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Source: *The American Journal of Economics and Sociology*, Oct., 1986, Vol. 45, No. 4 (Oct., 1986), pp. 457-474

Published by: American Journal of Economics and Sociology, Inc.

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# American Indians and Natural Resource Development:

## *Indigenous Peoples' Land, Now Sought After, Has Produced New Indian-White Problems*

By C. MATTHEW SNIPP\*

ABSTRACT. In the *colonial period* of U.S. history, American Indian tribes enjoyed the status of political sovereigns, and dealt as equals with the *English Crown* and *colonial authorities*. In the years following U.S. independence, legal, administrative, and military actions were used to redefine the meaning of *tribal sovereignty*. Conceptualizing these developments, "*captive nations*" refers to the limited sovereignty of tribes and their isolation and detachment from mainstream *American society*. Recently, *natural resource* development on their *land* and especially the discovery of *energy resources* has had a major impact on the structure of Federal-Indian relations and the political status of Indian tribes in American society. Willingly or unwillingly, many tribes are in the process of renegotiating their status with the *Federal Government* as a consequence of the *resource development*. As a result, these former captive nations are now more aptly described as "internal colonies."

### I

#### Introduction

STEMMING FROM AGREEMENTS made in the 19th century, American Indians occupy a unique niche in the political and economic structures of the United States. These agreements removed American Indians to isolated areas where they now have access to potentially vast resources in the form of water, timber, fisheries, and energy minerals. The growing demand for these resources is in several important ways reshaping the relationship between Indians and the rest of

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American Journal of Economics and Sociology, Vol. 45, No. 4 (October, 1986).  
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American society. A dramatic example is that, since the mid-1970s, holdings in energy resources such as gas, coal, oil, and petroleum have given a small number of tribes the power to control raw materials considered vital for the well-being of the national economy.

In an earlier article,<sup>1</sup> I briefly reviewed the literature pertinent to resource development on tribal lands and outlined a simple typology for describing the changing political and economic status of American Indians in the wake of natural resource development. This typology remedies several shortcomings in the development literature by taking into account the special legal and historical status of North American Indians. By highlighting the changing status of American Indians before and after development, this typology is primarily intended as a heuristic device for characterizing, in simple terms, an otherwise highly complex process spanning a long period of U.S. history.

The transformation of the political and economic status of American Indians before and after development can be described in terms of two distinctive phases of development: "captive nations" and "internal colonies." Captive nationhood describes the status of American Indian tribes following their subordination to the United States, and before natural resource development. An especially important point is that the captive nation status is mainly a political condition established and maintained through the legal doctrine of tribal sovereignty. During the 19th century, military and bureaucratic measures were used to restrict the powers of tribal leaders, rendering Indians as "sovereign wards of the State." Captive nationhood expresses the limited powers of self-government retained by tribal leaders after their conquest by the United States. Although the status of captive nation insures a measure of political autonomy, it also has made American Indians heavily dependent on federal authorities for diverse types of assistance.

Surrendering their autonomy to become captive nations had little effect on the economic life of most Indian tribes. If anything, it further impoverished Indian people by denying them access to traditional pursuits such as hunting, fishing, and trapping. In relation to the development of natural resources, the dependence and economic vulnerability cultivated among Indian tribes in their tenure as captive nations paved the way for their emergence as internal colonies. Resource development on Indian lands is hastening the process of internal colonialism and this process is revolutionizing the status of American Indian tribes on a scale equal to the restriction of their political powers in the 19th century. As internal colonies, Indian lands are being developed primarily for the benefit of the outside, non-Indian economy. The tribes have been relatively unsuccessful in capturing the material benefits of development to be used as tribal public revenue, and some observers claim that Indians are now exposed

to subtle new forms of economic exploitation, in addition to the political dominance they have experienced as captive nations.

The captive nation-internal colony distinction implies a gradual process by which political domination is translated into economic exploitation. Internal colonialism is a type of economic relationship that has developed out of the political dominance established with the creation of captive nations. Resource development on Indian lands is the mechanism by which tribes are transformed from captive nations into internal colonies. Documenting the changing political and economic position of American Indians requires a survey of historical events as evidence. Other types of data are inadequate for capturing the richness and complexity of this process. This paper has two objectives. The first is to review the historical circumstances by which formerly autonomous Indian tribes were transformed into captive nations. The second objective is to establish how the practices of internal colonialism are manifest in resource development on Indian lands. Collectively, this information should build support for the captive nation-internal colony typology as a way of conceiving the changing status of American Indians.

## II

### **Captive Nations: The Development of Underdevelopment**

SHOWING HOW American Indian tribes were gradually moved into their status as captive nations illustrates a process that at once led to their political subjugation and facilitated their survival as inhabitants of isolated social enclaves. This process is characterized by alternating trends in social policy that swing between measures aimed at annihilating Indians and Indian culture, and vigorous efforts intended to preserve the remnants of tribal life. The status of American Indian tribes as captive nations did not result from sudden tribal capitulation or from scattered social policies. Captive nationhood is the product of slowly evolving social policies toward Indians beginning with the British administration of colonial America.<sup>2</sup>

Prior to American independence, American Indian tribes enjoyed the political status of fully independent sovereigns and were treated accordingly by the British crown. In recognition of military realities, British authorities enacted policies designed to curry good will with the east coast tribes. Edmund Atkin, one of the British officials responsible for Indian policy wrote:

The importance of Indians is now generally known and understood. A doubt remains not, that the prosperity of our colonies on the continent will stand or fall with our interest and favor among them. While they are our friends, they are the cheapest and strongest barrier for the protection of our settlements; when enemies, they are capable of ravaging in their method of war, in spite of all we can do, to render these possessions almost useless.<sup>3</sup>

For the British, safeguarding their colonial interests meant developing a set of policies which would provide for equitable relations with the tribes. With this purpose in mind, colonial agents adopted a three-pronged strategy for managing diplomatic relations. Essentially, the British attempted to (1) centralize authority in the conduct of negotiations, (2) upgrade the standards for business ethics among traders dealing with Indian groups and, (3) formalize the procedures for negotiating land cessions from the tribes.

These goals were fully embraced by the Royal Proclamation of 1763 which would later influence U.S. Indian policies. Consistent with British goals, the Royal Proclamation contained four major provisions. It recognized the territorial rights of tribes to lands which they had not formally relinquished by sale or by cession. A second proviso prescribed a boundary line beyond which White settlement would be forbidden. Third, it provided for the removal of White settlers living on Indian lands and, last, it set forth a principle for peacefully acquiring future territory.<sup>4</sup>

The British policies, and especially the 1763 Proclamation are important because they set the tone for the handling of Indian affairs after the American revolution. In 1783, the Indian Committee of Congress recommended that the U.S. government should enter negotiations with the tribes. In these discussions, the U.S. should try "neither to yield or to require too much."<sup>5</sup> Peaceful negotiations were preferable over what many influential policy makers regarded as the unacceptably high cost of military action. This opinion gained further influence with the support of George Washington. Several years later, these sentiments were re-expressed in two major pieces of legislation. One act, Ordinance for the Regulation of Indian Affairs (1786), established an Indian Department and strict rules for the governance of trade. A second act, Ordinance for the Government of the Northwest Territory, contained the framework for Northwestern territorial governance and declared that:

The utmost good faith shall always be observed towards the Indians, their lands and property shall never be taken from them without their consent; and in their property rights and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.<sup>6</sup>

In the years shortly after U.S. independence, American Indians still exercised sovereign authority over their lands and people.

This authority was relatively short lived as it was curtailed by the convergence of several events. Continuing immigration from Europe was a leading cause of expansionary pressures to the south and west of the original thirteen colonies. Between 1790 and 1830, the American population more than tripled from 4 to 13 million.<sup>7</sup> This period is significant because the pressures to expand U.S. territory were decisive in the election of Andrew Jackson in 1828. Prior to his

election, Jackson commanded the U.S. troops against the Creek tribe. The Creek Wars of 1813 represented a major defeat for the Creek tribe and signified the growing strength of the U.S. military. The Creek defeat also compromised the image of Indian tribes as major military threats. After his election, Jackson added to his military success by effectively lobbying for the wholesale removal of all Indians east of the Appalachians.<sup>8</sup> In 1830, the Indian Removal Act provided for the relocation of eastern tribes such as Cherokee, Choctaw, Seminole, Creek, and Chickasaw to territory in eastern Oklahoma. Implementing this act established the U.S. government's absolute dominance over these tribes.

While Jackson and his supporters moved to strip all vestiges of tribal authority, Chief Justice John Marshall of the Supreme Court affirmed the principle of tribal sovereignty in a series of landmark decisions. These decisions offered a limited vision of tribal authority and continue to serve as the foundation of modern legal doctrines favoring sovereignty. In two decisions, Marshall expressed the view that American Indian tribes are "domestic, dependent nations" subject to the authority of the Federal government. In *Cherokee Nation vs. Georgia*,<sup>9</sup> Marshall ruled that Indian tribes did not have the same status as a foreign power because:

It may well be doubted, whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. . . . They are in a state of pupillage; their relations to the United States resembles that of a ward to his guardian.

Marshall elaborated this theme in *Worcester vs. Georgia*<sup>10</sup> by declaring that "Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights . . . a weaker power does not surrender its independence—its right to self-government—by associating with a stronger nation, and taking its protection." These passages illustrate the manner in which the subordinate political status of American Indians became esconced in American legal doctrine. It also illustrates the meaning of the term "captive nation." Events surrounding the Jacksonian attacks and the Marshall defense redefined the political status of American Indians from autonomous sovereigns to captive nations with limited rights of self-government.

Events after 1830 were presaged by Jackson's reaction to Marshall's opinions: "John Marshall has made his decision; let him enforce it."<sup>11</sup> The westward expansion and ensuing Indian Wars were smoothed by the signing of 70 treaties by 1870. Many of these treaties were never ratified by Congress and nearly all were summarily disregarded. By 1871, the domination of American Indians was virtually assured, and Congress confidently approved the legislation which forbade further treaty negotiations. At the close of the decade, 1880, military hostilities were concluded at the expense of \$500 million,<sup>12</sup> and the most hostile tribes were quarantined on reservations under military surveillance.

The apparent contradictions of the captive nationhood and the concept of sovereign wardship annoyed the authorities responsible for developing Indian policy in the late 19th century. Indian Affairs Commissioner Edward P. Smith complained in 1873 that, "This double condition of sovereignty and wardship involves increasing difficulties and absurdities. . . . So far, and as rapidly as possible, all recognition of Indians in any other relation than strictly as subjects of the United States should cease."<sup>13</sup>

Jacksonian Indian policy reached its peak in the late 1880s. As a means for severing the federal responsibility implied by wardship, Congress enacted a series of bills between 1878 and 1887 which culminated in the passage of the General Allotment Act (also known as the Dawes Severalty Act). The Allotment Act broke up tribal lands into small tracts that were haphazardly dispensed among tribal members. The rationale for this policy was to encourage Indians to become small farmers by giving them small plots of land. Owning and cultivating allotted land was supposed to hasten their incorporation into American society. Many American Indian tribes possessed little interest or knowledge of farming and much of the allotted land was eventually acquired by non-Indians. Allotment was seen as a failure mostly because it did not speed Indian acculturation.<sup>14</sup>

Counterbalancing the Jacksonian influence, the Indian Reorganization Act of 1934 was a legislative breakthrough and a centerpiece of the New Deal for Indians. This act formally encouraged tribes to take a more active role in their self-governance. It stopped short of re-instituting traditional tribal authority structures because they were perceived as undemocratic. Instead, it called for the formation of tribal councils modeled after western ideals of democratic organization. This act specified that federally recognized tribal councils must be democratically elected and formally organized with constitutions and by-laws. The actions of these councils are subject to scrutiny by the Bureau of Indian Affairs (BIA) and must not violate principles established in federal law. To this day, federal authorities do not recognize the authority granted by tribal traditions that are not in accordance with the basic principles of the Indian Reorganization Act.<sup>15</sup>

After World War II, Jacksonian sentiments re-emerged in policies designed to eliminate federal obligations by promoting Indian assimilation. The BIA established "relocation" programs which encouraged reservation Indians to move to designated urban centers such as Chicago, Minneapolis, and Los Angeles.<sup>16</sup> This policy tilt was formally recognized in 1953 by House Concurrent Resolution 108 (H.C.R. 108). It placed Congress on record as favoring the termination of federal involvement in Indian affairs. The initiatives following H.C.R. 108 made available to non-Indians 1.4 million acres of land and severed relations with

tribes in four states.<sup>17</sup> The adverse effects of termination were felt immediately in the loss of basic services such as health and education.

In 1954, the Menominee tribe of Wisconsin was the first to be denied recognition following H.C.R. 108. Symbolizing the failure of these measures and their eventual reversal, legislation was enacted in 1973 which restored the Menominee as a federally recognized tribe.<sup>18</sup> In the same year, the Congress also passed the Indian Self-Determination Act which calls for greater tribal authority in the administration of reservation affairs without diminishing government obligations. The importance of this act is comparable to the legislation authorizing the reorganization of tribal governments. These bills are representative of another swing in public policy toward strengthening tribal powers. The most recent expression of this position appears in the final report of the American Indian Policy Review Commission to the U.S. Senate. This document strongly affirms the legitimacy of tribal sovereignty and emphasizes a more forthright recognition of federal responsibilities.<sup>19</sup>

Involved in the continuing debate over the status of American Indians, the intellectual descendants of John Marshall advocate recognition of limited tribal authority and rights of self-governance. The Jacksonian position argues for policies that deny the legitimacy of tribal organization and would disperse Indians as a distinct segment of American society. As different as these ideological extremes in Indian policy may seem, they are jointly responsible for moving American Indians into increasingly marginal economic situations, and for creating the conditions that make underdevelopment possible. Measures intended to promote the assimilation and acculturation of Indians, such as the Allotment Acts, discounted the legitimacy of tribal authority and were a corrosive influence on tribal organization. Lapses in tribal authority were closely followed by actions that dispersed collectively-held tribal lands and resources. Once these lands and resources were lost, competing policies aimed at the preservation of tribal rights returned a depleted and dwindling resource base to Indian control. Gravitating between the positions of Marshall and Jackson, American Indians have been alternately isolated from society, stripped of their resources, then re-isolated as captive nations. The repetition of this cycle has pushed Indian tribes to the outer fringes of the U.S. economy.

To illustrate this process, around 1881 hostilities had ceased and most tribes had been removed to reservations. Congress had started enacting allotment legislation but it was yet to be fully implemented. In this year, Indians resided on about 156 million acres of reservation land.<sup>20</sup> In the twenty years following allotment, reservation lands fell to 85 million acres in 1900. And in 1928, they reached an all time low of 30 million acres. In less than 50 years, 126 million



acres of Indian land were removed from tribal possession. Considering that much of this land was acquired by non-Indians, this loss was made more critical by population growth which enlarged the number of Indians in 1880 from 244,000 to 332,000 in 1930.<sup>21</sup> As a result, the per capita land base changed from 516 acres per person in 1880 to 90 acres per person in 1930, an 83 percent reduction. Even allowing for measurement error, this represents a cataclysmic change in the land available to sustain a population, especially considering that most Indian land is located in agriculturally unproductive areas. At the same time that Indian land was dwindling, a series of land management acts<sup>22</sup> were re-assigning former Indian land to homesteaders and encouraging settlers to consolidate land holdings.<sup>23</sup> As their only remaining resource diminished, the restoration of tribal government in 1934 brought back Indian leadership to pre-empt over a constituency impoverished by earlier policies.

### III

#### **Internal Colonies: Perpetuating Underdevelopment**

DURING THE FORMATIVE YEARS of American capitalism, Indians were viewed as impediments to expansion and exempt from economic interests. Underdevelopment among American Indians resulted from the events related to their political subjugation, and except for the outright expropriation of their land, this preceded the economic relations associated with internal colonialism. The defining mark of internal colonization, economic penetration by outside interests, occurred after the marginal economic position of Indian tribes had been established by earlier legal and military action. From this perspective, internal colonialism is an extension of practices that add economic dominance to the already subordinate political status of the tribes. It should be no surprise that the instruments of internal colonization are not unlike the ones which established political dominance.

Acting on Congressional and Presidential authority, the U.S. military was primarily responsible for curtailing tribal autonomy, stopping short of Jacksonian inspired annihilation. Along with military force, treaties are the legal documents most closely identified with this era of Federal-Indian relations. Treaty agreements and the subsequent removal of Indian tribes sealed their fate as captive nations. Treaty negotiations have been outlawed and the military is no longer responsible for Indian affairs. Lease agreements and the Bureau of Indian Affairs have replaced these institutions in the conduct of contemporary Indian affairs.<sup>24</sup> As the catalysts of internal colonialism, leases facilitate economic penetration by granting access to Indian resources, and with Congressional and executive authority, the BIA administers virtually all leasing agreements.

Resembling minority workers in split labor markets,<sup>25</sup> Indians are exploiting whatever resources are available because their poverty and economic dependency leaves them with few alternatives. The subsequent intrusion of large scale capital investments for the benefit of non-Indian interests, along with poverty and dependency, complete the classic image of internal colonialism. As exporting colonies, Indians are mainly suppliers of agricultural and forest commodities, and mineral resources. The resources most often subject to lease agreements include agricultural land, lumber, water, and energy resources. Because of their scale and potential worth, energy resources are often perceived as the most significant but this has not always been the case. The process of economic penetration began much earlier than the discovery of coal and gas in the west.

*Agriculture:* The leases of tribal agricultural lands represent the earliest traces of colonial relations. This began in the late 19th century, stimulated by the allotment acts.<sup>26</sup> Allotted lands which are leased under the supervision of the BIA have been especially vulnerable. In 1960, more than 1.5 million acres of the 6 million administered for Indian heirs by the BIA were leased by non-Indians,<sup>27</sup> further shrinking the land base available for the Indian population. Two other factors promote the leasing of agriculturally productive lands to non-Indians. For some tribes, cash crop farming is an alien concept and consequently, they have little interest or expertise in agriculture as a livelihood. For many others, the capital requirements of farming are major impediments which have been repeatedly documented.<sup>28</sup> Financially pressed Indian land owners have few alternatives to leasing their property. Over the past 50 years, ranches and farms have consolidated and become larger, and farm land has become scarcer and more valuable. This has accelerated the leasing of Indian land and created pressures on the Federal Government to make more land available for longer periods of time. In the early 1960s, the lease terms on Indian lands were further liberalized by Congress,<sup>29</sup> providing for agreements up to 99 years.

Common types of agriculture practiced on Indian lands include livestock grazing, dry land farming, and irrigated crops. Traditionally, Indian farmers are most concentrated in grazing which is the least profitable of the three types of farming. Non-Indian lessees are more likely to be engaged in profitable dry land and irrigation farming.<sup>30</sup> Of the productive acreage belonging to American Indians, non-Indians lease 60 percent of irrigated lands, 75 percent of dry farm land, and only 20 percent of the less productive grazing land.<sup>31</sup> Besides having smaller proportions of the most productive lands, American Indians generally have smaller and less productive farms than non-Indians. For example, in the 1950s, most cattle herds on Indian ranches usually consisted of 100 or less animals.<sup>32</sup> Despite the small farm size and low productivity, livestock grazing is a major source of income for many Indians. In 1972, prior to major price

increases for energy, livestock grazing provided \$78 million in gross revenues compared to \$49 million from mineral leases and royalties, and \$38 million for timber leases.<sup>33</sup>

The productiveness of Indian lands could be increased by putting additional acreage under irrigation. The BIA estimated in 1974 that at least 400,000 acres could be brought into production with irrigation technology. Most of these lands are in the arid southwest and plains states where water is a scarce and valuable resource.<sup>34</sup> In these regions, the tribes are confronted by a serious dilemma. They may use their water for agricultural production which will be exported from the reservation, or they may export their water directly to rapidly expanding metropolitan areas such as Tucson, Arizona.

*Water:* In 1908, the Supreme Court case of *Winters v. United States*<sup>35</sup> established the principle that Indian tribes retain the rights to the water on their reservations, except for water relinquished in treaties and other types of agreements. Since the *Winters* decision, the rights of Indian tribes to claim this resource have been defined in a massive and complex body of case law. These decisions alternately deny and reaffirm tribal claims and the case is still in the midst of unfolding. In 1983, pending litigation over water rights involved over 60 water basins and 100 Indian communities.<sup>36</sup>

Much of this litigation results when non-Indians expropriate water without the benefit of lease agreements. Litigation over water rights is costly and protracted but it is the only recourse for most tribes wishing to preserve their resources. For example, in 1913, the Paiute Tribe first pressed their claims on the Truckee River in California. This claim was not settled until 1983—the Paiutes lost their rights to all but a small portion of the river.<sup>37</sup> The importance of water as a resource is vividly illustrated by the experiences of the Papago and the Ak Chin reservations. Earlier in this century, the Ak Chin reservation cultivated nearly 11,000 acres of farmland but the demand for water created by the rapid growth of Phoenix, Arizona depleted local aquifers until less than 4,000 acres were cultivated in 1980.<sup>38</sup> The Papago, near Tucson, cultivate less than 1 percent of 25,000 acres of tillable soil because water is unavailable.

Despite the scarcity of water and the extended legal struggles over its ownership, water leases and royalties are trivial revenue sources for southwest reservations. These reservations have provided water for urban development throughout this region and received almost nothing in return. The Navajo are the largest tribe in this region and are probably the largest losers to date. To participate in a large irrigation project planned by the Bureau of Reclamation, the Navajo ceded their rights to the San Juan River. Congressional approval was given to this project in 1962 and construction began shortly after Congress acted. The Navajo portion of this irrigation system is yet to be built after 21 years. In

another instance, they ceded their rights to 50,000 acre-feet of the Colorado River in exchange for special consideration in hiring at the Central Arizona Project, a large power generating station. Except for a few unskilled jobs, the promised positions have not materialized and the Navajo are alleging widespread discrimination in hiring and promotion.<sup>39</sup> Related to energy development, the Navajo also sold the Peabody Coal Company 3,000 acre-feet of unreplenishable aquifer water for a coal slurry pipeline at Black Mesa. They received the sum of \$9,000 per year for this resource.<sup>40</sup>

*Timber:* Compared to water, the tribes have profited much more from leases on their timber, but only a small number of tribes have commercially attractive amounts of this resource. Fourteen reservations receive 96 percent of all timber revenues. In the early 1960s, only 2 sawmills were located on or near reservations but a decade later, nearly two dozen were in operation.<sup>41</sup> A number of these mills, such as the Menominee Mill in Wisconsin, received assistance from the Economic Development Administration. However, there were no mills in operation near the largest timber producing areas of the Northwest. This timber is milled outside Northwest reservations. Amid occasional allegations of mismanagement, the BIA is still responsible for overseeing timber leases on many reservations. During the decade of the 1970s timber leases steadily increased. For example, from 1972 to 1974, the value of timber produced increased from \$38 million to \$49 million.<sup>42</sup> It is yet unknown how seriously the recent sharp recession in the lumber industry has reduced tribal revenues.

*Energy Minerals:* Over the past ten years, no other resources have attracted as much attention as the energy-related mineral deposits belonging to Indians in Oklahoma, the mountain states, and the southwest. Rapidly escalating energy prices throughout the 1970s raised the value of these deposits to unprecedented levels. High prices, combined with the large size of these deposits, held forth the potential of unbelievable wealth beneath tribal lands. As knowledge about the size and value of these resources became available, it was followed by a flurry of activity and controversy. Emissaries from the Federal Government and from private interests actively courted the tribes known to have energy reserves. As a result, numerous leases were signed with individuals and tribal groups.

Energy resource development on Indian lands is not a new phenomena; although it is rapidly expanding. As early as 1900, oil was discovered on the Osage reservation in western Oklahoma.<sup>43</sup> This discovery led to a vast number of oil leases and development sites throughout the Osage reservation (also known as Osage County). For many years, the Osage discoveries represented the only significant mineral developments on tribal land. As late as 1955, 90 percent of the \$30 million in total Indian mineral revenues was received by six reservations and a few tribes in Oklahoma. In this year, the Osage claimed 30 percent of the

\$30 million, another 15 percent was paid to other tribes in Oklahoma, and another 45 percent went to tribes such as the Navajo and Blackfoot in the southwest and plains states.<sup>44</sup> Almost 15 years later, this situation had changed very little. In 1969, nine reservations received 85 percent of the royalties from mineral development, and the Osage and Navajo accounted for about half of all royalties paid.<sup>45</sup>

Unlike water, there are relatively few disputes over the ownership of mineral rights. Instead, there are intense controversies arising from the terms in lease agreements and the overall handling of energy development on Indian lands. Managing energy resource development and effectively negotiating lease agreements requires highly specialized technical skills and information about geological formations and market behavior. Most tribes, and BIA officials, lack this expertise. They find themselves seriously disadvantaged in dealing with large corporations which possess an abundance of technical information. This lopsided arrangement has produced a series of lease negotiations which virtually have given away Indian resources and have drawn bitter criticism from groups inside and outside the Federal Government.

An extended litany of abuses and incompetence can be recited about the handling of energy developments on Indian lands. They range from outright fraud and theft to simple mismanagement. For example, lacking the resources to do otherwise, the BIA and most tribes rely on oil company reports of how much oil is taken from a lease. Most tribes are too understaffed to oversee pumping operations, and the BIA (as of 1983) has a staff of eight in its division of Energy and Minerals. An example of the abuses that this encourages is that an audit of a major oil company at a single field showed that the company failed to account for 1.38 million barrels of oil between 1971 and 1982. Another example is that in 1981, the Navajo were receiving 15 to 38 cents per ton for coal at the same time foreign buyers were paying American suppliers \$70 per ton. This resulted from extremely liberal leases negotiated in the 1950s and 1960s that the BIA declined to renegotiate, even after its own Office of Audit and Investigation urged in 1978 that these leases be reconsidered.<sup>46</sup>

The critics of these leases include numerous authorities within the Federal Government. The Indian Policy Review Commission, the Federal Trade Commission, and the Senate Select Committee on Indian Affairs have been most vocal. After an extensive review of lease agreements and leasing policy in the BIA, the Indian Policy Review Commission concluded that "the leases negotiated on behalf of Indians are among the poorest agreements ever made."<sup>47</sup> Senate and FTC investigations also uncovered widespread incompetence and legally questionable practices. The FTC warned that "it is imperative that the Department

of Interior clarify the role of the BIA in a way that leaves no doubt that the BIA's primary responsibility is to the Indians only and not to the developers."<sup>48</sup>

Energy development and its abuses are especially significant in crystallizing a growing recognition of the neo-colonial relationship between American Indians and mainstream American society. Taking note of problems among the Navajos, the U.S. Commission on Civil Rights<sup>49</sup> forthrightly labeled the Navajo reservation an American colony. In an overview of energy development, the American Indian Policy Review Commission<sup>50</sup> compared Indian reservations with developing nations and found numerous similarities, except that lease terms are usually less favorable for Indians.

American Indians are responding by reasserting their tribal sovereignty. Americans for Indian Opportunity, an influential Indian advocacy organization, sponsored a series of conferences in 1974 and 1975 aimed at promoting greater control over reservation resource development. These conferences emphasized the common problems which tribes shared with Third World countries, and urged tribal leaders to adopt strategies which would lead to greater control over tribal resources. The problems arising from colonial exploitation, namely inequitable bargains and dependence, were the central issues addressed at these meetings. Among the solutions proposed were methods for developing tribal expertise in energy resource management, and greater tribal involvement in development projects. These measures were offered as a way of reshaping the "lease mentality" which facilitates the exploitation of Indian resources by non-Indians.<sup>51</sup>

Taking lessons from these conferences, a group of tribal leaders from 22 tribes, many of whom attended these meetings, formed the Council of Energy Resource Tribes (CERT) in 1975. CERT was organized as a means for improving Indian control over reservation energy projects. Between 1975 and 1977, CERT was virtually unknown among non-Indians until June 1977. At this time, CERT opened discussions with leaders from the Organization of Petroleum Exporting Countries (OPEC). These meetings raised the possibility of having OPEC involved with tribal energy projects. Amid energy shortages allegedly caused by OPEC, the political implications of OPEC sponsored energy development within U.S. boundaries were intolerable to the Federal Government. To avert this possibility, CERT was soon receiving \$2 million annually to develop tribal capacities in energy resource management.<sup>52</sup>

Since its creation, CERT's membership has grown to 43 tribes and it continues to develop tribal management skills and advises tribes on the leasing of their lands. CERT advised the Laguna Pueblo to decline a \$191,000 for a pipeline right of way; they eventually settled for \$1.5 million. In another case, the ARCO

Company offered the Navajo \$280,000 for a pipeline easement which the BIA routinely approved. CERT urged the Navajo to renegotiate and a lease worth \$70 million over 20 years was later signed. Recently, oil surpluses and a conservative political climate have adversely affected CERT's prodevelopment positions. The Reagan administration cut two thirds of CERT's 1984 budget and a complete termination of federal support was slated for 1985.<sup>53</sup>

Besides CERT, another important measure designed to capture the benefits of development relies on the exercise of tribal sovereignty. Using this authority, some tribes have enacted *ad valorem* severance taxes on resources leaving the reservation. The Jicarilla Apache were the first to use this power and were immediately confronted with legal challenges from concerned oil companies. In a key 1977 decision, the Supreme Court upheld Apache taxation powers. Since then, several tribes such as the Navajo and the Crow have established tribal tax codes for energy development.<sup>54</sup>

#### IV

#### **Closing Remarks**

THE STRUCTURE of Indian-White relations over the past two centuries is composed of a complex web of events and processes, inextricably linked to the rise of capitalism and industrial society in the U.S. and elsewhere. The complexity of such circumstances defy simplification and easy generalization; it certainly escapes any single inquiry. A comprehensive rendering of U.S.-Indian relations was not intended in the preceding discussion. However, it should be evident from the narrative that the development of natural resources on tribal lands heralds a new era in relations between American Indian tribes and the United States.

This observation is often made but the conceptual framework for understanding this transition is poorly developed. Most observers ignore the special historical circumstances of American Indians and borrow heavily from other theoretical contexts. In response, this and the preceding article outline in historical and conceptual terms, a different way of thinking about the changing status of American Indians. This approach explicitly acknowledges historic events in the development of relations between Indian tribes and the United States by refocusing the underdevelopment perspective. Instead of dwelling on neocolonial relations like most discussions of underdevelopment, this approach attempts to understand these relations by focusing on conditions before and after development. Risking oversimplification, resource development delineates two distinct historical eras in White-Indian relations; suggesting several conclusions

about the captive nation–internal colony typology, and about the specific historic events from which it arises.

The early history of Indian-White relations is a period of military actions and other measures consciously used to subordinate Indian tribes, forcing them to recognize the authority of the United States. During this period of history, American Indians very nearly vanished and most tribes escaping annihilation did so by accommodating the demands for their land. American Indians also were not without allies. The survival of American Indians through the 19th century was aided by sympathizers who believed in the integrity of native cultures and the legitimacy of tribal organization. Compromising between the advocates and opponents of Indian rights evolved a political status for American Indian tribes that recognizes them as legitimate authorities but with highly circumscribed rights of sovereignty—captive nations.

Since 1900 and especially in recent years, the bargaining table has replaced the battleground and lease agreements have replaced treaty negotiation, but the outcomes of these encounters are not very different from earlier times. Many American Indian tribes have access to large amounts of increasingly scarce resources in the form of energy minerals, farm land, timber, and water. These resources have grown increasingly scarce throughout the 20th century and as the end of this century nears, it is almost certain that these resources will become even more depleted.

Land that was once considered worthless and “fit only for Indians” is now highly valued and intensely coveted. Rising valuation of Indian lands has spawned a new dimension of Indian-White relations that is as much economic as it is political. Akin to political events of the preceding century, Indian tribes are burdened with disadvantages in developing economic relations with non-Indians. The disadvantages of Indian tribes resemble the conditions associated with internal colonialism, which, as noted earlier, leads a growing number of observers to describe Indian tribes as *bona fide* internal colonies.

The captive nation–internal colony distinction described in this article, and discussed at length in another essay, should not be seen as an attempt to gloss over a long and complex history of Indian–White political and economic relations. In the most fundamental sense, this typology calls attention to how the political and economic roles of American Indians have been, and remain in a state of flux since the very earliest days of American history. It illustrates how the legacies of Andrew Jackson and John Marshall have been reflected in the policy vacillations that eventually created the politically ambiguous and economically marginal status of “captive nations.” It also shows how the economic exploitation associated with natural resource development now qualifies many tribes for the designation of “internal colony.” Captive nationhood, by creating



the poverty, dependence, and isolation of most tribes, is an indispensable element in the process by which tribes become colonial outposts for outside non-Indian interests.

In relation to development models, especially underdevelopment or dependency theory, this typology is especially useful. These models were originally intended to explain conditions in Third World nations. Their historic and geographic specificity causes them to reveal unseemly gaps when applied to American Indians. The typology in this paper is presented as a minor amendment to the standard underdevelopment perspective, making it resemble more closely the experiences and circumstances of Indian tribes.

The most apparent weakness of this typology is its simplicity in the face of the complexity of Indian-White and Indian-Indian relationships. However appealing the traditional lifestyle of American Indians, contacts with other cultures have also proved beneficial; the introduction of modern scientific medicine is a clear example. A credible complaint is that it reduces a long, complex process into two discrete categories, themselves imprecisely defined. In defense of such a scheme, the face validity and conceptual implications of this typology should recommend it for reasons other than conceptual precision. As a heuristic device, it is intended to reflect the political, economic, and social status of American Indians in U.S. society, and how this status has been changing as a consequence of natural resource development. Regarding empirical realities, two further qualifications are crucial. One is that the transformation from captive nation to internal colony is anything but discrete. For some tribes, the transition is likely to be rapid and for others, the process is less abrupt or evolutionary. A second consideration is that not all tribes have made the transition from one status to another. Some tribes are far along in their development as internal colonies, some are not and are actively resisting, other tribes are seeking to reverse the process by expelling development.

These qualifications raise important questions for empirical research. The causal forces shaping the rate of development on Indian reservations is an important research issue with significant implications for theoretical and applied work. A related problem concerns the extent of uneven development across Indian reservations. Systematic documentation is unavailable from any source, public or private. Little is known about why some tribes, resources being equal, choose to exploit their assets while other tribes firmly resist. Space prevents a thorough, in-depth consideration of the evidence which would fully support the implications of this typology. At best, the supporting details are sketchy and await further examination. Answers to these questions will enlarge our knowledge about the political and economic status of American Indians in particular, and provide insights about development processes in general.

## Notes

1. C. Matthew Snipp, "The Changing Political and Economic Status of American Indians: From Captive Nations to Internal Colonies," *American Journal of Economics and Sociology*, Vol. 45, No. 2 (April, 1986), pp. 145–57.
2. The following discussion relies very heavily on D'Arcy McNickle, Mary E. Young, and W. Roger Buffalohead, "Captives Within a Free Society," in American Indian Policy Review Commission (AIPRC), *Final Report of the American Indian Policy Review Commission* (Washington, D.C.: U.S. Government Printing Office, 1977), pp. 51–82; Harold E. Fey and D'Arcy McNickle, *Indians and Other Americans: Two Ways of Life Meet* (New York: Harper and Brothers, 1959); Joseph G. Jorgenson, "A Century of Political Economic Effects on American Indian Society, 1880–1980," *Journal of Ethnic Studies* 6: 1–82 (1978).
3. Fey and McNickle, *op. cit.*, p. 50.
4. *Ibid.*, pp. 49–51.
5. *Ibid.*, p. 52.
6. *Ibid.*, p. 53.
7. U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970, Bicentennial Edition, Parts 1 and 2* (Washington, D.C.: U.S. Government Printing Office, 1975): Series A 1–5, p. 8.
8. William T. Hagan, *American Indians*, revised ed. (Chicago, IL: University of Chicago Press, 1979), pp. 59–61; S. Lyman Tyler, *History of Indian Policy* (Washington, D.C.: United States Department of the Interior, Bureau of Indian Affairs, 1973), pp. 56–60.
9. 30 U.S. (5 Pet.) 1 (1831).
10. 21 U.S. (6 Pet.) 515 (1832).
11. Fey and McNickle, *op. cit.*, p. 31.
12. Jorgenson, *op. cit.*, p. 10.
13. Fey and McNickle, *op. cit.*, p. 67.
14. Tyler, *op. cit.*, pp. 95–124.
15. *Ibid.*, pp. 125–150; Jorgenson, *op. cit.*, pp. 17–22.
16. James E. Officer, "The American Indian and Federal Policy," in Jack O. Waddell and O. Michael Watson (eds.) *The American Indian in Urban Society* (Boston: Little, Brown and Company, 1971), pp. 8–65.
17. Raymond V. Butler, "The Bureau of Indian Affairs: Activities Since 1945," *The Annals*, 436: 359–69 (1978), p. 52.
18. *Ibid.*, p. 58.
19. AIPRC, *op. cit.*, pp. 3–9 EFNS.
20. These data are taken from U.S. Bureau of the Census, *op. cit.*, Series J 16–19, p. 430.
21. These numbers are illustrative but they should be regarded with caution. Even in recent censuses, federal data are notoriously inaccurate for American Indians. The 1880 population figure is taken from Russell Thornton and Joan Marsh-Thornton, "Estimating Prehistoric American Indian Population Size for United States Area: implications of the nineteenth century population decline and nadir." *American Journal of Physical Anthropology*, 55: 47–53 (1981); Thornton and Thornton, *op. cit.*; U.S. Bureau of the Census, *op. cit.*, Series A 91–104, p. 14.
22. The 1873 Culture Act, the Desert Land Act of 1877, the Timber and Stone Act of 1878, the Homestead Act of 1862.
23. Jorgenson, *op. cit.*, p. 13.
24. In the late 19th century, the Bureau of Indian Affairs was transferred from the War Department to the Interior Department.

25. Edna Bonacich, "A Theory of Ethnic Antagonism: the split labor market," *American Sociological Review*, 37: 547-59 (1972).
26. Jorgenson, *op. cit.*, p. 11-2.
27. William A. Brophy and Sophie D. Aberle, *The Indian: America's unfinished business* (Norman, OK: Univ. of Oklahoma Press, 1966), p. 74.
28. *Ibid.*, p. 79; Sar A. Levitan and William B. Johnston, *Indian Giving: Federal Programs for Native Americans* (Baltimore: Johns Hopkins Univ. Press, 1975), p. 21; Stephen W. Fuller, "Indian's Problems in Acquiring Development Capital," Four Corners Agriculture and Forestry Development Study. Special Report No. 11, 1971, p. 28.
29. Public Laws PL 86-326 and PL 88-167.
30. Levitan and Johnston, *op. cit.*, p. 21.
31. *Ibid.*
32. Brophy and Aberle, *op. cit.*, p. 80.
33. Levitan and Johnston, *op. cit.*, p. 20.
34. *Ibid.*, p. 23.
35. 207 U.S. 564 (1908).
36. Jim Richardson and John A. Farrell, "The New Indian Wars," *Denver Post*, Special Reprint. November 20-27 (1983), p. 44.
37. Richardson and Farrell, *op. cit.*, p. 45.
38. *Ibid.*, p. 45.
39. *Ibid.*
40. Joseph G. Jorgenson, Richard O. Clemmer, Ronald L. Little, Nancy J. Owens, and Lynn A. Robbins, *Native Americans and Energy Development* (Cambridge, MA: Anthropology Resource Center, 1978), p. 43.
41. Levitan and Johnston, *op. cit.*, pp. 25-26.
42. *Ibid.*, pp. 20-25.
43. H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907* (Columbia, MO: Univ. of Missouri Press, 1976), p. 171.
44. Brophy and Aberle, *op. cit.*, p. 85.
45. Levitan and Johnston, *op. cit.*, p. 26.
46. Richardson and Farrell, *op. cit.*, p. 17.
47. AIPRC, *op. cit.*, p. 339.
48. Quoted in Richardson and Farrell, *op. cit.*, p. 30.
49. U.S. Commission on Civil Rights, *The Navajo Nation, an American Colony* (Washington, D.C.: U.S. Government Printing Office, 1975).
50. AIPRC, *op. cit.*, p. 344.
51. See Americans for Indian Opportunity (AIO), *Indian Tribes as Developing Nations; A Question of Power: Indian Control of Indian Resource Development* (Albuquerque, NM: Americans for Indian Opportunity, Inc., 1975).
52. Mark Kellogg, "Indian Rights: Fighting Back with White Man's Weapons," *Saturday Review*, November 25, 1978, pp. 24-27; Mary Olson, "Native American Resource Development," unpublished manuscript (1978); Richard Nafziger, "Transnational Corporations and American Indian Development," pp. 9-38 in Roxanne Dunbar, ed., *American Indian Energy Resources and Development* (Santa Fe, NM: Native American Studies, University of New Mexico, 1980).
53. Richardson and Farrell, *op. cit.*, p. 68.
54. *Ibid.*, pp. 17-18.