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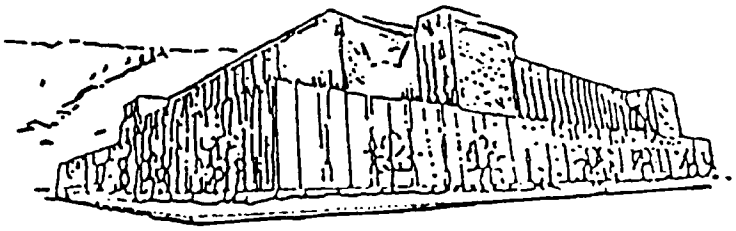

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# THE IMPACT OF ALLOTMENT ON CONTEMPORARY HUNTING CONFLICTS:

# THE CONFEDERATED SALISH-KOOTENAI AS EXAMPLE

By

Dagny K. Krigbaum

B.A., University of Montana, 1994

Presented in partial fulfillment of the requirements

for the degree of

Master of Arts

University of Montana

1997

Approved by

Chair, Board of Examiners

Dean, Graduate School

4/28/97

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Krigbaum, Dagny Kristine, M.A., May 1997 **Anthropology**

**The impact of allotment on contemporary hunting conflicts: The Confederated Salish & Kootenai as example.**

Chairman: Gregory R. Campbell

The allotment policy is at the root of contemporary hunting conflicts on the Flathead Reservation. In particular, the management of fish and game and jurisdiction over those who use tribal resources have resulted in an extremely long-standing controversy. The conflict has been between the state of Montana and the Salish-Kootenai Tribes since the Act of 1904 opened up the reservation to non-Indian settlement. Opening up the reservation to white settlement was an illegal act, and therefore the tribes are strongly opposed to the state asserting jurisdiction over tribal people, land and resources. The evolution of game laws on the reservation is a direct reflection of U.S. land policies concerning Native Americans. Because federal policies were ambiguous and poorly planned, they set up potential conflicts over authority. These conflicts were then left to be battled out between the tribes and the state.

With the force of law behind them, the state easily asserted jurisdiction over Indians, their land, and their resources. The Salish-Kootenai however, never gave up opposition. They strongly opposed the allotment policy, and the intergovernmental confusion it caused. They spent many years defining their rights to control reservation matters based on their treaty and various federal acts and statutes. The tribes have gained ground in asserting their jurisdiction, and they have recently entered into a compact with the state for joint authority over some fish and game matters. Now, however, they face serious opposition for exerting control over their resources as well as authority over non-Indians. Today non-Indian residents on the reservation are demanding to be protected from what they see as unnecessary tribal control.

To promote understanding of hunting conflicts on the Flathead Reservation, this study will examine the U.S. policies implemented between the signing of the Treaty in 1855, and the 1994 Tribal Self-Governance Act. In addition, it will look at over eighty years of various justifications devised by the Salish-Kootenai and state authorities to keep the evolution of game laws in motion. With a better understanding of tribal history and their intergovernmental relationships, today's conflicts can be seen outside of the realm of racism. This study will demonstrate that many of today's conflicts over fish and game matters exist because of ambiguity, poor planning, and the paternalism found in federal and state Indian policies.

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# CHAPTER I:

## INTRODUCTION

The purpose of this study is to show the relationship between the United States policy of land allotment and the development of contemporary hunting conflicts on the Flathead Reservation in Montana. Due to the allotment policies implemented in the early twentieth century and opening the reservation to white settlement, jurisdiction over land has become a serious political and emotional issue for both Indians and non-Indians living on the reservation. This conflict over the jurisdiction of land directly applies to the regulatory control of game laws. Hunting conflicts arise between Indians and their non-Indian neighbors because each group falls under separate federal, state, and tribal laws. Currently, the Confederated Salish-Kootenai Tribes are being challenged by many non-Indians who oppose game laws implemented by the tribes. Those opposed to tribal regulations are often non-Indians living within reservation boundaries who contest tribal jurisdiction over the acts of non-tribal members as well as over their property, which they believe to be no longer a part of the reservation.

Since the reservation was opened to white settlement, approximately one-half of the land base has been appropriated by non-Indians. This private ownership of land by non-Indians has created problems of jurisdiction over the entire land base. Because private property is not legally owned by the tribe, jurisdiction over both individuals and property has generally fallen under Montana state law. Jurisdiction over fish and game have been separated from the land, however, and therefore fall under the management of the tribe, who currently have joint control with the state of Montana. The Salish-Kootenai have turned the management of wildlife into revenue for

the tribes. This revenue depends upon attracting non-members and tourists who fish, hunt, and recreate on the reservation. Consequently, any non-tribal resident must purchase a joint state/tribal permit to hunt within the reservation, even if they hunt on their own property.

The required purchase of the permit by non-Indians has recently set off conflicts between Indians and non-Indians. Although objection to paying for the permit may seem petty, much more is at the root of this problem. At its root lies the issue of sovereignty and freedom for the Salish-Kootenai. Sovereignty and freedom mean having control over issues pertaining to land and resources that ultimately concern the well-being of the tribe. It is, after all, a land base the tribes reserved for themselves since 1855. On the other hand, non-Indians believe they should have the right to use the resources on their private property without facing additional fees or restrictions. If restrictions or taxation are to be implemented, they believe that both should fall exclusively under state law. Ultimately, many non-tribal residents believe that Indians should not have the power to regulate how non-Indians exercise their private property rights. They have complained for years that state and federal laws are contradictory, and are often implemented illegally without considering the consent or welfare of non-Indians. In effect, the conflicts today create problems for both sides.

The U.S allotment policy continues to affect all contemporary issues over jurisdiction on the reservation. If lands had not been allotted, joint control by Indian and state authorities would have been avoided, leaving the State of Montana with little or no jurisdiction within the reservation and leaving the Salish-Kootenai to manage their people and resources as they see fit. As matters currently stand, no one wants to fully relinquish authority over fish

and game, because that authority includes the power to use and manage resources as well as generate income. In addition, it would be hard to relinquish jurisdiction over migrating game because it does not stay within reservation or state boundaries, making joint management between the tribes and the state an appealing idea to both sides.

Joint control allows for sharing of the information and expenses of regulatory game control; however, joint control does not solve the following questions that need to be answered. Who should ultimately have control over fish and game within the reservation, and what jurisdiction should non-Indians fall under if they commit a game violation? In a land base checkerboarded by the ownership of both Indians and non-Indians, can each area afford to have separate laws? Would that be a feasible solution, considering the problems of patrolling each area within the reservation? As animals migrate across the reservation they cross property boundaries. Should a person in possession of wild game be held accountable based on laws that pertain inside that particular boundary, or should they fall under hunting regulations based on a theoretical tribal or state "ownership" of the game? All of these questions have become troublesome. The problems include who should issue permits, who should regulate and enforce hunting laws, and whose court should hunting offenders face charges in. Councilman Hank Baylor acknowledged these problems when running for his four-year term in 1993. Hank stated that the "checkerboard ownership of land challenges us all the time." Councilwoman Rhonda Swaney stated in the same election that the tribes are in a position where if they don't exercise their jurisdiction, they will certainly lose it. She suggested that the tribes

continue purchasing as much land as possible on the reservation to eliminate many of the jurisdictional and legal problems occurring today.[1]

These issues connecting private ownership of land and hunting rights within reservations have been discussed among lawmakers for years. Some of the more recent discussions aiming to work out long term solutions to this problem began in 1965 when the tribes and the state began working toward joint jurisdiction over particular matters on the reservation, and in 1968 when the Senate held hearings on the management of wildlife on federal lands.[2] Several more recent conflicts have been filed in court, setting precedence for future decisions over fish and game authority on reservations. For instance, in the 1983 court case of *New Mexico v. Mescalero Apache Tribe,* the court held that "New Mexico could not regulate non-member hunting and fishing on the Mescalero Apache reservation. This decision was based upon a balancing of the competing federal, tribal, and state interests at stake in state regulation. The facts in the case weighed strongly in favor of invalidation of state regulation."[3] The ruling favors tribal jurisdiction over the issues pertaining to wildlife within the reservation, indirectly allowing some tribal authority over non-Indian game violators. Another case known as *U.S. v. Montana* ruled in favor of the state. In this case the ruling decreed who should maintain jurisdiction over hunting rights on tribal lands within the Crow reservation. Not only was the state of Montana allowed to continue issuing state licenses to non-members, but the state was also permitted to impose restrictive bag limits and hunting seasons.[4] Ultimately this case determined that the state possessed a "great interest" in the preservation of game which migrate across the reservation boundary, leaving the Crow nation with little if any authority to control their own resources and generate

income. More importantly, this decision blatantly disregarded the Crows' right to self-government. The Crow lost their recourses while the state of Montana made money from issuing hunting permits.

The inconsistencies of these various rulings are perhaps the reason that blatant hunting violations by non-members of the Flathead reservation have become a common occurrence. The fact that court rulings are often inconsistent is one reason the Salish-Kootenai like to avoid any litigation over game issues. Historically, a case ruling has been a test of one's rights. As it stands, the tribes need to keep what control they have over resource management and hunting, and if any major litigation occurs within this realm, they risk losing the jurisdiction they have been asserting. On the other hand, if they do not actively press charges against those individuals that break tribal laws, there is a chance that the gap in jurisdiction will be subsumed by the state and they may face disrespect of their justice system from non-Indians. The evolution of tribal law has proven that if Indians do not exert their jurisdiction and power over their land base, they lose their rights to do so.

## Methods and Materials

Before we can offer possible solutions to contemporary problems, we have to stop and look at where we stand on a particular issue and how we got there. Today, many anthropologists who study contemporary issues are putting an even greater emphasis on studying the history behind the issues. They, like myself, are convinced that history has charted the course for many of today's social, political, and economic views, as well as for the decisions we make concerning these issues. In this particular study of the Salish-Kootenai,

I have found that historical circumstances have not only influenced, but have virtually created the present form of relations between Indians and non-Indians on the Flathead Reservation. For this reason I have chosen to use an ethnohistorical approach to this study. Ethnohistory is the study of primary documents from an anthropological perspective.[5] This method exploits various historical resources including journals from government officials, correspondence between tribal members and federal and state governments, newspaper articles, transcripts of tribal meetings, and documents and correspondence of local white settlers. The documents are used in conjunction with ethnographies and other materials, and when all materials are critically analyzed, and put into context with other documents, they can give the reader a perspective on issues at a very personal level, reproducing a particular moment in time. This study will focus on the personal experiences and views of the Confederated Salish-Kootenai people.

Ethnohistory is different from history because of the approach one uses to look at historical information. The objective is to gain insight into how a culture perceives their own actions, beliefs, and behavior, over time. Ethnohistory adds the insight of anthropology, allowing you to critically analyze oral history or written documents, in order to eliminate much of the fictitious or legendary perceptions that we see in western histories. History has often been interpreted to give credence only to the testimony of Euro-Americans. This being the case, ethnohistory is a different approach, in that it is typically a cultural biography about people who have traditionally been disregarded or ignored in history.

Without an understanding of the Salish-Kootenai perspective and their cultural phenomena, the conflicts created by culture contact on the Flathead

reservation are impossible to solve. By employing an ethnohistorical method, I will study two aspects of the Confederated Salish-Kootenai people. The first will primarily deal with culture contact and how it has affected contemporary relationships between Indians and non-Indians. The second aspect of this study will look at the evolution of legal jurisdiction on the reservation's fragmented landscape. In doing so, we will begin to see how the tribes legitimize their cultural and political decisions that also affect many of their non-Indian neighbors. The history presented in this thesis is largely chronological. It will include the interpretation of culture contact between the Salish-Kootenai and the non-Indian people who settled and integrated on the reservation. It will look at how the policy of allotment initiated and consumed people in emotional and legal battles concerning the value, use, and rights over the land.

Examining the evolution of legal jurisdiction on the reservation is important because law affects and is affected by behavior, attitudes, and the way people interact with each other. On the Flathead Reservation the implementation and violation of laws have produced a very emotional history for Indian-white relations. Laws reflect and shape intergroup attitudes through time. Ultimately, this thesis will show how the policy of allotment has influenced or affected legal decisions pertaining to game rights on the reservation. Ethnohistory will take us back in time to see where conflicts began and how attitudes were justified over time. A study of this kind cannot be successful without acquiring adequate data on the various groups who participate in the larger social system. The archives often reveal personal attitudes and emotions that are sometimes lacking in personal interviews, or information that can not be attained due to its controversial

political nature. A critical review of past events and historical documents is absolutely necessary in order to attempt to reveal accurate, truthful accounts of events on the Salish-Kootenai reservation. Bruce Trigger who writes on the ethnohistorical method adds that:

> The main checks on the quality of ethnohistorical research are methodological. The most important of these are the techniques shared by all historians and which ehtnohistorians have borrowed from them. These relate to the evaluation of sources and understanding their biases. They also ensure that interpretations are tested against a sufficiently comprehensive corpus of data and that evidence that does not support an interpretation is taken into account no less than that which does.[6]

Trigger and other great anthropologists have given excellent advice as to how one insures a "scholarly approach" to historical interpretation, and I do agree with their methodology. Many scholars have spent years, however, trying to ensure that the interpretation of historical documents is "scientific." Although I agree that one can reveal patterns of behavior and interaction by using a consistent method of interpretation, I do not believe that this interpretation can be a totally scientific adventure. One's own experience, methods of comparison, fairness to each argument, and personal insights into a situation permit well-grounded interpretations. These are the qualities I have applied to this study along with my historical knowledge of the Flathead Reservation and my impartial observation of the historical data.

I was aware that problems could arise in my research; for instance, most written sources for my study identify only the attitudes of influential people, rather than the view of the average person who lives on the reservation. This has not posed a problem, however, because I resolved to stick to the sentiments and actions of the influential leaders and political organizations who have been forced to work together since the signing of the 1855 Treaty.

These political organizations are the representative voice of a good portion of the people. In addition, it would be extremely difficult to portray the sentiments of all of the Salish-Kootenai because of the diverse backgrounds and attitudes within the nation. I am also aware that this ethnohistory has a few gaps in the chronological study. Non-Indian testimony has naturally been much easier to come by than Indian testimony because western history has often overshadowed the history of the Indian nation with which it interacts. Although there is archival information written by or for the Salish-Kootenai people that contains emotional pleas, responses to certain events, and letters addressing cultural conflicts, there are many events and time periods that contain few clues as to the sentiments or actions taken on the part of the tribal people.

Ethnohistory as a method is certainly a bridge between anthropology and history. It allows the researcher to use historical data to gain insight into the present. The interaction between Indians and non-Indians on the reservation cannot be understood today without taking into consideration the continuity of policies and attitudes that have existed over time. Bruce Trigger refers to this method when he tells us that ethnohistory can give us some insight into how attitudes of the previous generations affect the historical record they produce.[7] Ultimately, the goal is to bring together the history of both sides of today's conflict. In this study, I am attempting a brief historical reconstruction from the Salish-Kootenai perspective. By attempting to take what we have always thought of as culture contact from the perspective of Euro-Americans and look at it from the other side, I hope to give the reader a better understanding of why problems and attitudes exist with such intensity. It is

hoped that this study will yield some explanations of the cause and effect of today's conflicts over game rights on the reservation.

**Thesis Format**

The format of this thesis will begin with an introduction to the Salish-Kootenai people. Chapter II will introduce the history and social organization of the people. Although this history does not go into any great depth, it will give the reader a general understanding of the Salish-Kootenai social structure and the values associated with land use. Chapter II will then go on to look at the process of change and how it began to heavily impact the Salish-Kootenai shortly after they moved onto the reservation in the 1850's. This history is brief, in that it does not address all of the cultural differences among the many bands and tribes that are living on the reservation. Instead, it often addresses traits and characteristics as well as the history held in common by the Confederated Tribes. The end of Chapter II will briefly contrast the land use and perceived rights of land ownership between the Confederated Salish-Kootenai and Euro-Americans. This contrast should help illuminate one of the very roots of today's conflicts. It will address historical conflicts stemming from different cultural attitudes toward the ownership and use of land. Land has symbolized private boundaries and a productive investment for whites, while land has often symbolized autonomy and a communal, non-profit existence for Native Americans.

Chapter III will be an in-depth historical study of the policy of allotment. This is not necessarily a study similar to previous allotment studies done on this reservation. Ronald Trosper's study of the allotment policy is an in depth-study, but does not specifically deal with the problems of jurisdiction

over land between tribal and state governments. Trosper deals with the economic prospects the reservation would have had if the allotment policy had never been put into effect.[8] Chapter III will look at what the Salish-Kootenai thought of the allotment policy, how it changed their social structure and economy, and how the policy allowed the United States government to manage and manipulate every aspect of the Indians personal affairs.

The fourth chapter of this thesis will establish a connection between the policy of allotment, the problems and conflicting attitudes over jurisdiction of land, and contemporary hunting conflicts. This chapter will deal with the evolution of law pertaining to the Salish-Kootenai reservation and more specifically, how the policy of allotment affected the evolution of game laws. The following chapter will specifically deal with contemporary hunting conflicts, the emotions involved, and how the Salish-Kootenai legally justify their political and emotional stand on the issues.

**Implications of This Research**

As I talked with western Montanans during the last five years, it became apparent to me that there is a need for non-Indian communities to become more familiar with the desires and goals of their Indian neighbors. Studying contemporary problems between Indians and non-Indians, I found that history is indeed the force behind today's conflict. It is history that established how decisions were reached and how they are carried out on the reservation today. I hope that this research will give the reader a better understanding of how the history of U.S. and Native American relations still greatly affects the people living on the Flathead Reservation.

Early policies often were not thought out thoroughly and could not have foreseen many of the contemporary problems they have created. Although the Salish-Kootenai have had to deal in the economic and political realm with many individuals who create negative stereotypes of Indians, they have also found fault with the commonly held, over-simplified explanation that "racial differences" are the cause of today's problems. Conflict between tribal and non-tribal members often stems from a lack of understanding of Native American culture, creating views that distort the reality of tribal history, culture, and political goals. This study is especially important as an example of how conflict can become a continuous cycle for generations, if a realization of its causes is not effectively understood by those involved. Often, as is the case on the Flathead Reservation, anger and alienation are the results. I hope that with a better understanding of Salish-Kootenai history and how law has developed on the reservation, non-Indians will turn to understanding and compromise as opposed to acts that attempt to deny the tribes of their authority.

## CHAPTER II:

## THE CENTRALITY OF LAND: A CONTRAST BETWEEN CULTURES

The Confederated Salish and Kootenai tribes have generally been characterized by their ability to adapt to changing circumstances, because through the years they have experienced many changes in their land base, economy, technology, and subsistence. Some of these changes were of course inevitable, as their way of life demanded that they adapt to the natural forces around them. Adaptation was also a necessity in their long history of interaction with other cultures. They often intermarried, traded, and warred with neighboring tribes; however, no change was as all-encompassing or came with such intensity as their interaction with Euro-Americans. This change was most devastating to the tribes because the resulting loss of their land affected almost every aspect of the tribe's well-being. In addition to major land cessions to white America, many of the relatively small parcels of land that the tribes reserved for themselves were divided and taken as well. When the tribal enrollment lists were completed by 1909, the total allotments held by Salish-Kootenai members were approximately one-fifth of the entire acreage within the reservation.[1] By the mid 1980's, the reservation was home to over 20,000 people and only about nineteen percent were of Indian ancestry.[2] The Salish-Kootenai and their reservation are larger than life symbols of change, adaptation and tolerance among the cultures and various ways of life that have surrounded them.

Although hunting conflict is the topic of this thesis, it is not the ultimate focus of this study. Jurisdiction over hunting on the reservation is just one of many topics that illustrate the confusion and conflict caused by the Salish-Kootenai's loss of land due to the allotment policy. We will see that

jurisdiction over land and private property is at the root of almost all contemporary conflicts between Indians and non-Indians. Therefore, we cannot simply take a superficial look at today's conflicts, but must travel back in time to find their underlying causes.

To understand contemporary problems pertaining to land and its jurisdiction, it is best to first try to understand the symbolism of land to tribal people as it was in the recent past. We are all products of our history, and symbolic and mythical beliefs pertaining to land are still prevalent in all of us today. It is therefore beneficial for us to have an understanding of the recent social, political, and economic structures that were directly tied to land use by the Salish-Kootenai. After looking at these aspects of tribal history, we will then take a brief historical look at Euro-Americans in the New World to see how their view of social structure and land use contrasts with the Salish-Kootenai. We will also look at how both perceptions are implemented in today's society. It is hoped that this will set up some basic underlying reasons for the misunderstanding and tension that exist between the two cultures.

What do the land and its use mean to today's tribal people? We can find out by looking at what it has meant to them in the past. There is a perceived notion on the part of many non-Indians that the previous history or meaning of land to Indian cultures is not relevant to today's issues. Indians of North America do not live as their ancestors did; consequently, the argument that Indian heritage must be preserved and exemplified through tribal law is rarely understood by non-Indians. Outward changes in the Salish-Kootenai people however, do not necessarily mean that the symbolic importance of their land has changed. Today few tribal people seem very different from their white neighbors. Many Indians do not relate as much to the

characteristics of their own heritage as they do to the characteristics of white American culture. On the other hand, some Salish-Kootenai members relate to their heritage on various levels, ranging from the superficial to the very traditional. What-ever their views, tribal members have one thing that binds them at some point and allows them to work toward common goals--their history of being Native Americans.

The importance of their cultural ties comes from remembering their recent past. That past is reflected in the daily political and economic decisions made by the Tribal Council and the various tribal bureaus, as well as the Council's trust in a committee of elders that advise them. The elders have seen many changes in their lifetimes and can reflect on the changes certain processes initiated. They can point out preventive measures to help insure the long range protection of tribal interests.[3] Decisions to preserve water, air, wildlife, and other aspects of their cultural heritage show the importance of preserving everything associated with their land base for the future well-being of their people. It is important for non-Indians to realize that today's cultural beliefs and the ability to integrate those beliefs into Salish-Kootenai politics and the economy is imperative. Controlling their reservation in a way that benefits their own people is something they have been outright denied and have struggled to obtain since the allotment policy was imposed on them around the turn of the century. Bringing together historical traits with today's beliefs creates a delicate balance because today's tribal beliefs are tied to two very different histories. The first and foremost history for many recalls their cultural beliefs and practices of land use before forced integration with American settlers. These beliefs are both prevalent and persistent, regardless of how assimilated individuals may appear to others. On the other hand,

many Salish-Kootenai have a strong history of assimilation with the white man. Being a member of the tribe does not necessarily mean denouncing the influence of another culture; it simply means that first and foremost, they are Indian. A review of Salish-Kootenai history will help us understand the importance of this first and foremost aspect...their tribal culture.

**Land as Cultural Mandate Among the Salish-Kootenai**

Traditional land tenure by the Salish-Kootenai was not based on individual ownership of land as we perceive it today. Instead, the land was occupied by tribal entities that controlled tracts of land held in common. Land use prior to the reservation is important because many historical ties to land are symbolically carried out today by the tribal people and their government. Carling Malouf lies out some of the historical land use by the tribes in his book called *Economy and Land Use by the Indians of Western Montana.* Malouf explains that the Salish and Kootenai people occupied the western region of Montana for quite some time, and this region included a mountainous area stretching from above the Canadian border south to the Montana-Idaho border. The region was also encompassed by the Idaho border on the West, and the Rockies to the East. Essentially there were several bands and tribes that lived in the large area that was later ceded to the United States. These various people were later designated by the U.S. as one nation under the name of the Confederated Salish-Kootenai Tribes. The Kootenai generally occupied the northern region stretching from the tip of Flathead Lake in Montana up into Canada. The Upper Pend d'Orielle occupied the mid-section of this long stretch of western Montana. This area ran from the tip of Flathead Lake south to what is now Arlee, Montana. This section

spread east and west for quite some distance. The Flathead were located farther south from the Canadian border. They held the land that generally ran from the town of Arlee south through the Bitterroot Valley.[4]

Although the traditional land base of the Salish-Kootenai is systematically mapped out today, Indians were not confined to such areas. The Flathead, who often lived in the Bitterroot valley, traveled as far east as what is today known as Yellowstone and westward into Idaho. Their subsistence economy divided the Kootenai people into two tribes. Many hunted on the plains of Montana, and others fished the Columbia River in Washington. The Indians' economy depended on the land, and different times of the year required moving to a new geographical area to seek necessary resources for food, trade, and medicine. The seasons, warfare, and tribal mobility determined the Salish-Kootenai economy and land use. The reverse was also true, because the Salish-Kootenai were tied to the land in such a way that their economy and use of the land determined when and where they would move next. Religion and ceremony were also tied to land use, as both were believed to alleviate natural disasters affecting tribal subsistence. Religion and mythology also determined what foods could and could not be eaten. For instance, the meat of wolves, coyotes and foxes were avoided because each of them were characters in Salish-Kootenai mythology.[5]

The Salish-Kootenai People had obtained the horse by the early 1700's, and it became important to hunting, trade and communication. The horse allowed much of the tribe to join together to hunt and process buffalo in the winter months. Entire tribes would move onto the eastern plains in the late fall and would remain there for up to six months. Before acquiring the horse, they did not usually winter on the plains as an entire tribe, and hunting

excursions generally consisted of several individual hunters. The buffalo was of great importance until the mid to late nineteenth century when it began to disappear, and tribal people became confined to the reservation. Although an important resource was lost with the passing of the buffalo, many staples of life remained in the valleys the tribes lived in. The flora in the valleys contained various trees, berries, wild onions, and edible roots, some of which were main items in the diet. Camas and bitterroot were a part of the diet for some tribes and were found in abundance throughout western Montana. Deer, elk, rabbit , moose, fowl, and fish were all important food sources and were numerous as well.

The importance of the land as a provider of food and healing becomes quite clear with the continued tradition of the bitterroot-digging ceremony. The ceremony has been changed and modified today, but the significance of the bitterroot as food and medicine, the season in which it grows, and the creator and land from which it comes are still acknowledged today. The bitterroot is dug each spring by those who trek to the Bitterroot Valley. They believe the root is the first plant food the Creator makes available to the people each spring, and that the growth of the bitterroot means that the tribal people have been blessed by another year.[6]

The food produced in the different seasons was the basis of the tribal economy, and determined where the tribes would reside on the land. Both the Salish and Kootenai calendar kept track of the events in the natural world. Each month was named after an important event taking place in the community or its surrounding environment.[7] According to anthropologist Harry Holbert Turney-High, the Salish calendar was divided primarily by

economic pursuits, and the twelve months of the year roughly corresponded to the following:

1. First month: The Wandering
2. Second month: Three Bands Spread All Over (?)
3. Third month: The Goose Flight
4. Fourth month: The Lovemaking
5. Fifth month: Bitter Root Month
6. Sixth month: Camas Month
7. Seventh month: Service Berry Month
8. Eighth month: Onion Month
9. Ninth month: The Harvest of Ripe Things
10. Tenth month: Half-autumn, or Half-summer
11. Eleventh month: Autumn
12. Twelfth month: Continuous Snow (?)[8]

One can see the great importance land itself has played in the life of tribal people by looking at one of the few written histories of the Kootenai in the nineteenth century. At this time, history was passed down orally, with the exception of those historians who recorded it through the use of symbols notched onto sticks or pieces of hide. Sometimes they added knots and beads to signify important events in the life of the tribal people. When we read the historical accounts of Kootenai member Hollow Head, we find that many of his symbols indicate where the people were located on the land, and why. Wars, treaties and the birth of Hollow Heads' chiefs were naturally recorded events, but the more commonly recorded information included tribal campsites, places to "winter," and the resources located there.[9]

The condition and the amount of land available, as well as how the land was utilized, always determined the quality of life for the tribal people. The entire economy was tied to what the land produced and how it was used; and what the people could not produce they could trade for. The tribal people used trees, barks, wild grasses, stones, and various parts of animals for the

very creation of their economy and livelihood. Crafting material goods like baskets, ropes, and clothing allowed them to live comfortably, and trade for necessities and luxuries like ornamental and metal goods. The tribes camped in various locations and each campsite had one or two important characteristics. There were places specifically suited to fatten up their horses, areas that offered protection by separating the enemy across a swift river, and hunting grounds where natural salt licks attracted black tailed deer. Other campsites were chosen specifically to give thanks to, or to seek help from the supernatural.[10] All of these types of land and the offerings they produced, attached a deep spiritual value to the land. This spirituality was directly tied to the protection of their people and their homeland, a "homeland" once encompassing thousands of miles of natural boundaries.

**The Politics and Economy of Leadership**

Among the Salish-Kootenai people, political and economic ventures were generally led by those with special skills and knowledge. Decisions often were made by the head chief, sub chiefs, or councils in charge of everything from defense to subsistence and trade. For the most part, the chiefs had no absolute power, but were generally respected for their ability to make decisions that benefited no one individual, but rather the people as a whole. The chief acted as a group's conscience and could help direct political decisions, but the main economic units of the tribal people were their families.[11] As John Fahey notes in his book on the Flathead Indians, "The core unit within the tribe was, of course, the family, in which cousins to the fourth degree were addressed as brothers and sister. Beyond the seventh, cousins might marry. The family constituted an economic as well as a kinship unit. No distinct

pattern appeared other than a patriarchal society exploiting a geographic area."[12]

Although no absolute power existed, the position of the principal chief of the tribes was very influential, and heredity most often determined his position. Major Peter Ronan wrote in the late 1800's, however, that other chiefs were elected: "The greatest portions of wisdom, strength and bravery were combined" to elect [the] war chief. "The elections took place every year and it sometimes occurred that the general in one campaign became a private in the next."[13] This war chief had no authority over his people at home, but when on the hunt or at war, he exercised his authority with great precision and power. He even expressed his jurisdiction with a long whip that he applied to anyone who fell out of rank. For many years, whipping was a way in which tribal laws and moral codes were enforced. Several of the Flathead chiefs enforced obedience and harmony by means of whipping and public humiliation. The people did not resent punishments administered by the chiefs, as children were brought up to respect him and his position of authority.[14] Perhaps one of the key characteristics of this form of tribal government was the fact that decisions were typically ruled by consensus, rather than by a majority ruling or a bureau of some kind. This promoted constant interaction between all people, and kept everyone aware of their communities needs. The morals and values of the community were formed partially through the interaction needed to reach a consensus.

Although each tribe had its own definition of moral codes, there were always some "common sense" laws for each tribe to follow. One example is a couple of basic principles taught to Kootenai boys by their fathers and uncles.

> Try to get up before anyone else. Take your bow and hunt. True, the girls will not see your face because you are out hunting every day, but they will know your fame and will want to marry you. That is surer and better than strutting around before them all the time...One cannot keep a lie, and when the truth is known the camp will be told and its laughter will make you ashamed.[15]

Honesty, generosity, and personal honor were highly esteemed characteristics in many tribes. The chiefs were very devoted to their tribal members, and they were generally respected for all of these traits and their wisdom as well. Olga Johnson's' research of the Salish-Kootenai revealed that the Kootenai listened and followed their chiefs out of great respect for their personal achievements. The chiefs symbolized the group as a whole, in a way that Johnson likens to today's monarchs of Britain. The chiefs were father figures looking out for the welfare of their communities. By the turn of the twentieth century, Johnson found, the chief acted as administrator and persuader to help sort out disagreements or differences of opinion in critical tribal matters.[16]

We will see that ways in which tribal chiefs and their legal system instilled values, were replaced by federal policies and agents who essentially destroyed the chief's power, and with it the sense of tribal unity. In doing so, the U.S. placed itself in a position to become the new protector and provider for these people. When they asserted their political and economic authority, however, the Salish-Kootenai were completely let down by the United States. The U.S. never seemed to fulfill the promises to either protect or assimilate tribal societies. It is certainly no wonder that the pre-reservation days are remembered so favorably today. Although they were a time of change, they were also a time of less want, greater security in tribal autonomy, and pride in the people's heritage.

From the perspective of the Indian, it is hard to understand why the white man invading the land undercut the importance of the tribal leaders and tried so desperately to mold the Indian to a new way of life. Unfortunately, for years the popular assumption among whites has been that Indians are less complex in their ability to manage their people or make decisions concerning their own well being. In reality, the Salish-Kootenai were incredibly complex in their socialization, spiritual life, defense systems, and economics, and they have maintained these qualities in the midst of forced change. As we begin to look at the interaction between the Salish-Kootenai and white societies, keep in mind that throughout their relationship, the tribes put a very strong emphasis on keeping verbal agreements and respecting one's sincerity and honesty. Keeping one's word was expected, and this is how the Salish-Kootenai chiefs and those of influence approached their agreements with Indians and non-Indians alike. These tribal characteristics often determined how they interacted with non-Indians, and the same characteristics allowed for failed dealings with the United States government. Their ability to keep peace even while the agreements made with the federal government were failing, show the tribes' determination to fulfill their original peace agreement of 1855.

## Erosion of the Cultural Landscape

Much of the rapid change felt by the Salish-Kootenai culture came around the mid 1800's, when white expansion was pushing its way into western Montana. Tribal land holdings shrank fast, as settlers pushed Indians out of their traditional hunting territories and campsites. As the land became more and more crowded and the settler's vulnerability increased, the United States

approached the tribes and asked them to treaty with them. In addition to financial rewards, the treaty was to reserve for the tribes a tract of land in what is now western Montana. The reservation seemed necessary for the development of the West by white settlers, as reservations would allow Manifest Destiny to continue without aggressive interference from tribal nations. A policy separating Indians from whites was expected to reduce any conflict between the two cultures.[17] As the need for land grew, whites justified their desire to purchase Indian lands. Settlers could not comprehend the need for so few Indians to occupy so much valuable space. Although it appeared to whites that Indians "wasted" land by having few people utilize large areas, in reality the tribes needed the large portions of land for survival. Nevertheless, the Salish-Kootenai agreed to cede much of their hunting grounds and reserve for themselves a sanctuary large enough for the tribes to live on part of the year.

Agreeing whether or not to live on a reservation was a tough decision, because many Indians opposed the idea, and believed that the settlers should be forced to leave. Native Americans were already in competition with other tribes for resources, and whites were extremely competitive in using those same resources. In addition, whites found Indian campsites the most comfortable and beneficial sites on which to locate their communities in Montana, as they were usually near water, trees, subsistence, and grazing fields for horses or cattle.[18] Other tribal members believed that perhaps Indians and whites could live peacefully together. Their lifestyles were very different and Indians may have reasoned that the settlers wouldn't take up too much space. After all, most lived sedentary lifestyles by Indian standards. But although settlers took up a small amount of actual living space, they did

compete with the Salish-Kootenai for huge tracts of grazing land. This put them in direct competition with the tribal horse economy and raising cattle. The large numbers of settlers' cattle also encroached on wildlife grazing areas, pushing the game farther away and directly reducing the subsistence of the tribal people.[19]

Although reluctant, the Salish-Kootenai agreed to the arrangements in the Treaty of 1855 after many days of discussion and consultation. They agreed to cede much of their territory to the United States, and reserve 1,243,969 acres for themselves. The idea of a reservation was opposed by the tribes for many obvious reasons, but was finally agreed upon for the main reason of protecting themselves and their land from the Blackfeet who frequently warred with them.[20] The Treaty agreed that any conflict between Indian nations would be handled by the U.S for the tribes' protection.[21] In addition, the treaty was somewhat of a peace offering to the United States on behalf of the tribes. As far as the tribes were concerned, it was an agreement to stay out of each other's way, but to cooperate when necessary. It is clear, however, that both Indians and non-Indians who negotiated the Treaty had a hard time understanding each other, and it is noted by Father Hoecken, who kept a diary of the negotiations, that the translator Ben Kiser was extremely poor at his skill.[22]

Once the tribes moved onto the reservation, they continued their common use of the land. Much land off of the reservation was still equally important, and they continued to preserve their traditional economy by traveling to their accustomed areas. They continued their beliefs in religion and the spirit world and their linguistic characteristics that culturally defined each of the tribes. Their lifestyle was quickly inundated, however, by the surrounding

settlers that had developed large communities on their traditional hunting grounds and soon began encroaching on the reservation as well. The new land base and their tribal cultures were greatly affected, and rapid change took its toll on the social unity of many tribes. The deterioration the tribal people experienced was not due to inflexibility or inability to adapt to new situations, but rather to the pace and intensity with which these new situations arose.

Besides the devastating effect of the settlers' illegal use of resources on the reservation, other events were eroding the landscape. Missionaries' educational activities and federal agents' control on the reservation had a long term negative impact on the Salish-Kootenai. Although missionaries and agents were often respected by Indians for particular qualities, their attempts to transform Indian society played a prominent role in severing the Indians from their cultural ties. Authority figures exerted most of their control by illegally confining the tribal people to particular areas within their own reservation. Although Catholicism was welcomed by many tribal people, it often overstepped its bounds. For instance, the Indian children were confined to missionary schools in which they lived away from their families. They were required to dress, act, and even speak like white people. Their parents were often confined by the agent to the area within the reservation boundaries. This limitation destroyed both their success in hunting, and their efforts to successfully raise horses and cattle because they competed with non-Indians and government officials for grazing land. This fact gave political and religious figures an open door to controlling the economic aspects of Indian life, and in turn directly affecting tribal law and politics. Chiefs had been respected for their wisdom or generosity in providing for the well being of their people, and their ability to do so quickly

deteriorated after moving onto the reservation. The impact of education and laws imposed upon the Indians by government agents came so quickly that it left the tribal people extremely vulnerable. This erosion of the tribal economic and political base created a dependency on the various means of relief the U.S. felt compelled to offer, but this dependency by no means resulted in a total cultural breakdown. Tribal people had several means to resist white culture, and to slow the process and impact of assimilation.

In order to understand the Salish-Kootenai today, we must first break through some typical stereotypes. One misconception is that tribal people were somehow not smart enough or flexible enough to adapt to changes in their economy. They were seen as childlike and even foolish at times, without the ability to unite and make decisions. Tribal entities were certainly not static cultures, however, and were quite adaptable to change. Travel and trade had previously changed the material culture affecting their economy. They were generally a people open to new technology and anxious to learn about it, so technology was not a threatening change to their culture either. They only adapted the technology that could be easily utilized in their particular economy, however, and this fact kept them from emphasizing the material benefits. As Donald Fixico points out in his paper *Indian and White Interpretation of the Frontier Experience,* "Indian groups stressed different areas of culture for development such as philosophy and art, rather than business enterprise and technology."[23] Whether they were adapting to new technology, or to new landscapes and food sources for the year, the ability to remain flexible was indeed a necessary characteristic of the Salish-Kootnei.

Another common myth about Indians in the past as well as today, is that they are too lazy to farm or enter into an economy based on full time labor.

Farming was opposed for several good reasons, however, and mostly because it did not fit into their cultural economy. Although some did indeed farm or cultivate gardens, others refused to farm except out of necessity. Farming did not fit into their lifestyle, and many knew that extensive agriculture was not feasible in western Montana, considering its frosty weather, potential problems with insects, and a soil that consisted of large layers of glacial rock. It was a full time job to farm with little money or security in it. In addition, E.O. Fuller states that wars with other tribes prevented them from cultivating crops and advancing in material wealth. The Salish-Kootenai, Fuller says, were often exposed to enemies, thereby losing material wealth in raids, and the defensive stance they had to take created an unsettling feeling among the tribes.[24] Until they were absolutely forced to farm due to diminishing resources, many seriously opposed farming as a means of subsistence. The tribal people knew well, as settlers like Father Mengarini soon came to find out, that:

> The soil is naturally dry and filled with large rocks...and we cannot find arable spots except along the creeks which are often located at great distances from each other. To cultivate one hundred acres of land the Flatheads are forced to make five different camps within a sixteen-mile area. In addition the large rocks hidden beneath the surface of the ground frequently break the plows.[25]

In spite of the Indians' conviction that their land was unsuitable for a life of agriculture, Euro-Americans pressed on with their attempts to transform the Indian into a yeoman farmer. The Salish-Kootenai confrontation with this overwhelming and typically condescending and paternalistic culture was the greatest challenge they had to face.

The Indians of western Montana were somewhat familiar with the white man as a missionary, trader, and pioneer. They had historical encounters

with white people, but were not forced to live side by side with them. Thus no specific event had threatened their cultural autonomy. The situation between Indians and settlers was different. Their separate economic pursuits forced the two cultures to compete for the use of the land and the resources it provided. Personal characteristics emphasized by the tribes as worthy were not necessarily valued in all situations by non-Indians. Tribal nations expected the qualities of honesty, personal integrity, and above all, keeping one's word to be demonstrated by all those entering into agreements. Unlike their white counterparts, the Salish-Kootenai put no more value on a written agreement than a verbal one. The tribes' sense of community demanded that one's trust and honor always be maintained.[26] The U.S. and its people, however, appeared to emphasize honesty and the importance of verbal agreements only when it was to their own advantage to do so. Many promises were not kept, and the personal integrity of agents and other government officials often proved to be corrupt. The event that first put the different character traits into perspective and lost the trust of the Salish-Kootenai was none other than the signing of the 1855 treaty. Although we have already briefly discussed how and when the treaty came about, it is important to take a look at the event in greater detail to see why the Salish-Kootenai have emphasized the importance of this document over the years.

It was Governor Stevens who represented the United States in the land exchange with the Indians of western Montana. The purpose of this agreement from the tribal standpoint appeared to be a contract in which each culture would be ensured safety, and would control its own defined territory with little interference from each other. After all, separation of Indians and whites was the U.S. policy at that time. The Flathead reservation was

officially established in 1859, by the ratification of the Hellgate Treaty. This treaty officially condensed Kootenai, Salish (sometimes referred to as the Flathead), and the Pen d'Oreille which also held small groups of Nez Perce, Spokan, Coeur d'Alene, Kettle Falls and Blackfoot Indians, and a few French half-breeds.[27] The Confederated Salish-Kootenai tribes agreed to cede their aboriginal territories that ranged from Montana and the Idaho panhandle, to parts of British Columbia and Alberta, Canada ceding approximately 25,000 square miles of Indian land in exchange for a permanent reserve of approximately 2000 square miles. The Mission Mountains are the east wall of the reservation, with Evaro Canyon and the Squaw Range marking the southern border. The Cabinet Range is the western border, and the northern border is an imaginary line through the center of the Flathead Lake.[28]

Although the various tribes that were united under the treaty were not always friendly toward each other, the general attitude among the Indians was that there would be enough land to comfortably separate the bands or tribes. They agreed to consolidate for the benefit of peace with the large Blackfeet nation, other neighboring tribes, and the white man as well. The reservation was essentially large enough for all of the tribes to live on, although certainly not large enough for them to carry out their traditional means of subsistence or other economic ventures. The tribal leaders who signed the treaty did not really expect to be confined to the territory within the reservation...it was simply a place to call "home."[29] In fact, the United States also made it clear that the Indians were not confined to the reservation either, as Article III of the treaty gave the tribal people exclusive rights to hunt and fish in all accustomed places.[30]

The treaty was essentially the first encounter the tribes had with the "legal arm" of American expansion, and they soon found out that jurisdiction over the tribal people had been ambiguously set up in the treaty. Only a few years after the signing, the U.S. restricted when and where the tribes could hunt. Restrictions on hunting ranged from designating only certain areas to hunt buffalo, to agents withholding guns and ammunition from tribal members.[31] Restricting the Salish-Kootenai to hunting buffalo only on specific tracts of land on the plains was particularly devastating. The fact that buffalo migrate somewhat sporadically, and rarely use the same migration routes means that a successful hunt would depend on pure chance if any restrictions were placed on the hunter. These and other acts on the part of the government created such instability, the tribal economy was no longer dependable.

Other promises of the 1855 treaty were not kept, a fact which causes much of today's tension between Indians and non-Indians living on the Flathead reservation. One unkept promise was the federal government's agreement to protect the Salish-Kootenai from white settlers' illegally moving onto the reservation and utilizing the available resources. By 1860 there was already great unrest by the tribes, as they complained that employees of the federal government were not only avoiding the issue of protecting Indians, but were actually granting permission to traders and settlers to "winter" on the reservation. Some of the Salish-Kootenai members were greatly offended and rebelled, doing everything from stealing the settlers' horses to destroying their permanent structures.[32] As it turned out, agents became much more concerned with the wrongs done by Indians than with making right their promises to the tribal people.

The story of Chief Victor and Chief Charlo is another example of how casually the articles in the treaty were disregarded. After signing the Treaty of 1855 the Flathead Chief Victor and his people believed that they would have a permanent reserve in the Bitterroot Valley. Although he signed the treaty with the other Confederated Tribal Chiefs, Victor did not want to be confined to the same reservation. Instead, he and his people were to be given a separate location in one of their traditional homelands just south of the Flathead reserve. The Flathead were able to live peaceably in the Bitterroot Valley for only a short while, before white intrusion became a serious problem for them as it had been for neighboring tribes. Agent McCormick wrote in his agency report of 1868 that the Bitterroot Valley with its vast grazing lands and extremely adaptable land for agriculture had brought several hundred white people into the valley. In addition to being attracted by the land, many of the new settlers were those who were following the fortunes of the mining prospectors. McCormick closes by saying that:

> The conflicting interests of the opposite races are becoming every day more and more apparent, until what now seems but a matter of trivial moment, in a few short years, perhaps months, will develop into a question of magnitude, as these lands become valuable by improvements, cultivation, and their close proximity to centers of trade.[33]

The agent of the Flathead reservation at this time made the suggestion that the government take action either to buy out the white people and uphold the agreements of the treaty or to buy out Victor, paying him for his land and the improvements his people had built, and move them to the Flathead reservation.

By the 1870's, the government pushed for Victor's people to disband and either take up residence in the Bitterroot Valley by applying for individual

allotments, or move north to the Flathead Reservation. Although several of the Flatheads were farming at the time, the idea of allotments and patented farms repelled them. They were determined to avoid patents, and to stay in the valley promised to their forefathers in the Treaty of 1855. In 1871, Chief Victor died and was replaced by his son Charlo. It was this same year that the Flatheads received an executive order to leave their land and join the others on the Flathead Reservation. Charlo and several members of his tribe absolutely refused to leave based on their treaty rights, and lived in the valley for another twenty years before finally being forced out. The significance of this story is that like so many agreements made in the treaty, the promise to Charlo's people was broken quite easily by the United States. Charlo had been promised the Bitterroot Valley as a reserve for his people. The President was to survey the land and if finding it sufficient, the reserve was to remain there for the tribe's exclusive use. It would not be open to whites until the entire matter was decided. Not only did the U.S. fail to survey the land as promised, but failed to protect Charlo from the white settlers which crowded in. It was of course unrealistic for the government to make such promises in their treaties because they had little if any ability to enforce federal laws over the vast majority of western inhabitants. If western settlers claimed that local Indians were a nuisance, it was easier for the federal government to bargain with the Indians, ignoring agreements already made to the tribal nations, than to deny the wishes of their own people.

In addition to ceding the land to the U.S., the Salish-Kootenai had agreed that they would also receive money and services following the ratification of the treaty. The following were to be supplied: $120,000 which would be paid in installments of $36,000 for the first four years, and then decrease to

payments ranging from 3 to 6 thousand dollars a year. This money was to be paid to the tribal people, and the chief would receive an additional $500 per year for twenty years, for his services of "public character." In addition, the chiefs were to have a house built and furnished for them with 10 acres of plowed and fenced land. The U.S. also agreed to provide services on the reservation that included a hospital, school, carpenter, wagon and plow maker, gunsmith, and a saw and flouring-mill. All of these were to be supplied and maintained efficiently by the United States government.[35]

It was truly unfortunate that the U.S. failed to keep most of these promises with the exception of providing a school immediately following the agreement. The school, was perhaps the least beneficial innovation the government could have devised. The school was established to civilize the Indian and consequently, it was built and maintained quite well. It was run by the Jesuit Fathers and the Sisters of Charity at Saint Ignatius Mission who worked desperately to civilize and Christianize the Salish-Kootenai. They believed that to civilize the children meant teaching them the way of the white man. They taught the boys reading, writing, spelling, grammar and history. The girls on the other hand learned embroidery, housewifery, and sewing.[36] These skills were not in themselves wrong, but they taught the children nothing about working and succeeding within their own culture. Rather, they learned that their social behavior was not appropriate, and as a result they lost respect for the way their own relatives lived. The teaching created great difficulties for family members. Agent Joseph T. Carter wrote in 1894 that "It is sometimes pitiful to see an Indian father or mother unable to speak English conversing with their little one through an interpreter."[37]

Education had a great impact on transforming the lifestyle of the Salish-Kootenai. Education created tension within the tribes, as people were torn between the way of life they desired, and the way of life being forced upon them. Because their culture had so quickly been transformed, the white man's education soon became a necessity for Indian survival on the reservation. The Indians applied learned traits to their own culture, but tried to avoid full assimilation into the white man's world. This apparent willingness of persons to acculturate, prompted whites to create new stereotypes. Indians that farmed on any level were said to be "moral, high toned, and Christianized," and those Indians like the Kootenai who early on had little interest in a so called "civilized" life were deemed to be "idle, thriftless, improvident, and dishonest."[38] Both settlers and their representative government failed to understand why some Indians continued to embrace many of their cultural practices. Because of this ignorance, transforming the Indian became incredibly intense effort on every level.

Eventually there were other ways that the government and its people took control over the Indian, further deteriorating tribal culture. When the white man moved onto the reservation, he created and applied laws to Indians without any real jurisdiction to do so. Early on, this jurisdiction was often imposed by the Flathead agent. One of the earliest examples in the archives has to do with the Agent Chas S. Medary being instructed to keep all of the Salish-Kootenai within the reservation boundary except when hunting buffalo. When hunting, they were to inform the agent and obtain an escort by a detachment of the United States troops. This was obviously a problem for the Salish-Kootenai as Medary writes in his agency report of 1876 that the

orders could not be enforced until a military post was established in the local vicinity.[39] Regardless of reasons for keeping Indians within the reservation boundaries, the escort was a clear violation of their treaty rights. Overstepping jurisdictional boundaries meant the destruction of Salish-Kootenai economy and culture.

Up until the time the reservation had become their home, it appears that the Salish-Kootenai had rarely encountered long periods of starvation or need. The illegal jurisdiction asserted over the Indians in the latter 1800's brought with it a host of other troubles. Indian wars had already caused restrictions on travel, the buffalo were almost gone, and mother nature had taken a turn for the worse. Cold winters and dry summers caused crops on the reservation to fail, cattle and horses died, and food of all kinds were scarce. In 1871, crickets devoured all crops belonging to the Pend d'Oreilles and that same year the Flatheads in their attempt to range farther for food encountered the heavily armed Sioux tribe and lost approximately one-fifth of their fighting men, which were all heads of families.[40] Just a few years later, the tribes had another year in which they faced an extremely cold winter that killed large numbers of their cattle, followed by a dry summer in which they lost many of their crops.[41]

Coincidentally, the Northern Pacific Railroad approached the tribes during this time of natural disasters to ask for a cession of land from their reservation that was over fifty miles long and encompassed approximately 2,500 acres, on which they hoped to build their railroad. The railroad wanted a lot of the good land, including much of the land running along rivers on the reservation. Although the tribes had faced great losses and were quite vulnerable, many were opposed to giving up any more land. Chief Eneas of

the Kootenai opposed the session, and told the representative of Northern Pacific in 1882, that:

> This reservation is a small country, and yet you want five depots upon it. These are the best spots on the reservation. What is the reason I should be encouraged when you take the best part of my country? My country was like a flower and I gave you its best part. What I gave I don't look for back, and I never have asked for it back. The Great Father gave it to us for three tribes, Flathead, Upper Pend d'Oreilles, and Kootenais. What are we going to do when you build the road? We have no place to go. That is why it is my wish that you should go down the Missoula River. I am not telling you that you are mean, but this is a small country, and we are hanging on to it like a child on to a piece of candy.[42]

Although very reluctantly, the tribes did eventually sell their land. They may have sold it out of great necessity, but it is also apparent in the letters of Agent Ronan that the tribes believed that if they didn't sell the land, the government would simply take it. The tribes demanded from Northern Pacific hard cash in quarterly settlements, to be put directly in the hands of the tribes and not the Secretary of the Interior.[43] Unfortunately, they never saw the money, and it was deposited in the treasury of the United States to be expended for the benefit of the tribes as the Secretary of the Interior saw fit.[44] These hard times and the transition into a cash economy without any access to cash, quickly forced many of the Salish-Kootenai into dependency on the federal government for their material and subsistence resources.

In addition to destroying their economy, the imposed jurisdiction on the tribal people by the federal government undercut the political strength and leadership of the chiefs. It allowed the U.S. to easily interfere in tribal politics by refusing to recognize a chosen tribal chief when it was advantageous to do so. The Agent could then proceed to appoint whatever leaders he believed would lead the Confederated Tribes towards the white man's idea of

civilization. This had first happened in 1855 when the United States designated Victor as Head Chief of the Confederated Tribes. As author John Fahey notes, the idea of selecting a supreme Chief to represent all of the various bands, tribes and nations was absurd. Not only was combining the three nations into the Confederated Tribes an accident, but Indians had always chosen their chiefs for particular characteristics valued by the people as a whole. There was no chance that Chief Victor could remain any kind of real negotiator for the many tribes. In addition, by 1855 Victor had already lost some of the respect of his own people for the Christian act of allowing a rival to strike him without retribution.[45] The choice of Salish-Kootenai leaders by government agents continued right up to the Indian Reorganization Act in 1935.

Even in the 1920's, when the tribes were trying to organize themselves as one federally recognized political unit, the Agent was always there to help initiate factions. In 1922 the Tribal Council was greatly opposed to having federal and local officials on the reservation; however, their objections went unrecognized by the agent and the U.S. government because they disapproved of the tribal members who made up the council. Further problems resulted because the agent would only officially recognize the reservation's "Business Committee" as representatives of the tribes. Members of this committee were generally mixed-bloods who were more assimilated into mainstream America, or members that were hand picked by the agent.[46] By the late 1920's direct opposition to the agent grew. The traditional Tribal Council accused the agent of backing "progressive" Indians and taking bribes from Montana Power Company and other non-Indians who needed tribal cooperation for the use of tribal land or resources. Montana

Senator B.K. Wheeler wrote to the Bureau of Indian Affairs in 1929 stating that he had received letters from Mose Michell, Camille Lantow, and several other Indians who had complained of the agent and other Business Committee representatives being "bought off."[47]

By 1934, the tribes were faced with a decision of whether or not to adopt a Constitution and By-laws under the Indian Reorganization Act. Although it is unclear exactly which tribal members were in favor of the successful adoption, it is clear from the council minutes that the three chiefs did not sign in favor of the new bill when it was first presented.[48] Although tribal factions already existed, the agent usually intensified the conflict, because he was really the only voice or mediator between the U.S. government and the tribes. He therefore became a symbol of power over the tribal people. The tribes realized that the agent was their only political recourse for persuading the government to carry out their promises and goals effectively. The Salish-Kootneai people were often obliged to temporarily adhere to the agent's desires, even though his requests sometimes had a negative impact.

One example of how agents committed seriously destructive acts on the Flathead Reservation was their part in establishing an Indian police force and judges for the tribal court. This of course ran counter to the way Indians had handled jurisdiction over their own people, which as we have seen was traditionally handled by the chief and by humiliations imposed by the tribal people. Tribal jurisdiction was seriously violated when Agent Ronan appointed a Pend d'Oreille by the name of Andre as the head chief of police in 1877. An unpaid police force imposed white social norms on all tribal families. The system forced Indians to adhere to new morals and condemn other Indians as a means of social control. Police and tribal courts were all

part of a system that pushed aside various aspects of tribal culture and traditional means of enforcing laws.[49] By 1894, the tribal police force and judges for the court were well established. At the time, there were 15 police, consisting of 1 captain and 14 privates. The agency jail, built around 1894, allowed the police to enforce laws with the penalty of a jail sentence. Joseph Carter, the agent at that time, wrote in his government report that the chiefs were not happy with the new jurisdiction and would try to prevent the execution of the policeman's duties whenever possible. This police force was indeed a serious sign that the chiefs authority was being debilitated by the U.S. government.[50]

Even though the agent exerted his jurisdiction over Indians, the Salish-Kootenai noticed that he possessed little if any jurisdiction over his white neighbors on the reservation. Although some agents truly tried to protect the Salish-Kootenai and uphold the agreements made between the tribes and the U.S., they rarely had the power to do so. One example comes from the Flathead Agency report of 1876. The report reveals that disputes between whites and Indians on the reservation were running rampant due to disagreement over the reservation boundaries. Agent Medary reported that settlers had encroached on a large meadow, only a small portion of which extended outside of the reservation boundary. They were not only living on it but using the resources as well. They had driven bands of horses on it to feed and the agent was concerned that they had completely destroyed the meadow and the large quantity of hay it provided for the Indians. Medary had approached the white settlers but said they refused to move because he couldn't prove where the reservation boundaries were. The agent states in his letter that:

> I have consulted a lawyer in regard to such and other trespasses, but the law seems to be so indefinite that no decisive action can be taken in the premises. As there is also a meadow on the northern boundary similarly situated and under like difficulties, I shall make the matter subject of a special communication hereafter, suggesting now that both of these disputed tracts be either included within the reservation or else that the treaty-line be surveyed and definitely established."[51]

In addition to all of the existing conflict and confusion for the tribal people, they found out that without "legal proof" in the form of a written document (which in itself was a foreign concept) they would never be able to defend their land and resources from settlers. By 1910, when the reservation was opened to white settlement, there were still boundary disputes that were not settled, and the inability of the Department of the Interior to prove those boundaries left the ownership of 11,000 acres of valuable timbered land in question.[52] Many homesteaders developed ranches on the disputed land and one rancher by the name of Harrison Robinson had cut over six hundred thousand feet of timber in less than a year. Even though an investigation of the property by Superintendent Fred Morgan found that the land belonged to the tribes, the federal government ignored his findings. Salish-Kootenai members Joseph Seepay, Antoine Moiese, Louie Vanderburg, Big Sam, Lassaw Kaltomee and others who had built homes along the river in this disputed location, were forced by the government to abandon their properties to homesteaders.[53] The tribes had discovered that the Treaty of 1855 left even the government completely confused about where the boundaries were, and they were therefore unable to protect the land for the Salish-Kootenai people. The Indians, on the other hand, had always known exactly what land they had reserved for themselves in the Treaty. These disputes not only infuriated the tribes, but created many financial hardships as well.

**Perceived Rights and Liberties of Euro-Americans**

As the Salish-Kootenai observed this total disregard for Native American rights, many thought the white man's only motivation was pure and simple greed. Although many individuals certainly exemplified greed, there were also at fault some basic ideologies prevalent in the minds of the settlers that came west. These ideas played a big part in shaping settlers' attitudes toward themselves, as well as toward the tribal people. Regardless of what each white newcomer's intentions were toward Native Americans, the outcome seemed to be the same. The supposed superiority and strength of the white society was ingrained in the American people in various ways, and they believed that their culture would and should prevail over the Indians. Even those citizens who sympathized with the Indian's loss of culture and land had no better solution than to turn the Indian into a competitor with the white man. The Salish-Kootenai, although strongly assimilated in some ways, find that these attitudes still persist today in some of their white neighbors. To give us an idea of the strength of these predominant white attitudes, and why they have persisted through time, we can take a brief look at some of the history that helped shape and mold these attitudes.

Reflecting on the Euro-Americans' perception of land rights and their use of land, we find that although Euro-Americans strongly believed that particular rights and liberties were embedded in private land ownership, they failed to apply them to every landowner. After the Salish-Kootenai were forced to adhere to the responsibilities tied to individual ownership of land and to U.S. citizenship, they were still denied the rights associated with those responsibilities. Looking at the history behind the importance of land and the

rights associated with it, we discover that ethnicity played a role in the perception of the rights of U.S. citizens, but the power exerted over the Indian cannot simply be seen as a racial issue or as nothing more than greed. Although the goal of assimilating the Indian by means of the allotment policy was indeed contradictory, it should be realized that the justification of the policy was directly tied to the myths of private land ownership.

Euro-American ancestors lived and preached for centuries the morals and ethics that pertained to the myth of land. Land was, in past and present times regarded as a sound investment for the financial and moral stability of any American. They believed a parcel of land could be shaped and molded by hard work and sweat into a dependable source of income. Private land ownership meant freedom, privacy, and wealth gave owners a sense of power over their own destinies. By underlying this sense of security and independence, land has been the symbol of American democracy. Historically, private ownership was an opportunity given to the common people by the common people and represented their new way of life and their new government. It should be understood that the very same issues pertaining to land today on the Flathead reservation have been instilled in both Euro-Americans and Native Americans for quite some time. It is just as ridiculous to say that the Indian no longer has a cultural attachment to the land, as it is to say that Euro-Americans no longer have preconceived notions of land use and rights that are theoretically centuries old. If we contrast the two parties' historical and cultural use of land, we may be able to better understand why jurisdiction over land is such an emotional issue, and why there are so many misunderstandings when dealing with land issues today.

In the brief history of the meaning and importance of land to the Salish-Kootenai, it was obvious that their use of land had less to do with private ownership and investment, and more to do with maintaining a certain quality of life and a spiritual connection with their surroundings. This view of the land was essentially a non-profit venture for quite some time. They did, however, have a great interest in protecting their economic recourses, but protection was for the benefit of the tribe, and put less emphasis on the individual. Now let us contrast this approach to land use by taking a look into the recent history of the Euro-American.

For the white man, private ownership of land was and still is a firm institution in American society. Yet the history of this institution reaches far beyond Americans in the New World. We can get a sense of the issues that were important to many of the North American newcomers by looking at the early British Freemen in the New World. Briefly put, the Freemen's cause arose when King George III's Royal Proclamation of 1763 restricted settlement beyond the crest of the Alleghenies in the New World.[54] The Freemen became part of the American Revolutionary era that began the expansion of the west by extinguishing the power of the Crown over the virgin lands of the New World. The people of the New World fought to oppose the Crown's taxation of property, control of trading licensing, and "prohibitions on purchasing Indian lands."[55] The New World was seen as a frontier of virgin soil, waiting for its people to shape and mold it, and the Crown's demand that the West be closed to settlement was a serious constraint on the future of Euro-America. Robert Williams in his book *The American Indian in Western Legal Thought* describes how some groups of people were fighting for the New World to be subordinate to a power overseas, thus creating a

fierce resistance among many Americans. This resistance motivated them to absolutely deny any feudal restraints on land, and to create their own social institutions. Denying the Crown's restraints on the new land led in turn to denial of tribal sovereignty and tribal ownership of the land already occupied by Native Americans.[56]

In the case of the Freemen, land meant power, as it was essential to gaining freedom from the Crown. Defying the Crown's control often entailed defining law as well. As law developed, it incorporated many common sensibilities, resulting in so-called "natural law." Natural law was to become the constitution of the people of the New World and encompassed all of the perceived rights and liberties based on the British constitution.[57] For instance, under their constitution, the English people were protected from taxation without representation, and from seizure of property without the owner's consent. The repeal of the Stamp Act, (taxation without representation) took place with the help of Freemen like Samuel Adams who drafted resolutions. Even with the new laws, however, colonists were still at a disadvantage with a government that held so much power in the New World. The colonists still had to overcome an obstacle that was in the way of their ambitions, which was the Proclamation of 1764. This obstacle was the agreement between the Crown and the Indians of the western frontier. Williams explains it well when he states that:

> The English had come to the New World in search of plentiful and cheap lands free of the feudal burdens that made land dear and unavailable in England. To radical colonists intent on undermining Crown prerogative rights in their country, the proclamation's assertion that the king, not the colonists, ought to control the pace, the direction, and ultimately the price of the disposition of lands on the American frontier seemed contradicted by their sense of history as well as by their "common sense."[58]

The boundaries set up in the Proclamation were to keep Indians from getting in the way of settlement, and they allowed the British to make a pretty penny from the Indian trade that would continue if the Indians were left their wilderness. The colonial rebels wanted to expand westward, however, and decided that it was time to take control and initiate self-government. This would in turn allow them to control the manner and pace with which they would open the frontier. Among the theories of the enlightenment period that could justify this revolution over the Crown, perhaps the most important were the ideas of free land and independence, which went hand in hand. Stewart Udall explains in his book *The Quiet Crisis* that:

> In the face of wolves, savages and blizzards, skill and courage measured men, and nature was the final arbiter of nobility. The hand of London or Charleston or Williamsburg could not reach into the back country; and if a man took up land in the mountains, who was there to stop him or to tell him how to live? The ideas of independence and free land were always inseparable.[59]

As part of asserting power over the Crown, John Locke put forth a theory on why the frontier should be opened. He asserted that the frontier was little more than an "Indian wasteland" that could be turned into "valuable property" by hard work and tiring labor--an idea quite appealing to colonists. The bottom line of his theoretical argument was that the work of converting useless land into something productive, made that land private property.[60] In other words, land that lies dormant and unproductive is not owned.

There are many books written addressing the particular issues of westward expansion, but perhaps none better than *Virgin Land* by Henry Nash Smith. He examines how a particular people's history and literature had a profound influence on the way Americans looked at land. For quite some time there was a prominent feeling that the undeveloped West was there for the taking,

and would be developed into a profitable empire. These prevailing attitudes toward land involved the people of the time and their history as well. The newly-arrived inhabitants of North America often were distressed Europeans who had come to the New World in search of land and a better way of life. They were hoping to be free from the impoverishing restraints of the Crown. They embrace the concept that land would make impoverished people wealthy and independent, and most importantly, would offer security.

These hopes and dreams of a new way of life could be seen in many of the writings of the day. For instance, some of the better known promoters of the agrarian philosophy were Benjamin Franklin and Thomas Jefferson. Henry Nash Smith called this agrarian philosophy the "myth of the garden," and stated that the fertile West was just waiting to be transformed through agriculture. The image of a vast agricultural society that would grow and prosper within the nation's interior was extremely popular at the time, although this image ran counter to the industry and commerce actually taking place on the eastern seaboards of America. Even though the reality of becoming a yeoman farmer was dying out by the 19th century, the myth persisted that agrarian simplicity offered a better quality of life. This myth of "the good life" was exemplified by the agrarian frontiersman, who was a heroic figure in everything from literature to politics.

Although there was a dual expansion going on throughout the eighteenth and nineteenth centuries, agrarian societies encompassed much of mainstream America. There was the busy, booming eastern side of America that was a region of industry and growing social stratification, but many Americans believed in the simplicity and happiness of the agrarian farmers that were filling in the regions to the west. Thomas Jefferson himself viewed

agrarianism as a political stand. He believed that the small land holders tilling the soil were what made up the backbone of America. They were the future stronghold for the nation, as the eastern United States had already become over crowded. Jefferson pushed hard to open up the vacant lands of the West and eventually he established a system allowing for westward expansion. His goal was to prevent the American population from crowding themselves into the "depravity" they had experienced in Europe. Westward expansion and land for all was the answer to maintaining a higher quality of life than their European ancestors. Robert Nash Smith sums it up best for us with his statement that:

> The Western yeoman had become a symbol which could be made to bear an almost unlimited charge of meaning. It had strong overtones of patriotism, and it implied a far-reaching social theory. The career of this symbol deserves careful attention because it is one of the most tangible things we mean when we speak of the development of democratic ideas in the United States.[61]

Perhaps the greatest appeal of the yeoman farmer symbol was the perception that farm life allowed the control of one's own destiny. Farming allowed one to plan ahead, and to control the future and well-being of the family. This idea seriously contrasted, however, with the American belief that Indians had little or no control over their destiny. Indians, Euro-Americans believed, could only plan from "Moon to moon, season to season, and accepted the world the way they found it..."[62]

As we now take a jump in time to the turn of the twentieth century when whites and Indians were living as neighbors, we can see that the early attitudes and myths about land use persisted into modern times. Typical correspondence among non-Indians on the Flathead reservation reflects the importance of land and the belief in an inherent right to progress materially

through the improvement of their land. When Indian land was coveted by whites, settlers used the argument that development by whites put the land to better use in making a better country. A letter from a non-Indian club located on the Flathead Reservation exemplifies the common beliefs pertaining to non-Indian land use. The Ronan Commercial Club wrote to the Office of Indian Affairs in April of 1912 asking that the department allow some of the lands held by the tribal people to be sold.

> And that while the purchaser of this land through his industry may make this land much more valuable. We submit that the example which he will set to his Indian neighbor and the immediate relief which the Indian will get will more than offset the enhancement which would take place five or six years hence when the irrigation project will be completed.
>
> Furthermore the making available of one-fourth of this land to a thrifty white people will cause a production of diversified farming products which would bring to our valley creameries, canneries, flouring mills, factories, etc., which will form a market for not only the white settler but the Indian as well.[63]

In this letter the non-Indians coveting Indian land have identified themselves as "thrifty" people with capabilities to plan extensively for the future and develop the area's businesses and industries. Meanwhile, the Indians are indirectly portrayed as a dormant society that should be taken under the paternal wing of those who know how to progress.

Ronald Trosper notes in his study of the effects of the allotment policy on the Flathead reservation, that some non-Indians were aware of the cultural differences in land use and yet still felt that the functioning property system of the Indians should be abolished. Senator Dawes revealed his attitudes toward Indian property in 1885 when he stated that:

> The head chief told us that there was not a family in that whole nation (one of the Five Civilized Tribes) that had not a home of its own. There was not a pauper in that Nation, and the Nation did not owe a dollar. It built its own

> capitol...and it built its schools and its hospitals. Yet the defect of the system was apparent. They have got as far as they can go, because they own their land in common. It is Henry George's system, and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each one can own the land he cultivates, they will not make much more progress.[64]

Even though Senator Dawes understood that Indians were not concerned with material progress as much as their quality of life, his statement reflects the sheer strength of cultural myths. Attitudes of superiority through material prosperity were and are still directly tied to private property.

These beliefs continue to detract from the Native Americans' right to participate in their own natural law and tribal sovereignty. If we are to take these early beliefs and myths toward land and carry them over into the late nineteenth centuries dealings with the Salish-Kootenai Indians, we can gain a clearer picture of why emotions over land use ran so deep. In addition, we will see that because Euro-American attitudes contrasted so deeply with those of the Salish-Kootenai, the two cultures inevitably clashed when dealing with laws and regulations over people and property on the Flathead reservation.

## CHAPTER III:

## THE POLICY OF ALLOTMENT

The myths pertaining to land and the belief in the superiority of the Euro-American culture were often the motivating force behind government policies toward Native Americans. The most devastating of these government enactments for the Salish-Kootenai was the allotment policy. Allotment forced private land ownership on the Indians by allotting members individual parcels of land and eventually opening up the remaining land within the reservation to non-Indians. The history of allotment and its effects on the Confederated Tribes lay the very foundation for today's jurisdictional problems on the reservation. Allotment was much more than an act that fragmented the landscape, it was an act that tried desperately to impose upon Indians a belief in the superior quality of non-Indian life. All in all, the goal of the policy was to "civilize" the Indian, through assimilation rather than integration.

Paternalistic by nature, the policy of allotment sanctioned absolute control over every political and economic aspect of tribal life. This control forced the Indian to adhere to state and federal laws regarding marriage, religion, education, land and even personal finances. Not only was it destructive to tribal life, but there was an inherent contradiction in the policy. The policy forced United States citizenship on Native Americans, yet refused to render the protection and rights valued in citizenship. Citizenship did not insure basic individual rights like religious freedom or control over one's personal property and finances, because this was not the government's concern when they bestowed the powers of American citizenship on Native Americans. What they did have in mind was to create a motivating force that would

compel Indians to abandon their strongest cultural glue... communal land. Individual ownership, they hoped, would introduce Indians to civilized pursuits and eventually assimilate them.[1] Although the policy did successfully fragment the land, the goal of individualization fell short of realization. The allotment policy failed in its attempt to tear tribal people from their cultural ties; yet for over 100 years, the policy continues to be at the root of many complex problems on the Flathead reservation.

## A Fragmented Landscape

Although the treaty with the Salish-Kootenai was signed in 1855, it wasn't ratified until 1859 and it was in this year that the tribal people were expected to move into the Jocko Valley of the Flathead Reservation. Taking three culturally different tribes and various bands that resided in different localities and restricting them to one small land base was a new kind of stress on all of the tribal people involved. Not only were they competitive among themselves for particular areas of land and resources on the reservation, but they had moved onto their reservation only a short time before whites illegally moved onto the reservation. In only a few years, the Salish-Kootenai began feeling crowded on their newly negotiated land base. In addition, their traditional hunting grounds had been filled with settlers for some time, and these areas were quickly being depleted of resources. In 1868, Agent W.J. McCormick wrote to the Office of Indian Affairs, stating that encroachment of the white man was "converting vast hunting ground into theaters of busy, active industry." We also know that by 1872 the valleys surrounding the reservation were packed heavily with settlers, and that was the main reason for creating the executive order for Charlo and his band to leave the Bitterroot

Valley. Even before Charlo was forced to leave, many members of the tribes had complained of white encroachment. The Pend d'Oreille and Salish were very concerned that the big game they had always believed to be an inexhaustible source of food and clothing, would soon be gone due to the over-crowding.[2]

The new white communities pushed much of the game into different areas and higher elevations, forcing hunters to exert more energy. Dangerous encounters with the Blackfeet , Sioux or Cheyenne Indians became a greater possibility. The annual buffalo hunt in 1868 resulted in the Flathead and Pend d'Oreille tribes losing several warriors in skirmishes with the Blackfeet, and they returned with very little subsistence and few robes for their efforts.[3] By the early 1870's, the Flathead agent reported trespassers on the reservation were using the northern meadows and creeks of the Indian lands because of their rich soil and large quantities of hay.[4] There were also whites who settled on the south end of the reservation and used timber and grazing lands belonging to the Salish-Kootenai. Of course the tribes demanded that the settlers take their cattle and graze elsewhere, but the Indians had no political recourse, and the settlers continued to move in.[5]

By 1883 trespassing had become such a problem that Flathead agent Peter Ronan attempted to scare non-Indians off of the reservation by threatening them with a one thousand dollar fine for trespassing.[6] This threat was supported by Section 2118 U.S. Revised Statute which gave him the power to issue such fines. That same year another incident was equally frustrating for the tribes. That summer, Ronan had tried desperately to remove from the reservation four large herds of cattle that were owned by a non-Indian cattle company. Ronan threatened the owners of the cattle with fines, and ordered

their removal. The owner of the cattle, Mr. Cummings, protested and explained to Ronan that he and his company had grazed their cattle for over three years on a particular area of the reservation with consent from the Indians. The chiefs and headmen who gave the consent were leasing out the land for three hundred dollars a year, which was profitable to them, seeing that they had little use for the particular area being grazed upon. Although Ronan meant well in trying to protect the Indians from whites encroaching on their property, he negatively affected the tribe in not allowing them to make their own decisions politically and economically. The Federal Government did not allow Indians to make economic decisions like leasing land without the consent of Congress, and any money made from such transactions was to be managed by the federal government, not by the Indians themselves.

The encroachment of settlers and big businesses on Indian lands, as well as their own need for grazing and agricultural land, helped fuel the enactment of the allotment policy. Another reason behind the act was the desire for the federal government to protect the Indians from total poverty, as well as to drastically reduce financial expenditure on Native Americans. Some believed that the best way to achieve these goals was to eliminate the separation policy that had been enacted through treaties, and force the Indians to live with, and imitate their white neighbors. It was hoped that once assimilated culturally, the Indian would be on equal footing with every white American, and Native American culture would fade away. In theory, this assimilation would dissolve the reservation boundaries, and the huge federal bureaucracy dealing with Native Americans could then be eliminated.

Interestingly enough, those who pushed the hardest in Washington to allot land to Indians were not those settlers in direct competition for the use of Indian resources. They were the humanitarians of the eastern United States, whose policies concerning Native Americans were well-accepted by leading politicians. Many of these humanitarians had never met an Indian and knew little of their lifestyle or true needs, yet they sympathized with those many Native Americans who were being taken advantage of by the unchecked advances of the white man. They strongly believed that assimilation into the dominant culture would be the only real way to save them. Many of these people took the future and safety of the Indian very seriously, and although they had good intentions, they, like many U.S. policy makers, gave Native Americans little if any credit for knowing what would be best for their own people. Many had little faith in the Indian's ability to adapt, and this lack of faith created a paternalism that ran rampant in humanitarians and Congress alike. Both groups, in almost complete ignorance, marched on with policies to transform the Indian.

Government attitudes toward Native Americans always conflicted, and the Confederated Salish-Kootenai tribes saw the same conflicting attitudes in settlers who came onto the reservation to live. Although there were always whites with good will toward them, there were just as many who had a negative stereotype of the Indian and treated them accordingly. Nothing fostered the negative stereotype more than the very means by which Indians sustained themselves. The white man thought of himself as hard working, future oriented, and a virtuous tiller of the soil. In addition, he could support his family on a fairly small parcel of land. Agriculture, as we have noted before, was the white man's security. The Indian, on the other hand, was

believed to be one who "roamed around," used up a lot of space and took food wherever he could find it.

In reality, the Salish-Kootenai culture embodied many of the same characteristics important to the white man. They too thought of themselves as hard working people with great foresight, but these characteristics were exemplified in culturally different ways. What was considered to be a "good quality of life" for these two cultures differed greatly. The key conflict of course was mobility...a necessity and enjoyment to the Salish-Kootenai, but a direct threat to the white settler's way of life. Settling in one area and fencing themselves off from the community that helped and protected them, or fencing off the land that provided for them, would be regarded as extremely detrimental to the tribal people.

The civilization of American Indians was one of the primary goals of allotment. Even though Indian nations were losing their power to negotiate, they would not let go of their communal life without being separated from their bands or tribes. The first congressional act that called for the allotment of reservation lands was the Dawes Act of 1887, also known as the General Allotment Act. This was a federal act allotting land to Indians on each reservation and reserving the right to open the remaining land to non-Indians in the future. The size of grants depended on the individual's family status and age. For instance, the head of a particular Salish-Kootenai family would receive 160 acres, individuals over the age of 18 and orphans would receive 80 acres, and those under 18 were to receive 40 acres. Those who opted to raise livestock rather than farm would receive additional acreage.[8] The allotment policy aimed to transform the Salish-Kootenai in every way; from creating a new kinship organization, to an adherence to new political

organizations and economies. The policy took precedence over any future legislation dealing with Native Americans until the policy was transformed under the Indian Reorganization Act of 1936.

For an example of how intent the US. was on transforming the Indian, we can look at six of the eight points of Indian policy put forth by Indian Commissioner Thomas J. Morgan in 1889. The following six points summed up the common theoretical approach by white America toward Native American policy and the support for the allotment policy.

> (1) The Reservation system belongs to the past, (2) Indians must be absorbed into our national life, not as Indians, but as American citizens, (3) The Indian must be "individualized" and treated as an individual by the Government, (4) The Indian must "conform to the White man's ways, peaceably if they will, forcible if they must," (5) The Indian must be prepared for the new order through a system of compulsory education, and (6) The traditional society of Indian groups must be broken up.[9]

The 1887 Dawes Act essentially embodied and tried to implement the previous points, denying the Indians inherent right to govern themselves, as well as those rights stated in their treaty. In fact, whatever the Indians thought they agreed to in the Treaty of 1855, the policy of allotment was to enact the opposite. Although it was indeed forced assimilation, the allotment policy did intend to promote gradual transformation. The allotments to individuals were made so that the allottee was prevented from selling the land for 25 years. This stipulation was designed to protect the allottees from having their property transferred to settlers, as many Indians would have been willing to sell at an extremely low price and would then likely remain landless. The allottee was also protected from state or territorial government taxes for the first twenty-five years, and the President had the power to extend the trust status on the property indefinitely if it was in the Indian's best

interest.[10] This was of course a necessary protection, as Indians were not capitalists at heart, and had few if any means to make money and fully integrate into a cash economy. Although stipulations like the 25 year trust period were meant to protect the Indian, what they often did was keep Indians like the Salish-Kootenai from deciding how best to run their life and provide for their families. In times of extreme need, and newly surrounded by a cash economy, some Indians needed to sell their land as an economic resource. In addition to the other provisions, the final draft of the Dawes Act granted United States citizenship to Native Americans. Citizenship was little more than a statement of intent, but needed to be a part of the allotment policy. It would have been embarrassing to demand of the Indians their transformation into American landowners while denying them American citizenship.

Although Thomas Morgan and other opponents of the reservation policy appeared cruel to some, they were actually interested in protecting the Native American. Morgan was aware that the reservation did not meet Indian needs. Many had lost their hunting grounds and were starving as a result. In various other ways they had been pauperized by the U.S. government and non-Indian settlers. Morgan stated in 1890 that:

> The entire system of dealing with them (the Indians) is vicious, involving, as it does, the installing of agents, with semi-despotic power over ignorant, superstitious, and helpless subjects; the keeping of thousands of them on reservations practically as prisoners, isolated from civililized life and dominated by fear and force; the issue of rations and annuities, which inevitably tends to breed pauperism; the disbursement of millions of dollars worth of supplies by contract, which invites fraud; the maintenance of a system of licensed trade, which stimulates cupidity and extortion, etc..[11]

In spite of Morgan's obvious negative stereotypes of Indian culture, he had certainly pegged the disgraceful situations occurring on Americas Indian reservations, and felt they could be improved through individual land ownership. It was time for a change; however, a policy that did not seek any input from the Indians themselves, simply created a greater paternalism and even greater poverty. Because of the great importance of communal lands, the Salish-Kootenai always protested heavily against the policy that fragmented their landscape. The protests against splitting up the land on the Flathead reservation were initially seen in the late 1880's, but became a serious campaign for the tribes by the turn of the century. The Salish-Kootenai had been denied almost every promise made in their treaty, and were therefore not convinced of the government's goodwill in creating the allotment policy. They spent many years and a lot of money, and used every means possible to oppose it. Because the Dawes Act was implemented without tribal consent, the Salish-Kootenai realized that they had become extremely vulnerable. Their lack of participation in the political process, left them little control over the protection of their people or over the decision making concerning their welfare.

Although the land within the Flathead reservation had been allotted to individual Indians through a federal act, it took an additional act by each state to "officially" open up the surplus lands to white settlers. The Dawes act greatly affected the Salish-Kootenai by allotting land, but the most serious effects came from the Act of 1904. The act is known as the Dixon bill or the Flathead Allotment Act and was designed to sell the excess land left over after all Indians were allotted property. Burton Smith's article on "The Politics of Allotment" specifically deals with allotment on the Flathead reservation.

Smith tells us that although the General Allotment Act was a Congressional Act, it was necessary for each state or territory to draft a bill pertaining to each reservation. He states that "This second legislation, drafted and passed in Congress by men representing state and territorial demands, determined American Indian policy."[12]

The Act of 1904 split up the left over acreage into five types of surplus land for white settlers to purchase. There were first and second class agricultural and grazing lands, as well as timbered and mineral lands for sale. The University of Montana biological station received 160 acres, and later, over 12,000 acres were reserved for a bison range. In addition, there were thousands of acres for townships reserved for the state of Montana and sold to the state for $1.25 per acre.[13] This was a cheap price considering that Northern Pacific Rail had paid the tribes $11.18 per acre almost thirty years before.[14] The money made from the sale of surplus land was to be paid to the Flathead Indians for their benefit. To the white man's mind they were not only putting wasted land to good use, but helping the Indian to become civilized by earning him profits. To the Salish-Kootenai, however, the money made was not considered a profit. The tribes had paid dearly in being forced to sell their land. In addition, they had no access or control over the money made. It was held in trust by the Secretary of the Interior. They were not allowed to manage their own tribe's money, invest it, or use it for their own benefit.

There were other financial restrictions on the tribal people as well. The federal government stated that one-half of the money made for the benefit of the tribes was to be used for the purchase of farm equipment, cattle, and seed to force the Indian into a new economy. In 1912, the superintendent

suggested that the elderly Indians sell the timber off of their land to purchase necessary farming implements. The timber, however, was of much more use to the elderly for a heat and cooking source.[15] The tribal money was also to be used for building irrigation canals for Salish-Kootenai use and benefit. Those Indians farming at this time, however, already had dug their own irrigation ditches and were angry that they would have to pay for something they already had.[16] The tribes would also have to surrender some of their money to pay for the surveying and allotment fees for the white settlers, to be paid back to the tribes at a later date. The money left over was to be dispersed in equal payments to the Indians.[17] Unfortunately, few of the Salish-Kootenai used the irrigation they paid for, and the farming implements were of less use to them than the actual money would have been. In the early 1900's, annuities were not paid for the year, causing many elders to complain of not having the means to purchase needed clothing and food for their families.[18] Even into the year of 1918, the tribes had not been reimbursed for the lands taken. By 1918 the Salish-Kootenai became agitated that large areas of tribal lands had been taken for reservoirs, campsites, and power sites without reimbursement to the tribes.[19]

Total paternalism and control over the tribal people was what the Salish-Kootenai experienced with the implementation of the allotment policy. There were agencies to control where the Indians would live, and exactly how much money they would have. Their spending was completely monitored to insure their transformation as well as to insure enough money to pay for the costs of opening up the reservation. The requirement that Indians would have to pay for non-Indian land surveys, allotments and irrigation, were immediately surfaced as a problem after the implementation of the Flathead

Allotment Act of 1904. By taking a look at some other problems the 1904 act initiated around the turn of the century, we will be able to see why the allotment policy remains so problematic for the Salish-Kootenai today.

**Political Issues**

It is certain that the Salish-Kootenai owned the land within their reservation boundary before the Act of 1904 opened it up to setttlers. The Dawes Act, although it forced private land ownership on the Salish-Kootenai, did not specifically open and sell the remaining land. The Act of 1904 (a.k.a. the Dixon Bill) was, however, much more devastating in that it blatantly broke the promise made in Article II of the Hellgate Treaty of 1855. That treaty declares that the land was set aside for the Salish-Kootenai people, and the first paragraph recognizes that the Salish-Kootenai are indeed a sovereign nation with Victor as the nation's chief. The United States agreed to certain stipulations on the reservation as stated in Article II:

> All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes, and superintendent and agent.[20]

Without the Indians ever consenting to it, the Salish-Kootenai land reserve allowed non-Indians to work, live and use recourses within the reservation. The government abandoned its promises and agreements, and even betrayed its own federal employees by not supporting them as they tried to carry out the duties of their job description. Federal agents on Indian reservations were originally hired to serve and protect the Indian from the encroaching white man. The agent was also the middle man who

communicated problems and needs between the tribal people and United States government. Correspondence beginning with the late 1800's through the turn of the century shows that the federal agents on the reservation were powerless to protect the Salish-Kootenai from the intrusions of cattle ranchers, settlers, and big businesses like Northern Pacific Rail, who used tribal resources to build their railroad.[21]

In 1882 the tribes had protested Northern Pacific's infractions by harassing the survey crews to the point that they were forced to shut down their work until agreements could be reached.[22] Chief Eneas was not afraid to voice his distrust of the American government or of American businesses. During the negotiations between the railroad company and the tribes, Eneas questioned the Attorney General who negotiated for Northern Pacific:

> Who established the lines of this reservation? It was the Great Father that got these lines established. Why does he want to break the lines? If we had no lines I would say no word. Lines are just like a fence. He told us so. No white man is allowed to live and work on the reservation. You know it is so in the treaty. That is the reason I say you had better go the other way. Why do you wish us to go away? It is a small country; it is valuable to us; we support ourselves by it; there is no end to these lands supporting us; they will do it for generations. If you say you will give us money for our lands, I doubt if we get it, because we didn't get it before.[23]

Eneas believed that the land they had reserved for themselves was quite capable of supporting all of his people, if they were left alone. He was frustrated in his attempts to protect tribal resources by government failure to uphold the article in the treaty providing for Indian consent to allow whites on the reservation. Eneas wanted to know why the American government felt no need to follow the policy of cultural separation that they had created. Ironically enough, when the Salish-Kootenai wanted businessmen and settlers off their land, most were allowed to stay and carry out their business.

But when Indians leased land to non-Indians to generate income for the tribe, those non-Indians were usually forced to leave.

The allotment Act of 1904 demanded that the Salish-Kootenai adhere to the accompanying changes. They were impacted in more ways than just the actual loss of land, as the policy tossed the Indian under new systems of jurisdiction. Often, as is still the case today, various jurisdictions were asserted over the Indian because Indians and non-Indians had become neighbors. Vulnerability could not be tolerated by non-Indians, and so "civilized" law was imposed upon those thought to have few if any social norms or a moral consciousness. Full jurisdiction over the Indian could be implemented and easily justified. The government's policy of assimilation through allotment was so ambiguous that the stipulations could be interpreted in any way one saw fit. Jurisdiction on the reservation had not been planned out in any detail when the Allotment Act passed, and now that the government had checkerboarded the reservation, Indians, whites, federal, state and county bureaus all contended for jurisdiction over people, land, and resources within the reservation boundaries. If Indians traveled anywhere within the reservation, they often found themselves subject to non-Indian jurisdiction. Being forced to adhere to non-Indian rules and regulations was nothing new, however, as the Salish-Kootenai had had several encounters with state and county officials who illegally assumed jurisdiction over the tribal people long before the turn of the century. State game wardens had refused to let the Indians continue hunting for food without state restrictions being imposed on where and when they could hunt. Generally these restrictions were applied to hunting both on and off the

reservation; however, after the reservation was opened up to settlement, jurisdictional disputes became extremely prevalent.

After the opening of the reservation to whites, letters came pouring into Washington from members of the Salish-Kootenai tribes. A letter from Sam Resurrection in 1910, explained to President Taft that there could not be two different sets of laws existing on the reservation. Sam identified the fact that as two nations, they were divided culturally. He believed that because their laws were different, they could not live together, and that forcing white laws upon the tribes had created a racism against all non-Indians. Sam further stated that it was not only non-Indian law he was opposed to, but those mixed-bloods who carried out white laws. By 1910, Sams' people were being controlled by Indian police officers and judges that were not tribal members. They had been appointed by the superintendent because of their progressive attitudes.[24]

How did jurisdictional problems develop, and how did the Salish-Kootenai lose much of their ability to maintain their political and legal authority within the boundaries of their own reservation? There were of course several factors playing a part, as new laws, both civil and criminal were applied to the Indian when-ever it was to the white's advantage. Some of the rationale for forcing the Indian to fall under white jurisdiction had to do with their new American citizenship. It was clear to some officials that many of the Indians were US. citizens through the allotment policy, and that laws should be applied equally to all citizens. Indians were considered Montana residents as well, because it was rationalized that the reservation boundary no longer existed after the 1904 Act. Therefore, the Salish-Kootenai were to obey Montana state laws. In addition, fee patents offered to "competent" Indians

meant they would pay taxes on property, opening up the jurisdiction over Indian property by the county and state.

By taking a look at how the land was split up and distributed, we will see how today's jurisdiction problems on the Flathead reservation have come about. The details are disturbing to tribal people. They know that their land was taken without their consent and without remorse. But to find out that Indians were relocated several times after whites choose the finest land available, and how government acts allowed land to be taken for purposes benefiting white interests, is beyond the understanding of many tribal people even today.

It is important to remember that it was approximately thirty years after the signing of the treaty with the Salish-Kootenai that their land base was split up, and less that fifty years before their reservation was entirely invaded and their culture suppressed by an overwhelming and determined people. The redistribution of land came swift and hard in 1910 and within a few years, Indians owned only a small portion of their entire reservation. Anthropologist and economist Ronald Trosper tells us that the allotment policy transferred thousands of acres into non-Indian hands. He also states that in 1954 the land-lease clerk for the tribes estimated that fewer than one percent of the allotments on the reservation were still held by an Indian owner. Trosper goes on to note that:

> Based on the 1904 Act which started the process, a total of 485,171 acres were disposed of . These dispositions were of three types. Land patented to settlers totaled 404,047 acres; these lands were "normal" and "cash" homesteads. School lands granted to the state of Montana totaled 60,843 acres. The other dispositions were miscellaneous; of this group, the creation of the National Bison Range was the largest, consisting of 18,524 acres. The total miscellaneous dispositions were 20,281 acres.[25]

The school lands were sold to the state of Montana for $1.25 per acre, and any Indian who already had a permanent home on this land was forced to relocate. These 60,000 acres of school lands took approximately 92 square miles of reservation land from the Salish-Kootenai. Section 12 of the bill also reserved almost 1000 acres for the Catholic mission schools, church and hospital, as well as any other institution they saw fit to establish. The President reserved the right to offer the same amount of property to any other missionary or religious society that applied within a year after the bill was passed. In addition, the President had the right to reserve any areas needed for government agencies, mills, institutions, and the like. Actual Indian allotments totaled 245,00 acres, only about one-fifth of the total reservation.[26]

In the midst of the confusion on the reservation came an overwhelming desire to get back the land that the Salish-Kootenai had so quickly lost. Without doing so, they had little hope of ever managing their personal lives or property. They had in a short time lost hundreds of thousands of acres to non-Indians. The tribes protested the allotment policy through several means, and the full bloods especially initiated many protests over the years. The following correspondence in the archives gives us a look at their concerns, their methods of opposition and, the intensity in which opening up the reservation devastated the lives of individual Salish-Kootenai members.

The Salish-Kootenai were unfortunate in having W.H. Smead as agent around the time the Dixon Bill was passed. Smead had quite a reputation for doing business on the reservation, and most of his business came at the expense of the Indians. Smead was agent from 1898-1904...a critical time in trying to get tribal voices heard in the government. Smead was all for the opening of the reservation, and his illegal practices on the reservation made

his political views very apparent. By the early 1900's he was involved in several business dealings with white business owners, many of them from nearby Missoula. Much of his business had to do with leasing Indian lands and the resources on it while he pocketed the money. He not only let his own cattle graze illegally on tribal land, but he advertised to outsiders that he would lease the entire northern part of the reservation for grazing. Grazing fees were pocketed by Smead, although many of his close cronies were allowed to run cattle on the reservation without paying anything. Smead denied all accusations of allowing non-Indians to run cattle, but both the Hubbard Cattle Company and Missoula Mercantile held grazing permits.[27]

Although Smead denied having done anything illegal, his comments reflected the actions he was accused of. He argued in 1903 that the Indians were being selfish with their land, and that they should be required to pay for the lands on which they ran their cattle, and that any land in excess should then be leased to whites.[28] Around the turn of the century, the businessmen of Missoula were especially bent on opening up the reservation to help stimulate their own businesses. They were owners of everything from newspapers and banks to real estate agencies and mercantiles, and were just the political force needed to help pass the Dixon Bill. Shortly after the bill passed, Agent Smead published a book to promote the opportunities available on the reservation to attract newcomers. In his book he advertised the services of all of the big business owners from Missoula. He included ads for his real estate, loans and insurance company that specialized in sheep and cattle ranches as well as land located on the fertile soil of the reservation's rivers and lakes.[29] From the book one could have hardly had the impression that Indians and whites would be living anywhere close to each other. The

book is full of pictures of cities, libraries, schools, court houses, farms, steamers, mills and other industries. Many of the buildings pictured were located in nearby cities outside of the reservation, but Smead had the dream of making the reservation into a similar empire. Even the pictures of Indians were of only two types. They showed either the peaceful, noble Indian dressed in full ceremonial garb, or Indians who simulated whites, living in nice houses with their ranches and gardens enclosed by fences. Smead wrote in his book that the reservation was still underdeveloped because "The Indian works fairly well for another, but not so for himself. He needs the guiding hand of one in authority."[30] He further wrote that the:

> Flathead Reservation will when opened to settlement furnish land for thousands of settlers, where by labor, industry and thrift, happy and prosperous homes will be builded. Great mines will open up, adding their quota to the world's wealth. Smelters will be erected to reduce the ores. saw mills will cut the virgin forests into lumber. Flouring mills will be required to grind the wheat. Cities will spring up to handle the business of this new country, and railroad will be builded to haul its products to market. Steamers will ply over the great Flathead Lake and on its shores summer homes and health resorts will be built. The abundance of fish and game together with the perfect climatic conditions make this an ideal spot for camping, hunting and fishing.28 Marvel not that the red man is loath to share his lands with his white brother. This, to him the fairest, the dearest, the brightest of earth, the last remnant of his former greatness will soon pass from him. So must it be.[31]

Because of all of his open business dealings, Smead had quite a reputation around the cities of western Montana. He began receiving letters from people in 1904 that asked for his help in securing lots near Dayton, Montana that were in a boundary dispute with the Salish-Kootenai. The tribes were sure that the areas they were living on was located within the boundaries as stated in the Treaty, and they remained on their allotted land. There were, however, many non-Indians interested in the particular strip of land near

Dayton, and they asked the Agent to relinquish the tribal allotments so they could be secured by outsiders. Smead had been pressured to sell those allotments to a member of the Republican Central Committee, and even to a Clerk at the United States Land Office within the Department of the Interior. The federal employee wanted the relinquishments because his son wanted to secure a timbered lot, and so he sent Smead the names of the particular Indians that he would like to have removed. He then told the Agent that what ever the price, the money would be sent immediately.[32] Smead apparently requested the relinquishment of certain lots but although a few families moved, he had no real authority as far as the tribal members were concerned and most Indians refused to leave, remaining on their lots. It is doubtful that any of the land near Dayton was really considered to be disputed. Dayton and its surroundings are well within the reservation even as it is stated in the treaty of 1855, and this is probably why Smead's demands for the Indians to re-locate were ignored. The agent continued receiving letters throughout 1904 from people inquiring why the Indians near Dayton had still not given up their lots.

Around this same time, many members of the tribe wrote government officials in Washington protesting their land being taken and protesting the actions of their agent. When they got little response, the tribes tried direct pressure by sending delegates to Washington D.C.. In Washington they had hoped to settle the problems affecting the tribes by directly communicating with those making and implementing laws on the reservation. The Salish-Kootenai had become aware that in order to make any lee-way in protecting their rights as a distinct culture and nation, they would have to deal with America and its people on their own terms. The Salish-Kootenai had to be

savvy, and considering the incredible obstacles, they were quite efficient in the way they handled political matters. They knew when to speak up, when to let things ride, when to compromise, and when to ignore government threats. They never stopped corresponding with the government requesting that their wishes be met. Indians constantly rebelled against those who tried to take their land under various pretenses. Their rebellion was usually peaceful. If one looks in the archives at all of the instances when the Salish-Kootenai were asked to extinguish title to their allotments and relocate, one finds that the same method of rebellion was used by almost every Indian. They simply wouldn't do what the government required of them, nor would they immediately contest demands from government officials, therefore remaining peaceful in the eyes of non-Indians.

There were several prominent members of the Salish tribe that had a constant voice in opposing those who had forced the Indians to split up their reservation. These prominent figures realized that the tribal voice was being ignored in Washington, and that they had few resources to depend on for any kind of legal help. Hiring lawyers was difficult, as the Secretary of the Interior had control of tribal as well as personal Indian moneys. The Secretary could permit the tribe to use its own money only if it was to be spent on farming implements or other "civilizing pursuits." Even then, the money was usually given to the agent to spend for the Indians, or the Indians would get some kind of voucher to buy certain implements at stores with inflated prices.

Complaints about the extreme control the government had over Indians and about losing their land to non-Indians seemed to go nowhere when they discussed matters with local officials, so in 1908 the tribes decided to send

three delegates to Washington with claims and complaints against the United States. Although the tribes wanted to send Babtiste Kakashee, Charley Mollman and Sam Resurrection, they couldn't secure enough tribal money, and therefore chose only one delegate, Babtiste, and an interpreter by the name of Jackson Sundown, to discuss matters with the President, the Secretary of the Interior, and the Commissioner of Indian Affairs.

After a long trip to the capital, Babtiste and Jackson were immediately denied access to the government officials they had come to talk with, because apparently they did not have the consent of the Flathead agent to make this trip. The Acting Commissioner who briefly spoke with the two delegates also claimed that they were not carrying proper credentials from their tribe. In other words, the Commissioner claimed that he did not believe that Babtiste was actually a chosen representative of the Salish-Kootenai tribes, because he had no certifying document from the agent. Although the Commissioner stated that he did not believe Babtiste was a political representative, he was indeed aware that Babtiste was the same Headman who signed the Treaty with the U.S. government representing various Pend d'Oreille people in 1855. The fact that Babtiste was seventy-three years old and had traveled so far in great discomfort was the only reason anyone in Washington even bothered acknowledging his presence. His time in Washington was brief, but Babtiste was able to state a few of the tribes complaints, which ranged from the protest of the Dixon Bill to demanding that white people be stopped from enrolling in the tribal nation and receiving tribal benefits of money and land. The Acting Commissioner listened briefly, but then either justified the actions that caused the complaints or told Babtiste that he found no merit in his claim.[33]

Not only were the tribal claims simply dismissed by the officials in Indian Affairs, but the official Headman who signed what is to this day the most important document of the tribal nation was denied his authority and sent home. This was probably not a surprise to Babtiste. He knew that to get permission to discuss matters in Washington, he would have had to have a document signed and notarized by the agent, a witness, and an interpreter. All three were non-Indian, and all three would approve only those who could best represent the "progressive" aspects of the tribes. Babtiste was far from progressive. It was well known that he hoped to return his people to the traditional economy of hunting and fishing. It was also well known that those like Babtiste who were less assimilated would not be allowed by government officials to officially represent the tribes, even if they were chosen as representatives by the tribe. It is for this same reason, that in later years tribal politics were run predominantly by mixed-bloods and any others showing "progressive" attitudes.

This brings up the topic of tribal factions, which were obviously in place by the turn of the century. There were those who vowed to remove the allotment policy and the whites who came with it, returning to their traditional economy. Others had already been forced to farm, and had been well exposed to non-Indian education and other social institutions and felt it was best to try and fit in with the dominant culture as best they could. Those that refused to fit in with white society, sometimes found themselves in unexpected troubles with their own families. A young Indian couple wrote to President Taft in 1910 and explained that rumors spread by whites had gotten them in deep trouble with their family and their community. The couple explained that they were at the fourth of July Indian celebration, when

governor Joe Dixon approached them and asked if they would pose for a picture with him. They refused because of their strong opposition to Dixon opening up their reservation to non-Indians, but the picture was taken anyway. The photo later became a national postcard showing Dixon standing next to the Salish-Kootenai couple. The interpretation under the picture read "we'll open this reservation together."[34] Incidents like this one were common, and quite capable of creating conflicts among tribal members. In addition, it is essential to keep in mind that there were thousands of Indians of various backgrounds that had been forced to unite on some political level to protect their land base. As one can imagine, the differences in spirituality, economy, and political goals, also made this union nearly impossible. These factors complicated matters and made it easier for federal officials to dismiss any tribal authority they opposed.

Although uniting on a political level was hard to do, there were always those leaders that continued their opposition to the allotment policy. Babtiste was a leader who refused to give up easily. Only a few months after his disastrous trip to Washington, he decided to return with something that would perhaps urge officials to take him more seriously. First, Babtiste gathered all of the information on the non-Indians who were securing their allotments on Indian lands. Babtiste claimed that a lawyer by the name of William Q. Ranft located in the town of Missoula had been paid by various individuals to secure their tribal enrollment and an allotment. Babtiste apparently took this information along with the specific names of parties who had paid Ranft. Before heading to D.C. again in 1909, Babtiste stopped in Missoula to see an attorney by the name of Chas Hall. Chas knew Babtiste as well as the many other Indians who were escorting Babtiste on his way to

Missoula. Among the escorts were Jackson Sundown, Antoine Moise, Martin, Loaman Vandred, Sam Resurrection, Paskel Antivine, and Joseph Pierre. Chas wrote Babtiste a letter to take to the capital that acknowledged his credentials for representing a good portion of the tribe. In addition, Babtiste was already carrying a petition signed by members of the Salish-Kootenai tribes acknowledging their respect and confidence in the delegates that would speak for them in Washington. In Hall's letter to the Commissioner of Indian Affairs, he personally requested that the delegates be heard this time even though their credentials would not be in the form required by the federal government.[35]

Chas Hall had obviously been informed that Babtiste had again not received permission from the agent to go on his visit to Washington. In fact, Flathead Superintendent Fred Morgan wrote a letter to the CIA just two days before Hall, stating that he had asked Babtiste to delay his trip, but Babtiste refused and stated he was going at once.[36] It was hard enough for the Salish-Kootenai to access any legal help that had real power to defend their interests, and this left the tribal people extremely vulnerable. Even when a tribal member with great political power within the nation dared to confront the U.S. policy makers, his protest was immediately subdued by tossing him under federal or state jurisdictions. The Delegation of 1909 exemplifies the methods in which Salish-Kootenai members protested, and the ways in which they were subjected to another culture's dominance by having new laws imposed upon them at the government's discretion.

What is not immediately revealed in the correspondence of 1909, is that Babtiste was for many years a tribal judge who seemed to have gained respect not only from fellow tribal members, but from many of the non-Indian

people who knew him. There is no doubt that he was quite frustrated in having to get permission and a stamp of approval from the agent before discussing the political issues of his nation with government officials. On his trip in 1909, there were additional complications imposed upon Babtiste by the Flathead Superintendent, Morgan. Knowing that Babtiste would probably decide to ignore the Superintendent's request that he stay on the reservation and wait to go to Washington, Morgan apparently told Babtiste that if he was going, he would have to take with him a different interpreter...one assigned to him by the superintendent. It was said that Babtiste agreed to take an interpreter by the name of Joe Pirerre.

If Babtiste did agree to the new interpreter, he had absolutely no intention of keeping his promise. Babtiste and Joe rode to Missoula, visited Chas Hall, and then Babtiste quickly dumped Joe and continued to Washington with his own chosen interpreter, Jackson Sundown. When the two arrived in the capital they stayed at the Beveridge's Hotel. There they received a letter on February 22 from Acting Commissioner R.G. Valentine explaining to them that once again, the two could not be recognized as representatives of their tribe, and were therefore dismissed. This time it had nothing to do with proper credentials, but rather the fact that Babtiste brought Jackson instead of Joe as interpreter. The office denied Babtiste any authority because first he broke his promise to the Superintendent, and secondly, as stated by Valentine, the interpreter by the name of Jackson Sundown was not "legally" married. When he was requested by proper authorities to get married, it was said that he "insolently and impudently refused to do so." In addition to the concern about Sundown's marriage status, it was said the government

believed that for a man with his intelligence, he was not setting a good example for his people.[37]

As absurd as this reasoning appeared, it is an important example to remember today. Babtiste, although a powerful man in the eyes of his people, had little if any real political power without totally conforming to the dictates of white America. As we will see in the next two chapters, the Salish-Kootenai have continually been forced to conform and compromise in order to remain peaceful and retain their nation's political power. Even today the tribes have to compromise in one area so that they can retain other powers, and for non-Indians who have little understanding of this concept, the tribe's authority may sometimes appear to be shaky.

For the early part of the twentieth century, it appears that the less the Salish-Kootenai were recognized in having valid claims, the harder they tried to be heard. Delegations to Washington became a continuing strategy, and there are records of the Salish-Kootenai sending delegations to the capital on an average of every two years from 1908-1935. The year 1910 was a stressful one for the tribes, because this was the year the reservation would actually be opened to thousands of settlers. The reservation was opened in the spring, and by July the tribes had more grievances than ever to present to Washington. A letter from the Department of the Interior on July 17, 1910 reveals the matters addressed by a delegation of the Salish-Kootenai at that particular time. The letter is in answer to 25 direct statements and questions put forth by the Salish-Kootenai that pertain mostly to problems directly related to land. The tribes had complaints ranging from errors in the reservation boundary to settlers' trespassing on private property. In addition, they requested permission to charge white settlers for the cattle that grazed

illegally on tribal property. The Commissioner of Indian Affairs who replied to the delegates either denied wrongs done to the tribes or circumvented each one of the questions. One complaint made by the tribal delegates was that the allotment policy had made provisions to sell tribal land to the state of Montana to be used for schools and other necessary purposes. The sale per acre to the state was only $1.25, and the delegates asserted that they were being cheated. After all, this was 1910, and they had been selling acreage back in 1882 for $11.20 per acre. In addition to not making any money from the sale of surplus land, the tribal people themselves were not happy with the allotments they had received. Many complained that they had not received the actual plot of land that they had picked out, and demanded exchanges or the right to sell their land and move elsewhere. They received neither. Allotees also complained of being invaded by settlers because they couldn't legally prove where their property boundaries were. Survey corners could not be located, and yet the Federal government insisted that the tribe's money had already been spent to survey each allotment.[38]

Other requests to the federal government by the tribe had to do with allowing the tribal elders and the infirm to sell their property because they had no other means to care for themselves. The Salish-Kootenai were losing the social structure needed to care for their elderly and other tribal members in need. This request was denied as well. The Indians were simply told to make their needs known to the superintendent if they felt it necessary.[39] One of the tribes' biggest problems that allotment had brought with it was paternalism. The Salish-Kootenai were not allowed to sell land, one of their only commodities, nor could they lease it. In addition, any personal money or tribal income was controlled by the Secretary of the Interior.

Indians who were aware of wrongs done by both settlers and local and federal governments, caused some animosity among those who would have preferred the Indians to remain ignorant. The Flathead Superintendent Fred Morgan, who was in charge during the opening of the reservation, appeared to be one of these people. He wrote to the Commissioner of Indian Affairs several times complaining of the many "ignorant" Indians who opposed non-Indians settling on their land. In 1915 there was a reference to the Commissioner of Indian Affairs about the letters and correspondence that tribal member Sam Resurrection wrote to the government over the years. Superintendent Morgan stated that "Mr. Resurrection is a medicine man who exists off of old and ignorant Indians who for the time being seem to believe in his powers to accomplish great achievements." The letter goes on to say that besides being a chronic letter-writer who wastes his efforts on the hopes of restoring the reservation to the Indians, Sam isn't to be trusted, as he hasn't paid back any of the money borrowed for his delegation five years ago. Along with his personal judgments about Sam, Morgan passed on a letter from Sam Resurrection to the Commissioner. The letter was strong in reminding the government that the Salish-Kootenai were not being treated in a fair, respectable manner. It also reminded them that the land had been taken from the Salish-Kootenai through the allotment policy and it was not the government's right to do so.[40] In addition, Sam reminded them that there were many unfortunate aspects of having someone else have so much control over his tribal people. He knew that several of the Indian agents and superintendents had their own agendas, and didn't want the Indians meddling in their business affairs. The federal officials had done more than their share in complicating the situations for Indians.

Relocation and receiving different allotments from the ones chosen, continued to be major problems for years to come. For instance, in 1904 Indians Joseph Jean Jan Graw and Malta Sachkolke protested their removal from their allotments, but were removed anyway because the government was not sure if their allotments were located inside the reservation boundaries. Any time a conflict arose over reservation boundaries, the federal government's response was that they were not sure if the boundaries had actually ever been surveyed. The survey had indeed been done, but since the signing of the 1855 treaty names for geographic landmarks had changed, making it difficult for the government to know exactly what geographical boundaries marked the reservation. The properties of Joseph and Malta, as well as the many others that were removed, were promptly requested by white settlers as soon as they found out that the land office was in the process of removing the Indians. Time was certainly never wasted listening to the arguments made by the Salish-Kootenai when there were opportunities from outsiders to purchase the land. If the tribal people could not prove their boundaries, than they could lay no claim to them as far as white settlers and the Land Office were concerned. The General Land Office located in the nearby town of Kallispell had the responsibility of allotting land to both Indians and non-Indians and clearly had little patience in determining right from wrong. They found it easier to remove the tribal people and sell the land in question to any settler that requested it.

For all of those prime properties lost and sold to settlers, it was later found by those who appraised the land for the Salish-Kootenai litigation against the federal government in 1972, that the tribes had only received 18 percent of the appraised value on the land they sold under the Act of 1904.[41] During the

litigation, the Court of Claims found that by 1951, the government had paid the tribes for only approximately one-seventh of the land taken. In addition, they found that the 1904 Act created a taking of property forbidden under the fifth amendment, and thereby awarded the tribes over twenty-one million dollars.[42]

The policy of allotment destroyed many individual tribal members economically. In addition to not receiving the money for their individually appraised allotments, many Salish-Kootenai found themselves struggling to pay taxes on a piece of property they couldn't afford. Before the Dixon Bill opened up the reservation to whites, the Dawes Act had previously held that the land of each allottee would be held in trust for twenty-five years. At the end of the twenty-five year trust period, they would receive a fee patent on the land entitling them to full benefits of ownership. The end of the twenty-five year trust meant that the Indian would pay taxes on the land, but would also be able to claim all rights to the land and sell it if necessary. Under the Dawes Act, the President had the power to allow Indian property to remain in trust status, but under the allotment act, they automatically became US. citizens. Because citizenship meant paying property taxes which pauperized most Indians, Native American citizenship was amended by an Act passed in 1906. The amendment stated that they would not become citizens until their allotments passed from trust to fee status. This same act, however, empowered the Secretary of the Interior to issue a patent in fee before the end of the twenty-five year trust period if the Indian applicant filed for a fee patent, or was shown to be "competent" by the federal Competency Commission. Each application for a fee patent was to be considered on its own merits and on the basis of a report from the Agency superintendent.

Patents in fee were not to be issued without Indian consent; however, when the cities and counties needed to generate more income, taxing the Indians became a great opportunity, the Competency Commission gave competency status to many Indians on the Flathead reservation without their consent.

For the federal government to determine competency was in itself ambiguous, and violated the twenty-five year trust period. "Competency" had no bottom line definition other than a person's ability to "manage" his or her own financial affairs. In reality, the government only wanted to know whether each Indian had the "ability" to pay taxes on their property. As many Salish-Kootenai knew, earning an income from forced farming was hardly a reality. Their life was not oriented toward business enterprise and profit, nor did they necessarily desire such a way of life. The yearly taxes were impossible to earn, forcing many to sell their land. Settlers, cattle ranchers, and white business interests further pauperized the Indians, by refusing to pay a fair price for Indian land.

Many of those Salish-Kootenai who were forced to pay taxes on their land either refused, or took their cases to court in opposition of the commission set up to determine competency. The tribal people complained that they had been determined to be competent without even being thoroughly investigated and without giving any consent. Most of the complaints referring to the issue of forced fee patents turn up in the early 1900's. With surprising consistency, the tribal people opposed these forced fee patents and any other imposed fees that went with the process. For instance, many refused to pay the county clerk the $5 to $7 that was required for receiving the patent. A letter from Superintendent Charles Coe to the Commissioner of Indian Affairs complained that the Indians "refuse to pay the costs, holding

that as the patents were arbitrarily issued them without their consent that no expense should attach in the matter of having the patents canceled and that expense for such an abstract should be borne by the Government."[43]

The Allotment policy created incredible amounts of confusion and sorrow for the Salish-Kootenai people. Without consent, they were not only forced to pay a property tax, but a tax on personal property as well. Anything believed to be gained materially by the profit of owning land was taxed by the county. Eventually, so many of the Salish-Kootenai as well as other North American Indians protested taxation, the act was rendered invalid by the Federal Court decisions of *U.S. v. Kootenai County, Idaho*, and *U.S. v. Benewah County, Idaho* , and the government agreed to cancel the fee patents issued. Although this was finally a victory for the tribes, much of the damage had already been done, as the federal court didn't even hear the Benewah case until 1923. Many of the Salish-Kootenai had already been forced to sell their land before the 1920's, and for those who struggled to pay their taxes over the years, the government refused to simply cancel the patent and return the money spent paying those taxes. It has been estimated that there were approximately 450 forced fee patents, and only 32, or seven percent, of those patents were ever canceled on the Flathead Reservation.[44] Mrs. Mary Blood, Angelic Bartl, and Mr. and Mrs. Ladderoute are all examples of the further complications endured by the Salish-Kootenai after the court rendered fee patents invalid.

Mary Blood was issued a fee patent in 1917, and had struggled to pay the taxes on her land for over eleven years before her requests for reimbursement were complied with in 1929. Mary did receive a refund on the taxes she paid on the land, but the government denied that the twelve years of taxes she

paid on personal property should be reimbursed. Ironically enough, she was being taxed on the very property and material goods that the government demanded she and other Indians have. Personal property taxes were to be paid on everything from cattle and other livestock, to household goods and farm implements. Mary's complaint was that the county should remove the things originally purchased or built by her husband so she could avoid paying taxes on the unnecessary property. While Mrs. Blood's husband had made these purchases, he had also abandoned his wife and children leaving them financially responsible to pay taxes on his personal property.[45]

Angelic Bartl on the other hand, refused to accept her patent in fee, and refused to pay any taxes on the land or lease it out to pay for the taxes. By 1929 she had several years of taxes held against the land, but she was fortunate in that the county authorities didn't take action to sell the land to pay for the taxes. The county's selling the land was a common occurrence if it was valuable enough for someone else to put a claim on it. To avoid paying the taxes, Angelic Bartl had to furnish her title to the land and show any entries against the land.[46] For instance, did she have any judgments, leases, contracts to sell, or any mortgages against the land? If she had, she would have perhaps lost it all. It was absurd to require proof of liens or mortgages against the land before being relieved of the wrongs done by the government, because some tribal members could not read or write English and could not complete the required process of proving liens and mortgages. From viewing the correspondence of the early 1900's, it is clear that to fight for one's land, writing and reading correspondence was an absolute necessity. Mary Blood was fortunate to have been well versed in the English language. There were well over 20 letters written between Mary, the superintendent or agent,

Department of the Interior, and the county over a period of several months before anything was settled. Angelic Bartel, who knew less English, found herself in a case that took almost two years to settle. After the first year of getting nowhere, she was forced to come up with the money to hire a lawyer to represent her. Those who had to pay for help in opposing the wrongs done by government policies were often at a great loss financially.

The last example of a tribal family's complications from forced fee patents comes from the Ladderoute family. Like so many, they too held out from paying taxes as long as they could. When the County authorities pressured them by threatening to sell their land, they took out mortgages on their property, but this measure only continued to increase their massive debts. They held out for several years, continuing to protest their patent in fee, but the Department of the Interior simply denied their requests. They refused to strike out the illegally imposed fee patent, because the couple had taken out a mortgage on the house to pay for taxes.[47] According to the government, taking out a mortgage meant that the property had to remain under fee patent status. This was a common disaster for many Salish-Kootenai because mortgages were almost always taken out just to pay the property taxes that were forced upon them illegally.

The allotment policy was no doubt devastating to the Salish-Kootenai. For them, control over every aspect of their future had fallen into the hands of outside governments with the force of law behind them. Federal and state acts pertaining to allotment on the reservation never contained specific plans for implementing the policies and therefore failed drastically. The goals of totally assimilating the Indian while protecting their property were never reached, and there were no policy specifics that laid out legal matters and

jurisdiction on the reservation. Jurisdictional confusion worked against everyone who lived there. Needless to say, for the Salish-Kootenai the most reasonable solution to these problems was to have all non-Indians removed from their land. Opposition to the allotment policy and demands to have whites removed became intense by 1904 and continued for many years.

# CHAPTER: IV

# POLITICS AND THE PAST

With an understanding of the history of allotment, we are able to see how the land within the reservation boundary was split up and how the tribes were overwhelmed by the control exerted over every aspect of their lives. With the division of land came the messy division of jurisdiction over all people living on the reservation. Deciding who should have authority over persons, property, and resources depended on several factors, and the ambiguity in federal laws pertaining to Native Americans allowed for plenty of debate. What the Salish-Kootenai found is that law was often implemented by whichever authority could argue or justify their case most meaningfully. With the opening of the reservation to whites in 1910, federal and tribal laws had to coincide with state laws that were to be enforced upon the non-Indian neighbors of the Salish-Kootenai. In the beginning, however, the state appeared more concerned with trying to bring tribal members under state laws, than to enforce federal or tribal rules on the settlers. One of the most controversial topics of those days was the control over fish and game rights, and it is here where we begin to see how the clash of jurisdictions directly effected the evolution of game laws on the reservation.

## Jurisdictional Confusion

There have obviously been several factors that existed to create the confusion for both Indians and whites on the Flathead reservation, and therefore neither Indians nor non-Indians have felt fully protected by their representative governments. The lack of consistency in determining and enforcing laws has threatened many residents for generations now.

Reservation law has the potential of being so complex, that few people have gained familiarity with the how's and why's of political decision making. Tribal officials often feel that non-Indians have at times made reservation law more complicated than it should be, because they have failed to understand the tribal-federal relationship. Non-Indians therefore do not understand state relations with the tribes, and do not realize when the state has overstepped their authority on the reservation. To understand the history of jurisdiction over fish and game matters, it is necessary to understand the Indian-state conflict over laws. The conflict begins simply because the state and the Confederated Salish-Kootenai Tribes are both sovereigns which must cooperate with each other. When the state applies its laws to Indian people within the reservation, or when the tribes apply regulations to non-Indians, legal disputes arise. The disputes question who will have authority over the matter. Attorneys Vine Deloria and Clifford Lytle state in their book entitled *American Indians, American Justice* that:

> A court's authority to hear and determine a case is usually predicated upon its jurisdiction over (a) the subject matter of the dispute or (b) the parties involved in the dispute (personal jurisdiction). If, for instance, an accident occurs within a state, the state court may assume jurisdiction since the subject matter of the dispute (the accident) occurred within the confines of the state's borders. Personal jurisdiction is invoked when the parties, as opposed to the subject matter, fall under the authority of the court. If two opposing litigants are domiciled within the state, that is, personally and geographically living within its borders, then the state court may assume jurisdiction over their persons so as to entertain jurisdiction.[1]

As the authors point out, jurisdiction is never as easily determined. Historically, deciding whether or not jurisdiction on the reservation fell into the hands of the state or the tribe depended on the status of one's domicile, or whether the violation occurred on tribal, federal, or state owned property. In

other words, did the act occur on land held in trust for Indians by the federal government (trust patented) or was it fee patented land, falling under state taxation and control? The ethnicity of the individual involved in a violation also determined whether the case would be heard in a state or tribal court. Although the previous rules given by Deloria and Lytle were the basis for determining early game laws, we will soon come to find out that those rules were inadequate for determining fairness, and fish and game conflicts were much more complicated to resolve.

Throughout the history of tribal-state jurisdiction on the reservation the problem has been that there are two questions that cannot seem to be answered definitively. The first question is exactly how much jurisdiction should the tribes have over non-Indian people living on the reservation? The second question is how much authority should the state of Montana have over the Salish-Kootenai people? Frank Pommersheim and Anita Remerowski's book *Reservation Street Law* gives us a good summary of the common legal arguments that would be used by both sides concerning the previous questions. Using previously held Supreme Court and lower court decisions, the Salish-Kootenai would generally argue in disputes over jurisdiction on the reservation that they had been continually recognized as a sovereign nation, and they had the right to govern much of what goes on within the borders of their reservation. In regards to hunting, this means they would make decisions concerning when and where people hunt and how much they pay for permits, and arrest any violators of fish and game regulations. In addition, when Indians leave the reservation, they fall under state jurisdiction for any violation, so it would be logical that any non-Indian

should fall under tribal authority when they violate the laws of the tribal jurisdiction.

The state and those non-Indians living on the reservation would generally counter that argument by stating that because non-Indians are not allowed to run for tribal offices, they are not fairly represented in issues that directly affect them. Their constitutional rights as Americans, therefore, are violated if they are to fall under any tribal jurisdiction. They argue that Indians should have absolutely no control over decisions affecting non-Indians who live on the reservation. As Frank Pommersheim and Anita Remerowski point out, when the state wants to extend its jurisdiction over Indians, it simply argues that Indian people have the same rights as non-Indians, in that they vote and can run for political office. Because Indians receive several state services just as non-Indians do, the state may argue in particular instances that they must follow state laws. An additional argument from many non-Indians living on the reservation is that tribal people don't pay property taxes, and therefore the burden of economic success falls to non-Indians on the reservation. In regards to hunting, whites argue that they pay to control and re-stock state fish and wildlife, and they will not pay again by purchasing a tribal hunting permit.

The game laws on the Flathead Reservation have evolved according to how the various jurisdictions have made and enforced laws, and whether or not litigation between the jurisdictions was involved. Often game laws evolved simply by one authority asserting its power over individuals in various situations, sometimes illegally. Soon we will look at historical information revealing a story that explains the confusion, the mishaps, and the manipulation exerted over the Salish-Kootenai concerning their hunting

rights. As their rights were restricted, they not only experienced a great loss of their valuable resources but a failure to control the welfare of their own people. After looking at this early history of conflict, we will be able to understand why the tribes have so needed and desired to regain control over land and resources within their reservation.

Because the lines of jurisdiction have always been blurred, fish and game laws have evolved based on emotional pleas and the changing needs of the people. In addition, jurisdiction on reservations are established based on previous outcomes of litigation throughout the nation. If there is no previous example of how to rule on a case, jurisdiction may simply be exerted based on someone's perceived needs at the time, and perhaps without any real legal justification. The early history of conflict over game and game rights will help us to understand how today's decisions over hunting and fishing are made on the Flathead reservation.

Some of earliest records of serious hunting conflicts on the reservation began in the early 1900's and occurred because of the intense movement of settlers onto the Flathead reservation. When the reservation was opened up to homesteading, everything the Salish-Kootenai did became every white man's business. Hunting had become a big issue among non-Indians because for the most part, the Salish-Kootenai went on with their business as usual, rarely drawing boundaries to show where they could and could not hunt on their tribal land. But settlers could not tolerate having Indians roaming around on or near what was considered private property. In addition, conservation became an issue for the state of Montana, and state game wardens argued that game restrictions for Indians were absolutely necessary to insure enough game for everyone. Underlying the public justification of

how to control Indian hunting were feelings ranging from fear to greed, and most importantly, the belief that Indians would have to assimilate into the Euro-American culture through the laws of civilization. Many events documented by non-Indians show that if they could not control Indian actions within the reservation, they began to feel vulnerable. This fear and vulnerability were felt by the Salish-Kootenai tribes as well. With the clash of cultures had come the need to gain control of the tribes' well being. In the face of great odds, the Salish-Kootenai continued meeting the needs of their families based on their interpretation of their relationship with the federal government, and ignoring the state laws imposed upon them.

Usually the stories of hunting conflicts started out with the Salish-Kootenai continuing to utilize their game rights based on their treaty with the U.S. government and their inherent right to do so as a sovereign nation. The Salish-Kootenai decisions of where to hunt and fish was based on Article III of the Hellgate Treaty which reads:

> The exclusive right of taking fish in all the streams running through or Bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.[2]

Notice this Article does not define any restrictions on what time of year they can hunt or how often they can hunt. In addition to Article III, the tribes had signed the treaty assuming that the tribal people would remain an independent nation, with the power to govern itself within the borders of the reservation. This of course would apply to the rules of fishing and hunting game without any additional restrictions from outside sources. The Treaty stated that the Salish-Kootenai had exclusive rights to fish and game. Not

only did it state that tribes retained the right to use those recourses that maintained their economy, but that they had the power to exclude others from using those recourses. The treaty, and specifically Article III, became one of the only legal tools the Salish-Kootenai consistently used to defend their lifestyle of hunting and fishing and to support their economy after the reservation opened up to settlement.

Most of the archival information pertaining to the tribes shows that in the evolution of game laws, there were several Supreme Court decisions and several local court decisions that were taken into consideration whenever conflicts arose and new laws or regulations needed to be made. The thing to keep in mind when viewing the archival material, is that although it often appeared that a law was made which prevented Indians from hunting or having jurisdiction over their own matters, this was in actuality, rarely the case. The rules, regulations and so called "laws" enforced upon the Salish-Kootenai were often little more than opinions and interpretations of officials who wanted to assert their power over the tribal people. Actual laws specific in content and pertaining directly to fish and game were quite rare. Although state and county officials asserted they could make laws pertaining to all reservation residents, the laws dealing with Native Americans were generally made solely by Congress. States had little real power to control Native American issues, as Cohen states in his book *Federal Indian Law* :

> When federal constitutional power over Indian affairs is validly exercised it is the "Supreme Law of the Land" and supersedes conflicting state laws or state constitutional provisions pursuant to the Supremacy Clause.[3]

In addition, Cohen tells us that state laws had no validity with Native Americans because of the legislation adopted under the Indian Commerce Clause, exemplified by a summary by Chief Justice Marshall in 1832:

> From the commencement of our government, Congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, with which their authority is ex-clusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guarantied by the United States.[4]

As it turns out however, Congress often guaranteed many conflicts and simply avoided any overt protection of Native American nations, letting the Indians and individual states battle out their differences. This failure on the part of the federal government came from the fact that most laws pertaining to Native Americans contained no specifics on how to implement and carry out a particular law. Because of any ambiguity or lack of clarity on a specific issue that shows up in federal law pertaining to Indians, individual states could take these laws and practically re-word and re-work the intention into something that would be advantageous to the state. There was also the problem that Congress and the federal government in general felt they were too far removed from the conflict to pass laws effectively protecting each of the tribal nations. This failure is why we typically see state and county jurisdictions easily being asserted over tribal people, property, and recourses on the reservation.

**Evolution of Game Laws on the Flathead Reservation**

Perhaps the biggest event that started sentiments flaring over hunting on the reservation , was an incident that occurred in the fall of 1908. The knowledge of the event made its way across the country, as shown by this clipping from the *Kansas City Journal* dated October 19, 1908:

> Missoula, Mont. Oct 19--A telephone message from Ovando, Powell county, says that Deputy Warden C.B. Peyton and four Flathead Indians are dead as a result of a pitched battle between Deputy Peyton, his assistant, Herman Rudolph and a band of Flathead Indians near Holland's Prairie on Swan river Yesterday afternoon.
>
> Peyton and Rudolph were attempting to arrest the Indians for hunting without a license and killing deer in excess of law. Peyton went to the camp of the Indians and told them that they must accompany him to Missoula. Without a word of warning they fired on the deputy with rifles. Their fire was returned by Peyton and Rudolph. Yellowhead was one of the Indians killed. The others are unknown. The squaws escaped.[5]

The headliner from the *Kansas City Journal* was taken out of a letter addressed to the Secretary of the Interior from the acting commissioner, R.G. Valentine. Valentine addressed the commissioner about the hunting accident and told the Secretary that the incident must have happened because the Indians were hunting off of their reservation. He stated, however, that he was only assuming this to be the case from reading the news article. When the article was written, no one knew for sure whether or not the incident happened within the reservation boundaries, but as far as the tribes were concerned, the incident had definitely occurred on the reservation. The problem came in determining weather or not the Indians who shot and killed the game warden were on tribal or state owned property inside the reservation. Once this was known, officials could determine whose court they would be tried in. If they were on state land, the state court would try

them, and if they were on tribal land, they fell under the jurisdiction of the federal government. The fact remained, however, that whether the tribal members were on state or tribal land, their treaty did not require them to purchase a state hunting permit.

R.G. Valentine pointed out to the Secretary of the Interior that if the Salish-Kootenai were found to be on any land belonging to the state, then they would have no rights because of the Supreme Court decision of *Ward vs. Race Horse*. This case ruled that Indians could not hunt within the limits of the state in violation of its state laws. Valentine later came to the conclusion that the Salish-Kootenai Indians were off the reservation and therefore hunting within the confines of the state and in violation of state game laws. Taken very literally, the term "outside" of the reservation boundary was interpreted to mean on any land within the reservation that had been relinquished to the state by the federal government.[6] The decision made by the federal government concerning the incident of 1908 created trouble for more than just those who had shot the game warden. According to non-Indian officials, the reservation boundaries "theoretically" no longer existed, because it was checkerboarded with state, federal and tribally owned property. The Salish-Kootenai would now have to know the status of every foot of land they walked across within their reservation. As one can imagine, determining the theoretical boundaries of state and tribal land and exactly who would have jurisdiction over the checkerboarded parcels was an extremely complicated issue, and one the Indians could have avoided had they been left to manage their own land base.

Along with court litigation like *Ward v. Race Horse*, there were other Supreme Court decisions that worked to denigrate the hunting and various

other rights of the Native Americans. One case particularly effective in doing this was the case of *Lone Wolf vs. Hitchcock* in which the court ruled that:

> Plenary authority over the tribal relations of Indians has been exercised by Congress from the beginning and the power has always been deemed a political one and not subject to be controlled by the judicial department of the government.[7]

This decision gave Congress the power to abrogate a treaty made with the Native American nations if they deemed it necessary for governmental policy. The only stipulation was that Congress had to show "good faith" toward the Indians and advise them of their intentions. As you can imagine, this court decision easily justified the non-Indians' need to change any treaty rights that were inconvenient, and the "good faith" could be avowed simply by stating that it would be done for the "benefit" of the Indians. Although the treaty rights of the Salish-Kootenai were never abrogated, non-Indian officials found great power in stating that the possibility to do so existed. The possibility of the Salish-Kootenai losing treaty rights became a common threat to get them to adhere to state laws, and to assert state authority over various legal matters on the reservation. For instance, if public opinion deemed Article III of the Hellgate Treaty outdated, they simply stated that it no longer applied to the Salish-Kootenai. They would tell Indians and non-Indians alike that the Treaty had expired or had been abrogated.

One example of this comes from a letter in 1908 addressed to the chiefs of the Flathead Tribes from the acting Indian commissioner within the Department of the Interior. The letter is in response to the tribal opposition to opening the reservation up to whites. Although the treaty was not abrogated, and the tribes were never properly notified of any intent to do so, the federal government defended their right to open up the reservation

illegally by stating that the case of *Lone Wolf v. Hitchcock* made it possible. In addition, the Acting Commissioner wrote that contrary to belief, the treaty contained no provision to the effect that the lands on the Flathead reservation were to remain a reservation for the use of Indians. The government was using the Lone Wolf case to defend the fact that the Flathead reservation was to be opened, and the opening was to be justified by stating that the treaty had no specific provision that stopped the government from doing so. The letter to the tribal chiefs was discouraging and sounded quite final, but in reality the letter was written as little more than an "opinion" of one official.[8] The reservation had been opened illegally, as the 1855 treaty was still in full force.

The federal government was at fault for creating many of the absurd legal justifications for illegal acts toward the tribes. They in fact gave little incentive through specific laws or congressional acts that motivated the American public to show any kind of respect toward Native American groups or the laws pertaining to them. Because the government did not consistently back up its policies toward Native Americans, much of the American public saw the idea of an Indian nation as nothing more than a creation in the mind of the Indian. The jurisdictional status of individuals living on the Flathead reservation remained incredibly ambiguous, because everyone had a different idea of how best to interpret Indian law. The Salish-Kootenai interpreted it one way, non-Indian people another, and every judge and jury interpreted it differently as well. The irony of it all to the Indian people was that treaties with other nation's were supposedly considered the ultimate law of the land, yet could be abrogated without the other nations consent, and although

Native Americans would remain sovereign nations, they were not allowed to govern themselves.

One good example of a disagreement in interpretation over Indian matters comes from a case that happened on the Flathead reservation in 1915. The defendant was Antoine Larose, an Indian and a ward of the federal government. This meant that his private property was held in trust by the federal government and he therefore fell under tribal and, ultimately, federal jurisdiction. Larose was cited by the state for fishing on the reservation with a gaff hook (spear), and was charged by the state game warden for violating state fish and game laws for two reasons. One, he was fishing with a spear, and two, he was fishing without a license on a reservoir that was part of the Flathead irrigation project. When arrested and tried in Missoula county, Larose was found guilty and fined $25.00 or 10 days in jail. Larose later discussed matters with the superintendent of the Flathead Reservation, Fred Morgan, and Morgan immediately wrote the Commissioner of Indian Affairs and pleaded with him to back Larose in his case for several reasons. First, Larose was a ward of the federal government and therefore fell under federal jurisdiction. Second, if he fell under federal jurisdiction, he should not have been able to be cited by a state official. In addition, Larose was fishing on a reservoir within the boundaries of the reservation which was run and operated by the U.S. Reclamation Service. The Reclamation Service also fell under the jurisdiction of the federal government, not the state. Being a ward of the government, Larose should not have had to buy a state permit to fish on his own reservation. Falling under federal jurisdiction gave Salish-Kootenai members "exclusive" rights to fish in all waters on the reserve. Morgan made it very clear that if the federal government did not back Larose

and protect him, the state would eventually assert total jurisdiction on the reservation by banning Indian hunting and fishing altogether. It appears that the state had been making threats for some time, and was intending to control the fish and game on the reservation at any cost to the welfare of the tribal people.[9]

It was obvious that the state warden was trying to make an example out of the Larose case, because he dropped the charges on the other two Indians fishing with Larose. The state did not want to have three of the same kind of cases on their hands, and Larose was the one who appeared to be protesting the most, based on his treaty rights.[10] By challenging Larose, the state would directly challenge all Salish-Kootenai treaty rights. Flathead Agent Morgan had gone to the trouble to get advice from the U.S. Attorney who acknowledged the rights of Larose and advised him to go through the motion of appealing the district court decision in order to get another opinion from the state supreme court. In addition, the U.S. Attorney was willing to defend Larose at the trial.[11] Ultimately the case made it all the way to the federal courts, and Judge George M. Bourquin ruled that the state game laws of Montana had no force or effect on Indian reservations. Although the case ruled in favor of Larose, the ruling was not as black and white as it appeared. The case ruled in favor of any future tribal members facing state hunting authorities, but only as long as the federal government was holding title to the land in which a violation was committed. Relinquishment of the title to various parcels of land on the Flathead reservation was a common move by the Federal government. There was relinquishment for the use of railroads, and some of the lands were granted to the state of Montana. The lands opened to whites, however, were not relinquished, as they were opened

under the provisions of the homestead, mineral, and town-site laws of the United States.[12] Other parcels of land reserved for reservoir, power sites, or wildlife refuges were not relinquished either. They were simply reserved for the federal government, with the Indians maintaining title to the land.[13]

Judge Bourquin's decision to exclude the state from having jurisdiction over tribal people seriously angered many state officials, especially state game wardens. State warden J.L. DeHart wrote several letters to federal officials stating his disagreement with the judge's decision. He further stated that he would continue to enforce state game laws anywhere off of the reservation, as he felt Article III of the treaty no longer had any force. As for jurisdiction within the reservation boundary, the warden pleaded with the Commissioner of Indian Affairs to allow state jurisdiction over Indian fish and game matters. He stated that Judge Bourquin's decision had made his job even tougher, because:

> Under this decision there are many of the Indians on the Flathead reserve who now take the position that the old treaties that formerly existed as between the Federal Government and the Flathead Tribe are still operative.[14]

In actuality, the treaty was still operative, but the warden had apparently taken his stand over tribal hunting rights due in part to the pressure from non-Indian settlers. Settlers in the Bitterroot Valley had even threatened to fight it out with the Salish-Kootenai themselves if the warden didn't stop them from hunting in their valley. Contrary to popular testimony of game wardens, it is probable that wardens pushed for control over Indian hunting not because Indians had become a threat to the conservation of game or were taking food out of the hands of settlers, but rather because they were the one authority whom non-Indians pressured to keep Indians and whites separate.

There is simply no evidence in the written testimony given by settlers that there were specific concerns threatening to their livelihood that prompted their opposition to Indian hunting. In correspondence by white settlers, it appears that unfamiliar Indians hunting in large numbers was uncomfortable and even threatening to the settlers. Settlers living on Fish Creek around 1915 complained that Judge Parce, a member of the tribe, came into the valley every fall with over sixty head of horses and large parties of Indians with children and dogs. Parce came to Fish Creek to hunt large numbers of deer for winter provisions, and other than the amount of game taken, the people of Fish Creek had no other specific complaints against the tribe...only a very serious request that they be removed.[15]

According to Judge Parce, also known as Louie Pierre, he had indeed frequented the vicinity of Fish Creek. Three years before the complaints about him came before the warden, however, he and his hunting parties had been run out of Fish Creek at gun point by the white community. Since then, he said he had hunted on a nearby place on Lo-Lo Creek. Agent Morgan stated in a letter to the commissioner that Louie had come to his office every year asking for a letter from the agent acknowledging his right to hunt there, so he could show it to the white people. Louie's reason for wanting the letter had to do with his fear that if he couldn't prove his right to hunt, there would be another incident like the one in 1908 that left four Salish-Kootenai dead. In addition to providing the letter, Agent Morgan had been advising Indians on state game laws they had to follow, and he felt sure they had been following them accordingly. The Salish-Kootenai did not fall under state hunting laws when outside of the reservation, but the agent felt it necessary

for tribal members to follow particular laws in order to avoid direct conflict with settlers and government officials.[16]

In addition to assertion of state jurisdiction over tribal members, there was another topic of conversation becoming apparent by 1915. It appears that because authorities could not agree on the particular hunting rights of Indians, the protection and conservation of game became a powerful tool to use against Indian rights. Conservation was certainly an issue on which all people could agree to. Indians would have to fall under state jurisdiction to insure that both state and reservation game would be conserved properly. In 1915 Assistant Commissioner E.B. Meritt wrote two letters trying to convince others that the Salish-Kootenai had no social rules that regulated the killing of fish and game. Meritt first wrote to F.C. Morgan, superintendent of the Flathead School. He wrote that he believed that all Indians should comply with state game laws when hunting off of the reservation in order to protect the fish and game. He then wrote a letter to the Montana game warden, Mr. DeHart, and stated that as far as he knew, the Salish-Kootenai had every right to hunt and fish "in accustomed places" off of the reservation, but that perhaps they should have to follow special rules pertaining to protection of wildlife. What the commissioner did was validate the legality of Article III of the Treaty, while trying to restrict it. This essentially left people believing that as long as it was for the "protection and preservation" of game, the state could assert their jurisdiction over tribal people when hunting and fishing anywhere in Montana.[17] This argument was soon used against the tribes on their own reservation as well, claiming that the tribes were quickly depleting the entire reservation of game.

Contrary to popular belief at the time, the protection and conservation of fish and game was practiced and had been for years, by many of the Salish-Kootenai. It is interesting to see how very differently each ethnic group practiced protection and conservation of animals. It cannot be disputed that there were Indians who ignored any conservation promoted by Indians or non-Indians. For the most part, however, Indians were very aware of animal behavior, mating seasons, and especially of the spiritual world that connected them with the creator of all animals. Accordingly, they practiced their own methods of protection and conservation. Documentation of Flathead hunting stories show that often, the success of a hunt had less to do with how many animals were hunted in a season, than it did with the skill of the hunter and his relationship to and respect for the animal and its creator. Many Indian hunters believed that maintaining a good relationship with the Creator and the animal helped insure success in a hunt. They believed that animals couldn't just be taken; they had to be granted to the people.[17]

Non-Indians had no understanding or tolerance for what was believed to be a very unscientific approach to game management and continued to suppress tribal hunting rights. Harassed by all of the stipulations by government officials over when and where the tribes could hunt, the Salish-Kootenai decided that it was time to exert their hunting rights through methods that whites would notice. That concept was somewhat new to the tribes, but very effective, and it is largely due to the cunning of these early Salish-Kootenai leaders and the risks they took that their people retain their jurisdiction today.

By the summer of 1919, it was apparent that the Salish-Kootenai would have to display opposition in a new way, and so a lawsuit was filed by the

Salish chief Martin Charlo. The suit was filed in Arlee, Montana in order to define Indian water rights on the reservation. Water rights had at this time had become an issue not only in itself, but involved fish and game because Indians were losing their preferred fishing spots on the reservation because of irrigation canals put in by the Reclamation Service. According to Charlo, the canals had blocked previously running streams, and as a result the tribal people were unable to procure fish. In addition, many of the Indians who were farming complained that their land was not being served by the irrigation services for which they had been forced to pay.[18] The method of settlement through litigation involved various federal and state bureaus, creating an air of intergovernmental cooperation for a short time afterwards. On the other hand, the tribes were feeling confident and pushed on with their opposition to the state. Just a few months before Charlo's suit was filed, tribal member Thomas Antish wrote a letter to H.L. Myers, the Commissioner of Indian Affairs, stating that the federal government needed to review its own laws relating to the Salish-Kootenai in order to avoid arresting tribal members for game violations. In addition, he told the Commissioner that until the tribes were paid in full for land that they had ceded to the U.S., they would feel no need to follow state game laws.[19] These gestures of opposition did gain the tribe attention, but most state officials did not appreciate the tribes' attempts to empower themselves, and pushed even harder to assert their jurisdiction over Indian matters.

By the early 1920's, a more defined argument arose pertaining to the legal hunting and fishing rights of the Salish-Kootenai. Fishing violations by Indians had come up before, but now had provided a serious reason for prosecution by the state. The violation was again the spearing of fish. The

state game warden filed charges against a Flathead Indian by the name of John Glover for spearing fish on a lake within the reservation boundaries. Glover was cited because he had recently been issued a patent in fee on his allotted land. Therefore the state assumed that John was no longer a ward of the federal government, and had now fallen under state jurisdiction because he paid state taxes on his property. After six months the final decision about the fishing rights of John Glover were still unsettled. The federal solicitor for the Department of the Interior wrote the Secretary of the Interior stating that the final decision on the Glover case must be "definitely and certainly determined." The solicitor like many federal officials, however, refused to express his opinion in that particular situation as he was afraid his opinion would be the final determination by the courts. In a sense, this was one of many opportunities federal officials had to protect the fishing rights of the Salish-Kootenai, but instead, they left the decision to be settled between the state and tribes, and the ruling would be decided in a local Montana district court.[20] The significance of this case is that with many of the Indians owning fee land and paying property taxes, the state argued that those individuals no longer had Indian rights. As we have seen in the last chapter, ownership of fee patented land was not a choice for many Indians. The federal government had instead forced "competency" upon individuals, thus imposing taxes.

In 1925 a tribal member Felix Gendron complained to the superintendent that he seemed to have no game rights left because he had to carry a federal permit to trap on his own private property. In addition to having to carry a permit to exert his tribal rights, there were additional rules Felix had to follow. Superintendent Charles Coe told Felix that:

> This permit does not give you any permission to trap on other people's lands. You could trap on trust allotments of other

> Indians provided you get the permission of the owner to do so. You can not trap on patented lands as they are under the jurisdiction of the state and the state laws prohibit it without a permit from the State Game Warden. You can not ship furs off the reservation without complying with the state laws.[21]

What is made clear by this example is that Indian hunting and fishing rights continued to be greatly reduced. According to the superintendents interpretation, Indians could not hunt on their own property without purchasing a permit either from the federal or state government depending on the Indians' land status.

A very important case arose for the Salish-Kootenai in 1926 that challenged one aspect of state control over Indian hunting rights. Philip Moss was arrested for shooting and killing an elk on tribal lands, and the District Court tried and convicted Philip on the grounds that although he was a Flathead Indian, he had received a patent in fee to his allotment, therefore falling under the jurisdiction of the State. The state had arrested him for shooting this elk during the state's closed hunting season. Phillip argued that he shot the elk on tribal lands, and butchered the elk on an allotment held in trust (by a friend of his), and therefore fell under either tribal or federal jurisdiction. Unfortunately, because Moss owned fee patented land, it was assumed he should fall under state jurisdiction and not federal or tribal authorities. He was tried in a local court, and was convicted to $25.00 or jail time.

Like many before him, Moss's case questioned the relationship between private property and tribal membership. State officials argued that once you owned land like any other American citizen, you lost your tribal rights, and this was the argument used to convict Moss. Moss did not see the connection between his personal land status and his treaty rights. Although convicted, Philip Moss was not a typical tribal member in that he was perhaps more

familiar than most with the contradictions of state and federal laws, as well as with his Indian rights. He had been a candidate for the office of sheriff during the first general election after Lake County was created, and had a few connections and ideas to assist him in fighting for his game rights. Philip struggled for months to get appeals to his case. He was first tried in a justice court where he was found guilty. He then appealed, and was tried in a district court. Here he was also found guilty and fined $200.00, or 100 days in jail. The justification for the guilty verdict came from the previous Montana supreme court case called *Big Sheep*, referring to the Crow tribe. As we have already seen, this case ruled that when an Indian received a fee patent to his allotment, he no longer retained his Indian rights. He had severed his tribal relations and therefore assumed all of the responsibilities of being a state citizen. After the last ruling, Moss tried to appeal his case again, but the Flathead Superintendent Charles Coe refused to report the case to the district attorney. Moss did eventually get the opportunity to appeal, however, and was tried in the federal Supreme Court on habeas corpus. Judge Bourquin denied the writ and remanded him back to the custody of the sheriff.[22]

At Mosse's last trial, the judge followed the decision of the case *Big Sheep*, and informed the jury that if the defendant had killed elk anywhere within the limits of Lake County (which is in the limits of the Flathead reserve) during closed hunting season, they must find Moss guilty.[23] The story of Moss shows the importance of case law in setting precedence for the outcome in new cases. However, case law meant little to Moss, as there was no doubt in his mind that if he pushed hard enough, he would win. He was very aware of his legal rights as an Indian. Although Moss was trying to protect Indian rights, his push for justice slapped him in the face. Now it was his

own case that would set precedence for all future Indian hunting violators. The trial of Philip Moss was the first major case where the courts ruled that even within the boundaries of their own land base, Indians did not have what was perceived as "special rights."[24]

Although the state court ruled against Moss, the federal government still held onto the idea that tribal members retained their treaty rights even under fee patent status. In a letter from Assistant Commissioner J. Henry Scattergood to Senator Wheeler in 1930, Scattergood states:

> With all due regard to what was said by the court in the Big Sheep case, supra, we are of the opinion that such right still rests with the member of an Indian tribe to whom a patent in fee simple has been issued. In other words, the mere issuance of a patent in fee to an individual member of an Indian tribe, covering the lands allotted in severalty to him does not, of itself, operate to deprive such Indian any other tribal or property right. Obviously, such an Indian is still entitled to participate in further disbursements of tribal funds, per capita payments etc., and undoubtedly has a like right also to enjoy hunting and fishing privileges on lands belonging to the tribe of which he is still a member.[25]

During the mid to late 1920's, and perhaps because of the victory of the state against Philip Moss, state game wardens actually began patrolling Salish-Kootenai property to prevent any violation of state game laws. What is very intriguing about the wardens trying to maintain strict jurisdiction over the Indians on their own reserve, is that the wardens were choosing to patrol an incredibly large area with theoretically few benefits to them or the non-Indian settlers. By the late 1920's, there were relatively few Indian hunters, and although non-Indians had swarmed over the reservation, creating white townships, the government had a regulation that they were not allowed to hunt anywhere on the reservation without obtaining a permit from the Flathead Superintendent.[26] Once they obtained a permit, non-Indians fell

under state laws concerning bag limits and closed seasons. In addition to obtaining the federal/tribal permit, non-Indians had to purchase the state permit to hunt on the reservation.

Even after the Moss trial, there was still no agreement on who had authority over Indian hunting rights. Wardens patrolling the reservation around the late 1920's were told by the Commissioner of Indian Affairs that they were more than welcome to arrest any white person for violating state laws, but Indians could not be arrested by a state official. The commissioner instructed the game wardens to only advise the Indians on the provisions of state laws that have to do with the prevention or extermination of any particular game, but they were not allowed to directly interfere with Indian hunting.[27] This order became nerve-wracking for the tribal people. On the one hand, Indians were afraid to hunt openly, because they could very well be arrested and fined by the state. On the other hand, the federal government took the view that the state officials had absolutely no jurisdiction to arrest Indians over hunting violations; they could only "advise" them. Therefore, it was simply the luck of the draw whom they ran into while hunting on their reservation.

The archives show constant correspondence between federal and Montana state officials asking each other to explain the various laws pertaining to fish and game on the Flathead Reservation. Often it appeared that whatever highest ranking official could state his opinion most confidently and eloquently, would voice the legal view most widely accepted by officials. Jurisdiction simply depended on the particular person, place, and time of a situation, because inconsistency in game laws was standard for the time.

Although state officials were concentrating on Indian violations, it appeared to the Salish-Kootenai that the real problem concerning fish and game regulation was with many non-Indians. Non-Indians hunting on the reservation in the 1920's had found a way to get around state laws pertaining to game, and this probably infuriated the game wardens and made matters even more intense. According to a letter from Warden J.F. Goldsby to the Department of the Interior, by 1927 non-Indians on the reservation had started an actual movement to keep the state from patrolling their private property. If they were successful, they could hunt freely on their own and possibly other property owners land without paying for a state permit or adhering to bag limits or seasons.[28] This is an interesting movement, in that it is the same approach that non-Indians on the Salish-Kootenai reservation are using now, but today it is the tribal permit and tribal authority rather than the state authority that are most avoided.

Because of the seemingly impossible job of controlling both Indian and non-Indian hunting, the federal bureaus eventually laid down some general regulations pertaining to fish and game for both groups. By the early 1930's officials began to state and act upon these principles with more consistency than the tribes had previously seen. As can be expected, the Indians had absolutely no say in the hunting matters affecting them, leaving important tribal matters to be battled out between state and federal officials. The opinions that both bureaus seemed to agree upon at the time were the following:

For Indians.

1. State game laws do not apply to Indians while hunting on their own land held in trust, or on unallotted tribal lands within the reservation. Federal officials such as reservation agents and

superintendents do not have the jurisdiction to regulate hunting on the reservation unless occurs on property that is fee patented, thus falling under state jurisdiction. Indians should, however, be advised of state statutes that are designed to protect fish and game. This is advisable to Indians in that it would protect their best interests in fish and game conservation.

2. When Indians do hunt off of the reservation, or on fee patented lands in or outside of reservation boundaries, they are subject to state laws and to the state courts for any violation of those laws. Hunting rights in the Treaty were to be interpreted to mean that Indians could hunt outside of the reserve in common with the citizens of the state. They were not, however, allowed special rights like excessive bag limits, hunting outside of state game seasons, etc.

For Non-Indians.

1. Non-Indians have no rights to fish, hunt or trap anywhere within the reservation without the permission of the superintendent. The superintendent may grant a permit depending on the circumstances. The permission is granted at the discretion of the superintendent, and a fee will be charged for a reservation permit. Those allowed any special privileges must comply with any special rules and regulations on the reservation, and they must comply with all state laws pertaining to fishing and hunting as well. Possession of a state permit to fish, hunt or trap does not confer the right to do so on the Reservation.

2. All non-Indian persons on reservations including business owners, traders, and employees are expected to comply with all state laws as well as the rules and regulations of the reservation. State laws do apply on the reservations, and state courts do have jurisdiction as to any action by whites if it does not involve an Indian, Indian property, or the operations of the federal government.[29]

Although the previous regulations appear to be easy to understand and enforce, in reality, the regulations were so general that they still left huge gaps in the jurisdiction on and off of the reservation. For instance, if an Indian was fishing on a lake and the land surrounding it was owned by the state, but the lake bed and water rights belonged to the tribes, did the Indian have the

potential of falling under state law? Since the reservation was incredibly checkerboarded by this time, how would officials know whose property was whose and whether they had the jurisdiction to make an immediate arrest? Although these questions appear unduly technical, they were the questions being asked when deciding jurisdiction over game violations. The opinions of 1933 on fish and game, although covering several possible scenarios, did not cover what ultimately needed to be decided in order to simplify all jurisdiction over fish and game. What really needed to be clarified was the question of who should have ultimate control over the fish and game. In other words, could the state or the tribe theoretically "own" fish and game? If the tribe had maintained water rights on the reservation, did they own the fish in those waters? Although officials tried answering these questions, the issue of who should control game populations was hard to answer specifically, because ultimately fish and game migrate back and forth across state and tribal boundaries.

By the mid nineteen-thirties the issue was focusing on the ownership of waters, the fish in those waters, and the ownership of game. It was an issue that needed a definitive answer for the tribal people. In 1934 Department of the Interior correspondence shows, that tribal members were in great opposition to the control over reservation waters by state game wardens. At this time the Salish-Kootenai were in the process of organizing themselves politically under the Federal Indian Reorganization Act (IRA), which was to transfer to the tribes some of the federal responsibilities and decision-making concerning Indians. The Salish-Kootenai had remained a political unit over the years, always advising or protesting to other government bureaus, but the IRA was to allow them to make decisions concerning their well-being

politically and economically, and re-assert their power as a sovereign nation. Under the IRA, the tribes began playing a big part in cleaning up the mess of federal and state game matters, and it appeared that the tables were turning.

One of the first issues the Salish-Kootenai attempted to solve was whether or not the State Fish and Game Commission had the right to issue fishing licenses on the Flathead Lake, and this was initiated by tribal member Joseph C. Allard. The licenses that had been issued to the area's white population allowed them to fish with drag nets to catch the sockeye salmon spawning on the reservation lake. This was controversial for several reasons, one being that the northern boundary of the reservation is a theoretical line that runs through the middle of the lake. One half of the lake (the southern half) belongs to the tribe. The seining operations were placed in the hands of a man by the name of Ben Cramer, and the fish were apparently distributed to community members for food, and not for commercial purposes. The agreement to operate seines and issue the licenses to do so, was a mutual agreement between Lake County officials and the State Game Commission. Obviously this was not simply a one-time operation on tribal waters, for as Superintendent Charles Coe stated in a letter to the Commissioner of Indian Affairs; "The State Game and Fish Commission has issued seining licenses in the past on different portions of the lake."[30]

What was wrong about this and almost every previous decision concerning fish and game on the reservation was that the tribal people had little if any say over the use of recourses on their reservation. Having no control over such issues prompted the tribes to focus on the constant depletion of recourses by non-Indians and initiated the Indians' concern over preservation and conservation. Ironically, this was the very same argument

used by whites to control the acts of Indians, just a few years earlier. As far as the tribes were concerned, the fact that whites were not allowed to hunt on the reservation without special permits from the federal government, meant that the fish and game on the reserve still belonged to the Salish-Kootenai. It was for their benefit and use as stated in the treaty, and it would have to be the Salish-Kootenai who decided matters concerning fish and game. Without going into the issue of tribal water rights in any great depth, it should be said that the Salish-Kootenai did have water rights that dated back to before white settlers were allowed to move onto the reserve. In the 1908 case of *Winters v. United States*, the Supreme Court had ruled in favor of water rights for the Indians on the Fort Belknap Reservation. The ruling affirmed that when the federal government set aside lands for the Indians, they reserved the water rights for them as well.[31] Essentially, Indian water is held in trust for Indians by the government, who protect water rights on their behalf. The United States does not own those water rights; they are simply a trustee for the Indians. In addition, federal water rights do not establish state law nor are they exercised in accordance with state law. There was and is a federal sovereign right to make use of unappropriated water for its own purposes. This fact, however, has often been ignored, as states have historically constructed their own water laws and appropriated water as needed.[32]

By the early 1930's the federal government appeared dedicated to changing federal policy toward Indians. Few of the previously implemented policies contained any specifics to make them work, and few were followed through to completion. Indian nations like the Salish-Kootenai had been robbed of their natural resources and their ability to do anything about it. Everything from fish and game, to water and timber was taken by people who lived on or

near the reservation. These outsiders had often found loopholes in the laws, allowing them to take whatever they believed was desirable or necessary. The policy makers realized that protection of these resources, along with a new land policy that would allow recovery from the disaster of allotment, was greatly needed. They set out to solve these problems with the implementation of the Indian Reorganization Act. The government had not been able to avoid paternalism over the tribes even while trying to implement tribal self-government. For this reason, the IRA became especially appealing to the Salish-Kootenai. Federal officials traveled to reservations and wrote up surveys of the status of each Indian nation, and according to their assessments, they then began trying to implement new ideas to help strengthen Indian governments. Ideas like conservation were strongly pushed on the reservations. Ironically, at the same time they promoted conservation, they pushed for the industrial evolution of the tribes as well.

By 1935 the Indian Reorganization Act was implemented and the Salish-Kootenai tried to turn the tables and participate heavily in the decision-making process concerning reservation matters. They had recently formed a federally recognized tribal council and began focusing their power on protecting Indians and their resources from unnecessary abuse. Although federal regulations stated that no white man or non-Indian of any kind was allowed to hunt on the reserve without special permission and a special permit given out by the superintendent, the tribes had no way to enforce that law until they took action in 1936 under the power of the tribal council. Under the IRA, the Salish-Kootenai began asserting their authority and jurisdiction over non-Indians when-ever conflicts concerned tribal resources.

A better understanding of the IRA helps us understand how the tribes were to be recognized legally, when asserting their jurisdiction on their reservation.

The IRA is also known as the Wheeler-Howard Act of 1934, and was created as the beginning of a new era in the administration of Native Americans. The act was designed to allow Indians to take on the responsibility of making and acting on tribal decisions in relationship to other organizations. Ultimately, it was to eliminate control on the reservation by federal officials, and allow tribes to govern themselves and work out local problems according to their own needs. Although the policy was spoken of as something "granted" to the tribes, it was really only verifying the tribal rights that they retained. The federal government was not really "allowing" Indians to take on the responsibility, they were simply trying to back out of a responsibility that shouldn't have been theirs in the first place. Under the Act, the tribes reorganized themselves for self-government, and would take on concerns over various matters on their reservation. As to jurisdiction over fish and game, the Salish-Kootenai held the right to conserve and develop their own land and resources. Section 16 of the IRA authorized the tribe to organize for its own common welfare and adopt a constitution and by-laws. This Act allowed the tribes to protect and preserve anything considered tribal property, which would include land and natural resources. By having jurisdiction over their own lands and by making laws pertaining to fish and game, they could then regulate fishing and hunting within the reservation. Indirectly this allowed the tribes to have a say over the actions of non-Indians. They began to regulate non-tribal members' actions by requiring the purchase of a permit to hunt on the reservation, issued independently of the state of Montana, or the Fish and Game Commission.

The IRA allowed for one of the most important decisions concerning fish and game in Montana to be heard. According to Attorney General W. Bonner, the IRA stated that:

> All Indian lands, whether allotted or unallotted, held separately or jointly and all land held for the use of the Indians, such as reservoir sites and similar lands, are subject to the exclusive jurisdiction of the United States government; all game fish, wild birds, game or fur-bearing animals, including beaver, killed, caught or captured thereon are Indian property; said beaver are not protected by the laws of Montana; The Indian under tribal ordinances may kill or capture said beaver on the lands aforesaid; the Indian's possession would be legal and the State of Montana has no claim or ownership therein, nor has the State jurisdiction over the same; beaver caught, killed or captured on any of the lands aforesaid is not considered as beaver coming from without the state but considered to be within the geographical limits of Montana.[33]

The essential point the Attorney General makes is that he believes that the fish and game are theoretically "owned" by the tribe, and held in trust for them by the federal government. The letter from Bonner also agreed that the tribes could require non-Indians to purchase a tribal game permit when hunting anywhere on the reservation because the tribes had the authority to protect and preserve their natural resources and property. The fact that these natural recourses tend to migrate onto fee land owned by whites, was not believed to affect the tribes' jurisdiction over the animals.

As the Salish-Kootenai began patrolling the property within the reservation for game violations, there arose a more noticeable resentment toward the Indians by whites. Non-Indians soon were confused as to whether a permit was needed when they hunted on their own land, tribal land, or all of the area inside the reservation. There was confusion over who ultimately had jurisdiction over non-Indians as well. Non-Indians resented being controlled in any way by a power that was not representative of the white

settlers, and therefore demanded that they fall under state jurisdiction in all cases. In this way they had justified their ignoring of all tribal fish and game regulations, and had created a staunch opposition to tribal authority. Whites said they now felt like minorities on the reservation, and could not believe that Indians could have game rights and tribal land that whites could not use equally.[34] Although by 1935 Indians could legally patrol their own tribal lands with police or game wardens, they did not have the money to do so, reinforcing the idea that tribal authority need not be taken seriously by whites. They had known for years that trespassing and hunting on Indian lands never entailed any consequences. White trespassing and hunting had become such a problem that Superintendent L.W. Shotwell wrote to the local newspaper in 1936 telling them to put out the word that trespassing to hunt on Indian lands would have to stop, or there would be no more hunting allowed anywhere on the reservation.[35]

In addition he sent the word out to all sportsmen that the Salish-Kootenai would be enforcing the mandatory purchase of a tribal hunting permit to hunt on tribal lands. Non-Indians opposed the permit, saying that they would fall either under state or tribal jurisdiction for game matters, but not both.[36] Superintendent Shotwell responded to the opposition in a letter to the local Chamber of Commerce stating that although the required permit raised considerable objection, it was surely already known that whites had never been allowed to hunt on the reservation without a special permit. Therefore, he felt that the newly required purchase should have created little surprise. In addition, he let the people know that the tribal permit was mandatory, but that the tribes never requested anyone to purchase a state permit. That was done at the request of the state, and non-Indians were

welcome to take matters up with state officials. As far as Shotwell was concerned, if the tribes wanted to disregard the state permit needed to hunt on the reservation, that was just fine.[37] Contrary to what non-Indians thought, the tribes were not out to control white-owned property. They simply wanted jurisdiction over non-Indians when their acts were committed on Indian lands, or when their acts directly affected the protection of tribal resources.

The Self-government Act legally reinforced the authority of the Salish-Kootenai to run their own affairs, but in the beginning, they had few means to legally enforce their decisions. In addition, their resolutions could be restricted by the reservation superintendent and by the Secretary of the Interior who both had to approve tribal resolutions. Concerning the preservation of fish and game on the reserve, the tribe was still forced to work jointly with the Office of Indian Affairs, the Bureau of Fisheries, the Bureau of Biological Survey, and even the state's Irrigation Service in protecting fish and all other game. Of course, these bureaus with varying goals ended up butting heads. For example, the federal government had reserved land from the Salish-Kootenai for the use of a bird refuge. Every year as the birds laid their eggs, the Irrigation Service began filling the reservoir, destroying most of the eggs. The government was paying thousands of dollars for the Biological Survey to protect wildlife, while another bureau destroyed it. Keep in mind that most of the land and resources under discussion belonged to the tribes, but were controlled by outside bureaus. Approximately 23,000 acres were reserved for storage reservoirs for the Irrigation Service, but the tribes were the actual owners of the title to the land. The tribes received no lease money from the Irrigation Service, however, and had little say in how the

lands were used. Just to make matters more frustrating, the Irrigation Service and the Biological Survey together had been preventing the Salish-Kootenai from hunting and fishing on the reserved lands except under regulation. The Irrigation Service offered to buy these lands several times but the tribes refused to sell. In addition to knowing that their survival depended on keeping the land, the tribes claimed that the Irrigation Service never offered them anything near the amount of money the land was worth.[38]

In addition to straightening out the bureaucratic mess, and asserting their own rights as hunters, it remained an ultimate goal for the tribes to "alleviate the considerable unauthorized fishing by white trespassers."[39] In 1936 Superintendent L.W. Shotwell wrote to the Commissioner of Indian Affairs that there was an enormous loss of fish because of white trespassing as well as the Irrigation Service. He stated that literally thousands of fish had been deposited on the fields that were being irrigated. The Service had not set up any nets or protective measures to keep the fish from ending up on the alfalfa fields.[40] The state of Montana brushed aside Shotwell's claims. Their argument was that whether waste occurred by mistakes or by trespassing, those waters were to be controlled by the state. Their justification was that they had often paid to stock those reservoirs, and therefore the fish belonged to them. Shotwell and the tribes argued that in reality it had been many years since the state had made any kind of effort to restock fish on the reservation.[41] While the state patrolled the land and destroyed the fish, they continued to be in direct conflict with the tribes and federal officials. Interestingly enough, few people, including Superintendent Shotwell, portrayed the conflict as a direct loss to the Salish-Kootenai. Shotwell's letter stated that the people that were seriously affected by the great loss of fish were

the fishermen and sportsmen of western Montana. He must have believed that argument would have more weight than appealing to sympathy or justice for the tribes. Even though his intentions were good, portraying the Salish-Kootenai as a secondary force on their own reservation did little for the image of tribal authority.

The tribes had much more to deal with than the problems created by colliding governments. They were being directly attacked by non-Indians almost anytime they tried to assert themselves in matters pertaining to the reservation. In regards to the permit that had to be purchased by non-Indians to hunt and fish on the reservation, there was great protest. The protest wasn't over the cost of the one dollar permit, but rather the fact that Indians had begun asserting jurisdiction over whites. These protesters were the same sportsmen who had stated earlier that they would support almost any measure of conservation of wildlife on the reservation.[42] Under the Indian Reorganization Act the tribes could have legally closed off all hunting on the reservation. Allowing sportsmen to fish and hunt on tribal land was a commendable concession, and expensive for the tribes. In addition to protesting tribal authority, whites fished illegally on lands that were closed jointly by the Biological Survey and the Bureau of Fisheries. The tribal game permit was a very simple measure to help pay the costs of carrying out protective measures for wildlife, and to provide a salary for a warden to patrol the areas.[43] Superintendent Shotwell agreed with the tribes' need to patrol their land and agreed that without police and game wardens, non-Indians would continue to disregard Indians and to "make free with the Indians' property."[44] The tribes apparently had no desire to exclude non-Indians from

hunting, only to have them participate in the protection and conservation of the tribal resources they used.[45]

Serious protest continued right into the mid to late 1930's, newspapers ran stories like the one entitled "Vigorous Protest Is Made Against New Indian Ordinance."[46] The Chamber of Commerce in Polson and especially its secretary, H.C. Redden personally protested over the tribes ability to issue permits. His reason for opposition was his belief that the law had been implemented by the Indians practically overnight. He complained that whites had always been allowed to hunt after purchasing a state permit, and now they had to purchase another one for hunting inside the reservation. This, however, as the tribal people knew, was a misconception on the part of non-Indians. As we have seen, the Salish-Kootenai were never allowed to implement anything without approval in Washington, so implementing laws on a "whim" was out of the question. In addition, If Redden was correct, and whites had been hunting on the reservation for years with a state permit, than the state of Montana had not been properly informing or patrolling these hunters. They were never allowed to hunt on the reservation by the sole use of a state hunting permit, and Superintendent Shotwell even stated in 1936 that there had never been a special hunting permit issued to any non-Indian. Shotwell further backed up the Salish-Kootenai accusations that notices prohibiting hunting were simply disregarded.[47] Non-Indians had some pretty hard feelings about the new game permit, as it appeared to arouse many misconceived notions over hunting rights on the part of non-Indians. Further feuding began. Whites blamed the confusion of the laws this time directly on the Salish-Kootenai, by arguing that the tribes were overstepping their bounds. But the rights of the Salish-Kootenai to assert their authority

over resources, and the fact that whites were not allowed to hunt without a special permit on the reservation had been in effect since the beginning of the allotment policy. There just had been no means to enforce them on any kind of regular basis until the 1930's. The difference was that not only were whites kept from trespassing on private tribal lands, but they now had to answer to the tribes even if they shot a deer in their own back yard.

For the Salish-Kootenai tribes, making money and reinvesting it for the use of patrolling and enforcing tribal laws was a giant leap from the paternalism of the federal government. The money made from the permits and court fines from game law violators was the first money that was not confiscated and held in trust for the tribal people by the Secretary of the Interior. In addition to what we have already seen, the late 1930's brought with it new conflicts over hunting on the reservation, as some whites began an anti-government movement. Because there had been progress made in tribal conservation, there were new tribal laws that sometimes prohibited all reservation residents from fishing on or around reservoirs like those at Mission Dam when waters were low. Non-Indians ignored these conservation laws, however, forcing tribal police to arrest them. The anti-government movement by some non-Indians sought to avoid all tribal, federal and state game laws on the reservation, and proposed offering individual Indians money to hunt on their private allotments. This measure, they argued, could get them around all rules and regulations of closed seasons and bag limits.[48]

So, what came of all of this? It was total frustration for the Tribal Council. Within the same year that they had implemented a tribal permit to fish and hunt, they were forced to discontinue the permit until they could work out

some of the confusion over authority, and devise means to enforce fish and game laws in a strict manner. The tribes allowed non-Indian hunters to once again take advantage of reservation resources free of cost until game issues could be resolved. Because of this move, many of the heated issues soon burned out. Non-Indians could hunt without a tribal permit, and the tribes' authority had been severely damaged. The tribes had no intention of taking a permanent leave, however, and by 1940 they were back in the saddle. Imposing permits was once again reconsidered. The State Fish and Game Commission were the first to voice opposition, stating that they would refuse to restock any of the waters with birds or fish if permits were reinstated.[49]

In the early 1940's the State Fish and Game Commission was consistently denied any direct authority over game violations that occurred on the reservation by Indians, but occasionally there would be a warden who would arrest Indians anyway. For Instance, Sahkale Finley, a Indian, was arrested in the fall of 1941 for killing a deer out of season. He had killed a deer on the reservation, but then carried it off of the reservation where he was caught during a closed season in Montana. Correspondence immediately began between the Flathead Superintendent and the state, however, and Finley was freed with the apparent understanding that the state had no authority over him. One thing to keep in mind, however, is that when a tribal member was arrested, lengthy discussion and exchanges of opinion often took weeks or even months, and created great hardships for individuals, Whether guilty or not. Such delays seldom applied to non-Indians.

In 1942, the Montana Fish and Game Commission sent a letter to the Department of the Interior. This letter was important because it was the first letter that stated not so much what jurisdiction the state had over wildlife on

Montana reservations, but what jurisdiction they were sure they did not have. The decisions reached had been handed down by the Attorney General and were generally agreed to by the Fish and Game Commission. They involved issues like the fact that state game laws on Indian reservations could not be enforced upon Indians. Interestingly enough, they agreed that the state had no right to arrest Indians or whites in violation of game laws on the reserve. This inconsistency left a gap in jurisdiction over non-Indians which the tribes assumed was their responsibility to fill on some level. Indians could also carry their kill outside of the reservation borders, or travel to necessary destinations with their kill. Last but not least, the Attorney General denied the state the right to hire Indians on a reservation to arrest other Indians for state game violations, a practice which created factions and divided tribal people.[51] As it turns out, William Zimmerman, the Assistant Commissioner of Indian Affairs, agreed with the laws as stated by the Attorney General, with the exception of the state not being allowed jurisdiction over whites on the reservation. This in his opinion would promote the transgression of jurisdiction and laws, as many whites already believed that by living on the reservation they were "beyond jurisdiction of the state." Zimmerman appeared less concerned about the protection of whites under state jurisdiction, than with avoiding turning reservations into "havens of refuge" for whites.[52]

1942 was a big year for the Salish-Kootenai tribes in their struggle to settle fish and game matters for two reasons. One was that for the last eight years, the tribes had asserted their decision making power, and had used the power of tribal law to finally persuade other governments to cooperate with them, and two, the government bureaus were beginning to agree on some general

rules for assessing jurisdictional disputes. One thing that tribal, state, and federal officials could all agree on in the 1940's, was that fish and game conservation was a necessity. This gave the tribe some support in their attempts to protect their recourses. In other ways the 1940's were a decade of concession for the tribes. They had to compromise their sole jurisdiction over game issues, and they had decided to forego charging for fish and game permits, thereby losing revenue. In effect, they opened up many fish and game responsibilities to state jurisdiction, and allowed the state to generate the income from permits. The 1940's were a time when it was decided that compromise would be the best approach to reduce conflict, and in 1942 the tribes and the state settled on a joint resolution over fish and game matters. All in all, it did appear to be a good compromise, for decisions that had created hard feelings between the two groups before, could now be settled jointly. In addition, the personal concessions made by the tribes could be revoked if they deemed it necessary.[53] To sum up the proposed agreement between the state and the tribes, there were ten issues that were generally resolved as follows:

1. The two organizations will appoint someone to act as both State Game Warden, and Indian Deputy Game Warden on the reservation. The person will be appointed by the tribe, and approved by the State Fish and Game Commission.

2. Those appointed to the game warden position will be paid equally by both the Flathead Indian Agency, and the State Fish and Game Commission.

3. The appointed Fish and Game Warden will carry out the provisions of the fish and game regulations within the boundaries of the reservation, and also act as a manager of Fish and Game affairs of the tribe.

4. All non-members of the tribe are required to have a State Fish

and Game License when fishing on the Flathead Reservation.

5. In reciprocation for the re-stocking of fish in the Flathead Lake and the distribution of game birds on the reservation, non-members of the tribe will be allowed to fish and hunt on the reservation without paying for a permit from the tribe.

6. No seining will be permitted by Indians or non-Indians except for the purpose of supplying State Fish Hatcheries with sockeye salmon.

7. The opening and closing of streams and lakes, and the setting of seasons for hunting upland birds and migratory waterfowl for non-members of the tribe will be determined mutually by the Tribal Council and the State Fish and Game Commission.

8. The Superintendent of the reservation will be authorized to tag beaver pelts caught by Indians of the tribe. The tags are furnished by the State Fish and Game Commission free of charge. In addition, a record of all beaver skins tagged will be furnished to the State Fish and Game Department.

9. The Tribal Council and the State Commission agree that big game hunting is closed within the original confines of the Flathead reservation.

10. It is understood that the Salish-Kootenai are not relinquishing any treaty rights or any of their rights contained in the 1934 Indian Reorganization Act.[54]

Although quite advantageous to the non-Indian population, the concessions made by the tribes still did not please many of the white people living on the reservation because they had little or no say in the agreement. In effect, the agreement went nowhere, because there was still so much disagreement over the tribal council's authority concerning game issues. Throughout the 1940's and into the next several decades, the Salish-Kootenai continued to work with state and federal officials to decide what regulations could and could not be legally enforced. By the 1950's fish and game regulations within the reservation required 25 sections of rules that covered

everything from where, when , how, and who. The one problem that still was not solved by this point in time and which continued to be incredibly problematic, was how the tribe could enforce these laws on non-members living on the reservation. Enforcing laws on tribal members was relatively easy. If they violated hunting laws, they would be tried in a tribal court where they could be fined up to $250.00 and sentenced to up to six months in jail. In addition, they could lose their hunting rights on the reservation. Non-Indian violators, however, were to be turned over to the state authorities to be tried in state courts. This created problems for the Salish-Kootenai. First of all, it was often difficult to actually arrest a non-Indian, as they rarely had any respect for tribal authority and assumed that the tribes had no authority to arrest them. This belief stemmed from the fact that the tribes did not officially have the jurisdiction to prosecute these people over game laws. They did, however, have the legal right to arrest non-Indian individuals and hold them or send them to other authorities for prosecution. Secondly, if the violator was turned over to other authorities, it took time, money and effort to hold the violator until other officials arrived. Letting things "slide" or avoiding pressing charges was often easier than going through the bureaucracy of another organization to obtain justice. Needless to say, this fact did nothing to positively reinforce the Salish-Kootenais' image of authority.

In the next chapter we will take a look at contemporary hunting issues on the reservation. Not surprisingly, we will find that the very same historical problems with tribal authority still exist today and are equally troublesome. Non-Indians still show disrespect for the authority of the tribes. They continue to argue that the Salish-Kootenai have no jurisdiction over non-

Indians, and their reasons for denying tribal authority range from not being fairly represented in the tribal government, to their perception that the reservation no longer exists. What we will see in contemporary conflict is that the old myths and perceived rights about the private ownership of land have been refined, but are still the main defense used by those who oppose tribal authority. This refusal to compromise and work with the tribes has done little more than continue conflicts over fish and game, and perpetuate a general sense of animosity between Indian and non-Indian residents of the reservation.

## CHAPTER V:

## CONTEMPORARY HUNTING CONFLICTS

It has been eighty-six years since the reservation was opened up to white settlement, but the topics of conflict and the way Indians and non-Indians justify their stands remain very much the same. There is no doubt that injustices were done to the Salish-Kootenai concerning their rights to utilize and control their resources, but today they are confident in their abilities, and have worked long and hard to place themselves back into a position of authority. They have spent a great deal of time and money in defining exactly what legal rights the tribes have maintained over the years. They now have greater security in asserting themselves, and it is for this reason that non-Indians feel that they are now the minority. Tribal strength has at times given non-Indians little power on the reservation over tribal decisions or joint decisions that affect them. In regards to tribal authority over game matters, non-Indians believe the tribes are exerting jurisdiction over more than just wildlife. Indians are blamed for injustices involving non-Indian property and constitutional rights. The vulnerability whites feel tends to promote attitudes that disregard the political rights of the Salish-Kootenai and in turn, non-Indians tend to carry out the very same injustices on the reservation that their forefathers did. Many non-Indians in western Montana still deny tribal sovereignty, tribal history, and the reality of tribal jurisdiction on the reservation.

The Salish-Kootenai are today, still running up against walls of paternalism and disrespect, which can at times leave them powerless to make their own ideas of self-government work efficiently. Although they are not seeking to make anyone feel guilty about the history of Indian-white

relations, they do ask that tribal culture and sovereignty be respected. Differences in culture and law foster various emotional issues that are today a concern for Indians and non-Indians alike. Fish and game issues on the Flathead Reservation are one example of a powerful emotional issue which has continued to create tension between the two ethnic groups. If conflict is to be resolved, connecting the past with the issues of today will likely be the key to solving problems.

As we begin to look at contemporary hunting issues on the Flathead reservation, we will find that there is still opposition to tribal jurisdiction, and this conflict still faces off tribal and state interests. To ease the tension and insure that gaps in jurisdiction are filled, the tribes have entered into a joint compact with the state. Although the agreement is for concurrent jurisdiction, it is not satisfactory to many non-Indian residents of the reservation. The opposition stems from being forced to purchase a tribal hunting permit. The fish and game compact is rooted in a legislative act from 1947 authorizing the state and the tribes to draw up agreements over fish and game management. Under the agreement, the state Department of Fish Wildlife and Parks issues joint licenses for bird hunting and fishing on the reservation, and the revenue goes to the tribes. It should be understood that although joint authority appears to be working to the advantage of both parties, it is still a compromise for the tribes. They have voluntarily put themselves in a position to work out agreements with the state, and the cities and counties that lie within their reservation. Concurrent jurisdiction is a step in the right direction, as it avoids unnecessary conflict, and in a sense, has enhanced tribal sovereignty by defining exactly what authority the tribes have maintained. Non-Indians who oppose tribal authority demand

protection, however, from what they believe to be the injustices of Indian decisions and tribal courts, just as Indians historically demanded federal protection from whites and their legal system. Historically, neither side has had much faith in or respect for the other's legal system. The ideologies behind things, the way decisions are carried out, and the punishment for offenses can differ greatly between tribal and state courts. The differences are often based on cultural differences pertaining to law.

The situation on the Flathead Reservation is different from the other six reservations located in Montana. The other tribes have less direct conflict between ethnic groups over jurisdiction, because laws and the enforcement of those laws often eliminate the state's authority. All of the other six reservations fall under the jurisdiction of the federal Bureau of Indian Affairs, which hires its own police force to work in conjunction with tribal officers. These measures reduce conflict between tribal and state jurisdictions over land, people, and recourses on the reservations. What also makes the Flathead Reservation different is the white majority population living on the reservation, and the tribes' original adoption of Public Law 280 in 1963 which opened up agreements between the tribes and the state of Montana for concurrent jurisdiction over various matters.

The opposition to concurrent jurisdiction on the Flathead Reservation is from non-Indians who are not a part of the decision making and therefore feel that their constitutional rights are being violated. They do not vote on the tribal hunting permit or its cost to those who are required to purchase it, and yet the outcome is imposed upon them. On the other hand, the tribes often open up community discussions where whites are welcome to come and speak their mind. There are opportunities to negotiate with the tribes as

well. Recreation program manager Tom McDonald stated just last year concerning the suggested alternatives by non-Indians to the immediate closure of 64,719 acres of tribal land to non-members:

> This is another example of deferment of a decision based on public involvement in the tribal process,...It is built into our administrative ordinance to have public comment. The local community has impacts in the decision making process and they will have input in the study.[1]

Because of public opposition to the closure of tribal lands last year, the tribes reconsidered and left the lands open to the public while they study the impacts of heavy recreational use. It is true, however, that the ultimate decision will be made by tribal members, and this infuriates some non-members who in turn try to deny the tribes their authority. To gain an idea of the typical opposition the tribes face from many whites today, we can take a look at one man in particular who has opposed the tribes over fish and game regulations for years. Del Palmer protests tribal jurisdiction over fish and game every year by purposely violating tribal game laws.

## Recent Hunting Issues

Del Palmer has been trying desperately to exert his perceived property and constitutional rights on the reservation, and in his view this can be done through violating tribal laws on his private property. Del believes that he should be allowed to shoot wildlife on his property without having to buy a tribal permit, but does not argue that he should be exempt from buying a state permit. He does, however, argue that the state has illegally entered into an agreement with the tribes because the compact "was made in the shade and kept in the dark by state officials."[2] He further argues that by not giving him the right to participate in the decision making process, the state is in violation

of Montana's open-meeting laws. Del hopes that by violating the tribal-state compact he will be cited and can then have his day in court to argue against the tribes' right to enforce the purchase of joint fish and game permits. Ultimately, Del feels that fee patented land like his own is no longer part of the reservation, and should therefore not fall under any tribal authority. Palmer has been cited several times for hunting violations. The charges were dropped in 1991, he was acquitted the following two years, and charges were dropped again in 1994. His efforts continue; although no authorities showed up to cite him in the fall of 1996, he turned himself in. Lake County attorney Kim Christopher dismissed the charge because of lack of evidence. Apparently, Del had already eaten the bird he had shot.[3]

Not surprisingly, Del's case reflects all of those same issues that have been brought up throughout the history of Indian-white relations, and his arguments are popular among non-Indians on several reservations throughout the United States. The first issue his case exemplifies is the question of who has jurisdiction over non-Indians when they are on their private property. According to Del and several Supreme Court cases, Indians have little or no jurisdiction over non-Indian persons or their property, and this belief is not necessarily disputed by the tribes. The second issue remains inconclusive, and creates a major problem in exerting jurisdiction over game laws. The issue is, whose game is it? Does the game on the reservation belong to the tribe, or does it belong to the state of Montana since it can be argued that game on the reservation is ultimately found within the confines of the state? Because fish and game migrate back and forth from state to tribal land, this question is complex, and has not been answered definitively.

Tribal ownership of fish and game on the reservation has been argued using various justifications. The tribes believe the game on the reservation belongs to them regardless of whether it is found on tribal, trust or fee land. It is stated in Article III of the *Treaty with the Flatheads* that the Salish-Kootenai have exclusive rights to fish and game on their reservation as well as in all "usual and accustomed places" for hunting. Therefore, the treaty acknowledges tribal control over game by giving them the power to exclude. In addition, the tribes have spent many years caring for wildlife on the reservation by relocation, re-stocking, monitoring, and patrolling. The Tribal Constitution approved by the Secretary of the Interior also reinforces tribal authority in Article VI, Section 1a, giving the Tribal Council authority to protect and preserve wildlife and natural recourses belonging to the tribes. The federal government backs this decision further by acknowledging that the fish and wildlife of the reservation do indeed belong to the Indians. The assistant to the Commissioner of Indian Affairs wrote to the Tribal Council in 1943 stating that all fish and game belong to the tribes. By adopting the Tribal Constitution, the council had vested power to regulate fish and game activity.[4] Del Palmer and others opposing tribal authority have argued from another viewpoint. Because their fees and taxes have been taking care of the entire state's fish and game, they believe they should have control of the game on the reservation as well. They too have helped finance the state for re-stocking the lakes and streams with fish, and have contributed considerably to wildlife conservation. Because they contribute to the state for these services, they argue they should not have to pay the tribe for the same services.

In his drive to eliminate laws and agreements that affect non-Indians living on the reservation, Del Palmer in the process is making a direct attack on the culture and sovereignty of the tribes. Del's statement about his last hunting violation charge was "I had every reason to believe what I did was legal...private land is not reservation land." He asserts that the Salish-Kootenai Tribes have no jurisdiction over private property that is in fee status. What Del ignores in his argument is that the tribes do not claim to have jurisdiction over his property, they claim to have control only over tribal resources. Fish and game are believed to be tribal resources, and when any resident of the reservation violates the civil law at hand, the tribes have the authority to make the arrest of that person regardless of his or her land status. The tribe may not be able to try a non-Indian offender in a tribal court. They can, however, arrest and hold the violator in custody until the proper authorities arrive.

The tribal game permit itself is the initial regulation that draws so much opposition. Non-Indians often disregard the fact that the permit is simply a tax on those people who hunt anywhere on the reservation. It is not a tax on a person's property, nor does it give the tribes authority over a person's property. But, for those who believe that their private land is no longer part of the reservation, and therefore cannot be taxed by the tribe, it should be pointed out that the reservation boundaries have never been extinguished, and that it would take an Act of Congress to do so. The tribes have the right to tax residents on the reservation based on the several Supreme Court cases. The *Merrion v. Jicarilla Apache Tribe* and the *Washington v. Confederated Colville Tribes* are two cases in particular that reaffirmed the fact that the power to tax is an aspect retained through the sovereignty of Indians.[5] For

the Salish-Kootenai, the fish and game permit is an imposed tax covering the costs of their Wildlife Management, and Fisheries and Recreation Program. It also allows non-Indian recreationists and sportsmen to use over one million acres of what has been said to be "some of the best bird hunting and fishing in the nation."[6] District court judge C.B. McNeil stated in 1995 that he believed the fish and game agreement between the tribe and state complied with the Pittman-Robertson Act, a federal act reinforcing the tribes' right to collect joint license fees from non-Indians.[7] In addition, the state of Montana agrees with the tribe that the 1990 state-tribal agreement has "superseded general Montana licensing requirements."[8] To this date there has been only one court that has reviewed Del Palmer's legal case, and it strongly rejected it. The judge disagreed with Del's assertions that the law was unconstitutional or unenforceable, but ultimately dismissed the case when the county attorney decided no to prosecute.[9]

Because whites are not necessarily allowed to participate in the decision making process of tribal matters, it would seem that a state-tribal compact would be pleasing to them. Although certainly not obligated to do so, the Salish-Kootenai have opened the door for state and tribal jurisdictions to have checks and balances on each other. This means there are doors open for checks on tribal matters concerning non-Indians. Keep in mind that this agreement with the state can be enforced only with the consent of the tribe, but has the potential to benefit all people living on the reservation. The conflicts between non-Indians and tribal authority is unfortunate for the Salish-Kootenai. Although the non-Indian culture has often been a challenge or direct threat to tribal sovereignty, many Indians recognize the contribution non-Indians have made to the reservation economically, and in other aspects

like conservation. For non-Indians who recreate or fish and hunt, the tribal-state compact is quite beneficial. John Stromnes of the *Missoulian* newspaper states that the agreement with the Salish-Kootenai tribes was desired by the State, Fish, Wildlife, and Parks Department "in order to clear up nagging jurisdictional questions about who could regulate hunting and fishing on the reservation land, and to make sure non-tribal access continued."[10]

Although new to the Indian opposition scene, another man holds views similar to Del Palmer's. Gene Erb Jr. is a friend of Del's and was his co-defendant in his 1994 hunting violation. During his hearing in April of 1995, Gene stated that in the past, he had always purchased the state-tribal permit but bought only the state permit the last year because he was hunting on private property.[11] The interesting thing about his story is that although he was hunting on private property, it was not his own. This brings up an interesting point, in that if all non-Indians are allowed to hunt without a tribal permit on <u>any</u> private property inside the reservation, it is certain that reservation wildlife would quickly be depleted, and the tribes also would not have the income to manage game populations. Del and Gene's choice of method to ignore tribal regulations is interesting, but certainly not new to the tribes. It is the same method whites used in the 1920's and early 1930's when they were hunting only on tribal land and Indian allotments in order to avoid all state game regulations. During these years, whites were not allowed to hunt anywhere on the reservation without a special permit obtained by the superintendent.[12] 1927 was one year in particular when the state game warden asked the Office of Indian Affairs for help in patrolling whites on the

reservation, because whites were using the argument that tribal lands and Indian allotments did not fall under any state jurisdiction.[13]

The political view held by non-Indians like Palmer and Erb is difficult for the tribes to work with, because although racism is far from being stated politically, many non-Indians directly oppose the concept of a "Native American." Del and several others who share similar attitudes toward Native Americans are part of an anti-Indian movement on the Flathead Reservation and belong to a group called All Citizens Equal. They have many topics on their agenda, but regarding fish and game, the group is distressed over the use of the natural resources and the fact that tribal officials have any authority over matters concerning non-Indians. They believe that until they have a part in the decision-making process on the reservation, Indians will continue to remain "super citizens" with special rights.[14] Because there have been several direct attacks on the Salish-Kootenai by this group, they have often been charged with racism. By 1989 the debate between Indians and members of All Citizen Equal had become quite public, resulting in the formation of a multi-racial group that monitored racist incidents on the reservation.[15]

What some residents of the reservation are unwilling to accept is the fact that the Salish-Kootenai have the inherent right to organize and govern themselves over matters that concern their reservation. The right was not given to them by the United States, they possessed it naturally as a sovereign entity. Their rights are reinforced by the Treaty of 1855 and several Congressional acts, public laws, and district and Supreme Court decisions that have generally continued to reinforce the rights of Native Americans. Although tribal rights are generally protected, Del Palmer, his attitudes

toward law and jurisdiction on the reservation, and his continual violations of tribal fish and game regulations do have the potential of being a threat to the tribe. Del has one important factor on his side. In a nutshell, he has a chance of being tried for fish and game violations under a justice of the peace who identifies with his plea on an emotional rather than a strictly legal level. Emotions run high in court-rooms, and can be devastating to the loser. The possible advantage is simply that there are inconsistencies in the rulings in tribal matters by court judges. Although to this day, most government officials back the tribal-state agreement and the tribal decision-making authority, there is always the chance that if a case were taken to court questioning tribal authority, a judge would simply ignore previous opinions of the court.

One judge appeared to do this just a couple of years ago, and now that Supreme Court decision in particular has the potential of having a negative impact on the Salish-Kootenai tribes, if litigation were ever to occur. The case sets a precedent for dealing with non-Indians who commit game violations within the boundaries of the reservation. The case is *South Dakota v. Bourland* which ruled in the summer of 1993 that the Cheyenne River Sioux lost their right to regulate hunting and fishing by non-Indians on the reservation. Not only did Justice Clarence Thomas rule in his opinion that the tribe had no authority, but he made his decision contrary to several previous court rulings. Tribal Attorney General Steve Emery stated that the judge ignored "established law and the federal-Indian trust relationship."[16] Emery believed that the judge based his conclusion on the fact that if Congress had intended the tribe to regulate non-Indian hunting, it would have done so by creating a specific statute. This conclusion is in direct conflict

with the long held legal principle that as sovereign powers, tribes automatically retain their rights unless Congress specifically reduces or diminishes them.[17] An important observation in this case is the fact that it was the state that brought suit against the tribe, and the Sioux were in a position of authority similar to that of the Salish-Kootenai today. The jurisdiction dispute was over land that was until 1987 jointly regulated by the tribe and the state under a wildlife agreement. When the two authorities came together to discuss the renewal of the compact, negotiations broke down, and the state sued. Although the outcome was not a total loss for the Sioux, the *Bourland* decision essentially limited tribal sovereignty. The *Bourland* case exemplifies that there is simply no law that does not have the potential to be changed by a serious emotional plea. Because case laws are "opinions of the court," they are not set in stone. Laws are dynamic and always changing.

The fact that laws are not static forces the Salish-Kootenai to always think ahead and determine whether they can risk the possible consequences of any legal action taken. Although they are currently viewed by most bureaucracies as sovereign nations who govern themselves and much of the activity in their boundaries, this does not necessarily mean that they will automatically retain the rights they have today. Gaining strength and power over their own reservation has been a slow process that is watched and regulated by surrounding governments very closely. What actions the tribal council takes do indeed have an effect on other Montana citizens and their economy. Because the tribes fall under the ultimate jurisdiction of Congress, they are very aware that they must work beyond their means and beyond their own needs in order to protect the political progress that they have made.

The tribes are also aware that promises made to them by Congress in the past have not always been upheld, nor have they necessarily met the needs of Native Americans. The federal government on the one hand has always stated that Indians have the right to be independent nations and in 1934 tried to back that statement up with the Indian Reorganization Act. Standing behind those statements has been a different matter, however, and often the tribes have gone without protection or the ability to really govern themselves. The powers given to Indians through congressional acts have always been stated very generally. This happened because non-Indians assumed that Native Americans had little motivation to empower themselves. This, as it has turned out, was not the case, and non-Indians and state governments especially, have found themselves ill-prepared to deal with today's issues on reservations.

Often to the white mans' dismay the Salish-Kootenai, although appearing to be assimilated in some ways, are proud to be a people of their own. They are culturally different, and working and living within the confines of the United States and the state of Montana will not change that. Forcing all Native Americans to become American citizens did not change anything either. Fighting for their right to maintain jurisdiction over matters within their reservation in a culturally different way, they have always faced direct hostility by non-Indians. An editorial in a Montana newspaper not only discusses the controversial tribal-state compact, but exemplifies non-Indian attitudes toward the entire concept of the Native American and the reservation. The letter reads:

> Governments, tribes infringe on rights
>
> I think it's about time the non-Indian people, and especially the sportsmen of our state, take note of our state and federal

governments infringing upon our constitutional rights.

I speak of our state maintaining a cooperative agreement with the Confederated Salish and Kootenai Tribes. This agreement requires a special hunting permit for anyone hunting on private land within the reservation boundaries. To this date, a jury has stated four times that this provision is not valid, but our state continues to exert pressure upon the sportsmen, including citations in court. Just how many acquittals does a jury have to make in order for our state to admit its mistake? Who can forget a crowd of sportsmen being illegally ordered to leave the Lone Pine State Building so the tribe and state could negotiate this secret agreement?

The tribes have long claimed they are a sovereign nation which can ignore federal and state laws that the rest of us must abide by. Just how many sovereign nations within our nation can we have? Many tribes have now obtained status as "treatment as states" under various federal environmental programs.

As citizens, which is their right, they are elected to our state Legislature in which they help make laws and taxes for all the other people in the state to obey and to pay while they, themselves and their people, are exempt. Nice, what?

The Flathead tribes are now negotiating for control of one of our national treasures the National Bison Range at Moiese. Along with it will go the federal Ninepipe Reservoir and surrounding property.

I ask that you understand that I have no quarrel with the Indian people. It is their form of government I oppose along with our federal Indian policy from Washington, D.C..[18]

Although the letter is polite, many of the author's remarks are historically inaccurate. For instance, a county jury has never stated that the tribal-state compact is not valid. However, there has in Del Palmers' case been a district court opinion saying the agreement is valid. The two acquittals to Del came only because charges were dropped by county officials. Charges were dropped either because there were no witnesses or no evidence of the violation, and not because the courts felt the compact to be illegal. It is quite apparent that the author understands that there have been mistakes made by state and federal governments; it is also apparent that most of his blame goes to the

Indian people. The author may not understand that the tribe itself falls under federal laws, and they have never claimed to be exempt from the ultimate control of Congress. Although the author says he is opposed only to the tribal government, and not to the Indians themselves, he should know that their government is the representative voice of the Indian people. The editorial appears harmless, but the many attitudes expressed in the author's letter can make solutions very hard to find. There is no doubt that the author's feelings about the compact as well as inter-governmental relations are very real. There is a sense of panic that Native Americans are taking advantage of white Americans because they want "special" rights. Some believe that Indians receive many rights and benefits that other Americans don't. These feelings are at times based on fact, and yet often these fears of inequality are based on ignorance.

It is true in one sense that people today are not responsible for laws that were implemented years ago. That the land he owns was opened to settlement by the United States government is certainly not the fault of the white man who owns a farm or business on the reservation today. On the other hand, it is not the fault of today's Salish-Kootenai that their forefathers and the federal government entered into agreements with the sovereign Indian nations in order to allow the non-Indian nation to grow. The federal government accepted the fact that the lands of North America were legally "owned" by sovereign nations with inherent rights, and entered into contracts with them accordingly. As part of the contract with the Salish-Kootenai, the tribes reserved a land base of their own. What the Salish-Kootenai fight to implement on their reservation is not a direct attack on the non-Indians who live there. They want simply to maintain their land base

and their inherent right to do so. As we view contemporary issues, we need to understand how the tribes justify controlling fish and game matters on the reservation.

As mentioned before, just because laws are written, they are not necessarily set in stone. The fact that Native American law tends to be so ambiguous is the reason why issues are still unsettled between the tribes and state and county officials. The tribe cannot protect its values and enforce its laws when every time they assert their jurisdiction their authority is dismissed by those arguing that they have no right to conduct criminal investigations or cite individuals for crimes. One thing that should be set straight, and that most officials can agree on, is that the tribes have little authority over non-Indians who commit any of the "major crimes" included in the *Major Crimes Act*. In other words, they cannot try non-Indians in a tribal court for major crimes. They do, however, have the right to conduct investigations and make arrests of those individuals under Public Law 280.[19] In addition, the case of *Oliphant v. Suquamish Tribe* (1978) clearly allows the tribes the right to arrest and/or detain non-Indians in order to deliver them to the proper authorities for prosecution.

Civil authority is much less defined. Thus, jurisdiction over non-Indians is often left up to the courts to decide. It is generally agreed that offenses committed by one non-Indian to another will be handled by state courts, as backed by the decision of *United States v. McBratney* (1882). Also agreed, is that in a civil offense where both of the parties involved are Indian, the tribal court has full jurisdiction. If a non-Indian brings action against an Indian in a situation that occurred on the reservation, exclusive jurisdiction of the tribe also occurs.[20] The gap in the law is when the Indian is the plaintiff, and the

non-Indian is the defendant. This is often the case today when dealing with fish and game violations on the Flathead reservation. This not only appears to be the one area that is not fully defined, but it is an area that has become quite risky for the Salish-Kootenai. A negative ruling against the tribe in a court of law could essentially affect tribal authority in many other aspects of self-government.

Today the tribes appear confident in exerting their jurisdiction and are not totally opposed to taking risks to define their authority. Working with the state in jurisdiction matters, however, has always seemed like a better answer for all of those concerned. The various compacts have allowed state and tribal authorities to share jurisdiction instead of risking the possibility of losing its authority in a court battle. The statute that has been the backbone of tribal-state compacts since the early 1960's is Public Law 280 (P.L. 280). P.L. 280 is a federal statute that now allows for concurrent jurisdiction by the state and the tribes over most crimes and several civil matters on the reservation. It was originally enacted as a federal policy to terminate tribal governments by once again forcing Indians into mainstream American society. P.L. 280 came about due to the termination era of the 1950's and early 1960's during which the federal government wanted to eliminate their trust responsibilities to Native Americans. They thought they could do this by handing over many of their responsibilities concerning Native Americans to the individual states. Needless to say, the termination policy failed, and caused great economic stress to many Native American societies.[21]

The Salish-Kootenai did have to consent to the implementation of Public Law 280 which allowed for some state jurisdiction on the reservation. The tribes gave their consent in 1963, because the law did not withdraw any tribal

regulatory authority, but merely transferred the responsibilities of jurisdiction by the federal government to the state of Montana. The state could then assume jurisdiction over "all criminal laws of the state of Montana; and all criminal ordinances of cities and towns within the Flathead Indian Reservation."[22] Under P.L. 280 the tribes had some authority to try Indians in criminal matters, but they could not issue more than a $5000 fine and/or 1 year in jail. They have been able to issue consecutive terms of the 366 day jail term, but because the sentence imposed for major crimes has differed greatly between state and tribal courts, and because many non-Indians have been extremely critical of the tribes judicial system, the state has usually exerted its authority over those matters.

In the area of civil authority under P.L. 280, there have been eight additional matters that the state and tribes share authority over, which are labeled Tribal Ordinance 40-A. These areas of civil authority have included:

> "(a) Compulsory school attendance; (b) public welfare; (c) domestic relations (except adoptions); (d) mental health, insanity, care of the infirm, aged and afflicted; (e) juvenile delinquency and youth rehabilitation; (f) adoption proceedings (with consent of the Tribal Court); (g) abandoned, dependent, neglected, orphaned or abused children; (h) operation of motor vehicles upon the public streets, alleys, roads, and highways."[23]

Although there is concurrent jurisdiction over Ordinance 40-A, the federal government could not transfer any more jurisdiction to the state than it already possessed. Thus, there are specific terms that exclude the state from having jurisdiction over Indian property , including the water rights of that property, and that excludes state jurisdiction over Indian hunting and fishing activities.

Although P.L. 280 enhances sovereignty in some aspects, it has restricted it in others, prompting the Salish-Kootenai to want to withdraw from the

agreement. Because P.L. 280 was implemented only upon the consent of the tribes, they were suppose to be able to withdraw from the agreement within two years if dissatisfied. When the tribes became dissatisfied with the arrangements, they attempted to withdraw their consent but to no avail. The Montana Supreme Court ruled in 1972 that these attempts were invalid. Apparently Montana Governor Babcock had issued an extension of the withdrawal deadline, but the court ruled that Babcock did not have the authority to extend that time period.[24]

In 1991 the tribes again made it clear that they wished to back out of their compacts stemming from P.L. 280 and Tribal Ordinance 40-A. They wanted the federal government to take control over the jurisdiction that the state had assumed. The main feeling in the tribes at this time was that although the state had concurrent jurisdiction over eight civil matters/laws, the tribes had been the primary providers of services for a number of years. In addition, they had retained their decision for authority over those matters. Retrocession would simply "officially" revest the tribes with exclusive jurisdiction in areas of authority.[25] Retrocession would not affect tribal jurisdiction over major crimes. It would only revest the federal government with jurisdiction over major crimes, whether by an Indian or non-Indian. Retrocession would eliminate most state jurisdiction unless a state-tribal agreement of a particular sort was seen as desirable by the tribes. Financially, this would be to the advantage of non-Indians living on the reservation, because they would no longer have to financially support the state burden of paying for jurisdiction. Although many Indians do not pay local property taxes, they do pay federal income tax, and would therefore contribute equally to the financing of federal jurisdiction on the reservation. This could result

in great savings in state and county budgets. Although the tribes fought for quite some time to back out of the compact agreement, the bill they proposed to the Legislature was essentially ignored. This tried the tribes' patience, as tribal Chairman Mickey Pablo wrote to Montana Senate President Joe Mazurek: "As a sovereign nation, it is demeaning for us to plead for that which we believe our government is rightfully entitled to and which was denied us in 1963: the right to withdraw our consent when we believe the time is right."[26]

Since the 1960's, the tribes have shared jurisdiction with the state of Montana over misdemeanor cases involving Indians, and over eight areas of civil law, but the two authorities have had a long tough road figuring out exactly who has jurisdiction in certain areas of fish and game. Anything not specifically worked out in laws and litigation is basically "up for grabs." The uncertainty in the compact over areas of civil matters and particularly fish and game has sparked long years of protest by non-Indians of the Flathead reservation.

There are several historical questions of authority that still need answers today. For instance, the controversy over ownership of fish and game grew by the late 1970's. In addition to figuring out the details of authority over people, the question of who "owned" the wildlife had several possible answers, depending on whom you consulted. The state claimed in 1978, that because they managed most areas of Montana Fish and Game they ought to have control over all wildlife in Montana. They believed their authority should include the Flathead Reservation within the state of Montana. The tribes asserted that wildlife existing on the reservation was owned by the tribe, and should therefore be managed by the tribe. The problem in deciding

jurisdiction is complicated by the migrations of fish and game, so that their "ownership" is not likely to be easily defined.

Arguments over control turned into a serious dispute in December of 1978, after a conflict between the tribes and state over a hunting violation involving bighorn sheep. The privately owned island on the reservation's Flathead Lake was home to many bighorn sheep. Apparently one of the bighorns left the island to cross the lake when it was frozen, and was then killed by a Native American hunter. The state was in the process of buying the island from the owners, and in addition, the state Fish and Game Department had been restocking and relocating fish and game on the reservation. They believed it was within their jurisdiction to prosecute the hunter in violation of illegally killing a bighorn sheep. Essentially the state was arguing that they "owned" the wildlife on the reservation, and especially if the game was found to be on state or fee status property. During the jurisdiction dispute over the hunter, the state also decided to proceed in moving 75-100 bighorn sheep off of the island because of overgrazing, and relocate them in another area. The state had already illegally confiscated the carcass of the bighorn from the hunter, and when the tribes demanded it back, the state refused. The tribes were unable to prosecute the violator without the evidence.

The tribes disagreed with the State Fish and Game Department over jurisdiction in both the prosecution and in the relocation of bighorn on the reservation. First of all, prosecuting hunting violations is the responsibility of the tribe when it involves a tribal member, and secondly, the tribes believed that the wildlife within the confines of their reserve were owned by the tribe. As the conflict of 1978 increased, the issue became less about the

actual hunting violation than about government authority to relocate the sheep off of the reservation. Tribal Councilman Tom "Bearhead" Swaney refused to allow the Fish and Game Department to relocate the wildlife. His refusal stemmed from the fear that such a concession would erode the tribes' treaty rights to the animals on the reservation. The conflict went on for months, and the tribes broke off negotiations with the state over the return of the carcass from the hunting violation. The tribal council then threatened other action if the sheep carcass was not returned to the tribes. The state Fish and Game Department only reaffirmed their position of authority over the bighorn, and suggested that they would pursue the right to extend their jurisdiction over all big game on the reservation. Because of the way this major conflict was handled, Tom Swaney was stripped of his seat as chairman by the tribe. Although there were perhaps other reasons for letting Swaney go, the tribe believed that he had "created a crisis with the state" concerning game on the reservation. The tribe could not afford to be that bold at the time, because they realized a heated confrontation meant a possible loss of control over all tribal game.

Vice Chairman Pablo, who became chairman after Swaney departed, stated that he was not sure whether or not he would back down from Swaney's firm stance against the state, but in the end agreed to compromise. The final agreement over the bighorn controversy was indeed a compromise on the part of the tribe, but the tribes could not afford any crisis over jurisdiction, and negotiated accordingly. They agreed that the state and the tribes would trap twenty-five bighorn and relocate them on the reservation. The tribe would have to reimburse the state for trapping and transporting the sheep. All in all the tribe was to pay for one-quarter of all trapping costs for the re-

location of approximately 102 sheep, yet they would not manage any of the relocated animals. The state got control of other bighorn transplants as well, but the contract had no provisions for the future management of sheep on the island by either the state or the tribes. What the tribes got out of this deal was an avoidance of any major litigation with the state while keeping a hand in the management of big game on their reservation. The state also kept their authority over game on the reservation and received financial help to foot the bill for game management goals.

The controversy served to show just how touchy and unstable tribal jurisdiction is. The tribes are aware that although Chairman Swaney's methods of negotiating with the state were hardlined, such a stance is desirable at times. If a situation arises where the tribes have a safe opportunity to negotiate in this manner they will do so. They are also aware of how emotional the issues of jurisdiction on the reservation can be. To maintain their authority, the tribe needs to be able to negotiate in good faith with other authorities, and sometimes even negotiate at a loss to maintain tribal sovereignty. In other words, it is likely that the tribe agreed to pay for part of the state's relocation of the bighorn and forego jurisdictional disputes over that process, so that they could maintain authority over other big game on the reservation. A negotiation that was pleasing to the state, on the other hand, motivated them to back off of their threats to control all of the big game on the reservation.[27]

1979 was an intense year for the tribes. After dealing with the conflict with the state's Fish and Game Department over the bighorn, Al Bishop, the commissioner of the same department, decided to sue the tribes over hunting rights off of the reservation. Bishop believed that Indian harvests of game off

of the reserve was taking away from the harvest available to non-Indian hunters. Although this thesis does not attempt to cover hunting conflicts off of the reservation, this story is worth mentioning, in that it gives us an idea of the intensity with which the tribes are hit from all sides of any given issue. Not only were the Salish-Kootenai accused of diminishing the state's wildlife, but to back up the argument, they were all accused of being "anti-conservationists." "They'll kill anything," Commissioner Bishop was quoted as saying.[28] In addition to dealing with an administration on a political level, the tribes were still dealing with people who had negative stereotypes of Indians. Unfortunately, stereotypes make solutions to any given problem almost impossible to find.

Non-Indians should realize that because the Salish-Kootenai are culturally different, they may choose to do things a little differently than state programs dictate, but this certainly does not make them any less knowledgeable in a given area. The Salish-Kootenai have and will continue to have different ideas about how things should operate for the benefit of the tribe. Ironically enough, criticism of the tribe is often highest when the tribal system imitates that of non-Indians. An example is the anti-conservationist accusations from Commissioner Bishop. At this time the tribes already had an intense game protection program, wildlife planning by game biologists, and enforcement of game violations by tribal game wardens.[29] Even back in the 1940's, several important ordinances for the protection and conservation of wildlife had been enacted by the tribes. They enforced proper practices in trapping and selling beaver furs, and had regulations for the killing of deer and elk, and for netting fish.[30] In addition, in 1979 the Confederated Salish-Kootenai Tribes became the first and only Indian group in the United States to create a

wilderness area on their reserve. The Tribal Recreation Department was self-supporting from the revenue of non-tribal member permits for recreational use of tribal land.[31]

Much of the media coverage of fish and game issues up until the mid to late 1970's featured non-Indian concerns about the manner in which Indians were using the recourses on the reservation. When looking over the events reported from the reservation during this time, the reader finds most of the conflict still had to do with fishing and hunting violations by tribal members, just as it had in the past. By the late 1970's, however, views somewhat flip-flopped again. Tribal members had established a wilderness, and had made the wildlife and environment much more than just a personal concern. These issues were consistently a part of the political agenda, and the tribal government once again began concentrating on legal protection of tribal land and recourses. They drafted additional fishing and hunting rules and regulations of their own, and continued to seek authority over those who committed crimes against these regulations. Just as we have seen in the past, there was great opposition to the tribes when they asserted their control over tribal land and wildlife, affecting non-Indian hunters on the reservation. Non-Indians complained of discrimination, especially when tribal lands were closed to hunting and recreation. Of course the tribal council often restricted its own members when it came to fishing and hunting, but only when they felt it was absolutely necessary. The tribes had the right to close tribal lands simply because they are privately owned by the tribes. From the tribal standpoint, it was a perfectly acceptable thing to do. After all, whites do not allow Indians to fish, hunt, or recreate on their private land. The resources on tribal land are there for future use of the Salish-Kootenai, and they should

be allowed to control the use of them as they see fit. But the fact that non-Indians are being limited to hunting areas, charged for a tribal permit to hunt, and having to answer to the tribes over game regulations, have angered many non-Indians.

The early 1980's brought many of the same disputes over jurisdiction, but the conflict was fairly subdued. The tribes asserted themselves with confidence, and many issues seemed to fall into place. During the early 1980's, many property owners on Flathead Lake and in the state of Montana were upset about the 1977 tribal-imposed Shoreline Protection Ordinance. In short, this ordinance maintained water quality standards. By 1982 some who believed that tribes should have no authority in regulating their riparian rights had ended up losing their rights in a court of law. Originally, the Federal District Court ruled against the tribes, but they appealed. In the appeal, the court "recognized that Tribal power can extend to activities of non members on fee lands in such circumstances but only if there is a tribal interest sufficient to justify Tribal regulation."[32] The decision of the court had been partially influenced by a case the preceding year that involved the Crow Tribe in Montana. The ruling in the Bighorn River case, stated that if Indians can prove that an issue is adversely affecting the tribes, there is a possible reason to allow for tribal authority over non-Indians. In the case of the *Confederated Salish & Kootenai Tribes v. Montana* the ruling stated that:

> The conduct that the Tribes seek to regulate in the instant case--generally speaking, the use of the bed and banks of the south half of Flathead Lake--has the potential for significantly affecting the economy, welfare, and health of the Tribes. Such conduct, if unregulated, could increase water pollution, damage the ecology of the lake, interfere with treaty fishing rights, or otherwise harm the lake, which is one of the most important tribal resources.[33]

The United States Supreme Court denied a petition for review in the Flathead Lake case, and with some general rules of jurisdiction being reaffirmed in that case, the Salish-Kootenai proceeded to develop plans to work out a new agreement with the state over game management. The outcome of the case certainly helped put the tribes in a better bargaining position for authority over game matters, and especially those issues pertaining to fish. The terms of the compact began to be discussed in 1986, and took several years of planning. In 1987, the tribes further asserted their right to control fish and game by passing Tribal Hunting and Fishing Ordinance 44-D, allowing the tribes to assert their jurisdiction over game throughout the entire reservation. The tribes' decision to pass 44-D was then approved by the Secretary of the Interior. Tribal jurisdiction over fishing and hunting by non-Indians evoked great protest, and in September of that year, 220 people were organized by the group All Citizens Equal (ACE) to discuss their opposition to the ordinance with Montana governor Ted Schwinden. In addition to protesting the ordinance, they protested the tribal-state negotiating sessions that began in 1986. In their view the sessions violated Montana's open meeting law, because the tribes often met in private with state officials to discuss matters. They also voiced concern that their constitutional rights were violated because they were not a part of the decision making process through voting. The state responded by informing them that both state and tribal officials had agreed that any compacts reached would have scheduled hearings and a complete review by the public. Much to the dissatisfaction of non-tribal and All Citizens Equal members, Governor Schwinden stated in his September meeting that the Salish-Kootenai have rights based on treaties and Congressional and executive acts. He also cited

the Bighorn River Case in which both state and tribal rights were addressed. The case, he said, exemplified the tribes' retention of inherent authority over non-Indians in matters adversely affecting the welfare of the tribes. Schwinden also backed the tribes' right to closed door sessions in particular cases, stating that everyone he meets with has that right.[34]

The tribes, Governor Schwinden, and the Department of Fish, Wildlife and Parks soon came to an agreement concerning the tribes' jurisdiction over wildlife. Throughout 1987 the tribes pushed to gain control over most reservation wildlife issues . They intended to contract with the federal government for many of the wildlife functions of the Flathead Agency.[35] They also made agreements with counties lying within the reservation boundaries. Some of these counties agreed to acknowledge that ultimate authority over land-use planning belonged to the tribes.[36] The fish and game agreement between the tribal and the state governments was made in hopes that it would ease jurisdictional disputes. The compact called for joint management, cross deputization of wardens, and a joint license for non-tribal residents of the reservation. The joint license was to satisfy the complaints of non-Indians over having to purchase two permits, and also requests that it be reasonably priced. In addition, the tribal-state compact envisioned that non-Indians who committed fishing and bird hunting violations on tribal land would be tried in tribal court, and if violations were committed on state lands, the violators would be tried in state court. The pact would also create a local reservation fish and game board of Indians and non-Indian residents. Although the tribe was still having to compromise regarding sole jurisdiction over their resources, the compact was an improvement over expensive litigation. The tribes signed the agreement in the later part of 1988. At this

time, Governor Schwinden was just leaving office, and the final signing of the pact by the state was then left up to the new governor, Stan Stephens.[37]

The new administration under governor Stephens did not believe that the tribes had made enough concessions. They opposed non-Indians ever being tried in Indian courts for fish and game violations, as well as other aspects of Indian jurisdiction over whites. Governor Stephens's opposition to tribal authority forced the tribes and the state to start over in bargaining for a final agreement. The state drafted a new proposal for the tribes to sign, but much to their surprise, the tribes strongly rejected it. Various aspects of the agreement itself were rejected because it required too much compromise on behalf of the tribes, but Stephens's accusations that tribal wardens were not adequately trained were quite offensive as well. Stephens apparently believed that cross-deputization could not be adequately attained until tribal wardens were trained in the same manner as state wardens. To him, graduation from Montana Law Enforcement Academy was a must.[38] In this sense he ignored the tribes' right to implement authority in a culturally different way and appeared to have little respect for tribal sovereignty.

The tribes' fear that the state was seizing their authority brought on a stalemate in which each side refused compromise. In February of 1990, the tribal council threatened to close over 600,000 acres of tribal land to non-Indian hunters and recreationists if Stephens didn't sign the compact that had previously been agreed upon.[39] That year also found a lawsuit filed on behalf of the Salish-Kootenai against the state, claiming the inherent right to exercise civil jurisdiction over non-members concerning fish and game. The following year the tribes began withdrawing from the 1965 agreement to share jurisdiction between the state and the tribes, hoping to share those

responsibilities with the federal government instead. The bill to withdraw from Public Law 280 was called House Bill 797, and would essentially give total authority over minor crimes to the tribal government.[40] Shared jurisdiction was not working for the tribes in its current form because they could not hold their own court, conduct their own policing, or set their own penalties for crimes committed.[41] Retrocession continued to be negotiated between the state and tribes over the next few years. The main opposition stemmed from the tribes' desire to have sole jurisdiction over all Flathead resident misdemeanor crimes. Non-Indians were afraid this jurisdiction would in the future lead to total tribal authority over non-Indian violations like fish and game matters.[42]

Because of state opposition to sole tribal jurisdiction, House Bill 797 lay dead in the legislature and was reintroduced at a later date as Senate Bill 368. That bill would allow the tribes only partial withdrawal from their earlier compact with the state. When Senate Bill 368 passed, the tribe regained partial legal jurisdiction on their reservation. The bill agreed that the tribes would have jurisdiction in all misdemeanor crimes involving tribal members, and in felonies and civil cases after consultation with the state.[43] By May of 1993, the state and the tribes started dividing up their new duties under Senate Bill 368, and eventually created a cross-deputization proposal that law enforcement agencies on the reservation could sign onto. According to the state, Missoula, Sanders, and Flathead counties as well as the cities of Ronan, Hot Springs and St.Ignatius, the pact that returned some of the law enforcement power to the tribes was working well, and had been signed by most of the authorities.[44]

Although Senate Bill 368 concentrated on the transfer of authority over tribal members from the state, it did reinforce tribal jurisdiction over whites in some instances. The tribes are not allowed to try non-Indians in a tribal court, but they can investigate a crime and cite a non-Indian under tribal jurisdiction if they need to make an arrest.[45] Protests continue because the tribes have gained ground in asserting their authority over non-Indians. Those in opposition assert that it is illegal for the tribes to have any jurisdiction over non-Indians, and illegal for the state to enter into such an agreement with the tribes. It should be understood, however, that higher courts have upheld the decision that anytime a non-Indian or a non-Indian organization such as the state enters into a relationship with the tribes by consent, the tribes have the potential to maintain civil authority over non-Indians. In effect, the courts have affirmed the state's right to enter into agreements with tribes, as well as tribal authority in concurrent jurisdiction over persons in civil actions.

**Tribal sentiments and legal justification of issues**

How do the tribes justify their sentiments and actions over the issues pertaining to game on their reservation? We can understand tribal sentiments by looking at how the Indians justify their attempts to control the outcome of events. Under Senate Bill 368 that became law in 1993, the tribes partially withdrew from their joint jurisdiction with the state. This act gave them more control over various legal matters on the reservation, and gave them sole jurisdiction over their own tribal members. Non-Indians are afraid of having to fall under the jurisdiction of the Tribal Court if they become plaintiffs under the bill, and have become extremely critical of the

entire tribal legal system. There has been an expectation on the part of many people and their representative governments for the Salish-Kootenai to act as a submissive, secondary force on their own reservation. This image is partially reinforced every time the tribes compromise in decisions concerning authority. Although the image is certainly not desired by the tribal government, they do believe that compromise is the best way for them to succeed, benefit and profit. Tribal decisions in the field of politics and law have for quite some time been a crafty balance of their own cultural needs with the needs of their non-Indian neighbors in order to avoid major criticism, factions, and conflict.

The tribes are convinced that generally, non-Indians are over-critical of the tribal legal system, forgetting not only that there are cultural differences, but that there is simply no legal system that is perfect. The tribes must surely wonder why non-Indians are so critical of another culture's system when it has failed to perfect its own. No government can be perfect or fair in every case and all politics and laws are culturally relevant to one's own people. Yet in the eyes of many non-Indians, the tribal government must run at a level close to perfection and should totally emulate surrounding cultures, if it is to remain in a position of authority. Arguments pertaining to Senate Bill 368 are good examples of non-Indian fears in the realm of tribal jurisdiction. The bill gives the tribe total authority only in cases when their own tribal members are defendants, but whites and county officials on the reservation persistently worry that non-Indians falling under tribal jurisdiction will receive different treatment in the tribal courts than they would in the state system. Even more of a concern to some county officials is that Indian defendants will receive different treatment in tribal courts than in the state

system. Even Montana Attorney General Joe Mazurek was quoted in 1993 as saying that equal guidelines for penalties need to be agreed upon by both state an tribal officials.[47] For the most part, the criticism comes not from actual complaints of whites being treated unfairly. It stems from the fact that the tribal court does not have a definite separation of powers, and therefore is perceived to be biased and running without checks and balances. Non-Indians worry about the severity of the penalty that Indian judges will put on other Indians. It is true that the sentences may vary depending on the situation, but there is no doubt in the minds of the tribal court that all people will be treated fairly. The Salish-Kootenai legal system may run differently, but the judges and their courts are operating for the very same purpose that the state system is...justice.

Because the two justice systems operate differently, the Salish-Kootenai are expected to set new guidelines and work through the many concerns of state officials concerning their legal system. This being the case, what exactly is left for the tribes to say in their own self-government? The concerns that come with Senate Bill 368 are a small but perfect example of one of the many ways in which the tribes are expected to compromise when dealing with outside forces. They demonstrate the contradictions implicitly in the complaints of many non-Indians. On the one hand they argue that the Salish-Kootenai cannot and do not have the "know how" to take care of political matters on their reservation. On the other hand, whenever the tribes have decided to emerge from beneath other governmental control, they are stopped immediately. Non-Indians show disrespect for Indian ideas that could work to benefit the tribe and relieve the state financial burden that so many non-Indians worry about. Even when initiatives or laws pass to benefit the Salish-

Kootenai, it does not necessarily mean that the tribe has actually been given the freedom and the tools to attain the goals at hand. There are almost always non-Indian officials who seem to have better answers for everything. This is the problem that in the past has forced Indians into dependency, and the Salish-Kootenai feel this same impact of paternalism today. They can hardly move without criticism, and a plan is almost always conjured up by outside officials to make sure that the tribes operate on a level that can be understood by non-Indians.

Because the tribes are put on the spot by the state and its people to justify their authority in another culture's legal terms, they have general guidelines they can use when justifying their actions in reservation matters. It is helpful to examine a general outline of tribal regulations that was prepared for the Indian Law Support Center in Colorado. The outline will not give us the specifics for Salish-Kootenai control over fish and game, but it will reveal the reasoning behind the arguments used by the Salish-Kootenai. These arguments are their legal strength in their efforts to control fish, game and other tribal recourses.

The *Tribal Regulation Manual* states that there are basically three major sources of tribal regulatory power, and three major sources of limitations on that power. The sources for power (especially in decisions dealing with non-Indians) are:

1. The inherent sovereignty source.
2. The power to exclude source.
3. The federal delegation source.

Inherent sovereignty is not recognized as a reality by non-Indians who oppose Indian control or the concept of an Indian reservation. When discussing tribal sovereignty, many do not fully understand how the term is

applied to Native Americans. The term "sovereign" needs to be understood as a principle of vested powers in an Indian tribe. Sovereignty is not "granted" to Indians by the United States Congress, and neither are those powers inherent in the term itself. The powers to choose a form of government, to adopt self-government, to define membership, to levy taxes, to regulate property within the jurisdiction of the tribes, and to administer justice are all inherent in the term sovereign. This sovereignty was recognized when the tribes first entered into relations with the federal government. Tribal sovereignty is limited because the Salish-Kootenai tribes are a "dependent sovereign," but their sovereignty has never been extinguished. For instance, they have lost some powers that the state of Montana still retains as a sovereign, but in reality the state is a dependent sovereign as well. In particular, the tribes have lost the power to transfer tribal land without federal approval, to carry on relations with nations other than the United States, to regulate non-Indians when there is no direct threat to tribal interests, and to impose punishment on non-Indian offenders.[48]

The federal government and the state of Montana build relations with the Salish-Kootenai within the confines of the term sovereignty. A few out of many Supreme Court and state decisions that uphold sovereignty of Native Americans provide good examples. *United States v. Wheeler* (1978) decreed that tribal laws could be enforced in tribal forums, *Williams v. Lee* (1959) upheld the decision that Native Americans could impose (levy) taxes for regulatory and revenue raising purposes, and *Montana v. United States* (1981) fount that tribes have the power to regulate the conduct of non-tribal members who enter into a consensual relationship with the tribe, or whose

conduct directly affects or threatens a significant tribal interest.[49] Yvonne T. Knight sums it up in the tribal regulation manual by stating that:

> Tribes are considered to be sovereigns completely separate from the state and federal governments in the sense that tribal sovereign powers derive from the consent of separate peoples whose governments were in existence at the time Europeans entered this country. Since tribal government predate the formation of the state and federal governments, and are not derived from or dependent upon the federal constitution, tribal governments are not bound by the provisions of the federal constitution.[50]

Sovereignty encompasses and justifies the Salish-Kootenai right to regulate the conduct of others if it threatens a tribal interest. It also gives them the right to tax. The fish and game permit imposed upon non-Indian Flathead residents is just such a tax. In addition, because sovereign tribal governments predate the constitution, and the reservation itself predates the formation of the state of Montana, tribal rights are not always restricted to the provisions of the United States constitution or the provisions of the state.

The second source of power for the tribe to regulate is called the power to exclude. This essentially means that tribal members can exclude non-members or non-residents from any tribally owned property. In regard to fish and game, this source of power has been reduced greatly for the Salish-Kootenai. In the Treaty of 1855, the "power to exclude" meant exclusive rights to game, especially inside of their reservation boundaries. The Salish-Kootenai have used the power to exclude as a bargaining tool several times over the years when dealing with state-tribal compacts. Their tool was the threat of closing tribal lands to hunting and recreation for non-tribal members, if they could not reach agreements with outside authorities. Court decisions like *Merrion v. Jicarilla Apache Tribe* (1980) reinforce this power for

the tribes by ruling that the power to exclude blends with the tribes' police power. "Over tribal lands, the tribe has the rights of a landowner as well as the rights of a local government, dominion as well as sovereignty."[51]

The third source of power tribes can use to regulate matters on the reservation, is the federal delegation source. In other words, Congress can delegate authority to the tribes, and this allows the tribes to preempt state law. In this case, they would not necessarily be forced to administer justice with state interests in mind.[52] In the case of *Mescalero Apache Tribe v. State of New Mexico* (1980) applicable treaties and federal statutes preempted state game laws, therefore allowing the tribe to enforce its game laws against non-tribal members on tribal lands. The state of New Mexico had previously been illegally exerting their jurisdiction over whites and enforcing state game laws on the reservation.

In spite of their powers to regulate, tribes face several limits on their authority. The limitations are often more defined than the powers to regulate, but are still quite complex. Although they do limit power, the ambiguity in their definitions can sometimes work to benefit the tribes. The following are several limitations of power imposed upon the tribes.

1. Limitations based on treaties and statutes.
2. Limits implied from the dependent nation status of tribes.
3. Limitations based on tribal constitutions.

Limitations based on treaties and statutes begin by defining "Indian country," or who can regulate what areas, and go on to include the federal government's delegation to the states of its jurisdiction over Indian country. For the Salish-Kootenai, limitations on jurisdiction over non-members come from defining what areas inside the reservation the tribes have authority over, a question raised by the fact that the reservation was opened up to non-

Indian homesteading. It is argued that those sections of land sold to non-Indians are no longer part of Indian country nor do they fall under tribal jurisdiction. It has always been assumed that fee patented land was outside of reservation authority because of Congressional intent to eliminate the reservation through allotment policies. But the Supreme Court has held that the act of opening up the reservation to non-Indians does not alone terminate the reservation or re-define "Indian country."[53] As a result, this limitation has never been strictly defined in the eyes of Native Americans.

Public Law 280 can also serve as a limitation based on a federal statute. That law delegated jurisdiction over most crimes and a few civil matters on reservations to the state. The Salish-Kootenai entered into this agreement in 1963 when the tribes did not have the financial resources to assume major areas of jurisdiction. The tribes are beginning to rise above the limitations of Public Law 280, however, because it does allow for retrocession of jurisdiction back to the federal government from the states at the request of the tribes. As we have seen, the Confederated Tribes formally began partial withdrawal in 1993. The tribes state that there are two basic reasons for withdrawing from the provisions of the law:

1. To assume more responsibility over their people and affairs in an effort to realize greater self-determination , and
2. To foster a comprehensive system of justice responsive to the unique cultural, social, and rehabilitative needs of their people.[54]

The tribes' ability to gain more authority over Indians and matters affecting the well-being of their people, will determine just how limiting the current compact with the state will be under Public Law 280.

Other limitations on the tribes have been implied from the dependent nation status, and this is certainly an important one to discuss from the

Salish-Kootenai point of view. The general rule for determining limits in this case is that tribal sovereign powers are implicitly limited (due to their dependent nation status) in those areas where tribal powers are in conflict with overriding national interests. The Supreme Court has identified four instances involving relations between tribes and non-members in which inherent tribal sovereign powers have been divested because the dependent nation status implicitly requires that tribal powers not conflict with overriding national interests.[55] The four instances are as follows: (1) The tribes can no longer alienate the land they occupy to non-Indians. In other words, Indian title to land could be extinguished by the United States if they show a valid need and clearly inform the tribe of their intent to do so.[56] (2) They cannot enter into commercial or governmental relations with foreign nations, (3) they cannot try non-members in an Indian court, and (4) they cannot assert civil authority over non-members. The last two definitions, however, have several exceptions that have specifically affected the Confederated Salish-Kootenai Tribes. These exceptions are important when viewing today's jurisdictional conflict over fish and game. The courts have identified two exceptions when the tribes would maintain civil authority over non-Indians:

1. When the non-member enters into consensual relationships with the tribe or its members, and

2. When the conduct of the non-member threatens to have or has a direct effect upon tribal interests.

The first exception applies to authority over fish and game, in that non-Indians have entered into a consensual agreement with the tribes through their representative state government. The state and the tribes have a consensual agreement to regulate authority over game matters. The second

exception is especially important to the Salish-Kootenai, because the definition of threatening or affecting tribal interests is set forth in *Montana v. United States* (1981). The decision holds that tribes have an inherent power to exercise civil authority if the conduct of non-Indians threatens or directly affects the political integrity, economic security, or health and welfare of the tribe. The Salish-Kootenai used this argument in the case of *Confederated Salish and Kootenai Tribes of the Flathead Reservation v. Namen* to gain control and regulatory powers over non-Indian property owners use of the riparian zone of a lakebed. The tribes argued that they owned the lakebed, and the lake itself was an important tribal resource; therefore, the tribe claimed they should be able to regulate water pollution, fishing and any other action threatening that resource. The ruling in favor of the tribe was re-affirmed by the U.S. Supreme Court in 1982.[57]

Two important court decisions have reinforced the tribes' right to have regulatory power over non-Indians: the Colville case and the *Montana* case. Although these cases set limitations for tribal jurisdiction over non-Indians, they clearly reinforce other rights like the right to tax non-Indians (*Colville*). Although the Colville case is inconsistent with the *Montana* in that it allows Indians to tax only on trust land (tribal land), *Montana* clearly allows the tribes to have regulatory power over non-Indians when they directly threaten tribal welfare or resources. The inconsistencies in the court rulings are important, because they sometimes make it hard for the Salish-Kootenai to assert jurisdiction, or maintain respect for tribal law. These inconsistencies and the fuzziness in the interpretation of laws are the very reasons why Del Palmer and others who persistently break tribal laws have some potential of being a threat to the tribe.

The last limitation on the tribes' power to regulate non-Indians is based on tribal constitutions. The tribal constitution for the Confederated Salish-Kootenai was adopted by the tribe in 1936 under the Indian Reorganization Act. The major purpose of the constitution was to delegate governmental powers to tribal representatives, protecting those people who are subject to the powers of the tribal government from any abuse of that power. The method used to accomplish the purpose of the constitution is generally called the enumerated powers approach. It delegates powers to elected representatives of the tribe, reserving the remainder of powers to be exercised by the vote of tribal members. It was hoped that this approach would implement proper checks and balances among the branches of tribal government. Many of the tribal governments adopted the enumerated powers approach at the request and advice of the federal Bureau of Indian Affairs. The same approach does not always meet the changing needs of the tribes today. The federal government did not foresee today's problems because they had little faith in the tribes' ability to empower themselves. Today tribal needs have changed, and tribes have become more powerful than the federal government could have foreseen. Their constitution therefore needs to be re-vamped so that they can empower themselves to enforce tribal ordinances over the entire reservation.

The Salish-Kootenai have been aware of the need to update their constitution. They have attempted to amend it, but their wishes have been denied by the Secretary of the Interior.[58] The original constitution lack both governing powers, and the delegation of specific powers to govern both themselves and non-Indians. Thus it failed to delegate or vest any regulatory authority in the tribal government.[59] As we have seen, this has caused

incredible conflict and is constantly nagging the tribe, instead of allowing them to move on with meeting the needs of their people. One of the many problems in amending the constitution is that any amendment has to be approved by the Secretary of the Interior, and that process can be risky for the tribes. It is very expensive and takes time. The actual risk comes from the Secretary's power to decide which tribal ordinances he will "allow" the tribes to enforce. At times the Secretary of the Interior or the Supreme Court may decide whether or not the tribe has the inherent power (based on their constitution) to enforce a specific tribal ordinance. Concerning fish and game, they would need to decide whether the Salish-Kootenai have an inherent authority over non-members who hunt and fish in violation of tribal ordinances.[60] Assuming that the tribe has inherent sovereign power to regulate in a particular matter, their power is subject to the provisions of the Indian Civil Rights Act. Under this act, the tribes' power for civil regulatory authority (over whites) is threatened due to Section 1302 (8), requiring "due process of law." It should be kept in mind, however, that several federal decisions have upheld that:

> Congress did not intend, through the ICRA (Indian Civil Rights Act), to impose on tribal governments the same standards imposed on federal and state governments by the federal due process and equal protection clause. Rather, Congress intended to allow tribes to develop their own standards of due process and equal protection by balancing tribal views of individual rights against tribal views of tribal interests in maintaining the unique traditions, customs, and political values of the tribe.[61]

The guidelines laid out in the *Tribal Regulation Manual* give us a good idea of the possible options and legal justifications as well as limitations felt by the Salish-Kootenai when legal disputes arise. In addition to the many Supreme Court decisions and federal laws or acts that we have seen support

or deny tribal decisions, there is one bottom line decision that ultimately affects tribal matters today. This is the decision of the United States government to give their direct support to tribal sovereignty and self-government. The 1994 Tribal Self Governance Act states in Section 2, that:

> Congress finds that--
> (1) the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations;
> (2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;
> (3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;
> (4) the Tribal Self-Governance Demonstration Project was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management; and
> (5) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that--
> (A) transferring control to tribal governments, upon tribal request, over funding and decision making for Federal programs, services, functions and activities intended to benefit Indians is an effective way to implement the Federal policy of government-to-government relations with Indian tribes; and
> (B) transferring control to tribal governments, upon tribal request, over funding and decision making for Federal programs, services, functions, and activities strengthens the Federal policy of Indian self-determination.[62]

Although there often appears to be great support for Native American rights, the fact remains that Indian authority will always be disputed when federal laws do not lay out specific authority between the state and the tribes. The main power behind those who dispute authority is the fact that often there is no specific litigation that has definitively settled a particular conflict.

For instance, the tribal-state compact giving the Salish-Kootenai authority over fish and game matters concerning non-Indians has never been settled in a court of law, therefore making the agreement appear as little more than a legal "obligation." Even though a legislative act in 1947 authorized the Montana Department of Fish, Wildlife and Parks to enter into agreements with the tribes to enforce joint management plans, today's compact is an obligation that carries little weight in the eyes of some non-Indians.

In the last few months the tribes have again been faced with direct challenges to their authority over fish and game. The issues at hand are the very same issues that we have seen since the opening of the reservation to whites. At stake, in the view of non-Indian hunters and some state officials, are perceived private property rights, constitutional rights, and other "matters of principle." In October 1996 Del Palmer once again staged his bird hunt to challenge the tribes' jurisdiction over private property. His goal has been the same every year...that his case will go to court and tribal jurisdiction will be overruled.[63] Although the tribes have never claimed to have jurisdiction over his private property, they do have the right to protect game as a tribal resource. The tribal-state compact grants tribal jurisdiction to enforce fish and game laws on all lands within the reservation boundaries.

As far as the tribes are concerned, if Del and others want to attack tribal jurisdiction over their own resources, then the tribes will simply cut off non-Indians from using them. In the same month in which Del announced he would challenge tribal authority, the Salish-Kootenai threatened the closure of over 64,000 acres of tribal lands to non-members. The proposed closure came about because the tribes felt the lands were being over used. The recreational demand is very high, and the tribal council believed that the

tribal members needed more room. They had planned to close the lands under tribal Ordinance 44D, which governs fish, game, and recreational use by non members on reservation lands.[64] Although the areas to be closed are sensitive due to overuse, it is certainly no coincidence that the land closure was proposed in October.

The proposed closure came at a time when it could perhaps weight decisions being made outside of tribal jurisdiction. Del had never been any significant threat to the tribes in the past, but the tribes never know when something might change. They reasoned that this might be the year that his case would be heard. In addition, the tribes heard a proposal by Lake County Representative Rick Jore in the 1997 state legislation. Jore's bill would rescind the state's agreement with the tribes over fish and game jurisdiction. Back in December of 1996, the tribes' Vice Chairman Mickey Pablo stated that he would certainly vote to close all tribal lands if the Rick Jore bill passed.[65]

As it turned out, Del's annual hunt failed to grab anyone's attention. He called on several people to cite him, but no one showed up, leaving Del to turn himself in. He handed a written statement to the deputy sheriff that said he had not purchased the required tribal permit to hunt, and although reluctant to do so, the deputy issued Del a ticket. The charge of hunting without a tribal permit was then dismissed in the Justice Court of Lake County.[66] As for Rick Jore's bill to end tribal-state cooperation, it appears that it will lie dead in the legislature as it did in 1995. Strong opposition came statewide from wildlife and sportsmen's groups, the Montana Wildlife Federation, and virtually every state government agency with any clout in the issue, including the Department of Fish, Wildlife and Parks, the Attorney General's Office and Governor Marc Racicot.[67] Surprisingly, even with this

opposition from major sources, the bill was tabled on only a 10-9 vote, and will be presented again in the next major legislative session.[68]

As we consider the long history of tribal-state relations since the reservation was first opened to settlers, it can certainly be said that tribal policies have had a greater tendency to foster cooperation than conflict. Today, the tribes have a willingness to enter compacts with the state and to foster positive cooperative management over reservation matters. The tribal-state agreement is a partial sacrifice by the tribes, but is an alternative to battling out issues through expensive litigation. If the consistent pressure felt by their authorities wears down the tribes' patience, however, non-Indians face the possibility of having to worry about more than merely paying a small fee to fish, hunt, and recreate within the reservation. If the tribes ever decided fish and game jurisdiction through litigation, Montanans would have plenty to lose regardless of whether the tribes were victors in their lawsuit. First, the tribes would be able to close off several thousand acres to all fishing, hunting, and recreation by non-members. This decision alone would affect well over 20,000 people a year. Non-Indians have said that it would be equivalent to shutting down a national park to Indians.[69] As it currently stands, the tribes have every intention of keeping these lands open for non-Indian use. Currently over 20,000 people purchase tribal permits every year, but it should be kept in mind that this number is far from the actual number of non-Indian people who use tribal lands to recreate. In addition, Chris Tweeten of the state Attorney General's Office recently stated that rescinding the agreement could cost Montana taxpayers upwards of a half a million dollars, and warned that "it is far from certain that the state would

prevail if it went back to federal court to dispute the Treaty of Hellgate, passed by the U.S. Congress in 1855, long before Montana was a state."[70]

The tribes do indeed have sources of power that could obtain a definitive outcome for game management on the reservation. But the tribes are somewhat dependent on the state at this point to back tribal decisions and enforce tribal regulations. If the state were to turn on the tribes and sue them over the specific extent of tribal jurisdiction, tribal sovereignty would be put on the line. As the *Bourland* case exemplified, the state can be very powerful in persuading the courts to limit tribal sovereignty. The state advantage would depend, however, on whether the judge chose to ignore previous case laws or the history of federal-Indian relations. Litigation is certainly something neither the state nor the tribes wants to face, because either side has an equal chance of losing their authority. The current balance in fish and game matters has evolved over ninety years, and attempts to be any more definitive in matters of jurisdiction could be risky for both governments. Although the people and the government of Montana have had the upper hand in the past, it is now time to reevaluate the stereotype that the Salish-Kootenai are helpless in controlling matters concerning themselves or those around them. They are no longer a quiet, secondary force on their reservation.

# CHAPTER VI:

# CONCLUSION

## Summary

There is no doubt that the allotment policy has created many intergovernmental problems that have caused conflict between Indian and non-Indian residents on the reservation. Opening up the reservation to non-Indians and their jurisdictions created a fight for power that has often hindered tribal political goals. With the signing of the 1855 Treaty, the Salish-Kootenai agreed to peace and separation from whites and were shocked to see the land and recourses on their reservation taken out of their control in just a few years. Regardless of the encroachment by early settlers, the Indians were still able to live for the most part as they had before. The Dawes Act, however, prompted changes in Indian economy, kinship, forms of marriage and education by forcing Indians to adhere to federal regulations. Later came the 1904 act that had the hardest impact on the tribes, as they were forced to divide up their land and live with people who had little understanding or tolerance for their culture. Under that act, the Salish-Kootneai were forced to follow various state laws, and state authority was justified as a direct result of allotments on the Indian reservation.

Before the allotment policy, Indians had some concept of private ownership, but not regarding land. They lived communally, so the concept of individually owned land did not fit into their social, political, economical, or spiritual life. Their communities were generally made up of tribal entities that controlled tracts of land held in common. Free movement and the use of recourses throughout large areas was the very economy of their people,

and each location they called home held something important to the tribe. The politics of the early tribal people were very different from what they experience today. There were those who asserted power and made decisions for the tribe, but rarely was their power absolute. There were chiefs in charge of matters such as women and children, war, or hunting parties, and these chiefs served as the tribal conscience. They were there to guide the community, and although many leaders held their positions hereditarily, they were still most often respected for their knowledge and skill in providing for their people. Because of his image as protector and provider, the chief was treated with respect among his people.

Enforcing laws or restitution was not decided by a separate organization of the tribe, but by the tribe itself. Perhaps one of the main differences between Indians and whites in the function of laws was that Indians did not make or enforce laws in a bureaucrat manner, but rather by consensus. Thus, politics were not separated from family, economy, or religion. Violations of tribal laws were handled openly. They were often publicly announced, and the violator put on display through some form of public humiliation. The chief did not try to cover up for another as bureaucratic governments often do. He was the one who scolded the violator publicly.[1] Because everyone had an intricate role in the community's survival, humiliation worked efficiently as part of the justice system. It was this system of living and interacting with large families on every social level that reinforced the tribal government's resistance to private land ownership.

When governor Stevens approached the three major tribes in 1855 and worked out a deal for them to cede a large part of western Montana and Idaho to the U.S., the tribes were reluctant, but they too had needs to be met out of

treatying. They agreed to cede land but to reserve for themselves a homeland called the Flathead Reservation. They believed that a reservation would not change their lives drastically and in addition, they would receive protection from warring tribes who had been trying to take away their land and resources. It is doubtful whether the ultimate goals of the United States were properly represented to the tribes, and there are documents proving that much of the conversation at the event was misinterpreted. It is quite unlikely that the tribes would make treaties to keep other Indians from taking their land, and yet let whites split it up and move onto their reserve. It is clear from the archives that many of the elders who attended the conference and the signing of the treaty, were in total disbelief when they heard that the reservation was to be opened to whites. It had been their clear understanding that whites were not to be allowed to settle on the reservation, except those in service to the Indians.

When the reservation was created for the Salish-Kootenai in 1855, their lives did not immediately change. They continued using the land held in common, and traveled to the accustomed spots to hunt and gather . By the 1880's it appeared, however, that the chief was becoming submissive to federal officials who began manipulating and controlling every move of the Indian people. Decisions were still guided by the chiefs, but they slowly lost the respect of their people when their decisions could not be carried out efficiently over non-Indian forms of control. The chiefs could no longer provide for their people economically or politically when the federal government began confining them to the reserve. Politically, they were unable to deal or bargain with federal officials, as the U.S. either ignored discussions with chiefs, or manipulated them with non-Indian laws and

regulations. There was often no choice for many of the Salish-Kootenai but to fall under the agent's strong arm of the law.

The real force of law on the Flathead Reservation came with the allotment policy. The Dawes Act initiated white social norms and values by promoting the concept of private land. This concept slowly began breaking down the tribal social system. Individual land ownership did not appear to break the tribes' spirit, as many were still able to live communally and carry out their economy both on and off of the reservation. What did drastically interfere with their economy and social structure was the 1904 Flathead Allotment Act. The act opened up the reservation to whites, forcing Indians to stay on their individual parcels of land, and non-Indian law enforcement was used to ensure that Indians did so.

Because the Flathead Reservation was opened to whites, non-Indian residents were reinforced in their belief of their superiority and strength over Indian governments. The Montana publications of the time emphasize this fact by portraying the Indians as a culture that could no longer survive, and which out of sheer weakness and defeat, had given up their land. The national political goal of transforming the Indian and assimilating him into white society was also a powerful tool against the Salish-Kootenai. As whites came onto the reservation, they were filled with grand illusions that the reservation would be completely dissolved. The Salish-Kootenai witnessed greed and disconcern for Indian treaty rights, not concern for carrying out goals to help the Indian in civilized pursuits. The U.S. had broken its promise and without any consent from the sovereign they had treatied with, proceeded as if the reservation boundaries and the completely different culture residing there, did not exist. Many Salish-Kootenai members living

through the implementation of the 1904 Act, had absolutely no intention of giving in to non-Indian control over land, and for many years made it their life goal to rescind the illegal policies that split up their reservation. They did not believe that because the reservation had been opened up to white settlement, its boundaries had been dissolved. They knew exactly where the boundaries were, and what federal document reserved the land within those boundaries for the tribal people. Although most tribal opposition to the act was not overly assertive, some of those members who had portrayed a calm opposition to U.S. Indian policy had lost their patience by the time the reservation was actually opened. One letter in particular written by Salish member Sam Resurrection reads:

> We only now thought of the right thing. Is it good for you white people to be thieving us. We want to know how are the robbers and thieves laws. We now find out that we are getting poor and will tell you all our riches that you have stolen. We know that this place belongs to us.[2]

Sam was quite assertive in accusing the U.S. of theft, and went on to accuse the government of robbing the Indians of their reservation resources. One of his main concerns over resources was the constant taking of reservation fish and game, and he stated his anger and disgust at the U.S. for killing Indians because they were hunting their own game. Sam reminded the U.S. that "we will never forget what they did to us. Because we are very sorry, we will always make you think of what you did to us for our animals."[3]

In addition to the allotment policy's control of fish and game matters, the opening of the reservation often forced Indians to move off of the most fertile and best-watered lands. Some were relocated onto hillsides or even sheer slopes and then forced to attempt farming there. White business men with political power reserved huge tracts of grazing land for their cattle and their

families, and this also forced many Salish-Kootenai to relocate. In addition to thousands of acres that were owned by individual whites, the allotment Act of 1904 reserved thousands of acres for town sites, schools, religious organizations, hospitals, mills and agency sites. The 1904 act imposed a forced sedentary life without the tools to make that kind of life work, and this only reinforced the Indians' need to use existing tribal resources.

For many Indians, forced entrance into a cash economy without the means to do so was virtually impossible, and certainly not a desired struggle. Living next to non-Indian people that competed with the Indians for land and recourses created a great need on the part of the tribes to have laws over whites on the reservation. The Salish-Kootenai were losing grazing spots for their own horses and cattle, they had lost their water sources, and the towns and communities had pushed the wildlife farther away from home. The tribes began sending correspondence and delegations to Washington in protest of the opening of the reservation. They received little empathy and were often subdued by authorities that illegally asserted their power over Indians.

Early on there was little competition between Indians and non-Indians over who would follow what laws. Indians simply would be forced to follow any federal or state laws that non-Indians had the physical strength to apply. When a violation occurred between a tribal member and a settler, state authorities arrested the Indian and tried him in a state court. If found guilty, he would be fined or jailed. It was not hard for the state system to work its way in and assert its jurisdiction over various reservation matters. The state could argue that authority over matters pertaining to fish and game was their jurisdiction because no other authority had taken on the responsibility. In

other words, if there were gaps in jurisdiction the state felt that they could assume responsibility for filling those gaps. The federal government could not offer proper protection to the Salish-Kootenai because their policies and laws on reservations were so poorly planned out. There were always gaps allowing states to assume control over Indians and their property. The federal government did not really take on the responsibility of fully assimilating Indians into mainstream America, but neither did they allow the Indians to make their own laws, protect themselves, or assert jurisdiction over their own reservation.

Not surprisingly, much of what the state perceived as civil violations by Indians, were those pertaining to fish and game. Hunting created conflict because Indians often hunted on property within the reservation that had passed out of federal or tribal ownership. Later the issue of game conservation made the Indian a sure target for hunting violations as well. Perhaps underlying the entire conflict was the idea that Indian fondness for hunting indicated they were not integrating properly into mainstream American society. They were still "roaming around" instead of living a sedentary farming life. Interestingly enough, non-Indian complaints about Indian hunting violations appeared insignificant. Indian hunting did not appear to change any non-Indian's quality of life. On the other hand, non-whites who were getting attention for being troublemakers felt they were really the ones with serious complaints. The Salish-Kootenai spent years in opposition to whites who both took and wasted recourses while cutting off Indians from using them. They tried repeatedly to get their various agents to enforce tribal and federal game laws on non-Indians living on the reservation. Political strength over non-Indians was hard to attain. The

Salish-Kootenai came from diverse social and political backgrounds making it tough for them to unite, and if the federal government did not honor their political promises to the tribes, the Salish-Kootenai had very little legal force against the state.

To ensure the downfall of tribal control over reservation matters and to continue the use of reservation resources without Indian interference, the state tried to apply all "civilized" laws to Indians. Their justification came from one underlying theme...land. Land became the justification for almost every violation against the tribal people. To whites it became both a weapon and a tool of justice. When arguing in favor of Indians falling under state law, there were several justifications frequently used. The first one was that since the reservation had been opened, and it contained huge parcels of land that were either owned by the state or fell under state jurisdiction, the reservation boundaries obviously no longer existed. Allotments blurred the reservation boundaries, as fee patented land became situated next to trust land. Secondly, because all Native Americans had been granted U.S. citizenship, it was assumed that they should have the same rights and fall under the same laws as any other citizen. Even later on when the citizenship act was deemed invalid, another argument would be used. Forced fee-patents were given to many of the Salish-Kootenai, forcing them to pay state and county taxes on their land; Therefore jurisdiction over some tribal property fell into the hands of the state. It was a simple transition to assume that because the state had control over Indian property, they would therefore have control over the actions of the owners.

Land was the very means to gaining control over Indians and their hunting rights. When the Indians began organizing on a political level

recognized by the federal government, they too began fighting for control and jurisdiction on the reservation, using the very same means that had been used by non-Indians. They developed and implemented tribal game and conservation regulations, they filed lawsuits, and most importantly, they began using every possible means to hold onto or buy back the lands within the reservation. They regained control over their own tribal members, and eliminated the state's control over trying Indians for state violations. The tribes continued protesting the abuse of their people and resources on the reservation, and never stopped opposing the illegal act that opened up their reservation to whites.

The tribes became quite savvy in their methods of opposition and control, but they almost always remained peaceful so as not to draw too much negative attention or opposition to their goals. The Indian Reorganization Act, and the adoption of the Tribal Constitution and Bylaws, as well as various court litigations and federal acts, helped to reinforce tribal authority over the years. Tribal authority has always been seen as a problem to some non-Indians and state representatives. The power the tribes retained as a sovereignty was never expected to be extensively used by the tribes, and therefore state governments never realized the tribes' potential to organize on any major political level. In spite of the power they began asserting over the years, there was one area in particular where the tribes knew they could not compete for control. In the area of non-Indian or state owned property within the reservation, Indians had little control over acts that affected the well-being of the tribe. Consequently they had no jurisdiction over tribal resources like fish and game, water or timber. In particular the tribes had no authority over non-Indians' excessive killing of game on non-Indian lands.

Because at one time the amount of land owned by non-Indians on the reservation was well over 50%, Indians feared that fish and game could easily be depleted if the tribes were left out of decisions concerning reservation game.

To gain control over acts concerning fish and game, the tribes used arguments in their favor that avoided issues of non-Indian land rights. They did not argue that they had jurisdiction over land, but rather authority over all reservation resources that were reserved for them in the treaty. As the argument over fish and game authority grew, the tribes seemed to be getting more and more support over the years from the federal government. Federal acts were implemented to help Native Americans keep their authority over matters that seriously concerned their people. Supreme Court litigation began ruling with some consistency that states could have jurisdiction only over non-Indian people on a reservation, and then only if their jurisdiction did not infringe upon tribal government.[4] The tribal government began to assert that non-Indian fish and game rights, state jurisdiction over game, and the loss of revenue to states did indeed infringe upon the tribes' right to protect tribal resources. Instead of battling it out with the state over the right to govern resources, they began working on agreements between the two governments that would be reasonable for all reservation residents. In reality the agreements began as early as the 1940's, but the major agreements noted in history are those that began in the 1960's and more recently in 1991. Today the compact between the state and the tribes allows for jurisdiction to be more consistent and for game laws and conservation to be enforced, all without the violation of non-Indian property rights. Tribal authority over fish and game

is simply to protect tribal resources for the use and benefit of all reservation residents.

## Tribal Explanations and Resolutions

The Salish-Kootenai never doubted their authority over fish and game on their reservation, but non-Indian law has always required that the question of tribal authority be answered in a definitive manner, or not expressed at all. Without the current tribal-state compact, the question of authority over game would have to be answered conclusively in order for the tribe to have their laws respected and enforce regulations with any consistency. The tribes have had the confidence and legal backing to pursue litigation in order to solve questions concerning game, but not without certain risks. For this reason, they have chosen cooperation with state bureaus and their non-Indian neighbors instead of lawsuits. The state bureaus agree that cooperation is the best answer. They too have plenty to risk if the tribes or state were to sue each other over fish and game regulation.

It should be understood that state and tribal bureaus have continued to support the compact not only because of what they both have to loose, but because of what they both have to gain. For years now, the state and the Salish-Kootenai tribes have been working together because many of their common goals can be attained by doing so. Preserving wildlife, saving taxpayers money, and helping to insure the continued recreational use of tribal wilderness by non-Indians are three primary goals that have been beneficial to the state through the fish and game compact. The tribes benefit in managing, regulating, and protecting their tribal recourses and in the process, are continuing to define their rights as a sovereign.

Unfortunately, many non-Indians misunderstand the fish and game issues at hand, and do not look at the intergovernmental agreement as a fair deal. Several oppose the compact because they do not understand that the tribes are simply exerting their right to control their resources, not the right to control private property. Although most state bureaus offer support for the agreement, there are individual representatives who support non-Indians in opposing it. The persistent fear that the tribes want to manage all non-Indian property and the unwillingness to work toward common goals has been evident in State Representative Rick Jore's defense of his proposed bill to eliminate the tribal-state compact. Jore told the committee that the very sanctity of private property and the Constitution was at stake because of the compact.[5] There are other arguments used by those opposed to the fish and game agreement. Many declare that because they are citizens of Montana they pay taxes to the state and receive state benefits, and therefore should not fall under tribal jurisdiction. In addition, they may argue that the mandatory purchase of a tribal fish and game permit is taxation without representation because it is imposed partially by the tribes. To that argument, the tribes have an answer that few like to hear, but all can comprehend. Tribal member Michael Pablo has a very simple analogy with which all of us can empathize in one way or another. In a letter addressed to all those critics who distort tribal history, Michael wrote:

> The tribes frequently hear the complaint that non-Indians cannot vote in tribal elections but may be subject to some tribal laws. I pay taxes on land in Sanders County, but I cannot vote in Sanders County because I live in Flathead County. So would this be taxation without representation? I can be arrested for speeding in another state, and do not have a vote in that state's government. I don't complain. I understand why things are the way they are.[6]

Michael reminds us that although governments may not always please everyone, they tend to do their best for the general public. Non-Indians must understand that the tribal-state compact is a concession for the Salish-Kootenai people, and is not necessarily pleasing to all tribal members either. The tribes have been limited in their power to fully control and protect their resources due to the failures on the part of the U.S. government. The Salish-Kootenai do not see themselves as trying to take advantage of non-Indians on the reservation. They regard their agreement with the state as a tribal concession that works to benefit the general public. Although the goals of the Confederated Tribes are not really complicated to understand, they still have a hard time convincing the non-Indian population of their importance. As Chairwomen Rhonda Swaney acknowledged in 1993 when running for election, the tribes "suffer from a poor public image," which she believed was caused largely from reactive, rather than proactive public relations with non-Indians.[7]

There is a fear in some non-Indians that the tribes' authority over game will eventually lead to total control over non-members. To have control over whites and their land would cost the tribes a lot of money and time, and it is not a goal that has been expressed by the tribe. Furthermore, it is not an inherent power of the tribe or supported by federal laws. It is apparent to the tribes that intergovernmental cooperation does indeed work. They look at many of the non-Indian fears as an overreaction that hinders positive law enforcement that would benefit all reservation residents. The tribes believe that the fear concerning tribal authority on the reservation comes from not truly understanding the tribal-federal relationship over the years. It is hoped that a better understanding of this history will clear up some of the

misconceived notions. The 1855 Treaty with the Flatheads is the tribes' most important legal document. For intergovernmental or residential conflicts to be worked out on any level, the treaty must be understood as a valid, enforceable legal principle. The treaty reveals how the federal government has historically viewed the Salish-Kootenai, and to some extent shows the United States' need to keep the peace and protect Indian nations. The treaty was an agreement of alliance with the United States. Most importantly, it is the one document that is legal proof of Indian sovereignty. The fact that the treaty is still recognized by today's Supreme Court, is its recognition of tribal sovereignty. Even through the federal government created tribal dependency, that dependency does not eliminate tribal sovereignty.

Native American sovereigns have been defined as those tribes that are "domestic dependent nations," and were ruled as such in the Supreme Court case of *Cherokee Nation v. Georgia* (1831). In this case, the issue was whether or not the Cherokee nation was considered a foreign nation. Chief Justice John Marshall ruled that Indian nations were independent political entities that were able to manage their own affairs, but described them as dependent sovereigns. This term meant that although they maintained self-government, there were several restrictions upon them as a nation.[8] For instance, they could not treaty with other nations, but they could negotiate with federal, state or county governments. They could not regulate non-members unless tribal interests justified their doing so, and they could not impose criminal punishment on non members.[9] Any authority not specifically taken away was retained by the tribes as an intricate part of their government's jurisdiction. In 1832 the *Worcester v. Georgia* case also decreed that because tribes were considered foreign nations, state laws could

not be imposed upon them.[10] Concerning this issue Sherwin Broadhead, legal consultant to the Colville Tribes remarked in 1978:

> Chief Justice Marshall used the phrase, "domestic, dependent nations," and I don't think Marshall recognized that was a two-edged sword. The United States could use dependency to keep Indian tribes from raising very important issues. If you look at the history of the way the United States dealt with Indian tribes in Montana and in the Dakotas, you see the government destroyed their source of sustenance, took their lands, and took and purchased their resources. The government gave the Indians money instead of giving them any long-term consideration of game.[11]

The use of dependent nation terminology was indeed a double edged sword. The Salish-Kootenai remained a political entity, but one that temporarily lost much of its power due to the dependency status of Indian nations. The remark by Sherwin Broadhead points out that by turning nations into dependents, the federal government could get around its responsibilities to the Indians. It was this very attitude that allowed for state bureaus and settlers to get their foot in the door of tribal politics. The term "domestic dependent nation" allowed the federal government to take a special interest in Indian nations and control various aspects of their personal lives if it appeared to be in the Indians' best interest. So entered the allotment policy. It was this very policy that reinforced the term dependent nation.

Forced dependency caused financial hardships and complete poverty for many of the Salish-Kootenai, and this is what made the Indian Reorganization Act attractive in the 1930's. The act reinforced the fact that the powers held by the tribes were not granted by the U.S. government. Their powers of self-government were inherent, although perhaps not always exercised. The IRA specifically gave the tribes more opportunities for self-government and initiated a retreat from the federal government's

paternalism. The tribal Constitution and Bylaws written up and adopted under the IRA are the means by which the Salish-Kootenai justify their legal stand regarding the protection and control of game or other tribal property.

In addition, a major source of strength for the tribes under the Indian Reorganization Act was its termination of the allotment policy, allowing the tribes to prevent the lease or sale of tribal lands. Not long after the IRA was implemented, however, the era of termination began. The termination policy of the federal government intended to hand over many of their Indian trust responsibilities to the states. Specifically, it was Public Law 280 that was implemented under the termination policy, which was to help fill the gaps in police powers and help resolve civil disputes. For the most part, Public Law 280 allowed the state to assume many of the jurisdiction responsibilities on the Flathead Reservation, but it could not be implemented without the consent of the Salish-Kootenai. In the court case *Kennerly v. District Court of Montana* the court ruled that Public Law 280 pre-empted all other means by which the state could assert their jurisdiction on the reservation. In other words, the court ruled that if the tribes did not enact Public Law 280, the state would not have any jurisdiction over Indians or Indian matters on their reservation.[12] The tribes consented to certain terms of Public Law 280 because it did not strike out any self-governing powers reinforced by the IRA. Concurrent authority between the state and the tribes soon was in place, but jurisdictional disputes remained. It appeared, therefore, that the one way to solve problems of authority was to have the Salish-Kootenai and the state of Montana sue each other to resolve the conflicts.

Both the state and the Salish-Kootenai were seriously opposed to litigation. The state was opposed because the tribes had maintained several important

powers. The tribes have their Constitution under the IRA as one important power, and it is reinforced by the federal government. That constitution is a legal concept that allows the tribes to be the delegates of certain authorities, but limits their powers only to those stated in their constitution. Those powers that the tribes hold pertaining to fish and game give them the authority over the following, under Article VI of the Tribal Constitution:

> (a) To regulate the uses and disposition of tribal property, to protect and preserve the tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture, to administer charity; to protect the health, security, and general welfare of the Confederated Tribes.
>
> (c) To negotiate with the Federal, State, and local governments on behalf of the Confederated Tribes, and to advise and consult with the representatives of the Departments of the Government of the United States on all matters affecting the affairs of the Confederated Tribes.
>
> (i) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon non members doing business within the reservation, or obtaining special rights or privileges, and the same may also be applied to members of the Confederated Tribes, provided such ordinances have been approved by a referendum of the Confederated Tribes.
>
> (n) To promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety, morals, and general welfare of the Confederated Tribes by regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any ordinance directly affecting non members shall be subject to review by the Secretary of the Interior.[13]

One should also keep in mind that there are tribal ordinances like 44-D, approved by the Secretary of the Interior, that grant tribal authority over all fish and game on the reservation. In addition, non-Indians are not allowed

to hunt big game or trap anywhere on the reservation. The taking of big game is the exclusive right of the Salish-Kootenai and is guaranteed to them by their treaty and various court decisions.[14] For the many who believe that they should not cooperate with the federal laws empowering the tribes because they are state and not tribal citizens, it should be noted that there are two advantages that the tribe has over this argument in a court of law. First, their relationship with the federal government was established long before Montana became a state. This is why legal documents like the 1855 treaty are still valid and enforceable. When Montana did become a state, the federal government was already quite aware of the state's ability and desire to interfere in the tribal-federal relationship. As a result, Montana had to put a disclaimer in its constitution in order to be accepted into the Union. This disclaimer was in the first ordinance of the Enabling Act of the State of Montana, stating that Montana would disclaim all rights to the lands owned or held by Indians, and that those lands would remain under the absolute jurisdiction and control of the United States.[15] In 1972, when the state of Montana rewrote its constitution, it carried over that ordinance because the Enabling Act still remained in force.[16] The state of Montana has claimed that although they are denied jurisdiction under the Enabling Act, they can still exert authority over acts committed between non-Indians on the reservation. This being the case, there is still a gap in the state's jurisdiction over non-Indian residents who commit a violation against tribal property: namely, fish and game.

Consequently, Montana currently agrees with the tribes that a joint compact is the best solution for all citizens on the Flathead Reservation. There can be no doubt that the legal stability of the tribes is secure. On the

other hand, they are aware that when tribes and states battle out court cases, the state often has the advantage. If the federal government does not back the tribes legally, than the tribes may be at a disadvantage due to the sheer power of the state's legal system. Elimination of the joint fish and game agreement has the potential of bringing great financial hardships to both governments. For this reason alone, there is little doubt that the compact is ideal. It avoids bad feelings between the two governments and for the most part, between Indian and non-Indians residents as well. It is a way for all to cooperate without overstepping jurisdictional boundaries.

Discussing issues at the local level is the most sensible approach to solving conflicts, and litigation should be strongly opposed. People like Del Palmer who believe that litigation is the only way to define legal jurisdiction over game and those people who commit violations, are missing a large part of the picture. Fighting it out in the court room has two possible scenarios for each side. The outcome could possibly answer only the question in front of the court. For instance, does the tribe have the authority to cite Del in a hunting violation? The answer would most likely be affirmative, but it would solve nothing that is truly of concern to Del. In this scenario, it would take case after case to provide the answers that Del is looking for. Because the costs of litigation are so high, this method could financially ruin a government bureau. No one would be the winner in that atmosphere of conflict.

The other possible scenario in the courtroom is that instead of merely answering the original question of who has authority over game or game violations, the court may find that the question should not be an issue of authority, but rather an issue of double jeopardy based on the constitution. If the court ruled on two sentences for one offense, the outcome would affect

the losing party in more than one area. For instance, if the Salish-Kootenai were the losing party, they could end up losing authority in other matters concerning their welfare. This would also hold true for the authority the state asserts on the Flathead Reservation; the state and non-Indian residents could lose their current authority and find themselves under even stronger tribal control.

Because the federal government is aware of problems at the local level on reservations, they created the Policy Review Commission to study the problems with federal Indian law and create solutions. The chairman of the commission stated in a conference in 1978, that there were several things the government should not do, and that only one solution would work for everyone. Litigation was out, and so was national legislation. For instance, they recommended that the federal government not enact a policy like Public Law 280 in the future, because it was not a "fair and equitable resolution."[17] The staff of the Policy Review Commission concluded that the best way to resolve conflicts at a local level was the intergovernmental compact allowing concurrent jurisdiction between states and tribes.

There is really no reasonable excuse for non-Indians and their representatives not to cooperate with the Salish-Kootenai fish and game compact. The compact is a political tool that works for both Indian and non-Indian people. It is true that the tribal-state compact does not recognize all citizens equally. It does require non-Indian people who use tribal resources to help pay for the fish and game management on the reservation. In a sense, non-Indian residents are treated as out-of-state visitors would be treated when fishing or hunting within the state of Montana. They pay to use those resources that do not belong to them and are not managed by them. But this

is a small price to pay considering the many positive aspects to the agreement. The fact that a tribal permit is required for fishing and hunting anywhere on the reservation, regardless of the status of the land, means better jurisdiction and less confusion for all reservation residents. The compact is straightforward and enforceable, and eases jurisdictional tension. Why not buy a tribal permit to fish and hunt anywhere on the reservation? The tribes certainly do not see the required purchase as a violation of personal property or constitutional rights. Non-Indian residents have always been required to buy a state fish and game license to hunt on their own private property. Does it really matter whether non-members have to get the state's or the tribes' permission to hunt on their land? The permit and its restrictions exerts no more authority over private land, than does the game permit from the state, and its purchase achieves common goals for both Indians and non-Indians. Conservation becomes a priority that now has the funding to be done exceedingly well. The money goes to improve and preserve wildlife habitat, benefiting all residents for generations to come. The money is allocated for the same goals the state would implement. Those concerned about state budgets on Indian reservations are relieved to know that the current system saves taxpayers' money. The state no longer has to totally fund programs for wildlife habitat because the tribes have taken on much of those responsibilities.

Although the tribes are aware that some are antagonistic to their goals and aspirations as a people, they are also aware that in general, non-Indians have good intentions. If all people will take the time and effort to understand the two governments' historical relationship, they will gain a better understanding of what transpires today in Indian country. Tribal cooperation

has most often stemmed from their understanding of the situation and their efforts to work within the confines of that situation. There is no reason why intergovernmental organizations cannot continue this cooperation for the benefit of all people. Those who have said that the conflicts caused by the fragmentation of reservation land can never be solved may want to reconsider that judgment. The tribes certainly feel that problems and conflicts can be resolved. They have invested a lot of time and money to insure that gaps in authority have been filled. They have adopted measures to make their political decisions positively affect as many people as possible. Although they have not totally abandoned the possibility of legal battles with government agencies, the tribes recognize that cooperation is the better way. It is certainly to the advantage of all Montana state citizens to become educated about federal-Indian relations, and to continue to cooperate in settling the historical conflicts bequeathed to them after years of struggle and compromise.

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