Therapeutic Experience of Maximum Feasible Participation

George Pierre Castile

In 1965 a number of scholars looked about them at the state of Native Americans, among them was Henry Dobyns, whose contribution to the collection, "The American Indian Today," was titled "Therapeutic Experience of Responsible Democracy" (Dobyns 1968). This phrase was taken from a statement by John Collier, Commissioner of Indian affairs from 1933-45. Collier had declared "The experience of responsible democracy is, of all experiences, the most therapeutic, the most disciplinary, the most dynamogenic and the most productive of efficiency" (Collier 1947, 262). What Collier meant by "responsible democracy" was self-government, which he himself had been responsible for attempting to reintroduce to the peoples resident on Federal Indian reservations, in the form of the 1934 Indian Reorganization Act (IRA) (Prucha 2000, 223).[1]

Prior to 1934 the reservations had been under a system that Edward Spicer has called the "superintendency," in which Federal employees made all important decisions on the reservations.

> "Indians grew up in their communities under this system for a period of two generations or more, from the 1880's to the 1930's. Much of Indian life was increasingly colored by the undermining of Indian community organization and the sub-

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> stitution of government by administrative order. Two generations of Indians were schooled in the referral of decisions outside of family life to federal employees" (Spicer 1969, 12).

Collier's 1934 Indian New Deal, made politically possible by the larger scale Roosevelt New Deal, promised to bring "home rule," to the reservations, and under it many tribes adopted constitutions and created tribal councils to administer their affairs (Prucha 2000, 223; Taylor 1980). The problem with the subsequent experience of responsible democracy was that, although many of the trappings of democracy were introduced under tribal reorganization, in fact tribal peoples were accorded very little responsibility.

The Collier governments were more form than substance, because their authority was very limited. They had no control over tribal resources held in trust or Federal funds, or over Bureau of Indian Affairs (BIA) personnel, who continued to run things on the reservations on a day-to-day basis. They were in fact much like student governments on college campuses, free to make only the most trivial decisions on their own. The superintendency remained intact under Collier, with the actual amount of tribal council authority almost entirely a function of the ideas of each agency superintendent, whose authority in these matters was backed by Collier himself (Taylor 1980, 117-118). Dobyns made little attempt in his article to explore this Collier era, from which he took his title, since by 1965, when he wrote, Indian reorganization under the IRA, which he characterizes as ". . . phase I of the development of tribal self determination . . ." had given way to yet another policy, one commonly and ominously called "termination" (Dobyns 1968, 175; Philp 1999) .

The termination policy aimed, as House Concurrent Resolution 108 stated in 1953, ". . . to make the Indians . . . subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens . . . [and] to end their status as wards of the United States . . ." (Prucha 2000, 234). In short, the policies of termination was designed to end the special Federal-Indian relationship with the reservations and the Federal trust responsibility entirely. This would make reservation peoples self-governing, but only as individual citizens of the states, counties and cities into which they would have been absorbed. This policy had emerged at the end of World War II as part of a general post-war, post-New Deal drive toward cutting back on Federal spending by eliminating Federal programs, in this case the Indian programs (Castile 1998, xxii). One of the earliest legislative elements of this policy was the 1946 Indian Claims Commission Act, which authorized the settlement of Indian claims against the Federal government for land loss since contact (Prucha 2000, 231). Although sounding benign, the primary aim of the act was to settle up once and for all such claims, as part of the general winding up of the Federal Indian relation.

Most students of Indian affairs have viewed the termination policy negatively, but in 1965 Dobyns saw at least part of it positively (Fixico 1986; Drinnon

1987; Burt 1982).[2] Dobyns recognized the many negative aspects of the policy, but nonetheless called it "phase II of Indian self determination" (Dobyns 1968, 174). He focused on what he saw as a bright spot—Sec. 15 of the 1946 Indian Claims Act, which had authorized the hiring and funding of attorneys by tribes, to independently represent their interests, rather than relying on the Bureau to speak for them (Prucha 2000, 233). Dobyns saw these attorneys as a "third force," inasmuch as, ". . . his client is the tribe, he is paid to work for its interests regardless of the wishes of BIA administrators or any other member of the dominant group" (Dobyns 1968, 176).[3] The thrust of his paper suggested that the success of these attorneys in bolstering tribal self government would have a "therapeutic" impact on Native people. Although he focused on the tribal attorney, Dobyns noted there were other such specialists hired by tribes, but in fact, as of 1965, such control by tribes of those employed to help them was very rare.[4] Funds for most significant administration on reservations remained under the direct control of the Bureau, not tribal officials or their attorneys.

Writing today with the advantage of hindsight, it appears that Dobyns probably overestimated the "therapeutic" importance of the role of tribal attorneys in changing Indian self government, although their influence varied greatly from reservation to reservation.[5] The Bureau in fact retained considerable say over the attorney's contracts and fees, which had to be approved by the Secretary of Interior, which limited their independence as a third force (Philp 1999, 111). In this article I am not going to pursue the topic of the role of tribal attorneys further, but instead I want to consider yet another bright spot that had emerged by 1965, but which neither Dobyns, nor any other contributor to the "American Indian Today," recognized as perhaps the true "phase II of Indian self determination." My focus is the emergence of the "war on poverty," the Office of Economic Opportunity and its "Community Action" programs on reservations (Castile 1998; Cobb 1998).

Few could, or did, guess at the time, at the long range impact of this new program on Indian self government. Although by 1968 Dobyns was surely aware of the existence of these programs on the reservations, he mentions them not at all. This is odd because they were, at a minimum, further examples of programs that allowed tribes to pay their own specialists, his major theme. Other contributors to the volume took passing note of the OEO programs, but attributed little significance to them (Witt 1968, 68; Kupferer 1968, 88; Rachlin 1968, 105). Levine, one of the editors, in his foreword does make some appraisal of the OEO on the reservations (1968, 8). He is however ambivalent, or reflects the ambivalence on the reservations as to the importance of the new effort. Levine quotes a source as saying ". . . that local Office of Economic Opportunity staff members are as 'intransigent as the old Bureau used to be' and doing a great deal of harm . . ." (1968, 8). But he also notes, "There has been increasing talk, in discussions of the operation of the OEO, of allowing groups which are benefiting from OEO aid to develop their own leadership . . ." (1968, 8).[6] The objective of developing social confidence, in fact, represented the whole

thrust of the community action program of the OEO, to develop social competence.

By 1965 the termination policy that had replaced Collier's reorganization was still technically in force, but it was running out of political steam, because times had changed from the cost-cutting immediate post-war context. A new era of social activism was at hand, "The long decade was an endless pageant of political and cultural protests, from sit-ins at lunch counters to gunfire at Wounded Knee. . . . Nothing was sacred, everything was challenged, and the result was an era we simply call 'The Sixties'" (Anderson 1995, 1). Even the government joined in the upheaval as President Lyndon Baines Johnson (LBJ), proposed the creation of the "Great Society," and ushered in a wave of social legislation and spending that rivaled and even surpassed the New Deal (Conkin 1986). Ethnic relations writ large were also changing dramatically, as the Civil Rights Movement achieved its greatest legislative victory in the 1964 Civil Rights Act and the 1965 Voting Register Act, which was guided through Congress by LBJ. Changes in Indian affairs were inevitably swept along with this new wave of social change, just as the Indian Reorganization Act had been born of the broader New Deal struggle against the Depression.

In his 1964 state of the union address LBJ had declared war on poverty, and the war was embodied in the Economic Opportunity Act of 1964 (Castile 1998, 26). By 1965 the Office of Economic Opportunity had been created to wage this war, primarily through its Community Action program. The community action concept aimed to mobilize local communities to solve their own problems, using Federal grants to do so, in contrast to traditional delivery systems of social welfare aid. There was considerable confusion over just what parts of the community were to play what roles, such that Patrick Moynihan wrote critically of the Community Action effort under the title "Maximum Feasible Misunderstanding" (1969). The creators of the community action program had proposed variations on the theme "maximum feasible participation of the poor" in framing the new program (Gillette 1996, 79). The concept was generally taken to mean some degree of representation and empowerment of the actual residents of urban ghettos and rural poverty pockets, to enable them to act for themselves, rather to remain passive recipients of local government and private charity largesse.

The program very soon ran into political trouble, as some of the newly organized poor began to confront and make demands upon local governments and the social welfare establishment. It became something like the Red Guards movement in China, a government-sponsored revolution against itself, a noble concept but unworkable in both cases. State and local politicians made their unhappiness known and the more free-wheeling aspects of the program were soon reined in by Congress in 1967, which empowered local authorities to take over the CAA programs (Matusow 1984, 269). When the programs reached the reservations, they did not face the same tensions because the only established power structure being circumvented by the OEO and its community action agen-

cies was another Federal agency, the BIA, whose clout in Congress was far less than that of the states and cities protesting OEO elsewhere.

The CAA program was not designed with Indian communities primarily in mind, but they were soon included because they were undeniably among the poor. Representation of the poor was not a problem here since virtually the entire population of most reservations fit the Federal definitions of poverty, so anything that represented the people of the reservation *ipso facto* represented its poverty population. Local community action agencies were formed, like the Office of Navaho Economic Opportunity, and their leadership tended to be interchangeable with established tribal leadership (Iverson 1981, 90). The Navaho were among the earliest to create a community action agency, led by Peter MacDonald (later tribal chair), which was initially funded with a nearly million dollar grant, made directly to the Navaho, not through the BIA (MacDonald 1993, 154). Many other tribes also embraced the new programs, and by 1967 Vine Deloria, director of the National Congress of American Indians, said "The poverty program is extremely popular and for the first time tribes can run and plan their own programs for their people without someone in the BIA dictating to them" (quoted in Castile 1998, 41).

In addition to the core community action program the OEO funded a number of special purpose programs and one off "demonstration" programs. Probably the most influential of these demonstrations was the funding of an experimental community school at Lukachukai, later relocated to Rough Rock, on the Navaho reservation (Castile 1998, 37). Although it had a wide variety of experimental aims, the ultimate major impact was to demonstrate the feasibility of direct local Indian control over their own schools, including hiring and firing, rather than having them administered by outsiders.

Another of the special purpose programs was Legal Services, an attempt by OEO to provide access to attorneys for the poor. Legal services offices were established on some reservations, and the Navaho were one of the earliest of these (Iverson 1981, 91). If Dobyns saw tribal attorneys as therapeutic, the Legal Services programs turned out in some cases to be shock therapy. The attorneys did not generally represent the tribe per se, but its individual members, who often sought legal assistance against the tribe itself. The OEO programs in general and the Legal Services in particular, also sometimes precipitated a considerable factional political struggle within the tribal leadership for their control, as in the Navaho case (Iverson 1981, 91). One of the long range impacts of OEO Legal Services was the creation of NARF (Native American Rights Fund), a spin-off of the California Indian Legal Services program, that has become an influential national legal entity representing Indian interests (Wilkinson 2005, 246).

The role of the OEO on reservations and elsewhere was short lived. In 1969 the Nixon administration, opposed to Johnson's Great Society programs, began to dismantle OEO and reallocate its surviving programs to other agencies (Matusow 1984, 270). But before dying the OEO and its "maximum feasible

participation" model of Federal-Indian relations had been "therapeutic" in its demonstration of a new approach to tribal self governance. William King, superintendent at Salt River, noted in a 1966 letter to Secretary of Interior Stewart Udall, "Nothing I can think of has so accelerated the changing role of the Superintendent as has the OEO program . . .[I]t has allowed Indians to redefine their relationship with the Federal Government. Tribes, in most instances, deal directly with OEO; BIA occupies a subordinate position as advisor . . ." (quoted in Castile 1998, 48). Udall and his staff began to consider whether the CAA approach of federally funded grants and contracts, made directly to tribes to self administer services, might be a model for the Bureau itself. Lacking direct legislative authorization, Udall experimented with contracting with tribes to perform services under the authority of the "Buy Indian" act, which had existed since 1910 (Prucha 2000, 212; Castile 1998, 56).

Convinced that new legislation was needed, Udall pressed the case for a new direction in Indian policy with LBJ. The result was a "Special Presidential Message to Congress on the Problems of the American Indian: 'The Forgotten American'" (Prucha 2000, 249). Referring to OEO programs LBJ said, "Within the last few months we have seen a new concept of community development—a concept based on self help—work successfully among Indians. Many tribes have begun to administer activities which Federal agencies had long performed on their behalf. . ." (quoted in Prucha 2000, 249). Based on this model he said, "I propose a new goal for our Indian programs: A goal that ends the old debate about 'termination' of Indian programs and stresses self determination; a goal that erases old attitudes of paternalism and promotes partnership self-help." (Prucha 2000, 249). A new policy—"self determination"—had emerged to replace termination, out of the therapeutic OEO experience of maximum feasible participation, but it was very nearly still-born.

LBJ's declaration of a new Indian policy was made March 6, 1968, but on the 31st of that same month he declared that he would not run for another term (Matusow 1984, 394). There was no time left for Udall's new Indian legislation to be proposed or passed. His successor Richard M. Nixon was, as noted above, generally hostile to the social programs that made up Johnson's "Great Society" and set out to curtail and dismantle them, including OEO. Oddly enough, the Indian self determination policy, though a direct spin off of the OEO, was not dismantled but found favor with the new Republican policy makers (Castile 1998, 81). While Nixon was not inclined to support the Great Society he was a supporter of "New Federalism," a policy aiming to devolve power from the Federal government to local and state governments (Conlan 1988). Indian-self determination fit this model and the devolution of power from the BIA to local Indian governments could serve as a small scale demonstration of the larger policy.

Nixon's aide Bob Haldeman noted of his views "He feels very strongly that we need to show more heart, and that we care about people, and thinks the Indian problem is a good area for us to work in" (quoted in Castile 1998, 76).

Whatever his motivation, Nixon did support the Indian self determination policy and early in his administration (1970) delivered an Indian message to Congress that echoed LBJ when he declared a general policy of "self determination without termination" in Indian affairs (Prucha 2000, 256). He also took note of the OEO role "For over four years, many OEO -funded programs have operated under the control of local Indian organizations and the results have been most heartening." Moreover, he asserted that "The time has come to build on these experiences and to extend local Indian control-at a rate and to the degree that Indians themselves establish" (Nixon 1970, 565).[7] Under New Federalism the programs would not go to the vanishing community action agencies, but directly to tribal governments.

Nixon's message contained an extensive set of legislative proposals to implement the new approach, but the administration faced a Congress generally hostile to his initiatives. The BIA did what it could to implement a policy of grants and contracts to tribes administratively, but although Congressional hearings were held on Nixon's proposed legislation, for four years Congress failed to enact it, until after Nixon had left office in 1974. Bills were already before Congress and less than three months into the administration of President Gerald Ford, a self-determination bill, that differed little from the Nixon proposals passed Congress on December 19, 1974 (Castile 1998, 168). This was signed into law by Ford January 5, 1975 as Public Law 93-68, The Indian Self Determination and Educational Assistance Act of 1975 (Prucha 2000, 275).

The 1975 Indian Self Determination and Education Assistance Act clearly echoes the OEO "maximum participation" language in several sections. It initially declares its purpose as "An act to provide *maximum Indian participation* in the Government and education of Indian people: to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians." In this declaration of policy "Congress hereby recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring *maximum Indian participation* in the direction of education services as well as other Federal services to Indian communities . . ." (Prucha 2000, 275 emphasis mine).[8] The act set out specific authority for contracting and grant making in support of tribal self-government.

The BIA had already been attempting to make contracts with the tribes during the LBJ and Nixon administrations, but with the mechanism of the act things obviously picked up. Of the impact of the self determination policy contracting approach on the Navaho Peter MacDonald noted as early as 1976,

> ". . . we were ultimately able to control far more of the services affecting our people. During Raymond Nakai's last year in office, when BIA service contract arrangements did not exist, his budget had included $30 million in tribal funds and $100,000 in government funds. By 1976, the annual tribal

> budget was over $60 million, and we had over $100 million in funds from the profitable government contracts" (1993, 221).

Control of funds and the power to hire and fire their own employees, including the attorneys of Dobyns' paper, were now moving into local Indian community hands.

But there was no immediate withering away of the BIA after 1975 as some had perhaps imagined would occur. The tribes contracted to administer more and more of the Federal programs on the reservations, but not all, and on a very uneven basis-some doing vastly more than others. Much of the blame for the slow transfer was put on the hapless Bureau, and Congress amended the self determination legislation in 1988, 1994 and 2000 to streamline and accelerate the process of delivering grants directly to the tribes (Prucha 2000, 320, 322, 353). There were probably a number of inherent brakes on the process, beyond BIA resistance to its withering—for example, caution on the part of the tribes that too much self-administration might lead back to termination. There was also the question of developing political competence; after a hundred years of superintendency, the tribes needed time to create a political class to assume the new roles.

Self-administration, which is what the self-determination policy provides, does not solve all problems. The reservations remain very largely dependent on Federal funding; their underdeveloped economies simply do not provide a local tribal tax base able to support the full range of governmental services. So long as this is true they necessarily remain limited in the degree of their independence in decision making, however many contracts they assume. They can only contract for programs that Congress has approved and for funds that Congress has appropriated; they do not simply receive unrestricted monies to spend as they might themselves decide.[9] The obvious solution to the problem of dependency is economic development of the reservations, but the self-determination policy *per se* does not address this issue. Federal spending on Indian programs, in constant dollars, remained basically unchanged after the inception of self-determination (CRS 1998). To complicate things still further, while funding stood still, the number of Federally recognized tribes who might be eligible for development assistance has increased, from 258 in 1934, to 562 today (Miller 2004, 28).

The self-determination policy also does not address or alter the degree of tribal sovereignty or Congressional authority in regard to the tribes. Congress retains plenary authority over Indian matters, including the power to abrogate the Federal special relationship (Pevar 2002, 87). Although LBJ had called for an end to the termination policy in 1968, Congress did not get around to formally repudiating the 1953 termination resolution until 1988, saying "The Congress hereby repudiates and rejects House Concurrent Resolution 108 of the 83

Congress, and any policy of unilateral termination of Federal relations with any Indian Nation"(Prucha 2000, 320). Like the original resolution this is only a statement of sentiment, and also like the original resolution, can itself be repudiated at any time.

The self-determination policy has obviously not solved all problems in Indian country, but it seems a long step in the right direction. Every President since LBJ has endorsed the policy, and as of 2000, the Senate unanimously passed a resolution saying that ". . . Indian self-determination policy has endured as the most successful policy of the United States in dealing with Indian tribes because it rejects the failed policies of termination and paternalism . . ." and it resolved "That the Senate of the United States recognized the unique role of the Indian tribes and their members in the United States, and commemorates the vision and leadership of President Nixon, and every succeeding President in fostering the policy of Indian Self-Determination."[10] The role of OEO and the original statement of the self determination policy by LBJ are unfortunately not acknowledged here.

John Collier and the IRA had provided the structure of self governance and responsible democracy for the tribes, but without the responsibility. The claims act attorneys described by Dobyns provided a small step toward tribal self administration, but the termination policy in whose context they were conceived promised the end of Indian governments entirely. The OEO demonstrated a mechanism by which actual responsibility could be transferred from the BIA directly to the tribal governments created by Collier. D'Arcy McNickel observed of the OEO success that its ". . . transferal of authority and responsibility for decision making to the local community was an administrative feat which the Bureau of Indian affairs, after more than one hundred years of stewardship, had never managed to carry out" (1973, 119). However under the 1975 Indian Self Determination Act, which the OEO experience inspired, the Bureau itself and other Federal agencies did at last join in such a transferal. All due to the "therapeutic experience of maximum feasible participation."

Notes

1. Where possible I have referenced documents to "Documents of United States Indian Policy" (Prucha 2000).

2. Philp (1999) is one of the few to see the period in a positive light.

3. Dobyns dates the employment of tribal attorneys from the 1946 act, but the 1934 Wheeler-Howard act also gave tribes the authority to retain counsel (Prucha 2000, 225).

4. Dobyns' primary example of other specialists were anthropologists, whose comparability to lawyers as paid advocates, controlled by the tribes, is highly debatable (1968:184, note 23).

5. For an account of the impact of the first Navaho tribal attorney, Norman Littell, see Iverson 2002, 207.

6. Levine's remarks on the OEO are considerably expanded in the 1968 version from the 1965 original.

7. "Special Message to the Congress on Indian Affairs, July 8, 1970," Public Papers of the Presidents, Richard M. Nixon,1970, 565

8. Esber has even suggested that "A more appropriate name for the policy would have been the Indian Participation Act" (1992, 221).

9. A relatively small number of tribes have participated in the Tribal Self Governance Demonstration, which does allow greater flexibility in design and spending (Prucha 2000, 322, 353).

10. Resolution "Commemorating the 30th Anniversary of the Policy of Self Determination." 106th Congress, 2nd Session, Senate of the United States. June 27, 2000.

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