

# Hopis, Western Shoshones, and Southern Utes: Three Different Responses to the Indian Reorganization Act of 1934

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## INTRODUCTION

The Indian Reorganization Act (IRA) has been described as "visionary, idealistic, theoretical, and impractical"<sup>1</sup> and as a "messianic movement" that "sought to recreate Indian cultures" and "to reverse modernizing trends" by undertaking "to redirect culture change toward communal, utopian societies . . . within the framework of free enterprise."<sup>2</sup> It is regarded by some as the source of Indian self-determination<sup>3</sup> and by others as an instrument of assimilation,<sup>4</sup> and by still others as a reversal of the trend toward the dissolution of tribal structures.<sup>5</sup> Critics have accused the IRA of being devoid of self-government<sup>6</sup> and of bringing to the tribes an inappropriate "western style of democracy without the democracy."<sup>7</sup> Calls have been made for its repeal (International Indian Treaty Council 1974), while another viewpoint regards the IRA as "the most impressive achievement in the field

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Research reflected in this paper was funded partially by two University of Illinois Doris Duke Oral History Project grants (1968, 1969); a National Institute of Mental Health Pre-Doctoral Fellowship (1970-72); and a grant from the Research Foundation of the City University of New York (1975-76).

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of applied anthropology that the discipline of anthropology can claim."<sup>8</sup>

Could the IRA have been, and done, all of the above? Was the IRA the most appropriate policy for all American Indian peoples at the time? To shed some light on this question, this essay focuses on two points: First, acceptance of the IRA by a particular Indian entity did not necessarily confirm the appropriateness of the IRA for that entity, nor did acceptance necessarily reflect a group's wholesale embrace of the Indian New Deal, which the IRA was meant to implement; and second, case studies of the implementation of the IRA among three reservation societies reveal answers to questions concerning its effects on self-determination and self-government; the reversal of historic trends; the initiation of qualitative changes; and the appropriateness of the Act in terms of Indians' wants and needs at the time.

The case study approach is appropriate for analyzing the IRA because we are dealing with culture contact situations in which some form of directed acculturation had been operating for several decades prior to the IRA's enactment. Because social fields differ from area to area and culture to culture due to variance in change agents and reactions to them, each culture contact situation presents a unique case. Nevertheless, certain elements of all culture contact situations involving American Indians and the U.S. government are relatively uniform: forced acculturation through boarding schools and missions; the use of native police to enforce administrative regulations; and the introduction of wage labor through construction and maintenance of agency headquarters. But variation occurred in the implementation of the General Allotment Act; the delivery and distribution of treaty annuities; the degree to which agriculture played a role in the BIA's economic development plans; and even the creation of reservations and their acreages.

#### METHODOLOGY AND DATA BASE

Ralph Linton observed nearly 50 years ago that "as long as the subject group is allowed to exercise judgment in acceptance . . . a program is not likely to be put over as a whole."<sup>9</sup> A cornerstone of the IRA was its provision for "acceptance." But

how much of the IRA was actually "put over"? "Acceptance" here refers to the process whereby a cultural trait, or trait-complex, is offered to, or imposed on, one culture by another, which results in the trait or trait-complex being incorporated into the accepting culture.<sup>10</sup> Because the procedures whereby the IRA's innovations were to be offered and accepted are well documented, the degree of acceptance can be measured and the process of acceptance or rejection can be analyzed. In this article, I provide summary base lines for three Indian societies prior to their adoption of the IRA, and review the process by which the IRA was presented to the three groups. On the basis of this review, I analyze the ultimate consequences of the IRA for each group, and evaluate the IRA in the context of culture contact and directed culture change. In doing so, I am arguing for viewing such things as self-determination and self-government, reversal of historic trends, initiation of qualitative changes, and servicing of Indians' wants and needs from the standpoints of the dominated cultures, as well as from that of the dominant culture.

Data are drawn from (1) the writings of John Collier, co-author of the Act and its visionary implementer during his tenure as Commissioner of Indian Affairs; (2) writings of Collier's colleagues and contemporaries; (3) statistical, descriptive, and historical records compiled and published under the authority of the Commissioner of Indian Affairs and the Interior Department; (4) published analyses of the IRA; and (5) interviews and participant observation among the groups in question.

#### BASE LINE SUMMARY

Table I summarizes some of the salient characteristics of the Hopis, Western Shoshones, and Southern Utes on the eve of the Indian New Deal's birth. Politically, Hopis presented distinct socio-political entities with a well-defined, but diffuse, system of leadership and no unity beyond the village level.<sup>11</sup> Western Shoshones presented a shifting pattern of population aggregates with no distinct political leadership *except* for the nominal authority of the Western Shoshone Chief. The chief, a man, of prestige who exercised some suasion, functioned *only* on the supra-community level and served primarily as a focal point

**Table I**  
**Demography and Land Base**  
**1932**

	Hopi	Western Shoshone	Southern Ute
Reservation Acreage	750,000	3,403	39,306
Population	2,842	2,000	369
Acre: Person Ratio	267/1	1.7:1	107:1
Land Tenure	Clan/village/ Communal	Few individual Patents	Individual Patents

Sources for population figures: Thompson & Joseph 1944: 136; Leland 1976: 29; Jorgensen 1972: 91

for political and social activity.<sup>12</sup> Several hundred Western Shoshones had moved to the Duck Valley Reservation by 1920<sup>13</sup> but Duck Valley was not in aboriginal Western Shoshone territory, and most Western Shoshones remained detached from political developments at Duck Valley.<sup>14</sup> The Southern Utes were the only group that was unified socially, demographically, and politically under one leader. This leader, Buckskin Charlie, seems to have assumed leadership within the model created by Ouray, his predecessor as "Chief of all the Utes."<sup>15</sup>

Economically, Hopis had by far the largest reservation land base, and had a somewhat mixed economy of subsistence agriculture, commercial livestock, a little wage labor, and nascent entrepreneurship.<sup>16</sup> The household, however, remained the unit of production at all villages despite some inter-village differences in economic base.<sup>17</sup> In contrast, Western Shoshones were heavily dependent on unpredictable wage labor in combination with subsistence hunting and gathering with a minuscule reservation and fee-patent land base, and a minimum of agriculture.<sup>18</sup> Southern Utes were primarily subsistence agriculturalists, supplementing their resources with hunting, gathering, and treaty rations.<sup>19</sup>

## IRA IMPLEMENTATION: THE GENERAL PROCESS

Written by Commissioner Collier with Felix Cohen and Nathan Margold, the Assistant Solicitor and Solicitor, respectively, for the Interior Department, the Indian Reorganization Act was introduced in 1934 by Representative Edgar Howard of Nebraska and Senator Burton Wheeler of Montana. It became known as the Wheeler-Howard Bill. By the time the Act emerged from Congress, many of Collier's most treasured provisions had been deleted.<sup>20</sup> But Collier's broad intentions were preserved.

According to Collier, the Act was intended to implement these policies: economic rehabilitation; organization of the Indian tribes for managing their own affairs; provision of civil and cultural freedom; and a return to the bilateralism that had characterized U.S.-Indian relations in the treaty-making period which ended in 1871.<sup>21</sup> Collier was deliberately vague on the question of whether or not the Act was intended to halt assimilation. It is quite clear, however, that Collier was *not* an assimilationist to the extent of wishing to see the dilution or disappearance of Indian cultures. However, it is also quite clear that in passing the IRA, Congress did not completely abandon the historic goal of assimilation.<sup>22</sup> The Act was intended to "reorganize" Indians on two levels: economically, according to a cooperative and corporate model; and politically, as a government answerable to the Secretary of the Interior.

The Act did not affect indigenous law, culture, religion, language, education, or artistic and symbolic expression, except to lift uniformly any and all bans and barriers on these aspects of Indian life that might have been imposed by particular agents and superintendents. Administratively, the BIA began to encourage perpetuation and revival of these aspects of Indian life. Thus, "reorganization" envisioned maintenance of much of the Indians' traditions, but also clearly envisioned their adoption of a complex of political and economic traits and behavior patterns from the dominant society.

Collier did not anticipate bringing the actual law to Indians for their approval. Congress, however, inserted a provision that, in order for the IRA to apply to a specific group, the group must first be given the chance to reject the IRA by majority vote. If the group did not reject the Act, then it would apply. In the first

round of referenda, Collier and Margold circumvented this provision by counting the abstentions, or non-votes, as "yes votes."<sup>23</sup> Their procedures resulted in 17 tribes actually rejecting the Act by majority vote but coming under its provisions anyway.

A year later, in 1935, Congress amended the Act with a provision that 30% of the eligible adult voting population had to participate in a particular referendum in order for a majority of "no" votes to effect rejection of the Act. If the number of participants did not amount to 30%, then even an overwhelming number of "no" votes could not result in its non-application to that particular group. On the other hand, if the plurality of votes favored adoption, the 30% rule did not apply; even a 1% voter participation—or less—could effect acceptance of the Act. Thus "acceptance" of the IRA in a vote did not reflect acceptance of the trait-complex of economic and political behaviors intended by the Act.

According to plan, after a group had voted upon acceptance of the IRA, in John Collier's words, ". . . the process of self-organization went right ahead."<sup>24</sup> This process consisted of drawing up a constitution (and bylaws) and submitting it to referendum. If it passed the referendum and was approved by the Secretary of the Interior, then it was implemented. The "30%" rule applied in constitutional referenda, but in contrast to the IRA referenda, 30% of the eligible voters were required to vote in the constitutional referendum in order for a plurality of "yes" votes to effect adoption of a constitution. If the 30% minimum was not met, even an overwhelming "yes" vote was not sufficient for a particular constitution to be adopted. A final step, which not all reorganized tribes took, was the adoption of a Charter of Incorporation, the key to economic development on the IRA model. The Constitution and Corporate Charter were, in the words of one of Collier's biographers, "at the very heart of (the IRA's) benefits."<sup>25</sup>

Below I assess the ultimate impact of the IRA on the Hopi, Western Shoshone, and Southern Ute with reference to accomplishments of land reform and economic rehabilitation; organization for managing affairs and enhancing self-determination; and processes of implementation. Discussion of the relationship of the IRA to these points will proceed with the following measures in mind:

- Documentable changes from the baseline situations of all three groups in the areas of politics, economy, and land;
- Transfer of behavior patterns from the donor group (the dominant society) to the target group that are associated with vesting decision-making powers in political and corporate collectivities such as tribes and tribal councils;
- Attainment of stated goals of the particular group through use of IRA provisions.

#### A. IMPLEMENTATION AT HOPI

Collier visited the Hopi villages shortly after Congress passed the IRA and persuaded 519 voters to approve the IRA; 299 voted against it. "Although pleased with this favorable reaction," writes Kenneth Philp, one of Collier's biographers, "Collier knew that the Hopis . . . remained suspicious of the bureau. Consequently, he asked Oliver La Farge . . . to help establish a tribal government. . . ."26 La Farge, who had friends among the Hopi, spent three months there in the summer of 1936.

Hopis were indeed suspicious. "The idea that members of the government should do anything for them for idealistic reasons is impossible for them to receive," observed La Farge.<sup>27</sup> La Farge encountered widespread philosophical opposition to voting among the Hopi, and he reported that non-participation meant a rejection of the whole idea of basing policy and action on a mere vote. "The negative type of opposition is a method of refusing to be bound by the caucus," noted La Farge, "No amount of explaining could convince conservative Hopis that it was right that their failure to vote against the Reorganization Act had not been counted as so many negative votes. This must be borne in mind in judging from the results of referendum the heartiness of tribal support of the measure in question."<sup>28</sup> Conservative Hopis' refusal to vote was in large part responsible for the assertion by many Hopis in later years that "this Wheeler-Howard Act was without the consent of the majority of the Hopi people."<sup>29</sup>

Despite La Farge's *caveat*, Collier did not bear in mind the conservative Hopi position. He did not interpret the vote on the Hopi Constitution as anything but an acclamation for reorganization.<sup>30</sup> Although few scholars follow Collier's interpretation,<sup>31</sup>

Wilcomb Washburn does accept Collier's initial interpretation, and even adds to it, asserting that "fifty percent of the eligible voters came to the polls in October, 1936, and 80% voted to accept the constitution authorized under the IRA."<sup>32</sup> Of the 755 Hopis who voted, 651 voted "yes" to accept the Constitution, and that is actually more like 85%. But those who voted could not possibly have represented 50% of the eligible Hopi voting population.

Precise accounting of the eligible voting population required accurate population counts. But the U.S. Indian Service's most complete tabulation of votes per tribe and community on the IRA, the Tribal Constitutions, and the Corporate Charters reveals that the Hopi are the only group in the tables for which no figure is given under the column "voting population."<sup>33</sup> Apparently, the Indian Service did not know what the voting population was among the Hopi. Furthermore, my attempt to reconcile total population figures given by government sources over a 20-year period reveals irreconcilable discrepancies. For 1935, two different total population figures for the Hopi in two different government sources vary from each other by 3.5%—a figure which would represent a respectable population growth rate if it represented the difference between population counts for two successive years—but the difference between government figures for 1935 and 1936 is between 17.5% and 22%, an impossible growth rate for one year! (Total population is reported variously as 2,538 or 2,634 for 1935, and 3,101 for 1936.)<sup>34</sup> Washburn, working from the Hopi Tribal Census of 1934, set the number of eligible voters at 1,566 when the IRA was offered to the Hopi in referendum.<sup>35</sup> If 818 Hopis voted in the IRA in 1935, they constituted 52% of the eligible voters, assuming some validity to Washburn's figures. But why, then, did the BIA suddenly find so many more Hopis a year after the IRA referendum (1935), with no accompanying increase in the number of eligible voters? I have suggested elsewhere that the number of eligible Hopi voters was much higher than 1,566 in 1935, and that, therefore, the voter participation rate in both the 1935 IRA referendum and the 1935 constitutional referendum was much lower than 50%.<sup>36</sup> Until the discrepancies among population figures given by various government sources are cleared up or explained, we must assume that Hopi voting population in 1935 and 1936 was

"unknown" because the Indian Bureau was not confident of the accuracy of its total population figures.

The history of the Hopi Tribal Council following IRA implementation reveals the deeper story. Originally the Council had representation from the four Consolidated Villages of First Mesa, from four other traditional villages and from the non-traditional district of Moenkopi. In 1937 the three Second Mesa villages withdrew their representatives after the Council adopted a boiler plate law-and-order code proposed by the Secretary of the Interior. They objected that the code contained a provision that would have violated the traditional—and constitutional—rights of clans to assign and regulate land assignments and for villages to settle their own internal disputes. This withdrawal left the Council without a quorum.

The code was withdrawn, but the Second Mesa representatives did not return. Between 1941 and 1943, uncertainty at First Mesa over selection of a new Kilmongwi (village chief) and the reluctance of the Council to enforce stock reduction mandated by the Interior Department led to the IRA council's disbanding. It was not reconstituted until 1950,<sup>37</sup> but even as late as 1952 it was listed as "inactive" by the BIA.<sup>38</sup>

In 1955 the IRA Hopi Tribal Council was again designated by the Interior Department as the sole representative of the Hopi people, but since that time the Council has consistently functioned without representation from three villages, and with varying representation from another nine. At any one time over the last 30 years, at least four villages have refused to send representatives. Often this number has been six, the non-participating villages holding half the Hopi population.<sup>39</sup> Thus, although the Hopi Tribal Council has at times represented a majority of the villages and of the population, it has never represented all the villages and has not been accepted universally as a Hopi institution.

#### IMPLEMENTATION AMONG THE WESTERN SHOSHONE<sup>40</sup>

In 1934, Muchach Temoke held the hereditary chieftaincy of the Western Shoshone. He emerged in the 1920s as spokesman for Shoshones seeking restoration of their ancestral lands, and some time in the 1930s he came to head an informal council of

representatives from several Western Shoshone communities. Apparently Muchach was not contacted prior to the IRA referenda, which were held in 1934 and 1935 at four locations: Ely, Battle Mountain, Elko, and Duckwater. Shoshones near these locations counted for little more than a third of the total Western Shoshone population. The IRA was approved at these places by 74% of the voting population, yet the "yes" votes represented less than 20% of the eligible voting population.

Following the referenda the Indian Bureau attempted to correct its error of omission. Eventually, Shoshones from five communities met and drafted a Constitution, with the approval of Chief Muchach Temoke. But when the draft Constitution was sent to Washington, the BIA rejected it, insisting (ironically, it turned out) that because the Western Shoshones were "scattered over several communities," they "did not constitute a tribe."<sup>41</sup> A compromise Constitution approved by the Bureau did not recognize the existence of the Western Shoshones as a unified political entity, despite the fact that a Treaty with the "Western Shoshone Nation of Indians" had been signed in 1863, reaffirmed in 1869, ratified by the Senate in 1866, and proclaimed by the President of the United States in 1869.<sup>42</sup>

The Constitution created a "Te-Moak Bands" Tribe comprising the two communities of Elko and South Fork. It provided for creation of a "Western Shoshone Council" with a chief—presumably Muchach Temoke—and a subchief, and specified that an unlimited number of separate reservations and colonies could send representatives to this Council, but only if they joined the Te-Moak Bands as "constituent communities." The result was that other Western Shoshone communities had to incorporate as separate "tribes." Thus while the Bureau insisted on making a tribe out of the Hopi when they did not want to be one, the Bureau refused to allow Western Shoshones to become a tribe when they *did* want to be one.

Subsequent events resulted in land claims being filed by the Te-Moak Bands with the Indian Claims Commission which represented a strategy worked out by the claims attorney with representatives from Elko, South Fork, and the Western Shoshones living at Duck Valley. The claims requested monetary compensation from the U.S. Government, rather than return of land. At the same time, Muchach Temoke, and later his son Frank, maintained a "Traditional Council" and continued efforts

at getting land returned and having treaty rights recognized separately from the IRA councils. I agree with Elmer Rusco that had there been but one government representing the Western Shoshone during the 1940s, a claim would have been filed for land, not for money.<sup>43</sup> An entirely different strategy would have been pursued.

### IMPLEMENTATION AT SOUTHERN UTE

I have no data on how the IRA was explained and presented to Southern Utes. There are indications that the idea was opposed by some Utes, possibly representing a faction constituted of particular families. On the basis of a 94-page memorandum of explanation sent to agency superintendents,<sup>44</sup> one Southern Ute leader expressed some objections to the Wheeler-Howard Bill's intentions.<sup>45</sup> On the other hand, the acknowledged Southern Ute chief, Buckskin Charlie, approved of the IRA and it was ratified by a vote of 85 to 10. The Bureau listed a total population of 389 and a voting population of 129. Thus, the vote represented a 73% participation rate. The distribution of treaty annuities and rations to Southern Utes between 1880 and 1831 necessitated the maintenance of an accurate tribal roll, and thus there is no reason to doubt these figures. They also agree well with the data and analyses of other researchers.<sup>46</sup>

A Constitution was approved in 1936 and a Corporate Charter in 1938. Buckskin Charlie died in 1935, but when the first Council convened in 1937, his son, Antonio Buck, who succeeded to the Chieftaincy, was elected first Chairman of the Southern Ute Council. Thus, the process of IRA acceptance at Southern Ute seems to have been both a reflection of and a validation for the coalescence of tribal unity that occurred under the Buck Chieftaincy.

### THE RESULTS OF IRA IMPLEMENTATION

#### LAND REFORM, ECONOMIC DEVELOPMENT, AND TRIBAL MANAGEMENT: HOPI

It should be noted that land reform could, and did, proceed independently of a particular group's acceptance or rejection of the

IRA. For example, the Wind River Shoshone and Arapahoe, who had previously organized a Council on the urging of their agency superintendent and consequently rejected the IRA, had 1,078,056 acres of unallotted land returned to them, with mineral rights.<sup>47</sup> At Hopi, however, neither allotment nor homesteading nor alienation of land had ever occurred because of Hopis' resistance to allotment and because the paucity of water made Hopi territory undesirable to potential non-Indian homesteaders.

Land control, however, was extremely important to Hopis. In 1936, the BIA divided the Hopi and surrounding Navajo reservations into 20 grazing districts.<sup>48</sup> Creation of the grazing districts was part of the IRA's "conservation directive."<sup>49</sup> The Hopi jurisdiction was limited to District 6, covering an area of 624,064 acres Moenkopi was included in Navajo District 3.<sup>50</sup> In 1943, the Hopi Agency was given exclusive jurisdiction over District 6, and the Western Navajo Agency in Tuba City received exclusive jurisdiction over District 3.

Hopis found this administrative action unacceptable. They perceived that 1.8 million acres that remained from the 1882 Executive Order Hopi Reservation had been given to the Navajos. In a meeting in Washington, D.C. in 1939, John Collier told a delegation of four Hopis that "we have no power to restore to the Hopis this area (outside District 6) . . . I would not have the power, Secretary Ickes would not have the power, President Roosevelt would not have the power and Congress would not have the power . . . to put the Navajo off without their consent. . . ." <sup>51</sup> Of course, Collier was wrong, since Congress has plenary power over Indian affairs, and subsequent legislation in 1958 and 1974 did indeed result in Navajos being "put off" without their consent. However, the point here is that passage of the IRA had resulted in just the opposite of one of the IRA's purposes. Following their apparent approval of the IRA, Hopis had less land, not more.

In the area of cooperative economic development, some of the IRA's goals were reached: four cattlemen's associations were formed and a "Hopi Agricultural Improvement Association" was created, which had little to do with agriculture but rather represented cattlemen. A "Hopi Indian Credit Association" was begun, but not until 1952.<sup>52</sup> A "Hopi tribe ram distribution enterprise" and a "Hopi tribal livestock breeding enterprise" were listed as being operated by "the tribe" as of 1952, but since the

Council was barely active at this time, it is likely that these enterprises were run by a cattlemen's association or by the BIA.<sup>53</sup> At present, the Hopi Tribal Council operates only one enterprise—a Tribal trailer park—although it does contract programs from the Government under provisions of the 1976 Indian Self-Determination Act.

Among the Hopi, the Indian Reorganization Act became an instrument of directed acculturation, albeit an ineffective one, and the Hopi Tribal Council emerged as an agent of culture change. This point requires emphasis, since the uniform interpretation of the Hopi Tribal Council and the reliance on unreliable statistics to explain the IRA vote have been erroneously presented as *reflections* of acculturation rather than *mechanisms* of acculturation. In one extreme instance they have been alleged as the sole barriers preventing the breakdown of indigenous social structures under the uniform onslaught of assimilative pressures.<sup>54</sup> Such unwarranted hyperbole has generated confusion about the nature of political expression among the Hopi, and has been used to trivialize the legacy of Hopis' non-participation in the IRA process as the "challenges of dissidents among the Hopi."<sup>55</sup> The challenges come not from dissidents, but from those who never joined the imposed political process in the first place; one cannot dismiss traditional leaders as "unrepresentative" merely because they were not elected, as Washburn attempts to do, nor can one justly brand their political socialization as "revolutionary" merely because they operate outside the political format of the Hopi Tribal Council.<sup>56</sup>

I am in agreement with one point that Washburn has recently made about the Hopi: without the Hopi Tribal Council, the 1974 legislation resulting in dislocation of about 7,500 Navajos and returning half the 1882 Reservation allocated to Navajo use in 1936 to the Hopi would never have been enacted.<sup>57</sup> But contrary to Washburn's claim, the Hopi Tribal Council's lawyer, the late John Boyden, was responsible for that legislation. He drafted large parts of various versions of the bill, which was the last document in a series of legislative and court actions going back nineteen years. Boyden began his association with the Hopi as claims attorney, and his ability to act as Hopis' general counsel was dependent on his securing a \$1 million fee in 1964, which amounted to one-third of payments to the Council from oil and gas exploration leases on District Six.<sup>58</sup> It was a combination of

claims litigation and the concomitant alteration in the structure of the Hopi tribal administration with money from mineral leasing that generated ongoing retainers for Boyden's firm and was ultimately responsible for the 1974 legislation.<sup>59</sup> It was not the IRA that was responsible for developments in the Hopi land case.

#### LAND REFORM, ECONOMIC DEVELOPMENT, AND TRIBAL MANAGEMENT: WESTERN SHOSHONE

Whereas about 27,000 acres were added to trust status for Western Shoshones by the Department of Interior and congressional actions under the IRA, Shoshone land holdings are minuscule relative to need.<sup>60</sup> Nearly 700 Shoshones in Nevada are limited to a total trust status land base of 2,439 acres—less than four acres per person—in the high, cold, desert-steppe region of the Great Basin where one head of cattle can require up to 35 acres of land for forage per month. Three reservations have stockmen's associations, but there are only three tribally-owned enterprises, all of them smoke shops established in the 1970s.<sup>61</sup> Some Western Shoshone colonies and tribes obtained federal grants in the 1970s totalling several million dollars. Reservations with corporate charters were particularly encouraged to subcontract for services previously provided by the BIA and the Indian Health Service.<sup>62</sup> By comparison, many reservations in New Mexico such as San Juan Pueblo lack corporate charters, yet they are more heavily involved in business enterprises and subcontracting than Western Shoshone communities.<sup>63</sup> Therefore, it is a non-sequitur to claim that an IRA government is prerequisite to subcontracting, even if policy favored an IRA tie-in in Nevada.

Politically, the result of the constitution-making process was to split Western Shoshones into the IRA-sanctioned Te-Moak Bands Council which consistently sided with the attorneys who insisted that the land had been lost and therefore monetary compensation was the only alternative, and the Traditional Council headed by Frank Temoke which just as consistently asserted its contention that Western Shoshone title had been confirmed by Treaty and that, therefore, Western Shoshones still owned their land. By the time that political events among Western Shoshones had resulted in a reversal of the IRA government's stand in the mid-1970s, the Claims Commission refused to re-open the case.

Echoing a statement made by Muchach Temoke back in the 1930s, Western Shoshones refused a \$26 million claims settlement in 1980 and are still seeking ways of getting the land returned. Although they are now politically united, Western Shoshones expended much unnecessary effort in political battles among themselves over whose version of the claims proceedings was correct and which strategy should be followed. It is ironic that a ninth circuit court opinion in 1983 ruled that, indeed, Western Shoshone land title was guaranteed by Treaty, and that only Western Shoshones' acceptance of a monetary settlement such as that offered by the Claims Commission could extinguish that title.<sup>64</sup> Had the claim for monetary compensation never been filed, title never could have been extinguished.

#### LAND REFORM, ECONOMIC DEVELOPMENT, AND TRIBAL MANAGEMENT: SOUTHERN UTE

Of the three groups under consideration, the Southern Utes, by a wide margin, must be accorded the status of "best IRA tribe" in terms of demonstrating fulfillment of the Act's intentions. However, other factors are also responsible for this success.

In 1938, the BIA returned 200,000 acres to the Southern Utes.<sup>65</sup> Since that time, an additional 64,100 acres have been either returned or have been purchased by the Tribe. In 1933, the Civilian Conservation Corps—Indian Division initiated the first of over 100 projects on the Southern Ute Reservation that resulted in the expenditure of \$558,000 between 1933 and 1942. In 1960, 48 persons in a survey of the 220 adults were found to have participated in the work carried out by the CCC.<sup>66</sup> Shortly after Southern Utes adopted their Constitution (1936) and Corporate Charter (1938), a cooperative sheep herd and a Credit Association were established. The sheep herd failed in the late 1940s, as did a short-lived Tribal Cattle Enterprise and Farm during the 1950s.

But the IRA's most significant legacy came as a result of the return of surplus lands and as a result of a land claim filed prior to enactment of the Indian Claims Commission Act in 1946, but after the Southern Ute Tribal Council had been formed. Much of the acreage returned in the 1930s contained gas and oil reserves that the Tribal Council leased, starting in 1950. In 1938

the Council joined two other Ute Tribes in a lawsuit in the U.S. Court of Claims for damages and monetary compensation for land taken in the previous century. The claim was eventually the first claim heard and first judgment rendered by the Indian Claims Commission, to which it was remanded in 1946. In 1951 the Southern Utes received \$5,752,035 from the \$31 million judgment, the remainder going to the Northern and Ute Mountain Utes.<sup>67</sup> The Southern Ute Tribal Government used the money not only for *per capita* payments, but also for an ambitious program of home improvements, agricultural assistance, emergency family assistance, and trust funds for children.<sup>68</sup> In the mid-1960s, the Tribe also began developing an investment program which has yielded dividends to tribal members from time to time.

The Indian Civilian Conservation Corps was important in serving as a kind of proving ground for persons who later became leaders in the Southern Ute Tribal Council. These leaders drew up three long-range plans between 1953 and 1966 that coordinated economic and social developments within a framework of tribal government rooted in the IRA model. By 1960, the existence of the Southern Ute Tribal Council had become synonymous with the existence of the Tribe itself, and the local BIA agency had become an agency of the Tribal government more than of the U.S. government.<sup>69</sup>

The author of a study in modern Southwestern Indian leadership assessed the Tribal Council's position as follows in 1963:

. . . Inside the Tribe itself there is no other independent cluster of powers and prerogatives to put up against the Council. Its authority to speak for the Tribe is complete, its internal power to create, dissolve and modify being stated in the organic law of the Tribe, and it is consistently into everything the working units of the Tribe may do to which it has delegated a job.<sup>70</sup>

Today, the Tribe owns and operates two businesses and runs a range management program that successfully markets deer and elk hunting licenses to non-Ute hunters. It is in the process of entering the bingo business, and it manages a number of grants and contracts. It is the major source of employment in the area, and more than half of all the Southern Utes who are employed work for the Tribe.<sup>71</sup> Certainly in the areas of land reform, eco-

conomic development and tribal management, the Southern Utes must be rated a resounding success. But two other factors certainly contributed to that success, and perhaps they were even pivotal: the fortuitous existence of gas and oil underneath the returned surplus lands, and successful pursuit of a land claim facilitated by the IRA's provision for hiring legal counsel.

## CONCLUSIONS

At this point we shall return to some of the questions posed earlier on the basis of differential assessments of the IRA. From the three case studies presented here, it is not justifiable to extrapolate anything visionary or idealistic about the IRA. These characteristics might well apply to John Collier himself, but it must be remembered that the IRA was written by three people—John Collier, Nathan Margold, and Felix Cohen, and that it was modified by Congress.<sup>72</sup> It might well have been utopian in concept, and it proved indeed to be theoretical and somewhat impractical for the Hopi and the Western Shoshone.<sup>73</sup> But it was eminently practical for the Southern Ute.<sup>74</sup> Neither Hopis, nor Western Shoshones, nor Southern Utes needed recreating in 1934, nor is there any evidence that they were in danger of dissolving as cultural entities. Therefore, Steward's claim that the Act was intended to "recreate Indian cultures" must be regarded as non-applicable in these three cases, as must Washburn's claim that the IRA reversed the trend toward the dissolution of tribal structures.<sup>75</sup>

The Act did reverse the allotment policy as far as the Southern Ute were concerned, but it is hard to see any measure of reversal for Hopis or Western Shoshones. It certainly did redirect culture change toward communalism and cooperative management, as Steward and Washburn have observed, but it did so very much on a corporate model that encouraged capitalism and certainly did not discourage free enterprise. The Southern Ute Tribal Council's pursuit of a successful investment strategy that eventually yielded dividends is perhaps the best example of the IRA's influence in the direction of capitalism. The Hopi Tribal Council's letting of oil, gas, and coal permits in the 1960s certainly encouraged the free enterprise of the 32 exploratory drillers, of John

Boyden, and of Peabody Coal Company. It is difficult, however, to see how the Council's management of the resulting lease money encouraged either free enterprise or communalism among the Hopi.

There is nothing in these three cases to substantiate Steward's suggestion (1969) that the IRA reversed modernizing trends. If modernization has anything to do with the formation of tribal administrative bureaucracy, leasing of minerals, increases in per capita incomes, and political socialization, then at least among the Hopi and Southern Ute, the IRA accelerated modernization, rather than reversing it. Claims by Steward (1969) and Washburn (1975) that the IRA was a "radical break" and a "complete reversal" of previous policy are not entirely warranted, and if anything, the three cases underscore Lawrence Kelly's argument that the IRA froze U.S. Indian policy "where it was in 1934," rather than reversing it. I would argue that the IRA halted some trends and initiated others, but that it did not reverse anything.<sup>76</sup>

The Act did terminate the "destructive tendencies of the allotment system,"<sup>77</sup> but only at Southern Ute. It can be argued that IRA implementation among the Western Shoshones resulted in the door slamming shut on the possibilities of their ever obtaining an adequate land base, and Hopis also received an initial setback in their land situation, which was reversed only in the 1970s at the expense of Navajos. None of the three groups in question is close to being assimilated, but it is a fact that the IRA did bring western-style democracy and thus did mandate some degree of acculturation.<sup>78</sup> In the case of the Hopi, this kind of democracy did prove to be inappropriate, and among the Western Shoshone, the BIA's interpretation of it proved too inflexible to be appropriate. There is no evidence of chicanery in either the Western Shoshone or the Southern Ute cases, but there certainly is a *prima facie* case for some degree of disingenuous misrepresentation in that of the Hopi.<sup>79</sup>

The discrepancy between the purposes of the IRA and its actual effects are most evident in the Hopi and Western Shoshone cases. If the Act was *intended* to promote tribal solidarity, it certainly *did* the opposite. At Hopi, the large abstention among eligible voters in the Constitutional referendum was interpreted by Oliver La Farge as "a heavy opposition vote." Wilcomb Washburn has challenged that interpretation when it has been ad-

vanced by critics of the IRA, but surely it cannot be claimed that Oliver La Farge was a critic of the IRA!<sup>80</sup> I submit that the heavy abstention vote was a direct result of the unsuccessful attempt to impose a tribal structure on a people who were not a tribe, and expressed no interest in becoming one.

Among Western Shoshones, just the opposite occurred: despite the existence of a Chief, however symbolic, and despite the existence of a Treaty clearly recognizing the Western Shoshone as a "Nation of Indians," and despite the desire of Western Shoshones to explore the possibilities of tribal organization, the IRA split the Western Shoshones into multiple political groups, derailed their efforts to get back tribal land, and prevented them from formalizing what was already a good degree of tribal solidarity.

Did the Act result in the enhancement of self-determination and the initiation of bilateralism? Some criteria for recognizing self-determination and bilateralism might include: international recognition, power to tax, and possession of unique and exclusive authority in well-defined areas. In the Hopi case, the IRA created ambivalence in all these areas. Although the Hopi Tribal Council is recognized by the U.S. government as the only political authority representing the Hopi, the traditional political system lodged in *village* sovereignty continues to function independently of the Council and sometimes at odds with it. For nine months in 1985, for example, the Council could not obtain a quorum and was hamstrung. One village, Hotevilla, has pressed a claim for total independence from all other Hopi villages and from the Council since 1971, and has sought international recognition on that basis. Therefore, the Council cannot be said to have unique and exclusive representational authority. Although the Hopi Tribal Council recently was accorded international recognition at the Ninth Inter-American Indian Congress in Santa Fe in 1985, the Hopi Traditional Chiefs have been recognized as one of the United Nations' "Non-Governmental Organizations." They have issued their own passports that have been accepted by Sweden, Finland, and Switzerland. Although the Hopi Tribal Council taxes and licenses non-Indian businesses in Hopiland, and has asserted its right to levy a severance tax on coal, it has not been able to enforce a business license requirement consistently on all Hopi enterprises.

In contrast, the Southern Ute Tribal Council has no competitors for political authority; it successfully levies and collects severance taxes; and it is the only full-time, salaried legislative body in the state of Colorado. (The issue of taxing Indian-owned business on the reservation is not relevant, since all businesses in that category are tribally-owned). Western Shoshone councils competed for years for political representation with the Temoke Traditional Council until, in the mid-1970s, the IRA councils and the Temoke Traditional Council united on political goals under the aegis of the state-chartered Western Shoshone Sacred Lands Association. The resulting coalition consisting of Frank Temoke as Traditional Chief, several IRA councils, and the Association has achieved international recognition from the UN-NGO's and has continued to pursue the goals enunciated by Muchach Temoke and the Traditional Council in the 1930s and '40s.<sup>81</sup> But the IRA process seems to have been a major stumbling block—not the facilitator—in the Western Shoshone case.

The Indian Reorganization Act as a piece of legislation had an unequivocally positive effect for only one of the three groups in servicing their needs and wants regarding return of land, economic development, and tribal management. However, as an innovation in culture change, the IRA had very different impacts on the three groups under consideration in terms of the process by which it was implemented and the degree to which it achieved the intentions of its implementers. The impacts were most significant for the Hopis and the Southern Utes; the process of implementation varied enormously among the three groups; and only for the Southern Utes was there a close fit between the way the Act was supposed to work and the way it actually did work. We can conclude that for the Southern Utes, the IRA was "the right thing at the right time," but that for Hopis and Western Shoshones, it was something between useless and divisive.

We can only surmise that the reason for this is that there may have been many more "common factors," to use Malinowski's words, between the intentions of the IRA and the intentions of Southern Utes than was the case for the other two groups.<sup>82</sup> It may have been the existence of these common factors that resulted in the IRA being accepted *as a complex of culture traits* among the Southern Ute, while it was only partially accepted by some Hopis. Among the Western Shoshones, its implementation

could well serve as a measure of the *rejection* of the principle of bilateralism by the United States, since the government's reaction ran directly counter to Western Shoshones' wishes.

## TWO HYPOTHESES

These conclusions are certainly not definitive, since they apply only to three cases. However, they do suggest some hypotheses that could be applied to a larger number of cases. One hypothesis is that the IRA was most smoothly implemented, and most useful, for groups that:

- were culturally and linguistically homogeneous,
- had suffered diminishment of a formerly large land base,
- had been assigned to or settled on *one* reservation that had later been thrown open to homesteading and had been allotted,
- had mineral wealth,
- had no potential traditional sources of sectional, social factional, or competing leadership, and
- had little economic differentiation, for whatever reason, at the time.

Another hypothesis is that differential acceptance of the IRA and of the degree to which the IRA program was "put over" was the general rule for nearly all groups, and that the Southern Ute are an exception in consistently responding favorably to all IRA innovations in the areas of politics, economics, tribal management, legal strategy, land reform, and land improvement. This second hypothesis echoes the position of McNabb and Robbins in their analysis of Native Institutional Responses to the Alaska Native Claims Settlement Act: that "variations in responses (to ANCSA) are considerable and it is inadvisable . . . to use a single institution's response as the sole indicator of long-term consequences."<sup>83</sup> The three cases summarized above suggest that it is equally inadvisable to use a single response or event—such as a one-time vote in a referendum representing the very first instance of voting behavior among a particular group—as the sole indicator of that group's response to an innovation such as the Indian Reorganization Act.

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