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# EDUCATION OF AMERICAN INDIANS IN THE AGE OF *BROWN V. BOARD OF EDUCATION*

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I have been asked to comment briefly on the impact of *Brown v. Board of Education* upon the American Indians. The Indians, after all, can be considered a minority within the nation who have faced discrimination and oppression and who, in some ways, have a history parallel to that of African Americans. We may be forgiven if we are tempted to ask in the fiftieth anniversary year of the Supreme Court's decision: What did it do for the Indians?

The answer, in one word, is *nothing!* Nothing, that is, that was directly aimed at the Indians. Some years ago I published a large study of the relations between the United States and the American Indians.<sup>1</sup> Within its 1300 pages, I devoted almost 200 pages to the period between 1950 and 1980, of which two substantial sections were devoted to education, without a word or reference to *Brown*. Recently, when I checked the 1982 revision of *Felix S. Cohen's Handbook of Federal Indian Law*,<sup>2</sup> a basic legal reference book, I found only one citation of the case, and it was located in a general paragraph about discrimination, not in the book's extensive coverage of Indian education.

Still, it might be useful to consider the course of American Indian educational experience, for such a discussion can give us a useful perspective in dealing with the story of education for African

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1. FRANCIS P. PRUCHA, *THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS* (1991).

2. FELIX S. COHEN, *FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW* (rev. ed. 1982).

Americans. Since *Brown* was specifically about schools and condemned the policy of “separate but equal,”<sup>3</sup> which legally excluded African American children from public schools established for white children, my comments will deal only with education policy as it affected American Indian children, from the 1950s to the present day. You will see that the Indian experience was quite different from that of the African Americans.

We must remember through all of this account that schools for Indians were a federal responsibility, not the business of the states, because the Constitution placed Indian affairs in the hands of the federal government.<sup>4</sup> That in itself represents a fundamental difference between Indian and African American experience.

Indian education has passed through three stages, which I have designated somewhat arbitrarily. In the nation’s early years, schools for Indians were the work of Christian missionary societies, who built and maintained schools for Indians in the Indian Country. This work was aided by the federal government in terms of land grants for schools and some financial aid because the missionaries’ drive to Christianize the Indians—the primary goal of the United States—also contributed to their civilization. Of special note in this early period was the Civilization Fund. Authorized by Congress in 1819, it provided \$10,000 a year, which was divided among the missionaries who were involved.<sup>5</sup> As the system continued, Commissioner of Indian Affairs William Medill in 1847 indicated how much the Indian Department had come to rely on missionaries.

In every system that has been adopted for promoting the cause of education among the Indians, the department has found its most efficient and faithful auxiliaries and laborers in the societies of the several Christian denominations, which have sent out missionaries, have established schools, and have maintained local teachers among different tribes. Deriving its impulse from principles of philanthropy and religion, and devoting a large amount of its own means to the education, moral elevation, and improvement of the tribes, the department has not hesitated to make missionaries the instruments, to a considerable extent, of applying the funds appropriated by the government for like purposes.

It should be noted, too, that in the first half of the nineteenth century, sizable sums of money for education were provided by Indian

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3. 347 U.S. 483, 488 (1954).

4. U.S. CONST. art I, § 8, cl. 3.

5. PRUCHA, *supra* note 1, at 151.

treaties. The Indians accepted this support of education as part payment for the lands they ceded to the United States through the treaties.

After the Civil War, the federal government became increasingly involved in Indian education, developing a system of contract schools, in which missionary schools were paid a set sum for each student enrolled. As heavy immigration came from Catholic countries in Europe, the Catholic missionaries soon dominated this program.

A second state came late in the nineteenth century when the federal government itself took over the running of schools for Indians. Of special importance was the reservation of day schools program conceived by Commissioner of Indian Affairs Thomas Jefferson Morgan. In 1889, he introduced an elaborate system of federal reservations. His plan was to provide school buildings and a detailed program of curriculum for the various levels.

The Protestant schools closed because the churches were satisfied with the government schools and the religious training they included, and the Catholic schools were cut off from federal funding. The mission schools did not disappear entirely, and in fact, some of them still exist, but by 1900 they were a small part of the schooling of American Indians.

The year 1900 was a high point of the new government school system. The pupils were for the most part tribal Indians on the reservations for whom the federal schools were the engines of cultural change. During the year, out of some 25,000 children enrolled, 1275 attended the mission schools that had survived, and only 250 were enrolled in public schools of the state.<sup>6</sup> The criticism of the schools (clearly etched in the annual reports of the school superintendents) stemmed from the physical condition of the buildings and sickness among the children crowded into the schools, not from differences with the basic philosophy that undergirded the school system.

During these two stages, the overt purpose of the schools was to erase the Indian culture, including Indian language, and replace it with a homogenized Anglo civilization. The Indians were no longer to be tribal persons with a communal organization. Instead, they were to become individualized, small landowners, each with family owning its own 160-acre farm. The schools were to turn the children into persons trained for the new life as farmers or simply artisans; they provided vocational education, which in those days was called industrial training

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6. PRUCHA, *supra* note 1, at 815.

or manual training. And the reformers and the federal officials would brook no interference to obstructions. Thomas Jefferson Morgan, in promoting compulsion to get the Indian children enrolled in school said: "We do not think it desirable to rear another generation of savages."<sup>7</sup> A present-day historian who has written a history of the Indian boarding schools calls his book "Education for Extinction."<sup>8</sup>

Indian schools followed this pattern of schooling well into the twentieth century when it entered a third stage. Then, the Meriam Report—the 1928 report capturing a study by the Brookings Institution commissioned by the federal government and published in 1928—presented a scathing review of the conditions of Indian life.<sup>9</sup> Its section on education strongly criticized the work of the Federal Bureau of Indian Affairs ("BIA") for its handling of Indian schools. It found the care of Indian children in boarding schools to be "grossly inadequate." The children suffered from a poor diet, overcrowding of dormitories, below standard medical attention, and badly trained teachers. It found fault with the vocational training given, and it wanted to de-emphasize the boarding schools and instead promote community day schools. It urged for the mingling of Indian children with white pupils in the public schools.

What the Meriam Report called for in 1928, however, was not a new vision for Indian education, but a more efficient and productive implementation of conventional norms. It did not touch upon the long-standing transfer of Indian children from their own culture into white civilization, and it evaded the question of whether the schools were meeting the needs and wishes of the Indians themselves.

Dissatisfaction with the physical condition of the schools and the quality of the educational experience was persistent. But not until the end of the 1960s did the criticism have a dramatic, almost explosive, impact. In 1969 two searching and significant studies were made of Indian education, mostly independent of each other.

The first of the studies on Indian schools was that of a Senate Subcommittee chaired first by Robert Kennedy and then, after his death, by his brother Ted. Its report, based on a two-year examination of federal, state, local, and mission schools, was ominously entitled "Indian Education: A National Tragedy and National Challenge."<sup>10</sup> The

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7. PRUCHA, *supra* note 1, at 707.

8. DAVID WALLACE, *EDUCATION FOR EXTINCTION* (2000).

9. LEWIS M. MERIAM ET AL., *THE PROBLEM OF INDIAN ADMINISTRATION* (1928).

10. U.S. Senate Committee on Labor and Public Welfare, *Indian Education: A National*

committee concluded: “the national policies for education of American Indians are a failure of major proportions. They have not offered Indian children—either in years past or today—an educational opportunity anywhere near equal to that offered the great bulk of the American children.”<sup>11</sup> (This statement was intended, perhaps, to echo *Brown*). It was struck by the “low quality of virtually every aspect of the schooling available to Indian children. The school buildings themselves; the course material and books; the attitude of teachers and administrative personnel; the accessibility of school buildings—all these are of shocking quality.”<sup>12</sup> Setting the tone for the future decades of Indian education agitation, which focused on Indian self-determination, the committee insisted on increased participation and control by Indians themselves of the education of their children. Indian education came to be judged from the perspective of how well the schools provided the Indian children with knowledge of their own history and culture.

The second study was the National Study of American Indian Education, conducted from 1968 to 1970 by the Office of Education of the Department of Health, Education, and Welfare.<sup>13</sup> Its report was less strident than the Kennedy report, but it reached the same conclusions.

These developments occurred in the midst of a great furor and general protest by activist Indians throughout the nation, who promoted “Red Power” in imitation of “Black Power” and whose actions pointedly underscored the unacceptable conditions of Indian life in modern America. Beginning with the seizure in 1969 of Alcatraz Island by Indians of many tribes acting together, and continuing with sit-ins in various public facilities, the long march of Indians to Washington in 1972 culminating in the trashing of the BIA headquarters, and the standoff between irate Indians and the Federal Bureau of Investigation at Wounded Knee in 1972, protests electrified American society and created an atmosphere in which Indian demands regarding self-determination (including education) had to be noticed and responded to.

Congress got the message. In enacting the Indian Education Act of 1972 it recognized “the special, remedial needs of Indian children” and

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Tragedy and Challenge (1969) *quoted in* ALVIN M. JOSEPHNY ET AL., *RED POWER* (2d ed. 1999).

11. *Id.* at 188.

12. *Id.*

13. R.J. HAVIGHURST, *THE EDUCATION OF INDIAN CHILDREN AND YOUTH: THE NATIONAL STUDY OF AMERICAN INDIAN EDUCATION* (1970).

provided money to educational agencies to meet those needs.<sup>14</sup> It created an Office of Indian Education in the Department of Health, Education, and Welfare and established a National Advisory Council on Indian Education comprised of Indians and Alaska Natives. As the drive for Indian self-determination became increasingly pronounced in the field of education, there were continuing appropriations and an insistence on the part of both the executive branch and the Congress that the programs meet the special educational and cultural needs of the Indians and that direction and control of the schools be placed in Indian hands in order to assure these goals be attained.

For the rapidly growing number of Indians in public schools, Congress appropriated money to public school districts where a heavy concentration of Indian students were enrolled. It augmented the Johnson-O'Malley Act of 1934, which provided funds for special Indian programs in public schools and authorized the use of funds from the Federal Impacted Areas Act, eventually requiring that these extra moneys be used for supplementary Indian-related activities and not simply for the general operations of the schools.<sup>15</sup>

The movement toward self-determination was given renewed vigor by the Indian Self-Determination and Education Assistance Act of 1975, which required Indian-parent advisory committees in school districts to advise on the expenditure of federal funds for Indian education and allowed tribes to take over the running of federal Indian schools.<sup>16</sup>

In subsequent years, Congress continued to support the power of Indians to direct the education of their children and to extend Indian influence on education. Tribes and other Indian organizations were aided by federal funds in developing Indian high schools and then Indian-run colleges. The Education Amendments Act of 1978 directed: "It shall be the policy of the Bureau [of Indian Affairs] . . . to facilitate Indian control of Indian affairs in all matters relating to education."<sup>17</sup> Self-determination, however, was somewhat limited by the fact that most of the financial support still came from the federal government.

The two-fold classification of Indians schools—(1) schools directly run by the BIA or by the tribes and (2) public schools (serving perhaps

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14. PRUCHA, *supra* note 1, at 1142.

15. PRUCHA, *supra* note 1, at 1143-44.

16. *Id.* at 1144-45.

17. The Education Amendments Act of 1978, Pub. L. No. 95-561, § 1130, 92 Stat. 2313, 2321 (1978).

ninety percent of the pupils) with their federally funded programs for Indian students—became more pronounced. The BIA provided for the former; the Department of Health and Human Services and the Department of Education provided for the latter.

The goal and its implementation continue. Indian education has advanced in ways that would have been unrecognizable in 1900 and even in 1950. The major problems facing the schooling of the Indians have been slowly overcome, and the assimilationist rhetoric of the late nineteenth and early twentieth centuries has disappeared.

Of course, we should not discount the changes that *Brown* brought to the general climate of opinion in American society, which no longer could tolerate legal discrimination on the basis of race in education—or in housing, transportation, and other aspects of daily life. Yet the history of Indian progress has been quite distinct from that of the African Americans.

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