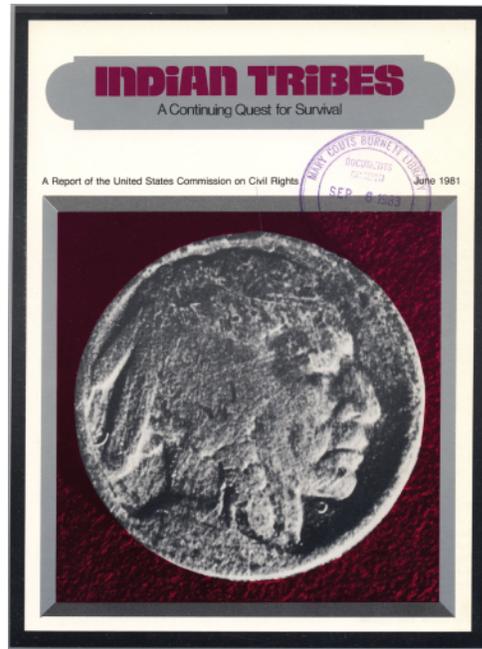


## “Citizen[s] with a Difference”: The U.S. Commission on Civil Rights and Native Americans, 1961–1981

By David W. Grua

On the morning of November 14, 1972, the Honorable Benny Atencio, Chairman of the All Indian Pueblo Council, testified concerning the civil rights situation of Pueblo Indians before the U.S. Commission on Civil Rights in Albuquerque, New Mexico. Atencio was “hopeful that someone, somewhere will begin to believe the seriousness of these problems that we as Indians are facing.”<sup>1</sup> Atencio spoke of his people’s poverty and the discrimination suffered on Pueblo reservations. His testimony illustrated Thomas J. Sugrue’s argument that “geography is destiny. Access to goods and resources—public services, education, and jobs—depends upon place of residence. In modern America, where you live determines to a great extent the quality of your schools, your roads, your access to employment, and how you pay for these benefits in the form of taxes.”<sup>2</sup> At mid-century, 357,000 American Indians lived in the United States, with two-thirds living on reservations and geographically unable to participate in the post–World War II economic boom.<sup>3</sup> The remaining third lived in cities, with some seeing prosperity but most suffering frustrations similar to those of other minorities that migrated to cities in the 1940s.<sup>4</sup> As Charles Wilkinson has argued, Native Americans “were mired in the worst economic and social conditions of any group in America.” Few reservations boasted unemployment rates below 40 percent, and some reached as high as 90 percent.<sup>5</sup>



The Cover of *Indian Tribes*, the Commission’s 1981 report

The decade following the war saw an awakening of many Americans to the plight of Native Americans and other racial minorities. Organizations like the National Congress of American Indians worked to strengthen the civil and treaty rights of Native Americans, while African Americans demanded

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<sup>1</sup> U.S. Commission on Civil Rights, *Hearing Held in Albuquerque, New Mexico*, November 14–15, 1972 (Washington, DC: U.S. Government Printing Office, 1972), 19.

<sup>2</sup> Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (1996; repr., Princeton: Princeton University Press, 2005), xxii.

<sup>3</sup> R. David Edmunds, Frederick E. Hoxie, and Neal Salisbury, *The People: A History of Native America* (Boston: Houghton Mifflin, 2007), 398–99.

<sup>4</sup> See Donald L. Fixico, *The Urban Indian Experience in America* (Albuquerque: University of New Mexico Press, 2000), 69–85.

<sup>5</sup> Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: W. W. Norton, 2005), xiv.

equal protection of the law and their rights as citizens. The federal government began to demonstrate a commitment to eliminating discrimination and guaranteeing the rights of Americans. In 1957, Congress established the United States Commission on Civil Rights to investigate the condition of civil rights in the nation. Historian Foster Rhea Dulles, in his book *The Civil Rights Commission*, has documented the activities and influence of the Commission from its founding through 1965.<sup>6</sup> Legal scholars Jocelyn C. Frye, Robert S. Gerber, Robert H. Pees, and Arthur W. Richardson analyzed the politics surrounding the Commission through Ronald Reagan's 1980s conservative reforms.<sup>7</sup> While the contribution of these scholars is invaluable, the Commission's work with non-black groups, particularly Native Americans, remains poorly understood. Beginning in 1961, the Commission published a series of reports documenting the civil rights situation of American Indians, culminating in 1981 with *Indian Tribes: A Continuing Quest for Survival*.<sup>8</sup> After providing historical and explanatory background on Native American rights issues, Indian and black activism, and the Commission's founding, this paper will analyze the Commission's reports on Native American civil rights. The analysis will concentrate on the changing nature of the reports' representations of American Indian issues. I argue that from 1961 to 1981 the Commission came to see the problems of Native Americans on their own terms (as opposed to simply in relation to the black civil rights movement) and that, as a result of this process, the Commission's outlook and position shifted from a position that primarily defended traditional civil rights categories (such as voting and housing) to a more expansive one that also defended Indian treaty rights.

This paper employs various terms and concepts that may be unfamiliar to some readers. I discuss the Black/White Binary, a concept that is deeply rooted in American law and culture. The Binary categorizes all racial groups as either white or black, and thereby marginalizes the historical identities of Latinos, American Indians, and others with unique histories. An extension of the Binary is the Black Analogy, which compares non-black groups that have historically suffered oppression with African Americans.<sup>9</sup> The Analogy has proven useful in winning civil rights gains for non-black groups. For example, it could be argued that Latinos in the Southwest have suffered segregation *like blacks*, and therefore should have the same protections as African Americans. Like the Binary, the Analogy by implication subsumes the histories of non-black groups within African American histories. I also examine frameworks used by the Commission to narrate Native American histories. The Commission initially relied upon semi-Turnerian historical concepts (derived from the writings of Frederick Jackson Turner) to portray the white settlement of the frontier as inevitable and justified, while its later reports challenged the white supremacy of semi-Turnerian ideologies. Understanding how the reports constructed the past provides important insights into how the Commission understood American Indian identities in the present. In addition, I discuss liberal and conservative ideologies in a civil rights context. I define liberal ideology as accepting and defending not only traditional civil rights categories such as voting and equal access to hous-

<sup>6</sup> Foster Rhea Dulles, *The Civil Rights Commission: 1957–1965* ([East Lansing]: Michigan State University, 1968).

<sup>7</sup> Jocelyn C. Frye, Robert S. Gerber, Robert H. Pees, and Arthur W. Richardson, "The Rise and Fall of the United States Commission on Civil Rights," *Harvard Civil Rights–Civil Liberties Law Review* 22, no. 2 (Spring 1987): 450–505.

<sup>8</sup> U.S. Commission on Civil Rights, *Indian Tribes: A Continuing Quest for Survival* (Washington, DC: U.S. Government Printing Office, 1981).

<sup>9</sup> On the Black/White Binary, see Juan F. Perea, "The Black/White Binary Paradigm of Race: The 'Normal Science' of American Racial Thought," *California Law Review* 85, no. 5, *LatCrit: Latinas/os and the Law: A Joint Symposium* by "California Law Review" and "La Raza Law Journal" (October 1997): 1213–58 and Linda Martin Alcoff, "Latino/as, Asian Americans, and the Black-White Binary," *The Journal of Ethics* 7, no. 1, *Race, Racism, and Reparations* (2003): 5–27; on the Black Analogy, see John D. Skrentny, *The Minority Rights Revolution* (Cambridge: Harvard University Press, 2002).

ing, but also rights not available to other citizens, such as treaty rights. I define conservative ideology as accepting and defending only those rights enjoyed by all citizens.

### Treaty Rights, Civil Rights, and Native American Activism

The Commission argued in its 1961 report, “The American Indian,” that American Indians are “citizen[s] with a difference,” referring to Native Americans’ tripartite legal status as U.S. citizens, tribal members, and federal wards.<sup>10</sup> This anomalous status confers special rights to members of Indian tribes not granted to other citizens, including limited tribal sovereignty, land rights, cash annuities, health services, and fishing rights. These communal rights derive from 367 treaties between the U.S. government and various Indian tribes.<sup>11</sup> Although the Commission spoke matter-of-factly of the special status of these treaties, their validity, along with the rights they bestow, have been challenged at various times during American history. Many 19th-century Anglo-Americans saw these treaties as reinforcing tribal identities and thus as impediments to assimilation. Congress ended the practice of treaty making in 1871; however, the treaties made prior to that year remained technically in force.<sup>12</sup> Although officially still on the books, Francis Prucha argues that from the 1870s through the 1960s the federal government largely ignored treaties in formulating policies.<sup>13</sup>

Like treaties, Indian citizenship is marked by a history of contestation. The Supreme Court in 1831 defined Indian tribes as “domestic dependent nations,” externally subject to and dependent upon the United States but internally sovereign.<sup>14</sup> Opponents of Indian citizenship argued that as members of foreign nations, Native Americans were not subject to U.S. law and therefore could not be American citizens.<sup>15</sup> Following the Civil War, humanitarian reformers argued that subjecting Indians to the law would Americanize them, arguing that “the way to fit men for citizenship is to make them citizens.”<sup>16</sup> Others believed that granting Native Americans citizenship without preparation to accept its obligations would hinder rather than aid progress. The reformers saw Native Americans as analogous to freed yet civilly unprepared slaves when granted citizenship by the 14th Amendment. During the 1880s, Congress broke up reservations into allotments for individual Indian families. This policy granted tribal members citizenship upon accepting an allotment, while awarding individual Indians citizenship upon severing tribal ties, abandoning the reservation, and adopting white customs.<sup>17</sup> In 1919, Congress granted Native American veterans of World War I citizenship without affecting his or her tribal membership or

<sup>10</sup> U.S. Commission on Civil Rights, “The American Indian,” in *1961 Commission on Civil Rights Report: Book Five, Justice* (Washington, DC: Government Printing Office, 1961), 115.

<sup>11</sup> Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 1.

<sup>12</sup> *Ibid.*, 289–310.

<sup>13</sup> However, Native American tribes and the government continued to acknowledge treaties in a limited fashion during litigations in the Court of Claims, the Indian Claims Commission, and the Supreme Court (see Prucha, *American Indian Treaties*, 361–408).

<sup>14</sup> Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), 209–10.

<sup>15</sup> *Ibid.*, 682.

<sup>16</sup> *Report of the Board of Indian Commissioners*, 1885, p. 17, as quoted in *Ibid.*, 685.

<sup>17</sup> The Allotment Act excluded the Five Civilized Tribes, the Osages, Miamis, Peorias, and Sacs and Foxes in the Indian Territory, the Seneca Indians of New York, and Sioux lands in Nebraska. For other tribes, it would be administered over the next few decades. Prucha, *The Great Father*, 686, 898.

property claims.<sup>18</sup> Prucha estimates that by the 1920s two thirds of American Indians gained citizenship. In 1924, the Indian Citizenship Act made all Indians born within the United States citizens.<sup>19</sup>

Granting citizenship was therefore a principal strategy by which reformers hoped to Americanize Native Americans, a process that the reformers thought would eventually allow Indians to be self-sufficient and no longer reliant on the government for aid. In the 1940s, congressmen such as Arthur Watkins (R-UT) argued that the paternalism of the Bureau of Indian Affairs was hindering the process of Americanization. Influenced by conservative ideologies, Watkins argued that BIA paternalism was communism and that Native Americans needed to be “freed” from their official governmental relationship. Watkins designed an “Indian Freedom Program,” better known as “termination,” that would officially terminate the government’s treaty obligations to Native Americans while giving severance payments to tribes. Although in theory termination was intended to be voluntary, requiring tribal consent and sufficient evidence that the tribe was self-sufficient, Congress terminated some tribes in the 1950s without receiving either. Increased poverty and deprivation resulted, as many Indians, suddenly “free,” found themselves woefully unprepared for that freedom.<sup>20</sup>

Native Americans also faced discrimination and civil rights violations. Although Congress granted Indians full citizenship in 1924, the act only guaranteed federal protections for citizenship. Western states such as Arizona, New Mexico, and Utah denied Indians the franchise, arguing that as federal wards, Indians could not be state citizens. These states also denied social security benefits to Native American citizens on similar grounds. Many neighborhoods used racially motivated restrictive covenants that prohibited Native Americans from living in “all-white” communities.<sup>21</sup> In addition, officials in midwestern and western states unlawfully abrogated treaties that guaranteed tribes the right to fish in lakes and rivers by transferring these privileges to private businesses. Police in these states arrested and jailed Native Americans for exercising their rights.<sup>22</sup>

American Indian activists lobbied Congress and instituted lawsuits in response to civil and treaty rights violations. The National Congress of American Indians (NCAI), founded in 1944, combated discrimination and termination.<sup>23</sup> The NCAI contributed to the cessation of discrimination in voting, social security, and housing in western states, and the discontinuance of termination as an official policy in 1970.<sup>24</sup> Activists in midwestern and northwestern states in the 1960s staged “fish-ins,” where they fished in prohibited areas to goad arrest.<sup>25</sup> Activists known as Indians of All Tribes occupied Alcatraz Island from 1969 to 1971, which attracted considerable media attention. Inspired by the Black Panthers, the American Indian Movement (AIM) monitored police actions to oppose police brutality. AIM occupied symbolic American places that represented for

<sup>18</sup> Ibid., 772.

<sup>19</sup> Ibid., 793.

<sup>20</sup> On termination, see Kenneth R. Philp, *Termination Revisited: American Indians on the Trail to Self-Determination, 1933–1953* (Lincoln: University of Nebraska Press, 2002) and R. Warren Metcalf, *Termination’s Legacy: The Discarded Indians of Utah* (Lincoln: University of Nebraska Press, 2002).

<sup>21</sup> Edmunds, Hoxie, and Salisbury, *The People*, 406.

<sup>22</sup> See Charles Wilkinson, *Messages from Frank’s Landing: A Story of Salmon, Treaties, and the Indian Way* (Seattle: University of Washington Press, 2000), Fay Cohen, *Treaties on Trial* (Seattle: University of Washington Press, 1986), and Jeffrey R. Dudas, *The Cultivation of Resentment: Treaty Rights and the New Right* (Stanford: Stanford University Press, 2008).

<sup>23</sup> Thomas W. Cowger, *The National Congress of American Indians: The Founding Years* (Lincoln: University of Nebraska Press, 1999).

<sup>24</sup> Edmunds, Hoxie, and Salisbury, *The People*, 406, 410–15.

<sup>25</sup> Wilkinson, *Blood Struggle*, 150–73.

American Indians a history of oppression, such as a replica of the Mayflower; Mount Rushmore; the Bureau of Indian Affairs in Washington, DC, and Wounded Knee, South Dakota, the site of the last major Indian massacre in 1890. These occupations sought to obtain government concessions and garner public sympathy, and received mixed results.<sup>26</sup>

### The Civil Rights Movement and the Establishment of the Commission

Clearly, the Native American rights movement had its own dynamics, but it is helpful to understand it in connection with the African American struggle for equality. Following World War II, black activists employed various strategies to end racial discrimination. The National Association for the Advancement of Colored People lobbied government officials and legally challenged segregation, culminating in the landmark U.S. Supreme Court decision *Brown v. Board of Education* in 1954.<sup>27</sup> The court held that the separate but equal doctrine was inherently unequal and therefore unconstitutional.<sup>28</sup> Aside from lobbying and legal challenges, black activists employed boycotts, sit-ins, Freedom Rides, and marches to direct attention to discrimination in schools, housing, public accommodations, transportation, and voting rights. These protests garnered national attention and convinced federal officials that new legislation and executive action was necessary to eliminate racial discrimination.<sup>29</sup>

Despite opposition from conservatives, liberals in both political parties pushed a successful civil rights agenda in Congress, largely due to the impact of domestic racial discrimination on American relations with Latin American and African countries. With the United States' emergence as a world leader during and after World War II, policymakers argued that the nation's image abroad depended on curtailing discrimination against Mexican Americans in the Southwest and African Americans in the South.<sup>30</sup> The Cold War also provided a strong context for civil rights. As American leaders sought to demonstrate the superiority of democracy to the Third World, Soviet propagandists pointed to examples of American racism, discrimination, and oppression. As legal scholar Mary Dudziak has argued, "[E]fforts to promote civil rights within the United States were consistent with and important to the more central U.S. mission of fighting world communism. The need to address international criticism gave the federal government an incentive to promote social change at home."<sup>31</sup> Federal officials used this argument successfully from the 1940s through the 1970s to convince moderates and some conservatives to support civil rights initiatives.<sup>32</sup>

<sup>26</sup> See Paul Chaat Smith and Robert Allen Warrior, *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee* (New York: The Free Press, 1996).

<sup>27</sup> See Merline Pitre, *In Struggle Against Jim Crow: Lulu B. White and the NAACP, 1900–1957* (College Station: Texas A&M Press, 1999), and Gilbert Jonas, *Freedom's Sword: The NAACP and the Struggle Against Racism in America, 1909–1969* (Milton Park, Great Britain: Routledge, 2004).

<sup>28</sup> See Derrick Bell, *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes of Racial Reform* (New York: Oxford University Press, 2005).

<sup>29</sup> See Charles M. Payne, *I've Got the Light of Freedom: The Organizing Tradition and Mississippi Freedom Struggle* (1995; repr., Berkeley: University of California Press, 2007).

<sup>30</sup> See Justin Hart, "Making Democracy Safe for the World: Race, Propaganda, and the Transformation of U.S. Foreign Policy during World War II," *Pacific Historical Review* 73, no. 1 (February 2004): 49–84, and Thomas A. Guglielmo, "Fighting for Caucasian Rights: Mexicans, Mexican Americans, and the Transnational Struggle for Civil Rights in World War II Texas," *The Journal of American History* 92, no. 4 (March 2006): 1212–237.

<sup>31</sup> Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2000), 12.

<sup>32</sup> See Dudziak, *Cold War Civil Rights*, and John D. Skrentny, *The Minority Rights Revolution*, 21–84.

Most civil rights progress during the 1940s came from executive orders that were not in danger of congressional filibusters or other conservative roadblocks. Franklin D. Roosevelt used Executive Order 8802 to establish the Fair Employment Practices Committee that “proclaimed a broad new policy of nondiscrimination by race, creed, color, or national origin in federal employment and defense contracts.”<sup>33</sup> Harry Truman desegregated the armed forces in the late 1940s.<sup>34</sup> Perhaps most germane to the later establishment of the U.S. Commission on Civil Rights was Truman’s Executive Order 9808, which created the President’s Committee on Civil Rights. Truman believed that the federal government had “the duty to act when state or local authorities abridge or fail to protect” civil rights and enjoined the Committee to offer recommendations regarding future legislation “for the protection of the civil rights of the people of the United States.”<sup>35</sup>

Although the Committee’s final report concentrated on the difficulties of African Americans, the Committee remarkably did not treat the “American dilemma” of race relations as simply a black/white phenomenon, which was typical at the time.<sup>36</sup> Rather, the Committee also included examples of discrimination against Jews, Latinos, Native Americans, and Asian Americans.<sup>37</sup> The Committee recommended that the civil rights sections in the Justice Department and the FBI be strengthened, that lynching and poll taxes be outlawed, that the military and Washington, DC, be desegregated, and that discrimination be eliminated in employment, education, housing, health care, and public accommodations.<sup>38</sup> In addition, the Committee recommended that Congress establish a permanent Commission on Civil Rights to conduct a “continuous appraisal of the status of civil rights, and the efficiency of the machinery with which we hope to improve that status.”<sup>39</sup> The Committee also suggested that the proposed Commission “should also investigate and make recommendations with respect to special civil rights problems, such as the status of Indians and their relationship to the federal government.”<sup>40</sup>

Although the Truman Committee recommended in 1947 that Congress create a permanent civil rights commission, a decade would pass before the Commission’s founding. Resistance from Southern conservatives to the desegregation mandated by *Brown* convinced Dwight D. Eisenhower that assertive action was needed to enforce federal court decisions and protect civil liberties. Eisenhower called on Congress to create a commission to investigate allegations that whites denied blacks the franchise. Supporters of the commission not only included Republican and Democratic liberals, such as Lyndon B. Johnson, but also some western conservatives like Arizona Senator Barry Goldwater. These advocates argued that a commission was necessary to document the status of civil liberties and to recommend areas of improvement. Southern conservative Democrats vehemently opposed the commission, arguing it was yet another example of federal

<sup>33</sup> Hugh Davis Graham, *The Civil Rights Era: Origins and Development of National Policy, 1960–1972* (New York: Oxford University Press, 1990), 10.

<sup>34</sup> See Michael R. Gardner, *Harry Truman and Civil Rights: Moral Courage and Political Risks* (Carbondale: Southern Illinois University Press, 2002).

<sup>35</sup> *To Secure These Rights: The Report of the President’s Committee on Civil Rights* (New York: Simon and Schuster, 1947), vii.

<sup>36</sup> See Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (New York: Harper and Brothers, 1944). See also Mark Brilliant, “Color Lines: Civil Rights Struggles on America’s ‘Racial Frontier,’ 1945–1975,” (Ph.D. diss., Stanford University, 2002), 1–15, for a discussion of Myrdal and other works from the period reviewing the “race problem.”

<sup>37</sup> *To Secure These Rights*, 14–16. See also Skrentny, *The Minority Rights Revolution*, 91–92.

<sup>38</sup> *To Secure These Rights*, 151–73.

<sup>39</sup> *Ibid.*, 154.

<sup>40</sup> *Ibid.* The Committee also recommended that Arizona and New Mexico cease to deny suffrage to Native Americans (*To Secure These Rights*, 161).

intervention into state affairs and that it was nothing more than a “roving election year Gestapo.” South Carolina Senator Strom Thurmond staged a record-setting filibuster of 24 hours and 18 minutes, but ultimately Congress established the U.S. Commission on Civil Rights with the Civil Rights Act of 1957, the first civil rights legislation since Reconstruction.<sup>41</sup>

The 1957 act empowered the President to appoint six commissioners, three from each side of the political aisle. The Commission theoretically was independent from both the Executive and Legislative branches. Congress enabled the Commission to conduct hearings and to investigate complaints regarding discrimination as well as subpoena recalcitrant witnesses. In addition, the Commission could establish state advisory committees for local investigations. The Commission however lacked power to take punitive actions against alleged discriminators. It was therefore empowered primarily to be a fact-finding agency. Specifically, the act directed the Commission to investigate charges of voting discrimination based on color, race, religion, or national origin, examine legal developments that deny equal protection under the law, and analyze federal statutes and regulations that promote or abet discrimination. After conducting its investigations, the Commission was to publish its findings and provide recommendations to the President and the Congress.<sup>42</sup>



President Eisenhower signed the 1957 Civil Rights Act on September 9, 1957.

Acting under the authority of the 1957 act, Eisenhower chose academics and former governors as the first six Commissioners, three from each political party. The first Commission included one ardent segregationist, former Virginia Governor John S. Battle. Despite its divided ideological composition, the Commission had a tremendous impact on the historic Civil Rights Acts of 1960, 1964, and 1965, which targeted discrimination against blacks in the South. The Commission recommended in 1959 that the federal government appoint special voting registrars in areas with apparent discrimination. The 1960 act partially accepted this recommendation by appointing voting referees, but the appointments were subject to civil suits, rather than under the direction of the Commission.<sup>43</sup> The 1964 act partially accepted the Commission’s recommendations that required all registration tests be administered in writing and establishing a sixth-grade education as the standard for literacy tests, but again Congress held that such provisions could only be settled by suits instituted by the Attorney General, rather than by federal registrars. The act also followed the Commission’s recommendation that federal funds be withheld from any state or local institution that practiced discrimination. The 1965 act finally enacted the Commission’s full recommendation for appointing federal registrars in counties found to have literacy tests and/or counties where less than half of voters were registered. Additionally, the act accepted the Commission’s recommendation to impose sanctions against individuals who interfered with voting rights, its recommendation to appoint federal poll watchers, and its recommendation to allow the Attorney General to institute suits to determine the constitutionality of poll taxes.<sup>44</sup>

<sup>41</sup> See Dulles, *The Civil Rights Commission*, 1–15. The act also created the Civil Rights Division (upgraded from the Civil Rights Section) in the Justice Department and a special assistant attorney general for civil rights.

<sup>42</sup> *Ibid.*, 2, 15.

<sup>43</sup> *Ibid.*, 21, 96–97, 220.

<sup>44</sup> *Ibid.*, 96–97, 220, and 243–45.

The U.S. Commission on Civil Rights and Native Americans, 1961–1981

In 1959, the Commission issued its first report, based on hearings held in various Southern states as well as New York, Chicago, and Washington, DC.<sup>45</sup> At this early date the Commission saw America’s race dilemma primarily through the Black/White Binary. The report’s historical section narrated American history within a framework that emphasized slavery and Jim Crow, thereby subsuming and marginalizing the distinctive histories of Latinos, Native Americans, and other racial minorities.<sup>46</sup> The Commission was clear in its belief that “[t]he principle [*sic*] racial group affected [by exclusion] is, of course, the Negro.”<sup>47</sup> Despite this limited paradigm, there were some indications that the Commission was willing, like the earlier Truman Civil Rights Committee, to include brief comments on non-black groups. Within the 668-page report were scattered references to Mexican Americans, Puerto Ricans, American Indians, Jews, and “Oriental Americans.”<sup>48</sup> The report also indicated that the Commission had conducted “[a] preliminary study [that] looked into the civil rights problems of Indians,” but did not explain why Native Americans were singled out as a non-black group for special attention.<sup>49</sup>

In preparation for its second report, the Commission held hearings not only in the South and North, but also in the West. In January 1960, the Commission held hearings in Los Angeles and San Francisco to gain a broader view of the nation’s racial problems. The Commission heard testimony concerning the civil rights situations of blacks, Latinos, and Asians, as well as one witness who discussed discrimination against California’s Indian tribes.<sup>50</sup> This testimony convinced the Commission “that Indians in that State were deprived of their rights because of race. On the basis of that testimony, the Commission initiated an inquiry to determine how serious and extensive the alleged deprivations were for all Indians.”<sup>51</sup> This inquiry included interviews with tribal delegations, conferences with experts on Indian issues, and consultations with state advisory committees, stating that “evidence obtained from the activities described above show sufficiently widespread denials of civil rights to warrant concern and fuller inquiry.”<sup>52</sup> By the early 1960s, the Commission therefore took initial steps to transcend the Black/White Binary with these special investigations of Native American civil rights issues.

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Contents of *The American Indian*, 1961, by the U.S. Commission on Civil Rights, in 1961 Commission on Civil Rights Report: Book Five, Justice

<sup>45</sup> U.S. Commission on Civil Rights, *Report of the United States Commission on Civil Rights, 1959* (Washington, DC: U.S. Government Printing Office, 1959), xiii–xiv.

<sup>46</sup> *Ibid.*, 1–40.

<sup>47</sup> *Ibid.*, 25.

<sup>48</sup> *Ibid.*, 40, 67, 252–55, 270, 315–16, 338–81, 366, 377, 548.

<sup>49</sup> *Ibid.*, xi.

<sup>50</sup> U.S. Commission on Civil Rights, *Hearings Held in Los Angeles, California, January 25–26, 1960, and San Francisco, California, January 27–28, 1960* (Washington, DC: U.S. Government Printing Office, 1960), 786.

<sup>51</sup> U.S.C.C.R., “The American Indian,” 115.

<sup>52</sup> *Ibid.*, 135.

This special investigation was published as part of the Commission's 1961 report under the title of "The American Indian."<sup>53</sup> It was divided into three chapters. The first chapter introduced the unique history of Native Americans in the United States.<sup>54</sup> The second chapter discussed the special legal status of Indians, America's "citizen[s] with a difference," referring to their statuses as members of sovereign tribes, American citizens, and federal wards. The final chapter described Native Americans as a racial minority in the United States and analyzed allegations of traditional civil rights discrimination in voting, education, the administration of justice, housing, employment, and public accommodations. Native Americans suffered discrimination in these areas; however, given the investigation's limited nature, the Commission declined to give specific recommendations to the President or Congress, instead calling for future study.<sup>55</sup> Additionally, it is noteworthy that the Commission did not expand its jurisdiction beyond traditional civil rights categories to include analyses of violations of treaty rights.<sup>56</sup>

"The American Indian" provided a narrative of Native American history that was shaped by Frederick Turner's interpretation of American history, one that assumed and accepted the inevitability of white expansion across the continent.<sup>57</sup>

[S]ettlers, statesmen, adventurers, railroaders, homesteaders, cattlemen, miners, prospectors, and shepherders—all that went into the continued, relentless movement westward that finally "settled" the continent. The drive had its own nomenclature, "manifest destiny," "progress," "civilization." It would be hard to say it should not have happened. Indeed, it is difficult to see how it could have been stopped, even if it should have been. The story of the American Indian then, is the story of an uneven contest between two civilizations—the one acquisitive and unrelentingly expansionist; the other by comparison, static. It is an ironic story when one considers the high aims and ends, freedom, justice and opportunity, which have always been part of the American political tradition. If the extension of European influence in the New World was inevitable as some claim, so was the outcome.<sup>58</sup>

Recent historians have heavily criticized Turner's framework as racist and for denying agency to Native Americans.<sup>59</sup> While it would be unfair to criticize the Commission for not anticipating future trends in historical narration, it is important to note the discursive underpinnings of the conceptual frameworks it used to assign historical identities to groups. In addition to adopting this semi-Turnerian language, the 1961 report also referred to Native Americans as "the Red man," usually in contradistinction to "the White man."<sup>60</sup> Such language, aside from its overt racialization, also employed gendered implications that obscured the fact that Native women experienced civil rights violations differently than men. "The American Indian" also relied heavily on the Black Analogy.

<sup>53</sup> Ibid., 115–60. The entire 1961 report contained five volumes, each devoted to a separate civil rights category. "The American Indian" was included at the end of volume five, *Justice*, although the Indian report dealt with broader issues than simply the administration of justice.

<sup>54</sup> U.S.C.C.R., "The American Indian," 115–24.

<sup>55</sup> Ibid., 155–60.

<sup>56</sup> Ibid., 115, 124, 158.

<sup>57</sup> Frederick Jackson Turner, *The Frontier in American History* (New York: Henry Holt, 1920).

<sup>58</sup> U.S.C.C.R., "The American Indian," 117.

<sup>59</sup> See, for example, Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: Norton, 1987).

<sup>60</sup> U.S.C.C.R., "The American Indian," 116. By semi-Turnerian, I mean that the historical framework adopted some, but not all, of Turner's arguments, in particular the inevitability and justice of white conquest.

For example, “The American Indian” reported that “on the basis of preliminary reports and interviews, it appears that Indians suffer extensive denials in both areas [housing and employment] analogous to those confronting Negroes and other minority groups.”<sup>61</sup> In this sense, while “The American Indian” transcended the Black/White Binary, it continued to rely on the Black Analogy in discussing the civil rights problems of American Indians.

“The American Indian” was the Commission’s most significant publication on Native Americans during the 1960s. Native American activist Paschal Sherman quoted the report approvingly in a letter sent to Congress, in which he argued against the extension of state laws to reservations. Sherman quoted from the report’s discussion of the administration of justice to augment his argument that states lacked sufficient funding to provide adequate police protection on reservations.<sup>62</sup> However, the report seems to have had negligible impact on the debates leading to the most significant Native American civil rights legislation of the decade, the Indian Civil Rights Act of 1968.<sup>63</sup> There is no indication that the Senate Subcommittee on Constitutional Rights, which prepared the legislation, used the Commission’s report.<sup>64</sup> This lack of impact was perhaps due to the appearance of two other major reports on Native Americans in 1961. A 1963 Subcommittee report indicated that they relied on “A Program for Indian Citizens,” by the Commission on the Rights, Liberties, and Responsibilities of the American Indian, and “Report on Indian Affairs,” by the Secretary of the Interior’s special task force.<sup>65</sup> As these reports covered some of the same ground as “The American Indian,” perhaps the Commission’s report was overshadowed by the other two.

In his 1969 landmark *Custer Died for Your Sins: An Indian Manifesto*, Native American activist and scholar Vine Deloria, Jr., argued that the Commission did very little for American Indians during the 1960s. Deloria included his discussion of the Commission in a longer analysis of the relationship between Native Americans and the African American civil rights movement. He argued that the black movement had succeeded in defining America’s “Race Relations” as a black issue. “By defining the problem as one of race and making race refer solely to blacks, Indians were systematically excluded from consideration.”<sup>66</sup> With civil rights being defined through the Black/White Binary, Deloria con-

<sup>61</sup> U.S.C.C.R., “The American Indian,” 151. See also 115, 125, 142, and 152.

<sup>62</sup> Paschal Sherman, letter, inserted in *Congressional Record*, 87th Cong., 2nd sess., 1962, vol. 108, Appendix, 108: p. A7094.

<sup>63</sup> See John R. Wunder, *“Retained by the People”: A History of American Indians and the Bill of Rights* (New York: Oxford University Press, 1994).

<sup>64</sup> See *Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Eighty-Seventh Congress, First Session, Pursuant to S. Res. 53, Part 1, August 29, 30, 31, and September 1, 1961* (Washington, DC: U.S. Government Printing Office, 1962); *Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Eighty-Seventh Congress, First Session, Part 2, November 25, 29, and December 1, 1961* (Washington, DC: U.S. Government Printing Office, 1963); *Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Eighty-Seventh Congress, Second Session, Pursuant to S. Res. 260, Part 3, June 1, 2, and 6, 1962* (Washington, DC: U.S. Government Printing Office, 1963); *Summary Report of Hearings and Investigations by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Eighty-Eighth Congress, Second Session, Pursuant to S. Res. 265* (Washington, DC: U.S. Government Printing Office, 1964); *Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Eighty-Ninth Congress, First Session, on S. 961, S. 962, S. 963, S. 964, S. 965, S. 966, S. 967, S. 968, and S.J. Res. 40, June 22, 23, 23, and 29, 1965* (Washington, DC: U.S. Government Printing Office, 1965); *Summary Report of Hearings and Investigations by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Eighty-Ninth Congress, Second Session, Pursuant to S. Res. 194* (Washington, DC: U.S. Government Printing Office, 1966); *Hearing before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Ninety-First Congress, First Session, on Title II of the Civil Rights Act of 1968, April 11, 1969, Albuquerque, New Mexico* (Washington, DC: U.S. Government Printing Office, 1970).

<sup>65</sup> Sam J. Ervin, Jr., preface, *Summary Report*, v.

<sup>66</sup> Vine Deloria, Jr., *Custer Died for Your Sins: An Indian Manifesto* (New York: Macmillan, 1969), 168.

cluded that government agencies were inconsistent in their classifications of American Indians. Some “agencies generally adopted a semi-black orientation. Sometimes Indians were treated as if they were blacks and other times not.”<sup>67</sup> In this context, Deloria argued that “[t]he Civil Rights Commission . . . always gave only lip service to Indians until it was necessary for them to write an annual report. At that time they always sought out some means of including Indians as a group with which they had worked the previous fiscal year.”<sup>68</sup> Whether Deloria was aware of “The American Indian” is unclear, but his description certainly fits the Commission’s overall approach to Indian issues during the decade. According to a 1972 *New York Times* article, “The suggestion at a staff meeting in 1967 that the United States Commission on Civil Rights look into the problem of American Indians was met with derision.”<sup>69</sup> Given the context of Deloria’s comment, clearly he believed the Commission failed to adequately transcend the Black/White Binary and separate Indian issues from black issues. Just a few years following Deloria’s indictment of the Commission for ignoring American Indian issues, the Commission commenced a series of investigations and hearings into the civil rights situation of Native Americans. Native American activism in the late 1960s and early 1970s provided a context for the decision. In November 1972, the Commission held hearings in New Mexico and Arizona to hear complaints concerning civil rights violations in five areas: employment, education, health care, the administration of justice, and water rights.<sup>70</sup> The *New York Times* reported that the New Mexico hearing, held on November 14, occurred “a few days after hundreds of Indians ended their takeover of the headquarters of the Bureau of Indian Affairs in Washington,” which happened from November 3 to 9, 1972.<sup>71</sup> The article indicated that “[s]everal Indian witnesses chided the fact-finding independent Federal agency for neglecting the Indian while concentrating on blacks and Spanish-speaking [*sic*].”<sup>72</sup> Like Deloria, these witnesses were apparently unaware of “The American Indian,” but the complaints reflected the Commission’s post-1961 priorities. In 1968 the Commission held hearings in San Antonio, Texas, to investigate the civil rights issues of Mexican Americans. The hearings resulted in the first of several reports on Latinos, *Stranger in One’s Land*, lending credence to the witnesses’ argument that the Commission prioritized Hispanics over Native Americans.<sup>73</sup> The *Times* article also quoted Apache Hubert Velarde as saying that “[p]erhaps if we had had an opportunity such as this in the past to air our grievances, the unfortunate events which took place in Washington earlier this month involving some of our Indian brothers could have been avoided.”<sup>74</sup> At least for Velarde, the Commission represented a voice that could perhaps belatedly make a difference in the struggle for Native American rights and thereby avoid future confrontations.

<sup>67</sup> Ibid., 169.

<sup>68</sup> Ibid.

<sup>69</sup> Paul Delaney, “Indians Criticize Long Neglect as Rights Panel Opens Inquiry,” *New York Times*, November 15, 1972, 39.

<sup>70</sup> U.S.C.C.R., *Hearing Held in Albuquerque, New Mexico*, November 14–15, 1972; U.S. Commission on Civil Rights, *Hearing Held in Phoenix, Arizona*, November 17–18, 1972 (Washington, DC: U.S. Government Printing Office, 1972); U.S. Commission on Civil Rights, *The Southwest Indian Report* (Washington, DC: U.S. Government Printing Office, 1973), 3.

<sup>71</sup> Delaney, “Indians Criticize Long Neglect,” 39. See Smith and Warrior, *Like a Hurricane*, 149–68.

<sup>72</sup> Delaney, “Indians Criticize Long Neglect,” 39.

<sup>73</sup> Rubén Salazar, *Stranger in One’s Land*, Clearinghouse Publication, no. 19 (Washington, DC: U.S. Government Publishing Office, 1970).

<sup>74</sup> Delaney, “Indians Criticize Long Neglect,” 39.

21662

COMMISSION ON CIVIL RIGHTS  
ARIZONA AND NEW MEXICO

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on November 14, 1972, and that executive sessions, if appropriate, will be convened on November 14, 1972, to be held at the Albuquerque Convention Center, 401 Second Street NW., Albuquerque, NM; and on November 17, 1972, at the Phoenix Indian High School, 48 East Midway, Phoenix, AZ. The purpose of this hearing is to collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, or national origin regarding the living conditions, the educational opportunities, the employment opportunities, the opportunities for adequate health services, the administration of justice, and the protection and preservation of water resources as they affect American Indians residing in the States of Arizona and New Mexico; to appraise the laws and policies of the Federal Government with respect to denial of equal protection of the laws under the Constitution because of race, color, religion, or national origin as they affect the educational opportunities, the employment opportunities, the health care opportunities, the administration of justice, and the protection and preservation of water resources as it affects American Indians in the above areas, and to disseminate information with respect to denial of equal protection of the laws because of race, color, religion, or national origin in the fields of employment, education, health care, the administration of justice, and the preservation and protection of tribal water rights and related areas.

Dated at Washington, D.C., October 6, 1972.

THEODORE M. HESSAUREN,  
Chairman.

[72 Doc 72-17438 Filed 10-12-72; 9:46 am]

AZ and NM 1972 Hearing Notice from Hearing Before the United States Commission on Civil Rights, Held in Albuquerque, New Mexico, November 14–15, 1972

A year following the New Mexico and Arizona hearings, the Commission released *The Southwest Indian Report*, summarizing and analyzing the hearings. The report found the unemployment level unacceptable, criticizing the Bureau of Indian Affairs, the Indian Health Service, the Post Office, and private businesses located near reservations. The Commission concluded that the failure to hire Indians not only violated federal quota mandates for governmental hiring, but also was a result of “widely held stereotypes of Indian workers. This stereotyping, which is not unlike that applied with a broad brush to other minority groups, is coupled with an almost total insensitivity to Indian culture, religion, tradition, and language.”<sup>75</sup> In terms of education, the report heavily criticized the primarily white reservation school administrators for not incorporating Indian viewpoints in decision-making processes, leaving parents and other tribal members essentially powerless in the education of Indian children.<sup>76</sup> The Commission concluded that the poor quality of health care on reservations was due to the lack of funding for the Indian Health Service, but in addition argued that the Service’s staff lacked understanding of Indian cultures, which contributed to the problem. For the administration of justice, the report argued that police brutality existed on reservations and that the federal government, including the FBI, did not do enough to investigate major crimes. Lastly, the Commission concluded that the federal government failed in its duties as trustee to Indian tribes, in particular in the protection of water rights in the arid West.<sup>77</sup> According to a *New York Times* article, the report concluded that the plight of American Indians was “the worst in the nation” among minorities.<sup>78</sup> The report concluded with several recommendations for Congress and the various government agencies charged with conducting Indian affairs on reservations.<sup>79</sup>

*The Southwest Indian Report*, unlike the 1961 report on American Indians, did not rely on the Black Analogy. Aside from a few vague references like “American Indians suffer much of the economic, social, and cultural damage that afflicts other minority Americans,” the report did not situate Native Americans within a wider American race dilemma.<sup>80</sup> However, *The Southwest Indian Report* challenged the semi-Turnerian framework used in the 1961 report.

Traditional history texts of 19th-century and early 20th-century America celebrate the heroism of white settlers in the development of the continent and the subduing of “hostile” Indian populations. . . . Little is reflected, in texts or monuments, of the cultures and histories of the diverse peoples commonly known as American Indians. Less is mentioned of the suffering that Indians have endured and continue to endure. Only recently has a more accurate account of official brutality, displacement, and neglect become recognized and grudgingly acknowledged.<sup>81</sup>

The Commission’s decision to not only analyze traditional civil rights issues like education and employment but also treaty rights violations like water rights suggests that the Commission by the early 1970s had adopted a fairly liberal interpretation of its purview. This ideological shift

<sup>75</sup> U.S.C.C.R., *The Southwest Indian Report*, 10-62, quote on 143–44.

<sup>76</sup> *Ibid.*, 63–83.

<sup>77</sup> *Ibid.*, 63–83, 84, 107, 108–41.

<sup>78</sup> “Robert S. Rankin Dies at 76; Member of U.S. Rights Panel,” *New York Times*, June 8, 1976, 35.

<sup>79</sup> U.S.C.C.R., *The Southwest Indian Report*, 149–71.

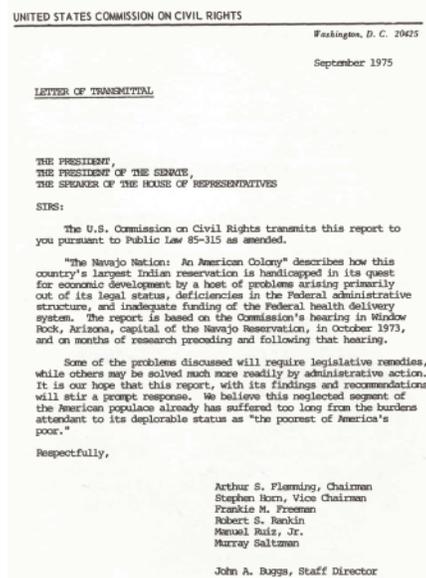
<sup>80</sup> *Ibid.*, 1.

<sup>81</sup> *Ibid.*

was likely caused by the fact that by the mid-1960s, the Commissioners, regardless of party affiliation, were primarily academics with liberal views on civil rights.<sup>82</sup>

As a follow-up to *The Southwest Indian Report*, the Commission turned its attention to the Navajo reservation, which covers parts of Utah, Arizona, and New Mexico. In October 1973, the Commission conducted a three-day hearing at Window Rock, Arizona, capital of the Navajo Nation.<sup>83</sup> Initially scheduled for mid-September, the hearing was postponed because “conflicts between ‘establishment’ Navajo leaders, and younger, more militant Indian factions had threatened to disrupt the hearings,” according to the *New York Times*. The article unfortunately provided no further details concerning this contention, leaving for future research to provide a clearer understanding of this generational conflict.<sup>84</sup> The hearing was held primarily to evaluate the effects of the new federal policy of “self-determination,” implemented by the Nixon administration to replace the previous policy of termination. “In the context of life on America’s largest Indian reservation, that policy [that is, self-determination] refers to the development of the tribe’s human and natural resources in terms of what the Navajo people want and need in order ‘to live lives that are meaningful and full according to the tenets of the Navajo culture.’”<sup>85</sup> In short, self-determination meant that although the federal government would maintain its treaty obligations to Indian tribes, the tribes themselves would theoretically have an improved ability to direct reservation developmental programs in conjunction with the Bureau of Indian Affairs and other federal agencies.<sup>86</sup>

In 1975, the Commission published its summary of the hearings in *The Navajo Nation: An American Colony*. The report concentrated on three areas identified as problematic to self-determination: economic development, education, and health care. For economic development, the Commission concluded that high unemployment levels (at 65 percent in 1971) resulted from the Indian Bureau’s failure to fulfill its legal mandate to prefer Navajos in hiring as well as the bureaucratic difficulties experienced by Indians in getting loans for businesses. In terms of education, the Commission determined that the poor suc-



*Navajo Nation 1975 Letter of Transmittal from U.S. Commission on Civil Rights, The Navajo Nation: An American Colony*

<sup>82</sup> Foster Rhea Dulles, for example, noted the resignation of the segregationist Battle, and the appointment of Robert S. Rankin, “a Democrat and a Southerner, [he] theoretically maintained the existing balance within the Commission, but he was far more of a moderate than the avowedly segregationist Battle, and accentuated the shift of the Commission as a whole to an increasing commitment to the civil rights cause (Dulles, *The Civil Rights Commission*, 85).”

<sup>83</sup> U.S. Commission on Civil Rights, *Hearing Held in Window Rock, Arizona*, October 22–24, 1973, 2 vols. (Washington, DC: U.S. Government Printing Office, 1973).

<sup>84</sup> James B. Sterba, “Navajo Hearings Will Begin Today,” *New York Times*, October 22, 1973, 10.

<sup>85</sup> U.S. Commission on Civil Rights, *The Navajo Nation: An American Colony* (Washington, DC: U.S. Government Printing Office, 1975), 1.

<sup>86</sup> See George Pierre Castile, *To Show Heart: Native American Self-Determination and Federal Indian Policy, 1960–1975* (Tucson: University of Arizona Press, 1998).

cess of reservation schools was due to a failure to incorporate bilingual and bicultural curriculum into the classroom setting, a lack of Navajo teachers and administrators in the school system, and the inability of Indian parents to participate in their children's education. As for healthcare, the Indian Health Service failed to provide adequate health care on the reservation, resulting in the deaths of newborns in some cases, primarily as a result of budget restraints. The report offered several recommendations to federal, state, and local governments and agencies.<sup>87</sup> The report's health care recommendations later contributed to the passage of the Indian Health Care Improvement Act in 1976.<sup>88</sup>

Like the 1972 report, *The Navajo Nation* did not use the Black Analogy to situate Indian civil rights problems within a wider context, preferring instead to rely on economic, rather than racial, comparisons to other minority groups. "We believe this neglected segment of the American populace already has suffered too long from the burdens attendant to its deplorable status as 'the poorest of America's poor.'" <sup>89</sup> The 1975 report included a brief history of the Navajo people that decried the white takeover of Indian lands, concluding that "[t]he period between the American takeover and the Civil War can be characterized as one of chaos and treachery, of broken promises, hostile actions, and atrocities by Anglo renegades, soldiers, and settlers on one hand, and of savage revenge by Navajo raiders on the other."<sup>90</sup> Unlike the 1972 report, *The Navajo Nation* did not explore the implications of racism among Indian Bureau, Indian Health Service, or other federal agency administrators or point to racism as a factor in Indian poverty. However, like *The Southwest Indian Tribes*, the 1975 report expanded beyond traditional categories of civil rights violations to include violations of "entitlements" derived from treaty rights, again reflecting a liberal discourse that accepted different treatment under the law for different groups.<sup>91</sup>

If the 1950s and 1960s proved to be the golden age for the African American civil rights movement, then the 1970s produced similar results for American Indian efforts to obtain equal protection for their rights. And just as black gains provoked massive white resistance in the South, gains by American Indians preceded a white backlash in the West. Westerners drew upon conservative civil rights language to protest what they saw as reverse discrimination in disputes over fishing rights in the Pacific Northwest, Indian land claims in the East, and lawlessness on reservations in the Dakotas. Believing that this backlash threatened Indian civil and treaty rights, the Commission conducted extensive hearings in Washington, DC; Rapid City, South Dakota; and Seattle, Washington in the late 1970s.<sup>92</sup>

The results of these hearings were published in 1981 as *Indian Tribes: A Continuing Quest for Survival*. The introductory chapters overviewed federal Indian policy and law, Indian civil rights gains in the

<sup>87</sup> U.S.C.C.R., *The Navajo Nation*, 20, 56, 58, 105, 107–19, 149–71.

<sup>88</sup> Senator Paul J. Fannin (R-AZ), who was involved in the passage of the act, submitted *The Navajo Nation's* findings on health care for publication in *The Congressional Record*, 94th Cong., 1st sess., 1975, vol. 121, pt. 24, pp. 30465–68.

<sup>89</sup> U.S.C.C.R., *The Navajo Nation*, iii.

<sup>90</sup> *Ibid.*, 12–17.

<sup>91</sup> *Ibid.*, 4–7.

<sup>92</sup> U.S. Commission on Civil Rights, *Hearing held in Seattle, Washington*, October 19–20, 1977, 2 vols. (Washington, DC: Government Printing Office, 1977); U.S. Commission on Civil Rights, *Hearing before the U.S. Commission on Civil Rights, Rapid City, North Dakota*, July 27–28, 1978 (Washington, DC: Government Printing Office, 1978); U.S. Commission on Civil Rights, *Hearing held in Seattle, Washington*, August 25, 1978, 2 vols. (Washington, DC: Government Printing Office, 1978); U.S. Commission on Civil Rights, *Hearing held in Washington, D.C.*, March 19–20, 1979, 2 vols. (Washington, DC: Government Printing Office, 1979).

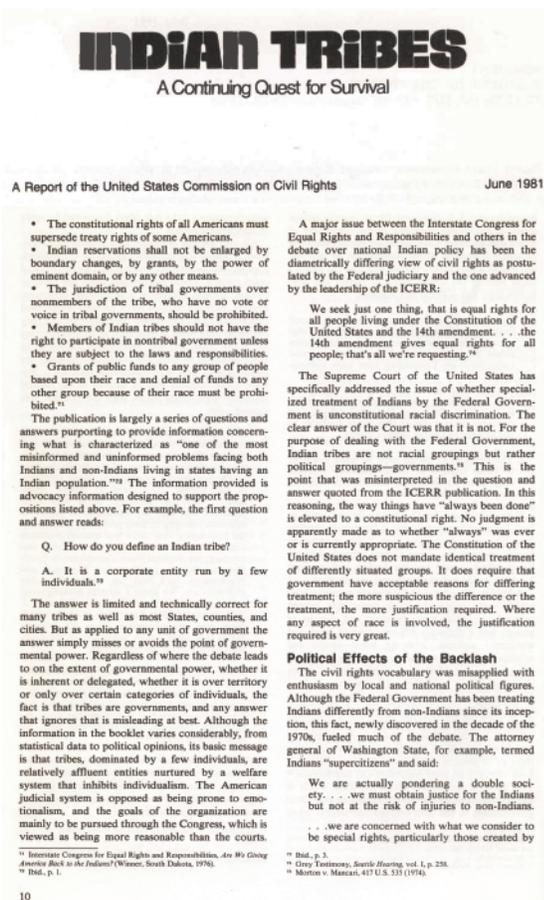
1970s, the western white backlash, and the relationship between the 14th Amendment's equal protection clause and American Indian treaty rights.<sup>93</sup> There followed three detailed case studies of controversies surrounding fishing rights in the Northwest, land claims in the East, and the administration of justice on Indian reservations. The first crisis involved the 1974 *United States v. Washington* (or *Boldt*) decision, which held that treaties guaranteed Native Americans could claim 50 percent of the annual salmon harvest. Anglo American fishers argued that the decision discriminated against them because of their race and was therefore unconstitutional. The second controversy involved several eastern Indian tribes that claimed that their lands were illegally taken from them during the 19th century. When it became apparent that the claims had some merit, whites living on the claimed lands responded by protesting and opposing the efforts of the Indians to reclaim the land. The third controversy resulted from the rise in violence on reservations in North and South Dakota, in particular the Pine Ridge Lakota Sioux Reservation in the latter state, and confusion following the American Indian Movement's 1973 occupation of Wounded Knee. Whites living on or near these reservations formed citizens' committees to protect themselves. The report analyzed these cases, the federal response to them, and their implications on American Indian civil and treaty rights, offering several recommendations to Federal and State governments for improving these situations.<sup>94</sup> Representative Mike Lowry of Washington State later said that the report's recommendation that Congress pass legislation to enhance the Northwest's salmon population was "a summary of the actions of the Northwest Salmon and Steelhead Enhancement and Conservation Act (Public Law 96-561), which passed with the unanimous support of the delegation. . . . The Commission on Civil Rights has done a fine job in its report, and I recommend it to the attention of my colleagues."<sup>95</sup>

Unlike the 1961 report 20 years earlier, *Indian Tribes* did not rely on the Black Analogy to situate the plight of Native Americans. Rather, the report emphasized the *dissimilarities* between American Indians and other oppressed groups in the nation.

<sup>93</sup> U.S.C.C.R., *Indian Tribes*, 1–58.

<sup>94</sup> U.S.C.C.R., *Indian Tribes*, See pages 61–100, 103–35, 137–87, and 190–92.

<sup>95</sup> *The Congressional Record*, 97th Cong., 1st Sess., vol. 127, pt. 10, p. 13226.



*Indian Tribes*, 1981, page 10, states that arguments of white opponents of Indian Civil Rights were "misapplied."

A basic and essential factor concerning American Indians is that the development of civil rights issues for them is in reverse order from other minorities in this country. Politically, other minorities started with nothing and attempted to obtain a voice in the existing economic and political structure. Indians started with everything and have gradually lost much of what they had to an advancing alien civilization. Other minorities have had no separate governmental institutions. Their goal primarily has been and continues to be to make the existing system involve them and work for them. Indian tribes have always been separate political entities interested in maintaining their own institutions and beliefs. Their goal has been to prevent the dismantling of their own systems. So while other minorities have sought integration into the larger society, much of Indian society is motivated to retain its political and cultural separateness.<sup>96</sup>

*Indian Tribes* contained a complex analysis of white racism and its import in defining the American Indian experience. The authors of the report also used a liberal framework to discuss the merits of the arguments of the white opponents of Indian civil rights, concluding that one particular conservative argument “simply misses or avoids the point,” and that conservative use of “civil rights vocabulary” to defend their interests “was misapplied.”<sup>97</sup> Further evidence of a leftward shift in the Commission’s makeup and worldview is that the 1981 report concentrated its primary analysis on threats to treaty, not civil, rights, something the authors of the 1961 report deemed outside of the Commission’s purview.

## Conclusion

The Commission’s liberalism, however, was short-lived. In November 1981, President Ronald Reagan fired the Commission’s Chairman, Arthur S. Flemming, for criticizing the administration’s antibusing position.<sup>98</sup> In his place, Reagan appointed Clarence M. Pendleton, a conservative African American, who would largely shift the Commission’s ideological position over the next decade.<sup>99</sup> According to the *New York Times*, although the Commission had lost some of its clout by 1981, “who is dismissed and who is appointed has symbolic importance because it is the only agency left in the Federal Government that has held consistently to the concept of minority rights that pervaded the Federal establishment in the 1960’s.”<sup>100</sup> Although the Commission survived Reagan’s conservative reforms, in the opinion of political scientist Donald W. Jackson, the conservative turn rendered the contemporary Commission “toothless.”<sup>101</sup> *Indian*



Arthur S. Flemming, Chairman of the U.S. Commission on Civil Rights

<sup>96</sup> U.S.C.C.R., *Indian Tribes*, 32–33.

<sup>97</sup> Both quotes from U.S.C.C.R., *Indian Tribes*, 10.

<sup>98</sup> John Herbers, “Civil Rights Agency Shift: Flemming Ouster Has Symbolic Importance Even Though Post Has Lost Old Authority,” *New York Times*, November 1981, A21.

<sup>99</sup> Herbers, “Civil Rights Agency Shift,” A21. See also Reginald Stuart, “State Rights Panels Are Being Headed by More White Men,” *New York Times*, May 26, 1985, 1; “Rights Aide Calls Queries Racist,” *New York Times*, September 21, 1985, 16; Robert Pear, “U.S. Urged to End Aid to Businesses Run by Minorities,” *New York Times*, April 8, 1986, A1; Frye and others, “The Rise and Fall of the Civil Rights Commission,” 476–505.

<sup>100</sup> Herbers, “Civil Rights Agency Shift,” A21.

<sup>101</sup> Frye et al, “The Rise and Fall of the Civil Rights Commission,” 476–505; Interview with the author, September 17, 2008.

*Tribes* therefore came at the end of an era for the federal government's most prominent civil rights agency.

That era was characterized by Commission's active promotion of black civil rights. As Foster Rhea Dulles demonstrated in *The Civil Rights Commission*, the Commission proved to be a potent force in the debates leading to the historic Civil Rights Acts of 1960, 1964, and 1965. Likewise, legal scholars Jocelyn C. Frye, Robert S. Gerber, Robert H. Pees, and Arthur W. Richardson illustrated in "The Rise and Fall of the United States Commission on Civil Rights" that the Commission had an important impact not only in the 1960s, but also in the 1970s during the debates over busing, affirmative action, the Equal Rights Amendment, and equal rights for the elderly and homosexuals. However, both of these works concentrated on the Commission's interactions with the black struggle for civil rights, largely ignoring the Commission's interactions with Latinos, Native Americans, and other racial minorities. This paper has sought to compensate for this scholarly lacuna by examining the Commission's reports on Native Americans from 1961 to 1981.

The evidence examined here suggests that although the Commission initially framed the civil rights struggles of Native Americans through the Black/White Binary, the Commission eventually abandoned this conceptual framework in favor of illuminating the unique position of American Indians in America. The first report, published in 1959, concentrated primarily on African Americans and their history of oppression, while providing scattered references to Native Americans and other minorities. In 1961, the Commission published "The American Indian," which narrated the unique history of American Indians, but simultaneously employed the Black Analogy to signal that the Indian experience was to be understood in conjunction with African American history. The report was the sole significant statement by the Commission during the decade, which brought criticism from American Indian activists. In the early 1970s, however, the Commission dedicated considerable resources to the study of Native American issues. The reports published during the decade ceased relying on the Black/White Binary and the Black Analogy, illustrating the Commission's commitment to understanding the Native American civil rights situation on its own terms. The Commission also abandoned semi-Turnerian and gendered conceptual frameworks and images, present in the 1961 report but absent in later publications.

The Commission's Native American reports also reveal a liberal shift over time in terms of the Commission's understanding of its jurisdiction over treaty rights. "The American Indian" concentrated primarily on traditional civil rights categories such as voting, housing, employment, education, among others, and specifically stated that treaty rights were outside of the Commission's jurisdiction. However, the reports published in the 1970s took a more liberal stance on the Commission's purview, including not only advocating affirmative action and bilingual education for Native Americans, but also the protection of water rights, all of which are guaranteed under treaty rights. Furthermore, the 1981 *Indian Tribes* included detailed case studies of white backlash against Indian gains in treaty rights. The report went so far as to criticize conservative appropriations of civil rights language and defending the fact that Indians have claim to rights not available to other Americans.

Lastly, this study has also shown that Congress paid attention to the Commission's recommendations concerning Native Americans. While the Commission did not have the same impact on

American Indian legislation as it did on African American legislation, congresspersons nonetheless relied on the Native American reports in formulating and assessing health care and salmon enhancement legislation. Additional research is needed to identify further examples of the Commission's impact, but there are intriguing hints that it was widespread. *Indian Tribes* indicated that the Department of Justice relied on some of the Commission's reports for its investigations of Indian civil rights complaints. Unfortunately, *Indian Tribes* does not provide further details.<sup>102</sup> There is also evidence that the Commission's staff provided data that led to the American Indian Child Welfare Act of 1978, which ensured that Indian orphans would be placed in Native American, rather than white, households.<sup>103</sup> Finally, in a much broader sense, the Commission's reports, in particular *Indian Tribes*, has had a wide impact through its inclusion on syllabi for university courses on race and discrimination.<sup>104</sup> But perhaps the most significant import of the Commission's reports on Native Americans, especially those produced in the 1970s, was their documentation and illumination of the special and unique civil rights history of American Indians, the nation's "citizen[s] with a difference."

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<sup>102</sup> U.S.C.C.R., *Indian Tribes*, 36.

<sup>103</sup> Paul Alexander, bio, [http://www.abwwlaw.com/attorney\\_Alexander.html](http://www.abwwlaw.com/attorney_Alexander.html), accessed 11/21/08.

<sup>104</sup> <http://www.discoverthenetworks.org/Articles/racismandsexismstu.html>, accessed 11/21/08; <http://www.latinocaucus.tcu.edu/syllabi/schmidt.htm>, accessed 11/21/08.