

Native American Rights Fund

The National Indian Law Library

ANNOUNCEMENTS

Volume 1, No. 5

October, 19

Eastern Indians— The Invisible Remnants

"I am about to leave you, and when I am gone and my warning shall no longer be heard or regarded, the craft and the avarice of the white man will prevail. Many winters I have breasted the storm, but I am an aged tree, and can stand no longer. . . Soon my aged trunk will be prostrated, and the foot of the exulting foe of the Indian may be placed upon it with safety; for I leave none who will be able to avenge such an injury. Think not that I mourn for myself. I go to join the spirits of my fathers, where age cannot come; but my heart fails when I think of my people, who are soon to be scattered and forgotten."

Red Jacket, Seneca, 1830

There were more than 9,000,000 Indians in North America when it was "discovered" by Columbus in 1492. Today, of the less than 800,000 surviving Native Americans, more than 200,000 live east of the Mississippi. The Eastern Indians have suffered longest from the pressures of European civilization. After more than four centuries—1500 to 1900—of almost constant warfare, these first victims survive for the most part as social isolates. Only a very few of the tribes are "recognized" by the federal government. A few others live on reservations provided by individual states; the remaining minority live in rural areas where often they are not even recognized as Indians by their neighbors.

Although the Eastern Indians played an immensely important role in the



Red Jacket

sang their death songs. Now the drummers are dead too, but sometimes they come back to where their villages were and beat their drums again and sing the death songs for the Senecas killed by the cruel white army.

Jesse Complanter, Chief of the Senecas

The Indians sided for the most part with the British during the Revolutionary War — they had seen that the majority of the abuses were being perpetuated by the settlers and not the Crown. The British edicts had been good, but unenforceable. The result was that during the war the colonies treated most of the Indians as enemies in their struggle for freedom. Therefore, the new United States, in the first treaties with Indians signed after the war, acted as if it was dealing with conquered tribes or nations. The government spoke of liberality, but it still dictated boundary lines and offered no compensation for ceded lands. The Eastern Indians had never asked for peace, but thought that the colonists desired it. They had no idea that they were to be treated as conquered peoples.

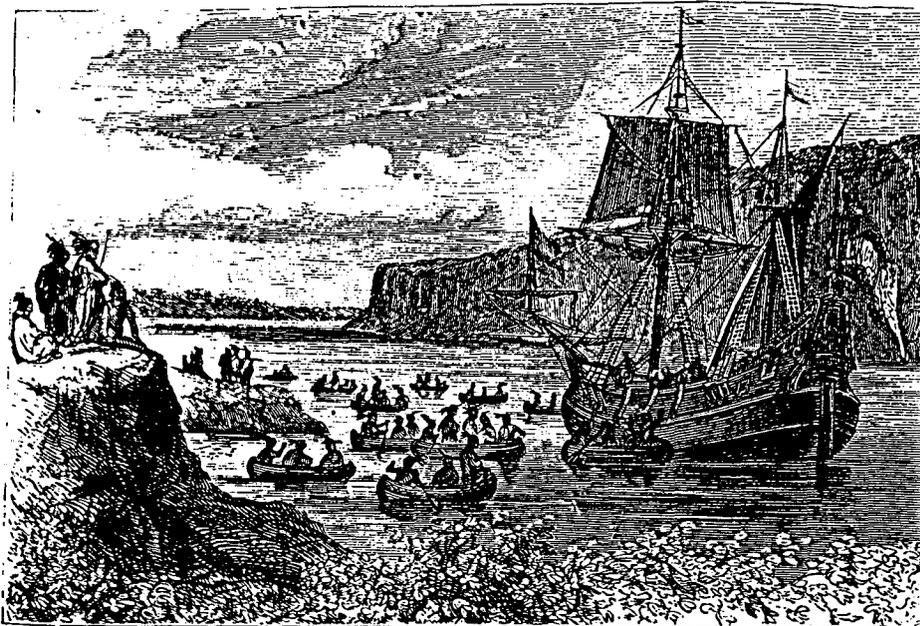
The treaties were not only unfair, they were useless since the new government, like the British Crown, was powerless to hold back the advancing onslaught of white settlers. The new government was hampered in this effort not only by the ruthlessness of the individual settlers, but by the interference of the original states in the federal government's Indian laws.

Congress passed more and more laws, ostensibly to provide justice and protection — but the frontier was too expansive, the governmental agencies far too inadequate to bring about enforcement of the laws and other governmental problems were more pressing.

“More Just, Less Expensive”

We kill white men because white men kill us.

The violations committed against Indians and their subsequent retaliations finally led the new nation to recognize the need for peace on its frontier and therefore its Indian policy changed. It abandoned the assumption that the



The “Half Moon” at Yonkers

Eastern Indians were a conquered people, and subject to the ensuing implicit rights of conquest, and adopted a policy of purchasing their right of soil.

Not only could the new country not stand the strain of a long drawn-out Indian war, but its leadership at least saw that this would also be in conflict with the high standard of humanity and justice the United States was trying to set out.

Unfortunately, the new policy — of conciliation, negotiation, liberality and guarantees of protection from further encroachment — did not include in it a method of restraint to be applied to the aggression of the whites. The jurisdictional laws and the Intercourse Acts all provided the judicial machinery for the protection of what rights to lands remained for Eastern Indians, but so much depended on the strength and endurance of individual citizens that the system failed.

If the Indian agents hired by the Department of War had the strength of character, they more often than not lacked the administrative authority to enforce the laws against both the whites and the Indians — but trials for whites could not be held in Indian country; instead they had to be taken to the nearest civil courts. The distances were too great, the time lag too long and the witnesses were impossible to assemble.

“Civil law is an admirable institution anywhere except on a frontier situated in the center of Indian Country. . .”

The trading companies often interfered with the intent of the law through questionable business tactics and dishonest employees. There was a horde of individual white traders who lived illegally and solely off gain from the Indians. They often took Indian wives and adopted Indian ways, but did not transfer any real loyalties to the Indians. They were difficult to prosecute inasmuch as they often claimed to be adopted members of the Eastern Tribes and were thus exempt from prosecution. Others lacking any real property would simply disappear into another state to commit a similar set of abuses upon another tribe.

The white traders were impossible to regulate, and as they continued to smuggle liquor into Indian Country they gradually destroyed the Indians who traded their lands and goods in their desperation. The government power under the laws was just as insufficient in relation to whisky as it was in stopping the intruding settler.

The official governmental policy of a system of laws to protect Indians was in direct conflict with the position of the frontiersmen, which was one of hostility. When justice for Indians was put alongside advances for the whites, the end product was always conflict and usually injustice for Indians.

The government's policy was based on international law: once a nation declared its limits, invasion of those limits by another nation was an act of

size of its reservation, and embarked on a program to revitalize the Catawba economy. In 1954 the Catawbas were praised by the Bureau of Indian Affairs for having made more economic progress than any other tribe in the country. The praise and the progress came at the wrong time, however, for the fifties was the time when the federal government was doing its best to get out of Indian business, and economically advanced tribes were the first to go. Federal assistance was discontinued, the Catawba reservation was broken up, and the Catawba tribal members were given their choice of \$296 or a small tract of taxable land. Most took the money, some moving to the cities, some to the Cherokee reservation in North Carolina. Several hundred disillusioned Catawbas remain today in South Carolina.

—Approximately 40,000 Indians live in and around Robeson County, North Carolina; 5,000 of them in and around the town of Pembroke. They have been referred to as Lumbees since 1956 although they are the descendents of a number of original Eastern tribes. The mayor of Pembroke is a Lumbee, as are the members of the City Council and the Chief of Police. If you ask any of these people if they are Indian, they answer "yes." For the last one hundred years, the Lumbees have been known for their fierce pride and determination to win recognition as Indians. Stories are still told of Henry Berry Lowry, a Lumbee Indian who, together with his followers, spent ten years during and after the Civil War avenging the deaths of Lumbees killed by Confederate soldiers for refusing conscription on racial grounds. A similar spirit was displayed in 1958 when the Lumbees combined to drive the Ku Klux Klan from Robeson County.

Thomas N. Tureen, "Remembering Eastern Indians," *Inequality in Education*, December 1971

Whatever historical events account for the plights of the various Indian

groups of the East (there are over sixty groups ranging in number from one person to over forty thousand persons), they share many of the present day problems of all Indians. These problems are exacerbated by the federal government which has refused to accord official recognition to Indians who are now without reservation lands held in trust by the United States and governing bodies recognized by the Secretary of the Interior. The result is a lack of federal services, leaving them at the mercy of various state governments.

State treatment of Indians has not been favorable, and although the federal Indian policies are often attacked, they have been far more favorable to Indians than state policies. The federal court system has dealt with more justice with the rights of Indians, but their early decisions either came too late for Eastern Indians or were unenforceable. From the time of its first decisions concerning Indians in the early 1830's, the Supreme Court has recognized the title of various tribes to the land which they occupied at the time of the European immigration, and it has confirmed the right of Indian tribes to govern themselves without state interference. Further, the Supreme Court has been a moderating influence, restraining legislators and administrators bent on forced assimilation of Indian people and alienation of Indian lands. On the other hand, when questions concerning the status and rights of these tribes have been determined by state courts, federal

precedents have generally been ignored and state governments have allowed to divest Eastern and Indians of their sovereignty and

The Passamaquoddy

In 1777 the federal government negotiated a treaty with the Passamaquoddy tribes whereby the Indians were to assist the federal government in the Revolution, and the federal government, in turn, was to give the Passamaquoddy Indians its perpetual protection and support. The Indians kept their part of the bargain, and helped win two-thirds of what is now Maine for the colonies. The new federal government, however, never lived up to its end of the bargain.

The Passamaquoddy Tribe provides one example of the practical effect of unchallenged state court decisions concerning Indians. In 1882 the Maine Supreme Judicial Court determined that the tribe had no claim to a group of islands which were specifically reserved by treaty, but had been granted to a white man the year before the treaty was signed. The federal doctrine of original Indian title was mentioned, but not followed. Similarly, in 1892 the Maine Court determined that the state's game laws were applicable on the Passamaquoddy reservations, even though hunting and fishing rights had been guaranteed the tribe by treaty, and have been upheld by the United States Supreme Court.

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Attakullaculla, at far right, and six other Cherokees

federal recognition. The research project has also been looking at the relationships between Eastern states and Indians, and the benefits accruing to Indians from such relationships, and making an analysis of the legal foundation for establishing, continuing, and approving these relationships.

To many Indians of non-recognized Eastern tribes, policies designed to limit federal services and expenditures are viewed as the impediment to moving out of their present plight. The research project will be assembling a handbook for the use of Eastern Indians in determining what direction they may wish to take in modifying their relationship with federal and state governments:

Eastern Indian Conference

The Native American Rights Fund will host a conference of Eastern Indians in Washington, D.C., on December 7-9, 1972. This conference will enable 120 representatives of some sixty tribal organizations and Indian communities east of the Mississippi, living in more than a dozen states, to come together for the first time to meet each other and to discuss common problems and concerns and methods of dealing with them. Such a conference of all Indian people living east of the Mississippi has been discussed by Indian people for many years. A recent grant from the Edna McConnell Clark Foundation to the Native American Rights Fund has made it a reality.

The planning committee for the conference includes John Stevens, Chairman, who is a Passamaquoddy and Commissioner of Indian Affairs for the State of Maine; Chief Curtis Custalow, a Mattaponi and chairman of his tribe in Virginia, and Tall Oak, a Narragansett Indian from Rhode Island and vice-president of the Federation of Eastern Indians League.

It is hoped that the conference itself will make an inroad into one of the most serious detriments under which the Eastern Indians have labored since the early 1800's—lack of communication with one another. The interchange concerning common problems and the solutions which some groups have found for them will be very valuable. Such an exchange of information will lead to greater access to those resources

that are now available to Eastern Indians, and possibly the development of joint strategies and solutions.

It may also be the beginning of a greater public awareness of the predicament of Eastern Indians and a desire on the part of the large society to end the isolation and invisibility of Eastern Indians. Many practical men may comprehend the necessity of what happened to the Eastern tribes and the



curious schism in the American character between its law and its action, but not many men fully appreciate the other side of the tragedy—the costly loss to all the Eastern states of such potentially superior citizens.

Indian Tribes Eligible For Revenue Sharing

On October 20, 1972, President Nixon approved Public Law 92-512, 86 Stat. 919, the State and Local Fiscal Assistance Act of 1972. This law will distribute millions of dollars to state and local governments over the next five years.

As a result of a major cooperative effort by the National Congress of American Indians, the National Tribal Chairman's Association, the Navajo Tribe, and the Oglala Sioux Tribe, a section was added to the original bill so that Indian tribes and Alaska Native villages which perform substantial governmental functions will be entitled to share the revenue being distributed by the federal government. Provision for Indian tribes was not in the original house bill, but was introduced in the

Senate by Senator Lee Metcalf (D-Mont.). Although the administration did not support the Metcalf amendment, President Nixon nevertheless signed the revenue sharing bill which includes provision for Native American government.

Two thirds of the amount of money available to any state will be divided among county areas in the state on the basis of a complex formula which considers population; county fiscal resources; county, local, and tribal taxation; and per capita income. On a determination has been made regarding the entitlement of a county area to an Indian tribe or Alaska native village exercising substantial governmental functions in that area will be given the amount of the revenue available to the county area represented by the percentage of Indian population in the total county population. The check will be paid directly to the Indian tribe from the United States Treasury. A tribe should receive a portion of the revenue attributable to any county area which contains land on which the tribe exercises substantial governmental functions. The Bureau of Indian Affairs will provide the Bureau of the Census with a list which certifies those tribes exercising such governmental functions.

Tribes which are excluded from participation in revenue sharing, or which receive less money than they believe they are entitled to, should request the assistance of the Commissioner of Indian Affairs in dealing with the Bureau of the Census and the Secretary of the Treasury. This is especially important for tribes which exercise substantial taxing powers, because such taxation may increase the entitlement of the tribe to a larger portion of share revenues.

Tribes which retain attorneys may wish to consult with them on this important subject; Native American Rights Fund attorneys are available to provide advice to tribes in need of counsel.

Statute of Limitations Extended

The 92nd Congress passed, and President Nixon signed, an additional five year extension of the Statute of Limitations which would have barred damage actions more than six years old



Iroquois assembly

We are especially interested in receiving subsequent pleadings and briefs from those of you who have already contributed case materials to the Library.

Steering Committee of the Native American Rights Fund

Charles Lohah, Chairman (*Osage*)
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 (*Hoopa*)
 LaNada Boyer, Executive Committee
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 Fred Gabourie (*Seneca*)
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 Janet McCloud (*Nisqually-Tulalip*)
 Francis McKinley (*Navajo-Ute*)
 John Stevens (*Passamaquoddy*)
 Richard Trudell (*Sioux*)
 Joseph Upicksoun (*Inupiat Eskimo*)

NEW STEERING COMMITTEE MEMBERS

Janet McCloud. Mrs. McCloud is a member of the Nisqually-Tulalip Tribe; she is presently involved in

prison and selective service work on behalf of Native Americans. Mrs. McCloud is founder of the Native American Free University.

Joseph Upicksoun. Mr. Upicksoun is an Inupiat Eskimo. He is president of the Arctic Slope Native Association and of the Inupiat Community (IRA Corporation). Mr. Upicksoun is also a member of the North Slope Borough School Board and is the Alaskan representative to the National Tribal Chairman's Association.



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NEW STAFF

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Roy S. Haber. Mr. Haber is graduate of the New York University School of Law and was a staff attorney with the Lawyers Committee for Civil Rights under Law in Jackson, Mississippi, prior to joining the Fund. Mr. Haber's work with the Fund will include matters involving employment discrimination, prisoners' rights and civil rights for Native Americans.

Scott E. Little. Mr. Little is graduate of the University of Colorado School of Law and a member of both the Arizona and Colorado State Bars. Until joining the Fund, Mr. Little was a partner with the firm of Lewis & Roca in Phoenix, Arizona. He has extensive litigation experience.