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Hunting and Fishing Rights, a Reprint from New York Law Forum

HUNTING AND FISHING RIGHTS*

In *Leech Lake Band of the Chippewa Indians v. Herbst*,[1] the federal district court held that the State of Minnesota could not enforce its game and fish laws against members of the tribe who used public lands of the Reservation, originally ceded by the tribe to the government of the United States,[2] for fishing, hunting, or ricing. The court concluded that these rights were protected by the treaty signed with the Leech Lake Band in 1855;[3] and that these treaty rights and the Leech Lake Reservation proper survived the Nelson Act of 1889[4] which had provided for the allotment of the Indian lands.[5] The court, however, did not go so far as to say that tribal hunting and fishing were to be exclusively regulated by the tribe, reserving ultimate jurisdiction for the federal courts.[6] The present case falls into a lengthy line of cases dealing with the tribal right to hunt and fish on reservation land free from interference. This right is generally recognized.[7]

Minnesota claimed that it had the right to enforce game and fish laws on reservation land not held in fee by the Indians,[8] on the ground that the aboriginal hunting and fishing rights which the tribe once possessed were absolutely terminated by the Nelson Act.[9] Minnesota contended that this act effected a cession of the lands owned by the tribe to the United States and extinguished all title to the lands, including the hunting and fishing rights customarily associated with Indian title. The state argued that traditional federal jurisdiction[10] ended because the reservation no longer existed.[11]

The court refused this argument, relying instead on the United States Supreme Court decisions in *Menominee Tribe v. United States*,[12] *Seymour v. Superintendent*,[13] and the Minnesota Supreme Court decision in *State v. Jackson*.[14] These cases had sustained the tribe's assertion that it possessed aboriginal fishing and hunting rights on the land in question.[15] In substance, *Chippewa* follows the reasoning applied in *Menominee*.[16] In both cases, the state had contended that the Termination Act[17] had abrogated all rights held by the Indians and put an end to the reservation itself. Both courts held that the earlier treaty rights of the Indians, regarding the use of the land and water within the reservation, survived the subsequent termination legislation.

The *Chippewa* case turned on two agreements between the Leech Lake Band and the United States: the treaty of 1855,[18] and the Nelson Act of 1889.[19] The treaty between the band and the United

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States in 1855 made no provisions for the preservation of Indian hunting and fishing rights.[20] The Nelson Act, 35 years later, allotted parcels of the reservation land to members of the Chippewa tribe. The portion of the reservation which remained after the allotment was made available to white settlers.[21] Essentially, the court was called upon to determine the status of that portion of Leech Lake reservation which had been ceded to the federal government by the tribe for the use of white settlers.

The court was confronted with two interpretations of two documents. Minnesota and its Commission of Natural Resources relied on the Nelson Act language and argued that the public lands of the reservation were ceded in fee to the Government, terminating the reservation and creating a new life style for the Indians of the reservation lands.[22]

Relying on the treaty of 1855 and the interpretation given it by the state court in *Jackson*,[23] the United States and the Leech Lake Band asserted that, as there was no explicit language in the later act abrogating the terms of the treaty or the rights and privileges implicitly recognized by it, then the hunting and fishing rights remain with the land.[24]

In determining the intent of Congress, the *Chippewa* court followed the well-established principle that a federal treaty is not to be casually abrogated,[25] stating that it failed to discern the language necessary to express such a nullification.[26] In this way, the court finds negative proof of congressional intent.

While the negative indicia of intent are addressed to the survival of the treaty terms, there are also positive indicia employed by the court to show that the reservation was never actually intended to be terminated. The most important of these involved a comparison of the language used in a statute[27] which "vacated and restored to the public domain"[28] the Colville reservation in Washington. Such language indicated to the court that Congress "if so minded"[29] had sufficient semantical resources to manifest clearly its intention to abrogate treaty terms and extinguish reservations.[30] Under the *Seymour*[31] ruling, the court further concluded that Congress never intended to abrogate the treaty, but also that the reservation still existed despite the allotment of the land.[32] Thus, the Court declared that the reservation still existed.[33]

It would appear that the court's use of *Seymour* is less strained than its reliance upon the *Menominee* decision.[34] In searching for "positive" purposes of the termination statute, the *Menominee* Court relied wholly upon Public Law 280[35] which was passed in 1953. This law made explicit provision for the preservation of tribal

hunting and fishing rights despite the end of federal jurisdiction.[36] The *Chippewa* court also employed this act to establish the intent of Congress, but its use in the *Chippewa* fact pattern requires a measure of mental gymnastics.

In *Menominee,* the statute clearly limited the language of the Termination Act because Public Law 280 was in force before the Termination Act.[37] As the two acts are read *in pari materia,* the Court concluded that it was *not* the intent of Congress to abrogate the treaty rights of the tribe. The Court, however, clearly justified its use of P.L. 280[38] in determining the congressional intent by the fact that the statute preceded the effect of the Termination Act the same year.[39]

The Nelson Act took force in 1889;[40] P.L. 280 was enacted in 1953.[41] Thus, the latter statute must be carefully limited as providing only an indication of the twentieth-century interpretation of congressional intent, and not as absolute proof of intent at the time that the Nelson Act was drafted. The widespread use of P.L. 280 as a means of establishing the intent of legislation passed half a century before may lead the courts into the delusion that that act may be used to lend support "whithersoever the governor listeth."[42] Clearly, American society has already betokened its tragic confusion concerning Indian history and culture.[43] It would appear that the *Chippewa* court endeavors to follow the reasoning of *Menominee* closely and logically. In this laudable effort, the court has over-emphasized form and deviated from the true spirit of *Menominee,* which was one of careful consideration of all impinging, *pertinent* treaties and statutes to reach a just result. It would do the Indian community a disservice to rest their claim to justice upon the broad and indiscriminate use of only partially relevant statutes. It is urged that the American courts must take a stern hand in the matter by initiating a firm pattern of careful analysis—one that is not prey to the changing demands of national mood and sentiment. *J.J.D.*

NOTES

1. 334 F. Supp. 1001 (D. Minn. 1971) [hereinafter cited as Chippewa]. Located in north central Minnesota, the Leech Lake Reservation occupies 588,684 acres of land. Eighty per cent of the reservation is presently owned by the local and federal governments. More than 2,700 Chippewa Indian tribe members live on the land, many of whom fish and hunt for sustenance and a livelihood.

2. Chippewa, *id.* at 1006.

3. Treaty with the Chippewas, Act of Feb. 22, 1855, 10 Stat. 642.

4. Act of Jan. 14, 1889, ch. 24, 25 Stat. 642.

5. Act of Jan. 14, 1889, ch. 24, 25 Stat. 642. The terms of the act affected an allotment of the Indian land, the communal Indian property being fragmentized into par-

cels of land owned individually as private property. Those Indians who desired to stay on what had previously been the reservation proper were issued patents in fee to an allotted portion of the land which was to be held in trust for the Indian and his heirs by the Government. The members of the tribe also had the option of removing to the White Earth Reservation where the communal life-style would remain more or less intact. Whatever land was not exhausted by allotments to the Indians was then opened to white settlers.

6. The court distinguishes between "open" and "closed" reservations. Chippewa *supra* note 1, at 1006. This distinction can only be as clear in any specific case as Congress has made its intent known. State intervention with Indian affairs on reservation land is severely limited. There are, however, situations where the jurisdiction of the tribal court will be exclusive. In the case of the Navajo tribe, for example, the Federal Government had gone to some lengths to strengthen and encourage the development of the Navajo tribal courts. *See* Williams v. Lee, 358 U.S. 217 (1959); Littel v. Nakal 344 F.2d 486 (9th Cir. 1965). The test applied to determine whether the federal or tribal court will have jurisdiction is whether the matter involved is "essential" (tribal) or "nonessential" (federal) to the tribe's self-government. Arizona *ex. rel.* Merril v. Turtle, 413 F.2d 683 (9th Cir. 1969), *cert. denied*, 396 U.S. 1003 (1970). *See* McClanahan v. State Tax Comm., 14 Ariz. App. 452, 484 P.2d 221 (1971).

7. In general, there are two parallel lines of decisions in the area of Indian hunting and fishing rights. One line deals with the hunting and fishing rights on the reservation, as does the instant case. The other line deals with those rights in land formerly held by the Indians which has been ceded by the tribe to the Federal Government. The former line, dealing with on-reservation rights, is more consistent than the latter. Generally, it has been held that a state has no right to control Indian hunting and fishing on reservation land. Menominee Tribe v. United States, 391 U.S. 404 (1968), *aff'g* 388 F.2d 998 (Ct. Cl. 1967); Metalakatala Indian Community v. Egan, 369 U.S. 45 (1962); Damath & Modoc Tribes v. Maison, 139 F. Supp. 634 (D. Ore. 1956); Mason v. Sams, 5 F.2d 255 (W.D. Wash. 1925); *In re* Blackbird, 109 F. 139 (W.D. Wis. 1901); Elser v. Gill Net No. One, 246 Cal. App. 2d 30, 54 Cal. Rptr. 568 (1st Dist. 1966); State v. Jackson, 218 Minn. 429, 16 N.W.2d 752 (1944).

The line of cases dealing with hunting and fishing rights on lands which were once part of a tribe's reservation, but which have since been ceded to the United States, has been the subject of much more controversy. In general, it can be said that the tribal Indians' rights are superior to the private citizen and landowner. Seufert Bros. Co. v. United States, 249 U.S. 194 (1919) (Indians' right to hunt and fish on ceded land privately owned and used by other tribes or white men); United States v. Winans, 198 U.S. 371 (1905) (off-reservation hunting and fishing rights of Indians not to be terminated by white private ownership of ceded land); United States v. Taylor, 3 Wash. Terr. 38, 13 P. 333 (1887) (Indians could pass over white-owned land to reach fishing stations.)

In the nineteenth century, the states' right to regulate Indian hunting and fishing was held to be unqualified. Ward v. Race Horse, 163 U.S. 504 (1896) *rev'g* 70 F. 598 (C.C.D. Wyo. 1895); United States v. The James G. Swan, 50 F. 108 (D. Wash. 1892). In the twentieth century, however, that view has been subject to qualification. While the states retain the right to regulate Indian hunting and fishing on land off the reservation, the courts have applied a number of tests to each situation. If the facts warrant an interference by the state, the regulation will be allowed, but the state does not have an absolute right to prosecute tribal members. Puyallup Tribe v. Department of Game, 391 U.S. 392 (1968) (reasonable and necessary); Tulee v. Washington, 315 U.S. 681 (1942) (necessary); New York *ex. rel.* Kennedy v. Becker, 241 U.S. 556

(1916) (necessary); Maison v. Confederated Tribes, 314 F.2d 169 (9th Cir.), *cert. denied*, 375 U.S. 829 (1963) (indispensable); Kautz v. Department of Game, 70 Wash. 2d 275, 422 P.2d 771 (1967) (reasonable and necessary). In the last two decades, there has been an opposing, though less vigorous, line of decisions on these same issues. These cases hold that the tribes are free of *all* state regulation while off the reservation by virtue of interpretation of the specific treaties involved. State v. Arthur, 74 Idaho 251, 261 P.2d 135 (1953), *cert. denied*, 347 U.S. 937 (1954) (Indian hunting on "open and unclaimed land" was free of all regulation); People v. Jondreau, 384 Mich. 539, 185 N.W.2d 375 (1971) (tribal members free of all state regulation off-reservation); State v. Satiacum, 50 Wash. 2d 513, 314 P.2d 400 (1957) (Indians free to hunt and fish on ceded land without regulation). In view of this mixed precedent, Minnesota, in *Chippewa*, chose to prove that the land involved was ceded to the United States by the Nelson Act, Act of Jan. 14, 1889, ch. 24, 25 Stat. 642, rather than to challenge the general principle established by case law that Indians are free from state regulation of hunting and fishing while on the reservation. This would bring the fact pattern out of the first category of decisions and into the second category dealing with off-reservation hunting and fishing. In this framework, the state's chances of prevailing were much greater in view of the Supreme Court rulings in Puyallup and Kautz, *supra*.

8. Chippewa, *supra* n. 1, at 1003. The Nelson Act, Act of Jan. 14, 1889, ch. 24, 25 Stat. 642, made private landowners of those Indians who chose to stay at the Leech Lake site. It has been clearly held that such land remained "Indian country" and was retained under federal supervision. Perrin v. United States, 232 U.S. 478 (1914); United States v. Pelican, 232 U.S. 442 (1914); State v. Jackson, *supra* n. 7.

9. Act of Jan. 14, 1889, ch. 24, 25 Stat. 642.

10. Federal jurisdiction is based upon the commerce clause, U.S. Const. art. I, § 8, which reserves to the Federal Government the right "[t]o regulate commerce with foreign nations, and among the several States, and with the Indian tribes." A classic, and frequently cited construction of this provision appears in Worchester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), where Chief Justice Marshall stated: "From the commencement of our government Congress has passed acts to regulate trade and intercourse with the Indians, which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts . . . manifestly consider the several Indian nations as distinct political communities. . . ." *Id.* at 556-57. This decision was the foundation of a long line of cases which maintain that Indian tribes are nations which fall under the jurisdiction of the Federal Government as dependent sovereigns, but are free from state intervention. *See* Williams v. Lee, 358 U.S. 217 (1959); United States v. Sante Fe Pac. R.R., 314 U.S. 339 (1941); Roff v. Burney, 168 U.S. 218 (1897) (territorial government); Elk v. Wilkins, 112 U.S. 94 (1884).

11. Chippewa, *supra* n. 1, at 1003. The implications of this reasoning are discussed in n. 7 *supra*.

12. *Supra* n. 7.

13. 368 U.S. 351 (1962).

14. *Supra* n. 7.

15. In State v. Jackson, *supra* n. 7, a member of the Chippewa tribe was arrested for trapping a partridge out of season on the Leech Lake Reservation. The court dismissed the conviction ruling that the state had no jurisdiction over Indians on reservation-allotted land. *Accord*, United States v. Pelican, *supra* note 8. For a discussion of aboriginal Indian rights see Caldwell v. State, 1 Stew. & Potter (Ala.) 327 (1832). The fact that the Indians were here long before any white man did nothing to stop

Europeans from asserting their absolute title to the land. It was claimed on the basis of "title by discovery." As early as the sixteenth century, the Indians' rights to their land was a compelling enough question to draw urgings from the Pope that the Spanish settlers respect the land title and rights of the American Indian. Pius III, *Bull Sublimus Deus* (1537).

Anglo-American settlers in the eighteenth century were again confronted with the same moral issue in the Northwest Ordinance, Act of July 13, 1787, art. V, which, nevertheless, did little to restrain the settlers from taking the land they wanted. United States v. Lucero, 1 N.M. 422 (1869); Cohen, *Original Indian Title*, 32 Minn. L. Rev. 28 (1947).

16. *Supra* n. 7.

17. *Cf.* Act of Jan. 14, 1889, ch. 24, 25 Stat. 642, *with* Termination Act of 1954, 25 U.S.C. §§ 891-902 (1970). The crucial distinction to be made in the facts of these two cases is that the *Menominee* case held that the reservation *had* been terminated, but the tribe itself had not. Hence it was the tribe's right to hunt and fish on the land in question which had survived the Termination Act. Menominee Tribe v. United States, *supra* n. 7, at 412. In the *Chippewa* decision, the court clearly held that the state had failed to prove that the reservation had been terminated. Chippewa, *supra* n. 1, at 1006.

18. Act of Feb. 22, 1855, 10 Stat. 1165.

19. Act of Jan. 14, 1889, ch. 24, 25 Stat. 642.

20. Act of Feb. 22, 1855, 10 Stat. 1165.

21. For a discussion of the legislative mechanics of this process see ns. 5, 7 *supra*.

22. Brief for the State of Minnesota at 11-15, Chippewa, *supra* n. 1.

23. *Supra* n. 7.

24. Brief for United States at 2-6, Chippewa, *supra* n. 1.

25. Menominee v. United States, *supra* n. 7, at 413. The U.S. Constitution asserts the supremacy of treaties made by the United States with other nations in the eyes of the law. U.S. Const., art. VI. *See, e.g.*, Nielsen v. Johnson, 279 U.S. 47 (1929); Asakura v. City of Seattle, 265 U.S. 332 (1924); Missouri v. Holland, 252 U.S. 416 (1920).

In 1871, Congress passed a bill which declared that the Federal Government no longer "acknowledged or recognized" the Indian nations as independent powers "with whom the United States may contract by treaty." The bill also provided, however, that this act would not alter the quality of the terms of any treaty executed before the statute. Act of March 3, 1871, ch. 120, § 1, 16 Stat. 544, 566.

Again, in 1935, Congress asserted that there would be no lessening of any rights already incurred under all treaties. Act of June 15, 1935, ch. 260, § 4, 49 Stat. 378. American courts had long been upholding the validity of Indian treaties. *See* United States v. Forty-three Gallons of Whiskey, 93 U.S. 188 (1876); Fellows v. Blacksmith, 60 U.S. 366 (1856); Turner v. American Baptist Missionary Union, 24 F. Cas. 344, 346 (No. 14, 251) (C.C. Mich. 1852). Under the Constitution, an Act of Congress will supersede a prior inconsistent treaty. U.S. Const., art. VI, § 2; Chae Chan Ping v. United States, 130 U.S. 581 (1889); Head Money Cases, 112 U.S. 580 (1884). However, the courts have been cautious in allowing treaties with the Indians to be modified or abrogated. *See* Lone Wolf v. Hitchcock, 187 U.S. 533 (1903); Ward v. Race Horse, *supra* n. 7; The Cherokee Tobacco, 78 U.S. (11 Wall.) 616, 621 (1870). *See also* Cook v. United States, 288 U.S. 102 (1932).

26. In Menominee Tribe v. United States, *supra* n. 7, at 413, the Court refused to accept a "backhand" abrogation of treaty rights conferred upon the Indians and demanded clear language to sustain any such termination of privilege. The classic ex-

pression is found in Pigeon River Improvement, Slide & Boom Co. v. Charles W. Cox, Ltd., 291 U.S. 138 (1934), where the Court stated: "Such power [of abrogation] will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so." *Id.* at 160. And in Ward v. Race Horse, *supra* n. 7, at 511, it was held "that repeals by implication are not favored, and will not be held to exist if there be any other reasonable construction". It is a basic rule that ambiguities in treaties between the United States and Indian nations shall be resolved in favor of the Indians. Winters v. United States, 207 U.S. 564 U.S. 564 (1908); 34 Op. Att. Gen. 439, 444 (1925); F.S. Cohen, Handbook of Indian Law 37 (1948). *But see* United States v. Choctaw Nation, 179 U.S. 494, 531-32 (1900), wherein the Court held that the plain meaning of words may not be disregarded. This decision recognized the general principle described above but limits it to bona fide ambiguities. Chippewa, *supra* n. 1, at 1005. The Court found support for the proposition that the Nelson Act, Act of Jan. 14, 1889, ch. 24, 25 Stat. 642, was merely intended to open up certain territories on the reservation to white settlers. *See* Seymour v. Superintendant, *supra* n. 13. The Nelson Act, Act of Jan. 14, 1889, ch. 24, 25 Stat. 642, was part of what has been called the "Allotment Period" of Indian-American relations. A further purpose was to "civilize" the Indian by instilling in him the European pride in private property and pulling him away from his communal roots. Kelly, *Indian Adjustment and the History of Indian Affairs,* 10 Ariz. L. Rev. 565 (1968). *See* ns. 5, 8 *supra.*

27. Act of July 1, 1892, ch. 140, § 4, 27 Stat. 63.

28. Act of July 1, 1892, ch. 140 § 4, 27 Stat. 63. In Seymour v. Superintendent, *supra* note 13, the Court contrasts the language in the 1892 statute with the Act of March 22, 1906, ch. 1126, 34 Stat. 80, which dealt with another section of the same reservation. The Court found that the 1892 act *did* terminate a portion of the reservation while the 1906 statute did not.

The 1906 statute contained no language as explicit as the "vacated and restored to public domain" phraseology in the former act. A further indication of intent discerned by the court was that the 1892 act had appropriated the proceeds for the "general public use" while the 1906 act had provided for appropriation "beneficial to the tribe". Seymour v. Superintendant, *supra* n. 13, at 355-56. It should be noted that the Nelson Act, Act of Jan. 14, 1889, ch. 24, 25 Stat. 642, 645, provided that the proceeds derived from the sale of the land to homesteaders were to be held in trust for the Indians. *See* United States v. Minnesota, 270 U.S. 181, 192 (1926); United States v. Mille Lac Band, 229 U.S. 498 (1913); Minnesota v. Hitchcock, 185 U.S. 375, 387 (1902).

29. Chippewa, *supra* n. 1, at 1005.

30. In comparing the *Menominee, supra* n. 7, situation with that of the case at bar, the *Chippewa* court found that "[d]espite unequivocal language [of termination of all rights] the Supreme Court had held that while the language was effective to terminate the reservation, it still did not abrogate Indian hunting and fishing rights." Chippewa, *supra* n. 1, at 1005.

31. *Supra* n. 13.

32. The Court in *Seymour* had held that the termination of a reservation turns upon the termination of federal responsibility and not the termination of legal land title in the Indians. It is apparent that the Nelson Act, Act of Jan. 14, 1889, ch. 24, 25 Stat. 642, merely terminated the communal property title of the band and not the federal jurisdiction over the band. This is clear from the Court's interpretation of congressional intent. Seymour v. Superintendant, *supra* note 13, at 356; Chippewa, *supra* n. 1,

at 1005. *Contra,* Arnett v. 5 Gill Nets, 20 Cal. App. 3d 729, 97 Cal. Rpter. 894 (1st Dist. 1971). In this case, the court held that the allotment of reservation land in 1892 had *terminated* the reservation, and thus, an Indian fishing on the ceded land could be prosecuted under state fishing laws. Although the court distinguishes its result from that in Seymour v. Superintendant, *supra* n. 13, on the basis of indicia of Congressional intent, it seems clear that the crux of the decision lies elsewhere in the court's definition of a reservation. That is, the court holds that a reservation is "an area reserved from homestead entry or other allotment to individual ownership . . . ." In other words, the reservation's existence depends upon communal land title. Arnett v. 5 Gill Nets, *supra* at 735, 97 Cal. Rptr. at 898.

33. *See* n. 7 *supra* for a discussion of the implications of this conclusion.

34. The *Menominee* decision, *supra* n. 7, involved the Termination Act of 1954, 25 U.S.C. §§ 891-902 (1970). That act provided for the "orderly termination" of the Government's supervision over the "property and members" of the tribe. It also provided for the uniform application of state laws to tribal members "in the same manner" as they would apply to non-Indian citizens of the state. 25 U.S.C. §§ 891, 899 (1970).

35. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588, *as amended,* 18 U.S.C. § 1162 (1970).

36. The act gave certain states, including Minnesota, exclusive jurisdiction over criminal matters of the Indian reservations. 18 U.S.C. § 18(a) (1970). U.S.C. § 1162(b) (1970) states that Congress has no desire to effect the cancelling of any treaty terms by this shift of responsibility.

The history of Indian-American relations follows roughly the same pattern as the development of legislation in this area. Congress has passed through four main periods in its attitudes towards the Indians and their problem—more usually they were concerned only with the problems of their constituencies. And their confusion and inevitable chagrin at the red man's "ingratitude" was great.

The first period might be called the "Reservation Period" during which treaties were made with the Indian tribes creating special areas of land within which the Indians could exist in their ancient manner, and where, in turn, they would not encumber the spread of the white settlers over the land.

As the eastern lands became congested with settlers, the thrust towards the West grew stronger. In the 1880's the second period began, the "Allotment Period." The purpose of the "Allotment Acts" was two-fold. First, by breaking up the reservations, Congress hoped to free new land for settlement. Secondly, by "alloting" land as private property to the Indians, it was hoped that the Indians would shed their communal past and assume the European traditions of private property and private enterprise. *See supra* n. 26.

37. Menominee v. United States, *supra* n. 7, at 410.

38. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588, *as amended,* 18 U.S.C. § 1162 (1970).

39. Menominee v. United States, *supra* n. 7, at 410.

40. Act of Jan. 14, 1889, ch. 24, 25 Stat. 642.

41. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588, *as amended,* 18 U.S.C. § 1162 (1970).

42. James 3:3-5. "Behold, we put bits in the horses' mouth, that they may obey us; and we turn about their whole body. Behold also the ships, which though they be so great, and are driven of fierce winds, yet are turned about with a very small helm, whithersoever the governor listeth. Even so the tongue is a little member, and boasteth great things. Behold, how great a matter a little fire kindleth."

43. The difficulty arises from the problem of dealing with a foreign independent nation existing within the boundaries of the United States. Whatever the degree of assimilation, the Indian ethos remains a vital entity, trapped in the alien American culture. And the situation has been aggravated by legislative confusion.

The Allotment Period drew to a close with the Indian Reorganization Act of June 18, 1934, ch. 576, 48 Stat. 984, *as amended*, 25 U.S.C. §§ 461-92 (1970). It was this bill that finally reversed the devastating effects of the Reservation and Allotment Periods. Funds were appropriated for the purchase of new lands for tribal use, tribal traditions and functions were renewed, and loans were made available to the tribes. This might well be termed the "Period of Re-integration."

The last period began in 1953 and can be called the Period of Termination. With H.R. Con. Res. No. 108, 83d Cong., 1st Sess. (1953), a movement began for the rapid assimilation of the Indian tribes into American culture. This was to be accomplished by the "termination" of all federal jurisdiction over Indian affairs. Individual states were to exercise the same control over tribes that they had over all other citizens. Kelly, *supra* n. 26, at 571. It is clear, then, that the Indian problem calls for a careful evaluation of not only the tribes and their rights, but of our own motives and sometimes selfish impulses. As Justice Frankfurter has written, the development of an Indian-American policy calls for "an appreciation of history and understanding of the economic, social, political and moral problems in which the more immediate problems of (Indian) law are entwined." *Quoted in* F.S. Cohen, *supra* n. 26, at 5.