North Dakota Law Review

Volume 49 | Number 2 Article 9

1973

# Indians - Protection of Personal Rights in General - The Right of Off-Reservation Indians to Receive General Welfare Assistance

Russell J. Myhre

# RECENT CASES

INDIANS—PROTECTION OF PERSONAL RIGHTS IN GENERAL—THE RIGHT OF OFF-RESERVATION INDIANS TO RECEIVE GENERAL WELFARE ASSISTANCE.

Appellant Ruiz and his family, members of the Papago Tribe of American Indians, reside in Ajo, Arizona, about fifteen miles outside the Papago Indian Reservation. They left the reservation some thirty years ago in search of employment. Ruiz worked in the copper mines near his home until a strike closed them on July 19, 1967. Unable to find other employment and not eligible for welfare assistance from the state because he was a striking union member, Ruiz turned to the Bureau of Indian Affairs.[1] The Bureau denied general assistance benefits because the appellants lived off the reservation. By Bureau regulation,[2] general assistance benefits were available only to those Indians living within the boundaries of a reservation.

Appellants brought a class action in federal district court to compel payment of benefits to them. The action was dismissed and a judgment was entered in favor of the Secretary of the Interior. On appeal, the Ninth Circuit Court of Appeals found for the appellants and *held* that the phrase "throughout the United States" within the Snyder Act,[3] which authorized the Bureau to expand such monies as Congress may from time to time appropriate for the benefit, care and assistance of Indians throughout the United States is expansive in meaning and is not the type of restrictive phrase Congress would have utilized had it intended to limit general assistance to reservation Indians. The court further held that even if the general assistance provision of the Snyder Act was limited in application to reservation Indians, the congressional intent of the Snyder Act was clearly to provide assistance for Indians on and off the reservation, and the Bureau could not amend congressional intent by regulation. *Ruiz v. Morton*, 462 F.2d 818 (9th Cir. 1972).

The original rule was that existing membership in a tribe was the requisite for sharing in tribal property.[4] But the begin-

1. Hereafter referred to as "the Bureau."
2. 66 Bureau of Indian Affairs Manual 3.1.4 (A).
3. 25 U.S.C. § 13 (1970).
4. Sac and Fox Indians v. Sac and Fox Indians, 220 U.S. 481 (1911); The Cherokee Trust Funds, 117 U.S. 288 (1886); 66 BUREAU OF INDIAN AFFAIRS MANUAL 3.1.4 (A).

ning of the allotment system and the policy of encouraging the abandonment of tribal relations brought a modification of this rule.[5] Incident to this change in policy, various treaties[6] were adopted and statutes[7] were enacted declaring that the right to share in tribal property should not be impaired or affected by such severance of tribal relations. Implicit in this arrangement was the thought that citizenship was incompatible with continued participation in tribal government or tribal property.[8]

The Act of March 3, 1865,[9] provided that certain members of specified tribes who lived off the reservation would not be deprived of their annuities if they would adopt civilized conduct as set forth in the statute. The Act of March 3, 1875,[10] provided that "any Indian" who was the head of a family or who was twenty-one years old, and "who has abandoned, or may hereafter abandon, his tribal relations" was entitled to the benefits of the Homestead Act of 1862.[11] The act further provided that "any such Indian shall be entitled to his distributive share of all annuities, tribal funds, lands, and other property, the same as though he had maintained his tribal relations."[12]

Section 1 of the Act of February 8, 1887,[13] gave the right to an allotment to any Indian "located" upon the reservation, and Section 4[14] provided an allotment for any Indian not residing upon a reservation, or for whose tribe no reservation had been provided. Most importantly, Section 6 granted citizenship to "every Indian" who had been accorded an allotment and to "every Indian" born within the territorial United States who has voluntarily "adopted the habits of civilized life." Such citizenship was not to affect or impair "the right of any such Indian to tribal or other property." A year later Congress declared that every Indian woman who married a citizen of the United States herself became a citizen, "*Provided*, that nothing in this section contained shall impair or in any way affect the right or title of such married woman to any tribal property or interest therein."[15]

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5. Oakes v. United States, 172 F. 305, 307 (8th Cir. 1909); F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 186 (1945).

6. *E.g.*, Treaty with Choctaws, Sept. 27, 1830, 7 Stat. 333, *discussed in* Winton v. Amos, 255 U.S. 373, 388 (1921).

7. *E.g.*, Act of Dec. 19, 1854, ch. 7, § 1(3), 10 Stat. 598, 599, which promised that the property rights of mixed bloods in the tribal property of the Chippewa Indians would not be impaired if they remained on the lands ceded to the United States but separated from the tribe.

8. F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 153 (1945).
9. Act of March 3, 1865, ch. 127, § 4, 13 Stat. 540, 562.
10. Act of March 3, 1875, ch. 131, § 15, 18 Stat. 402, 420.
11. Act of May 20, 1862, ch. 75, 12 Stat. 392.
12. Act of March 3, 1875, ch. 131, § 15, 18 Stat. 402, 420.
13. 25 U.S.C. § 331 (1970).
14. 25 U.S.C. § 334 (1970).
15. 25 U.S.C. § 182 (1971).

*In Hy-Yu-Tse-Mil-Kin v. Smith,*[16] the Supreme Court held that it was *not* necessary under the Allotment Act of 1885[17] that the individual members of the tribes mentioned in the act should actually be residing on the reservation at the time of the passage of the act, and *Oakes v. United States*[18] interpreted the passage of legislation granting various rights to share in tribal property to Indians residing off a reservation who had severed tribal relations to indicate a new policy by the United States Government. The Court noted that "the test of the right of individual Indians to share in tribal lands . . . was existing membership in the tribe, and this was true of all tribal property."[19] The reason for the original policy by the United States Government was to isolate Indians from white society by placing them on remote reservations.[20] However, the new policy of the government appeared to encourage individual Indians to adopt civilized life, and

> . . . incident to this change in policy, statutes were enacted declaring that the right to share in tribal property should not be impaired or affected by such severance of tribal relations. . . . These acts disclose a settled and persistent purpose on the part of Congress so to broaden the original rule respecting the right to share in tribal property as to place individual Indians who have abandoned tribal relations, once existing, and have adopted the customs, habits, and manners of civilized life, upon the same footing, in that regard, as though they had maintained tribal relations.[21]

This rule was limited by subsequent decisions. *LaRoque v. United States*[22] restricted inheritance of land allotments to Indians under the Nelson Act[23] only to heirs of Indians who had made a selection of an allotment. *Lemieux v. United States*[24] interpreted §1 of the Act of February 8, 1887,[25] which gave the right to an allotment of reservation land to an Indian located upon the reservation, to mean only "a reservation Indian."[26] Tracing the history of the Bureau's restrictive residence policy regarding wel-

16. Hy-Yu-Tse-Mil-Kin v. Smith, 194 U.S. 401 (1904).
17. Act of March 3, 1885, ch. 319, 23 Stat. 340.
18. Oakes v. United States, 172 F. 305 (1909).
19. *Id.* at 307.
20. *Id.* at 308.
21. *Id.* at 308-09.
22. LaRoque v. United States, 239 U.S. 62 (1915).
23. Act of Jan. 14, 1889, ch. 24, 25 Stat. 642.
24. Lemieux v. United States, 15 F.2d 518, 520 (8th Cir. 1926).
25. 25 U.S.C. § 331 (1970).
26. Lemieux v. United States, 15 F.2d 518, 520 (8th Cir. 1926).
27. 25 U.S.C. § 331 (1970).
28. Lemieux v. United States, 15 F.2d 518, 520 (8th Cir. 1926).

fare benefits for off-reservation Indians is difficult.[29] The first formalized notice of the Bureau's residence policy appeared on May 12, 1952, with the publication of the Indian Affairs Manual.[30] The Bureau at various times has claimed different jurisdiction for different purposes, which has contributed to confusion with regard to all services provided to Indians by the Bureau.[31] Apparently it is not possible to receive a reliable estimate from the Bureau as to the number of Indians on the reservations who are not serviced.[32]

The Snyder Act of 1921[33] authorized the Bureau under the Secretary of the Interior to expend such monies as Congress may appropriate for the "benefit, care and assistance of the Indians throughout the United States." Part of the authorized expenditures enumerated under the act were for "general support." But Congress enacted a very general measure and left the regulatory scheme to the Secretary of the Interior and the Bureau. The result is that the structure of the welfare system is the Bureau's own creation,[34] and actual cash assistance did not begin until 1944.[35]

In examining the Snyder Act, the court in *Ruiz* noted that benefits are to be available to Indians "throughout" the United States and attached the ordinary meaning of the preposition throughout, which is expansive.[36] The court did not see any indication by Congress of any contrary definition. Moreover, the court pointed out that the jurisdictional responsibility of the Bureau has traditionally extended beyond the borders of reservations.[37] Statutes, such as the Snyder Act which were passed for the benefit of Indians and Indian communities, are to be liberally construed.[38] On these bases the court concluded that Congress intended general assistance benefits to be available to all Indians, including Indians living off the reservation.[39]

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29. Ruiz v. Morton, 462 F.2d 818, 823 n.20 (1972). The court noted that the residency restriction appears only in 66 BUREAU OF INDIAN AFFAIRS MANUAL 3.1.4(A) and not in the Code of Federal Regulations. The court felt that the Bureau "is of the opinion that this section does not 'relate to the public, including Indians.'" The Bureau of Indian Affairs Manual itself is difficult to obtain. *See* R. Wolf, *Needed: A System of Income Maintenance For Indians*, 10 ARIZ. L. REV. 597, 608 (1968), where the author declares that the entire welfare regulatory scheme of the Bureau "remains inaccessible except to a few social workers and persistent attorneys."

30. As noted by the court, Ruiz v. Morton, 462 F.2d 818, 823 (1972). *See* 66 BUREAU OF INDIAN AFFAIRS MANUAL 3.1.4(A).

31. *See* Ruiz v. Morton, 462 F.2d 818, 823-24 (1972).
(1969).

32. *See* Note, *Indians: Better Dead Than Red?* 42 S. CAL. L. REV. 101, 118 n.82

33. 25 U.S.C. § 13 (1970).

34. Wolf, *Needed: A System of Income Maintenance for Indians*, 10 ARIZ. L. REV. 597, 608 (1968).

35. *Id.* at 607.

36. Ruiz v. Morton, 462 F.2d 818, 820 (1972).

37. *Id.*

38. *Id.* at 821.

39. *Id.*

The court then went on to point out that the Bureau itself has shown an expansive attitude toward its jurisdiction in related areas of service, including scholarships to off-reservation Indians, general assistance grants to off-reservations Indians in Alaska and Oklahoma, and loans and health benefits to off-reservation Indians.[40] Various commissioners of the Bureau have claimed to provide services to Indians living "on or near" reservations and have used the total Indian population of the United States in citing the number of people their agency serves.[41] Thus, the court concluded that the intent of the Snyder Act was unambiguous, and held that the Bureau could not amend the act by regulation.[42] However, the court declined to rule on the due process issue raised by the appellants, and it expressed no view on the issue of whether Congress could, if it so desired, limit general assistance benefits to reservation Indians.[43]

In a dissent, Justice Merrill did not find the Bureau's construction unreasonable.[44] He pointed out that the Snyder Act simply authorized expenditures for Indians, and that the grant of such broad powers would not preclude reasonable Bureau decisions as to how its limited funds may be allocated to areas of greatest need. He found that the classifications were not unreasonable and were not a denial of equal protection.[45] Further, he faced the issue of whether the regulation infringed appellant's right to travel under *Shapiro v. Thompson*[46] and found that there was no infringement.[47]

On-reservation Indians have generally been excluded from state welfare programs because of deficiencies in existing state programs, anti-Indian bias, absence of state programs, and policies of states that the Bureau general assistance program is an available resource in the same category as pension or other income, thereby relieving the state of any duty to provide assistance.[48] Bureau welfare workers are required to use the state's budgetary plan in their determination of amounts to be awarded to Bureau general assistance recipients. Apparently this is motivated by a desire for administrative efficiency, a desire to follow the low payments provided by states, and political expediency and safety by paying no more than the states pay rather than a desire to tailor a program to fit the needs of Indians on a specific reservation.[49]

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40. *Id.*
41. *Id.* at 822.
42. *Id.*
43. *Id.* at 824.
44. *Id.*
45. *Id.* at 825.
46. Shapiro v. Thompson, 394 U.S. 618 (1969).
47. Ruiz v. Morton, 462 F.2d 818, 826 (1972).
48. R. Wolf, note 33 *supra*, at 608-09.
49. *Id.* at 609.

Reservations are usually bleak areas originally granted to the Indians because they were isolated from the white community and because the white community did not want the lands thus made available to the Indians.[50] Indian response to those ghetto-like conditions has been to desert reservation life. Nearly one-third of America's Indian population had deserted the reservation by 1968. In part, migration has been implemented by federal programs which furnish relocation funds, but no post-vocational assistance is included. Often these Indians migrating to urban areas know nothing of the rudiments of city living, and Indians often experience difficulty finding employment.[51] Faced with such considerations, the court made the proper decision regarding general assistance benefits for off-reservation Indians from a sociological viewpoint.[52]

Since the decision rested heavily upon the language of the Snyder Act, the question arises whether the other provisions of the Snyder Act may be similarly applied. If this question may be answered affirmatively, Indians living off the reservation may receive assistance for education, relief of distress, conservation of health, industrial assistance and advancement, development of water supplies, employment of physicians, and suppression of liquor and drugs. While such a holding is desirable in light of the history of the affairs of the white man and the Indian, it may prove to cause a repeal or amendment of the Snyder Act to limit such benefits to the Indians because of real or alleged shortages of revenues. However, a debt is owed to the American Indian which has been ignored too long, and it is time that America began to repay the debt by providing these and other services to Indians, whether they live on or off the reservation.

RUSSELL J. MYHRE

INDIANS—RESERVATIONS—EFFECT OF LATER CONGRESSIONAL ACTS ON ACT ESTABLISHING RESERVATION BOUNDARIES

Appellant, a municipal corporation, brought suit for a declaratory judgment asserting that the Congressional Act of 1910,[1] which allowed for allotment and sale of certain Fort Berthold Indian Res-

50. *See generally,* D. BROWN, BURY MY HEART AT WOUNDED KNEE (1970) for a history of the creation of Indian reservations and the methods by which Indians were forced onto them.
51. Note, *Indians: Better Red Than Dead?*, 42 S. CAL. L. REV. 101, 118 (1969).
52. *See* Comment, 2 U.C.L.A. L. REV. 143 (1954).
1. Act of June 1, 1910, ch. 264, 36 Stat. 455.