that Indian leaders envisioned a quarter of a century earlier and then proceeded to make a reality: Tribal gaming is possible because it is one of the many sovereign activities that tribes, as independent governments, can undertake on their own terms, not those of the states. Gaming has played an important role, but the scope of the modern Indian movement goes far beyond it.

Tribes, as land-based peoples, have placed particular emphasis on natural resources management. You see it everywhere. Now nearly every tribe has a formal natural resource capability. Tribes with two-or-three person natural resource departments twenty years ago now have mature agencies of 25, 50, 100 or more—there are dozens of tribes in that category. The Navajo Nation has a natural resources staff of 600. The tribes of the Pacific Northwest are an organic part of the agonizing and intensive federal-tribal-state effort to save the salmon. In the state of Washington, the number of tribal fisheries biologists equals or exceeds those of the state. The Nez Perce Tribe administers the federal wolf recovery program in Idaho.

Two tribes, the White Mountain Apaches and the Tohono O'odham, give a sense of the extent, complexity, and diversity of tribal work for the land and water.

The White Mountain Apaches embody the tribal commitment to watershed protection. Their one million acre reservation is critical ground, for most of the water in the Salt River system, which serves the Phoenix metropolitan area, originates there. Mining is objectionable to the tribe and so they do none. As I mentioned earlier, the tribe has set aside a large wilderness-type area. The land has been overgrazed—not, I understand, a problem unique in the West—and the tribe has put in place a strong range management regime. The Apaches, having signed a path-breaking cooperative agreement with the U.S. Fish & Wildlife Service, are doing important endangered species work.

The White Mountain Reservation is heavily timbered, with high-volume ponderosa pine stands. As on other timbered reservations, the BIA had traditionally done the logging. The agency consistently over-harvested. Charges persist that the water users pressured the BIA to keep the timber cut high in order to maximize runoff for the downstream urban area. Like nearly every timber tribe, the White Mountain Apache has now taken over the timber pro-

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gram from the BIA and the cut is down significantly, protecting the watershed and traditional values.\(^{46}\)

Modern Indian tribes have invented a new kind of institution: the inter-tribal council, to bring tribes with similar interests together in order to leverage resources and develop common programs when appropriate. The Intertribal Timber Council (ITC), composed of some sixty tribes, has become a valuable forum for tribes to refine their management expertise. In the 1990s, with ITC taking the lead, the tribes achieved comprehensive federal legislation to support tribal forestry programs.\(^{47}\) Having drafted the statute, tribal representatives then proceeded to do most of the writing of the administrative regulations.

The Tohono O'odham Reservation, the second largest after Navajo, lies in the Sonoran Desert along the Mexican-U.S. Border. The O'odham people remain deeply traditional—the language is still widely spoken—but have faced severe and distinctive water-related problems in that dry country.\(^{48}\)

The O'odham had always engaged in substantial farming, often using floodwaters. After World War II, heavy ground water pumping for mining and municipal use in Tucson drew down the Santa Cruz River. As the flow diminished, the flooding became infrequent, then ceased altogether. Now the Santa Cruz is dry. Further inland, where some water was still available, BIA employees encouraged tribal members to abandon their subsistence farming and enter the cash economy and take jobs as field laborers in large, nearby, irrigated cotton fields. Entire families left their communities for half the year or more, leaving the fields untended.

Traditionally, the O'odham depended on corn, squash, chiles, and, especially, tepary beans.\(^{49}\) In the past two generations, the O'odham people have suffered an unspeakably severe diabetes crisis, the worst in the world. Nutritionists have identified the cause. With tribal agriculture greatly reduced, tribal members adopted a more western diet, including fast food. Studies confirmed that tepary beans and other traditional foods, which were no longer available to most O'odham people, help regulate blood sugar and significantly reduce the incidence of diabetes.\(^{50}\)

The Tohono O'odham have fought back. One task was to establish tribal water rights, which takes persistence: Charles Dickens would have had a field day if he had been exposed the inefficiency, expense, and armadillo-slow pace of western water litigation. Now, twenty years later, the O'odham have a

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\(^{46}\) On tribal timber management, see generally the issue dedicated to tribal forestry, 95 J. OF FORESTRY 4 (Nov. 1997), especially the article by Gary S. Morishima, id. at 4.


\(^{50}\) Id. at 18.
promise of Central Arizona Project water, to go on line in a few years. In the meantime, the tribe has been able to obtain some pumped water and is putting in traditional crops. Out in the villages, a non-profit group, Tohono O’odham Community Action (TOCA), is working with farmers to use floodwaters from low draws to raise tepary beans and other traditional crops. And, just as the more traditional watershed management of the White Mountain Apaches brings benefits to many others in the Salt River watershed, so too has the O’odhams’ focus on traditional crops benefited the larger community. A much-heralded cooperative, Native Seeds/Search, with non-Indian and Indian board members, and inspired by the O’odham experience, now distributes increasing quantities of nutritious native desert seeds to consumers throughout the Southwest and beyond.

One thing we might take away from our time here together, and with Powell and Stegner, is an even deeper appreciation of how much we need clear and pure and strong voices in these complex and turbulent times in the American West. With no sense of romanticism—and looking only to the force of the words, the intellectual and cultural tie to the natural world, the integrity of knowing intimately a particular landscape for more generations than can be counted, and a world view at once ecological and spiritual—I believe that, of all the societies in the West, none can put forth a voice for the land in more articulate, knowledgeable, and authentic terms than the American Indian tribes. To be sure, the years and the deeds have built up what seems to be, or may be, contradictions. As I mentioned, the Hopi Tribe is considering a coal-fired power plant on sacred Black Mesa. Yet if such a project goes ahead, it will be for the purpose of calling the bluff, and forcing out, a coal slurry project that is killing off the springs—springs that water the homes and the cornfields and the ceremonies—on a remote mesa with no year-round streams. And the mining complex the Hopis seek to force out was not their choice. It was born of the treachery of industry and the tribe’s own lawyer. If you go to Hopi, as many of you have, you will know that the West could hear no finer voice.

Can the Native voice endure? For all the progress of modern times, the setbacks have been grievous and many. Obstacles, including a near-majority of our highest court, block the way ahead. Yet heartbreak and incompleteness are the stuff of movements, however successful: The woman’s movement; the environmental movement; the civil rights movement.

Can the voice endure? You can say the odds are long, yet the odds in times past were far longer. So long, that even the futures of the West envi-

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sioned by John Wesley Powell and Wallace Stegner did not include Indian tribes. Indian people have a staying power this land has never seen the equal of. I don’t know what forever means. But I believe that an effective, vigorous, and creative American Indian tribal sovereignty will inhabit the landscapes of the West forever.