

Dear Congressman:

Because of recent changes in the expressions of American people it appears that Indian Affairs have reached another point in time whereby we are again at a crossroad. This is not a new experience because Indians have been there before-- in 1801, 1819, 1824, 1830, 1834, 1849, 1864, 1871, 1889, 1924 and 1953. These were landmark years and the opportunities passed them by in favor of some more theories and presuppositions. What 1967 will bring can hardly be presumed now, but based on past performances, it may well be another year of senile phrases and pacifying verbs.

A period of reformation and enablement has been a long standing wish of many Indians, and for some, it has been a hopeful legacy which passed to younger minds, for the hopeful ones are no longer here to share their wisdom. But as enthusiasm spreads enthusiasm, so does hope beget hope. There have been numerous Indian youth councils which have weighed the pros and cons of Indian affairs and over the past fifteen years, there have been more numerous Indian leadership conferences that have deliberated more fair and justifiable alternatives to the management of Indian business. Hardly any one keeps notes on these meetings any more because it has become repetitious to where certain expressions have become a consensus of minds, but there seems to be no fertile areas left to accept this grain of fruit of knowledge for greater crops of advancement.

In awareness of more recent histories whereby Indian OEO projects have dispelled the presumption that Indians cannot manage their own affairs, we would like to bring to light some of the thoughts and aspirations which go on from meeting to meeting among Indians and which are rarely ever discussed with non-Indians. This attempt to enlighten Congress of these ambitions is made with full knowledge that new and different innovations will result in many negative and damaging torts, but it is also needless to gain knowledge and information without making some attempt to put it to some beneficial use. With the hope that this information will be retraced to the people who will ultimately live with the resulting legislation, this information is respectfully submitted to both the Representatives of Congress and the Heads of Indian Tribes.

#### INDIAN CONCLUSIONS, 1967

Certainly, no one can deny that Indians have made their contributions to the development of this great country; there are evidences all around the country of their having lent assistance to make this country the hopes and dreams of many past centuries. There are few centuries--seven and one-half decades that have passed since Europeans became disenchanted with the debtor's prisons and poorhouses of Europe; four hundred seventy-five years of history to show that there are better roads leading to world peace than the perpetual ends of government in anarchy.

During these years, Indians have abided with all forms of inconsistency, and for this endurance of tolerance and patience, we can think that it is some kind of record of achievement; they have developed and shared the many goods which now have become commonplace the world over at meal time; they have excelled in sports, music and art to bring

credit to this country; they still serve as ambassadors of goodwill around the globe; not a single boy scout has missed using the methods of Indians in their training for outdoor life; neither has the armed forces failed to use the strategy and tactics of Indian warfare; Indian languages have contributed to the winning of a global war; Indian forms of government are still as fresh as the days of Indian confederacy so that even the smallest of men can enjoy democracy; Indian conservation techniques are an integral part of all conservation practices and Indian diplomacy can be evidenced through countless incidents of friction.

By the same token, how many of us can deny that all these contributions have not met their full measure of grateful acceptance. Who is there amongst us that does not know the endurance through the ruthless treatment Indians received by the Spaniards who mined their gold; who is not aware that many forests have been destroyed and left the Indian to survive in smoke and ashes; who can falsify the fact that the bison was nearly obliterated so that the Indian might starve; who can distort the fact that Indian bones were dug up by the tons to make buttons to clothe a nation; who cannot face the fact that Indians were up-rooted from their homelands and dislocated century-old customs to stretch Indian adaptability to its limits; who is there that will not be counted who has had a hand in relegating the Indian future to be counterparts to dams, fences, lakes and animal reserves as is the present government environment of Indian affairs; who can gloss over the fact that Indian affairs has resulted in keeping Indians on a referral treadmill to keep him in poverty; who can discolor the fact that under bureaucratic controls, the Indian has not had a voice in his future for more than one hundred fifty years; who is there who cannot say that the Indian must endure the embarrassment that they are wards (non compos mentis) under a trustee rather than being beneficiaries to a trust; and finally, who can erase the image of the Indian in our public media from being a perpetual failure without respect or substance.

Can Euro-Americans wash away these inconsistencies by money alone? Is the intent of legislation going to face up to democratic principles or try to cover up dishonor with more dishonor? Will America ever reach to the point of not proceeding with its work until the very poorest of us have been provided for--and to proceed for the greatest good for the greatest number? These are the basic questions that Congress and Indians need to ponder more fully; but whether they will ever be considered is a moot query which will remain moot until the actions of Congress can be reviewed.

To be critical of circumstances and conditions for the sake of criticism is not a part of this intention, but rather we prefer to share the basic reasons we have elected to bring forward for the benefit of all concerned. In a most serious philosophic manner, please consider these reasons as a guide.

Amongst the Annals of English Common Law, the position of a finder to real and personal property is repeated by the courts many times over. It appears, in substance, to be the most repeated principle of law, but it is as often circumvented when it comes to Aboriginal finding and title. That principle says "A finder of property has rights above all but the rightful owner". According to legendary Indian history, the Indians occupied this great land under a trust from the Great Spirit to have and possess for the benefit of their members so long as the user did not abuse the right to live within the natural

production of the land. This stipulation was never violated and lives have been lost to maintain this commitment. In the most serious light of reason, the Indian was the first possessor and he stipulated his conditions by his custom. He had rights above all but the Almighty and he gave occupancy privileges to others with the hope that their conditions would eventually be honored. Use privileges was all that he could give under the conditions of this great trust.

It has been said many times over that possession of this country is by conquest, and it has been proven over and over through the inevitable course of history that 'might does not make right'. Yet for some strange reason or another, we have not resorted to reason to gain a real and full appreciation of the meaning of conquest. Among Indian reason, conquest is a justifiable act under certain conditions. Among those conditions are the circumstances whereby the occupants of a land need to be in jeopardy of life and limb to justify a conquest. It is also a condition that the oppressed people must ask for aid to justify a conquest. There is no evidence to show that emissaries were ever sent to Europe and conquest is an invalid excuse because there is lack of evidence for a cause for conquest and all subsequential acts have been done under emotional reactions not based on substantial reasoning.

It was decided in Common Law, several centuries ago, that the mere occupancy of land under the guise of conquest does not in any manner or form give the new occupants a right to disturb, disrupt or change the customs of the prior occupants and possessors. Out of respect for life and liberty, native inhabitants were judged to be entitled to their customs and constitutions--the case in point is known as "Calvins Case", and it is written indelibly in the history of law and the courts. As added evidence that the customs of the inhabitants were not disturbed under the guide of legal decisions, we know that after the Articles of Confederation had failed to give satisfaction, emissaries were sent to study the American Indian Confederacies and this study resulted in the present Constitution of the United States of America. The fact that the Indian form of government was based on a four-fold division of powers is evidenced by the present day existence of Congress, the Courts, the Administration and the States. The only reasonable and prudent conclusion that we can reach here is that occupancy of this great land has not and is not entitled to extinguish aboriginal titles, rights, privileges and immunities to which Indians are entitled and that occupancy was accomplished by permission. It is also a standard in law that just compensation accompanies all forms of occupancy by contract and permission, including occupancy gained by duress which appears to be the case with many of the Indian treaties ratified by Congress.

Respectfully submitted,  
*Herbert Blatchford*  
Herbert Blatchford (Navajo)

Attachment: A Bill

A BILL

"To provide for the economic development of Indian Tribes and their resources, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Economic Enabling Act of 1967."

STATEMENT OF PURPOSE

Sec. 2. The Congress hereby declares that the elevation of the American Indian from his present condition of poverty, unemployment, underemployment, and economic distress is vital to the best interests of the United States; that the existing federal trusteeship, under the Department of the Interior and the Bureau of Indian Affairs, founded historically on the assumption that Indians as a people are not capable of managing their own affairs in developing their human and natural resources and are thus in need of federal protection and supervision, has not contributed significantly to the realization of the United States policy which is to assist Indian tribes in developing their resources; that the paternalism inherent in the existing trusteeship has seriously hampered the development of a spirit of independence and initiative in Indian tribes and has not assisted them in gaining that managerial experience prerequisite to full participation in the American economy; that reasonable and prudent changes in the federal relationship with Indian tribes authorized by this Act will provide the basis for Indian tribes to increasingly assume the freedom for decisions in developing their resources; that during a period of transition from containment to independence, the special resources management and development services, hereinafter provided for, because of their status as Indian tribes shall be available to them upon request; that Indian tribes shall have an opportunity to a much wider choice of alternatives in the management and development of their resources to the end that choices available to American society in general are available to them; that present statutory limitations, which although designed to preserve and protect the Indian's property have at the same time placed unreasonable limitations on his ability to make the optimum use of that property and have stifled incentive, shall be modified and/or eliminated; that positive steps must be taken to assist Indian tribes to eliminate the economic waste resulting from fractionation of land ownership through inheritance; and that Indian tribes shall be relieved of a status of trusteeship, not unlike the trust which came victim under the Theodore Roosevelt Administration of government; that Indian tribes shall be encouraged and aided in increasing quality and extent of self-government and in dealing with non-governmental advisors; and that many of the OEO's real success stories, written by Indians, have merit for self-sufficiency.

TITLE I - ADJUSTMENT OF FEDERAL RELATIONSHIP

Indian Tribes

Sec. 101. Since the present policy for Indian tribes is not conducive to favorable development, and has not proven to be favorable in 142 years of stewardship, and has placed Indian tribes "on the forefront

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in the War on Poverty"; therefore be it enacted to create an independent congressional federal agency, consisting of nine members, which shall represent the tribes of the various linguistic strains of Indian languages, namely Athabascan, Siouan, Iroquoian-Caddoan, Algonkian-Muskogean, Keresan-Tanoan, Shoshonean, Piman-Yuman, Northwest Coast and Californian, and a member at large to encompass the remaining linguistic strains; to be elected at large by Indian tribes belonging to their respective linguistic families of tribes; to serve for six (6) years or until resigned, recalled or replaced.

Sec. 102. The said Commission shall be cited as the "Commission on Indian Relations," hereinafter referred to as the "Commission."

Sec. 103. The chief duty of the Commission shall be to act as a fiduciary between Congress and Indian tribes; to be a holding agency for Indian real property titles; having powers of referral to Congress and/or to federal courts on matters of dispute between tribes; having powers to ratify agreements between tribes, states and federal administration, and having powers to ratify sale, assignments, and leases of Indian tribal real property which is decided upon not to be a detriment to the economic advancement of the tribal owner by the full Commission assembled.

Sec. 104. Indian tribes are hereby assured to be capable of making decisions as to their respective destinies by virtue of their sovereign status and by virtue of their past treaty making powers.

Sec. 105. All properties of lands and improvements within the exterior boundaries of reservations and allotted lands shall be subject to the jurisdiction of the Indian tribe residing thereon, and all such properties shall be subject to existing tax immunities including income derived therefrom to continue from the time of purchase or transfer until relinquishment or sale to non-tribal ownership.

Sec. 106. It shall be the responsibility of the Indian Tribe to maintain its roll and membership, and to service individual Indian needs through funds derived from federal means. The duties of the Commission shall be exclusive of individual concerns except in cases of extreme duress and emergency.

## TITLE II -- TRIBAL GOVERNMENT

Sec. 201. Notwithstanding any other provisions of law, an Indian tribe may sell or exchange any of its property subject to the ratification of the Commission.

Sec. 202. An Indian tribe may place its funds on deposit in the United States Treasury and pledge any of such funds as security for loans. Any Indian tribe is assured to be capable of handling its own investments inasmuch as advice may be gained from federal agencies, industry, or the Commission.

Sec. 203. Jurisdiction over civil causes arising between Indian tribes and non-Indian entities shall be vested in the U.S. Department of Justice, including the administration of judgments of like criminal causes.

Sec. 204. All rights that are derived from the rights to exist as an Indian tribe are hereby recognized and affirmed including those rights, privileges, and immunities heretofore practiced by Indian tribes by their customs and tribal practices; and that Indian tribes are entitled to franchise Indian corporations and non-profit entities as they may deem appropriate for the economic and social advancement of their members.

Sec. 205. It shall be the duty of the Commission to issue documents of recognition of Indian tribes, all previous enactments regarding

severance of recognition notwithstanding.

Sec. 206. For a period of five (5) years from the passage of this Act, it shall be the duty of the Department of the Interior to assist Indian tribes to devise budgets to be submitted to the Commission for the needs of Indian tribes, including the cost of all the services heretofore furnished by the Bureau of Indian Affairs. The Commission shall present these budgets to the Congress for funding and shall disburse the funds to the respective Tribal governments, providing they have met conditions of management hereinafter enumerated. In no event shall the federal funds total such an amount that exceeds \$500.00 for each adult member beyond the age of thirty (30) years; \$750.00 for each person between the ages of twenty-one (21) and twenty-nine (29) years; and \$1,000.00 for each child under the age of twenty-one (21) years. For those tribes whose managerial needs are still under development, within the said five (5) years, the Bureau of Indian Affairs may request developmental and service funds on their behalf. At the end of such period, the Commission shall be responsible for all financial matters.

Sec. 207. Section 10 of the Act of June 18, 1934 (68 Stat 986, 25 USC 1470) as amended, which authorizes appropriations for Indian Revolving Loan Fund, be further amended to provide a principle of \$1,000,000,000, to be administered by the Commission on loans to Indian tribes, charging such interest for administration as not to deplete the principle amount.

Sec. 208. There shall be a chief administrator to conduct the business of the Commission and shall receive compensation equal to that received by the present chief administrator of the Bureau of Indian Affairs. Such administrator shall be nominated by the Commission and ratified by the Senate and a majority of Indian tribes, and shall evidence in his qualifications the study and understanding of Indian customs or shall have acquired such understanding through experience and association with Indian tribes through business or non-governmental employment.

Sec. 209. The Commissioners selected and qualified to serve by referendum of Indian tribes shall serve at a compensation equal to that received by the judges of the several federal district courts, and shall receive such expenses as may be deemed appropriate for the conduct of business and may be adjusted as experiences may define in an annual budget submitted for approval.

### TITLE III - CONDITIONS OF MANAGEMENT

Sec. 301. Such terms and conditions hereinafter enumerated shall serve as a matter of balances and counterbalances to assure the fair and equal treatment of Indian tribes according to their abilities; and shall be subject for review upon submittal of each annual budget before the calendar year in which the Congress convenes.

Sec. 302. Inasmuch as Indian tribes exercise jurisdiction over their lands and property within the exterior boundaries of reservations and allotted lands, Indian tribes shall account for reasonable and prudent agreements, with states wherein they reside, on matters pertaining to additional rights granted to the Indian tribes or tribe by virtue of treaties heretofore signed between the United States and the applicable Indian tribes. Such agreements shall be subject to confirmation as provided for in Section 102 of Title I of this Act. Tribal jurisdiction shall be vested in the applicable tribe on rights, privileges, and immunities granted in said treaties, and shall be subject to modification by mutual consent and consultation between tribes and states; all prior arrangements granted to

states without the consent of Indian tribes notwithstanding.

Sec. 303. Inasmuch as tribes have suffered criticism in the past of uncontrolled grazing management, it shall be the duty and responsibility of Indian tribes to show evidence to the Commission of regulations, providing ways and means by which Indian grazing lands will not be endangered by the exercise of uncontrolled grazing. Accordingly, tribes shall submit evidence of the enforcement of said regulations.

Sec. 304. Inasmuch as it is deemed important for proper communication between Indian tribes to provide for the education of children, inclusive of sixteen years age, either by establishing an adequate school system or by contract with the several states to provide competent educational services or with other competent educational agencies.

Sec. 305. Inasmuch as it is essential for the survival and protection of Indian lands for future generations of Indian peoples, Indian tribes shall not pass title to land to non-Indian ownership without first obtaining from the Commission conclusive ratification of such sale to person, persons, entities, states or agencies outside the enrolled membership of an Indian tribe. Such ratification shall be issued after the unanimous written approvals of all the Commissioners has been obtained and filed with a committee of Congress therewith concerned.

Sec. 306. For the purposes of this title to meet with the terms and conditions herein stipulated, Indian tribes shall be subject to having their budgeted item funds withheld until the terms of this title have been met, providing that with each subsequent annual budget funds requested for the administration of terms and conditions in violation shall not be approved unless it be proven that disapproval creates undue hardship in meeting such terms and conditions within a reasonable and appropriate time. Be it further enacted that any state which refuses to enter into reasonable and prudent agreements with Indian tribes shall be deemed entitled to a like administration of federal funds.

Sec. 307. For the purpose of further economic development and participation, Indian tribes shall be entitled to submit applications for assistance under such special legislation as Congress shall from time to time enact for the betterment of the American society in general.

**APPROVAL**

I, HARRISON LOESCH, Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted to me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve effective June 14, 1969, the attached Amendment IX to the Constitution and Bylaws of the Oneida Tribe of Indians of Wisconsin.

Approval Recommended:

T. W. TAYLOR

Acting Commissioner of Indian Affairs

HARRISON LOESCH  
Assistant Secretary of the Interior

Washington, D. C.

Date: August 25, 1969