

**Review Essay**  
**Jeff Armstrong**

Vine Deloria, Jr. *The Nations Within: The Past and Future of American Indian Sovereignty* (New York: Pantheon Books, 1984).

Thomas Biolsi. *Organizing the Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations*. (Tucson & London: University of Arizona Press, 1992).

Paul Robertson. *The Power of the Land: Identity, Ethnicity, and Class Among the Oglala Lakota* (Lincoln: University of Nebraska, 2002).

Russell Means. *Where White Men Fear to Tread* (NY: St. Martin's Press, 1995).

Mary Crow Dog. *Lakota Woman* (NY: Grove Weidenfeld, 1990).

It is difficult to dispute Indian Commissioner John Collier's benign intentions in spearheading a dramatic redirection of federal Indian policy in the 1930s.

Inspired by a personal vision of indigenous cultural and political autonomy, he persuaded a (somewhat contrived) majority of Native peoples and a skeptical congress to suspend their respective doubts in the good faith and capacities of the other and thus embark on a radical experiment in cooperative governance. Hailed by its proponents as the "Indian New Deal," the 1934 Indian Reorganization Act halted the disastrous allotment policy before it could swallow up the remainder of reservation lands. It also provided a theoretical and legal framework for tribal self-government which has endured in the face of recurring threats for more than 70 years.

Notwithstanding the significance of the IRA, Collier is not widely regarded as the great emancipator of Indian Country. Indigenous scholars, tribal activists, and traditional Natives have blamed the IRA (more precisely, the Wheeler-Howard Act) for institutionalizing colonial relationships at the expense of traditional forms of government

and contemporary standards of civil and human rights. Critics, with some justification, have pointed to the occasionally deceitful and otherwise questionable means to which Collier resorted in gaining tribal assent to the act. Indeed, Collier's manipulation of the electoral process (for instance, counting voting abstentions as yes votes) in some tribal referendums helped foster similar tendencies in IRA tribal councils. It is equally valid to point out that the Indian New Deal was followed in short order by an effort to terminate the self-government policy in its infancy. Kenneth Philp has suggested rather provocatively that Collier had a hand in preparing tribes for termination before the latter's involuntary resignation as commissioner in 1946.<sup>1</sup>

Yet by subjecting his plan to individual tribal consent, Collier was restoring at least a semblance of treaty relations which had been quietly severed by the U.S. Congress in 1871. If the process by which the commissioner reestablished the principle of consent was flawed, the same was no less true of treaties initially viewed as treasonous by some but now held up as sacred text by many tribes. The act may have spawned a multiplicity of corrupt, inept tribal administrations, but it also established an externally recognized and internally defined institutional foundation for the exercise of tribal governmental powers. Even some of the most corrupted quisling regimes possessed sufficient self-esteem to fight for their survival in the post-WWII termination era and the requisite political awareness to cloak their internal despotism in the rhetoric of sovereignty and treaty rights—at least around election time. The IRA fell well short of facilitating self-determination, but it did serve to legitimize and popularize tribal sovereignty as an ideology. As suggested by the books under review here, there seems to be a broad consensus that the Indian Reorganization was a defining moment in federal Indian policy,

but no clear answer to the debate over whether the act was more of a building block or an impediment to tribal self-sufficiency.

Standing Rock Lakota tribal member Vine Deloria, Jr. and co-author Clifford Lytle make important contributions to both sides of the ongoing debate in *The Nations Within*. They profess admiration for Collier's resourcefulness and idealism but do not shrink from pointing out the contradictions and shortcomings of his formula for Indian salvation. The authors credit Collier with having "engineered a complete revolution in Indian affairs," while observing that traditional Natives "wanted independence, and partnership was not independence" (188-89). In a detailed legislative history of the act, they suggest the enormity of Collier's task by observing that the bill's own sponsor in the Senate, Burton Wheeler of Montana, was among Collier's most formidable opponents in the congressional debate, sponsoring legislation to repeal the act less than three years after passage. Deloria and Lytle focus on the political compromises forced upon Collier, taking pains to distinguish Collier's initial offering from the stripped-down Wheeler-Howard Act.

The authors thus stress the significance of Collier's willingness to discard his proposed Court of Indian Affairs, which would have had the power to review any tribal court decisions. Although such an appellate court could serve to streamline the legal process through which tribes and individuals assert their rights, Deloria and Lytle concede that the outcome would not necessarily be to the advantage of tribal peoples. A larger problem the authors do not fully address is the source of authority for such a judicial body. In democratic theory, power is supposed to flow from the people to their freely chosen representatives. However, a federal Indian appellate court would have at

best indirect political ties to its constituents and would in all likelihood be accountable only to the federal government. Although they point out that most tribal courts are of dubious origin themselves, evolving out of federal administrative Courts of Indian Offenses, the authors do not spell out how an additional layer of federal authority could advance the objective of tribal self-determination (which they rightly distinguish from self-government).

Despite the limitations of the IRA as enacted, Deloria and Lytle point out that Collier and Interior Department solicitor Nathan Margold devised an ingenious means to work around legislative compromises limiting tribal powers of government. At Collier's behest, Margold drew on the most favorable aspects of federal case law to issue a solicitor's opinion that recognized tribes as possessing *inherent* sovereign powers subject only to the express will of Congress. Underneath the radar of the legislative branch, Collier's Office of Indian Affairs turned federal Indian policy on its head by postulating that tribes could exercise any preexisting inherent sovereign powers, in addition to those expressly delegated by Congress. The burden of proof in jurisdictional disputes between tribes and state or federal governments thus shifted dramatically away from tribes, which were presumed to retain jurisdiction in the absence of congressional action to the contrary. It was "the most revolutionary interpretation of federal law ever attempted" and, arguably, the most lasting legacy of the Collier policy. As Deloria and Lytle observe, "Modern tribal sovereignty thus begins with this opinion, although it would be another generation before Indian tribes would understand the difference and begin to talk in the proper terms about their status" (158-61).

Considering the ambiguous nature and origin of the Indian New Deal, the best source of historical insight on the Indian Reorganization Act may be the experiences of particular tribes and individuals, which, for purposes of the remainder of this paper, will be the people of the Lakota nation. Thomas Biolsi offers such a study in *Organizing the Lakota*, a thorough and thoughtful analysis of how the Lakota people of Pine Ridge and Rosebud reservations responded to the new direction in United States Indian policy.

Biolsi places the Indian Reorganization Act at the latter end of a continuum of U.S. efforts to exercise hegemony over reservations through “technologies of surveillance and control” (32). The author points out that reservation tribal government did not begin with the IRA. Traditional Lakota participated in and evaluated the legitimacy of representative councils on the basis of their adherence to the model of three-fourths majority rule and to the concept of political representatives as diplomatic envoys for their community, as opposed to designated policymakers or negotiators. Although, Biolsi argues, the Indian New Deal flagrantly violated both fundamental precepts, the Lakota ultimately resigned themselves to the domination of the Office of Indian Affairs because of their economic dependence upon the federal government. Biolsi asserts that the three-fourths principle was not of Lakota origin at all, but rather was inserted into the 1868 Fort Laramie Treaty and the 1889 allotment negotiations by the U.S. to “undermine the influence of chiefs” (42).

Yet Biolsi shows that the most enduring pre-IRA tribal political body on Pine Ridge was the Oglala Treaty Council, in which traditional chiefs exercised leadership in accordance with the principle of three-fourths majority rule. When John Collier came calling in 1933, the Oglala Council had just led a successful movement to abolish an

OIA-sponsored elective council and adopt a new constitution based on tribal custom and three-fourths majority. Since 1920, the Rosebud Sioux Council had similarly presided over official meetings under the principle of *akasipe yamni* (Lakota for three-fourths majority council). Although the commissioner assured the councilmen of both reservations that his program “would help them build up what tribal organization they already had,” it was destined instead to revoke both constitutions and cause a “radical rupture” with what had come to be accepted as traditional political norms (59).

Biolsi asserts more controversially, however, that the Lakota never seriously challenged the overriding authority of the OIA, instead focusing their protests on tribal councils which overstepped the perceived bounds of their authority. Since “Tribal councils were propped up by the OIA, but not empowered by the OIA,” Biolsi argues, the federal government was able to divert popular discontent to its tribal intermediaries as scapegoats (181). The anthropologist maintains that even the declaration of an independent Oglala nation and the armed occupation of Wounded Knee in 1973 constituted less a demand for full self-determination than a call for drastic internal reform. (182-84) Here, Biolsi seems to be stretching the evidence to accommodate his thesis. Abolition of the Bureau of Indian Affairs may not have been specifically articulated by the Wounded Knee occupiers, but it was a key element in the program of the American Indian Movement, which spearheaded the action at the invitation of the Oglala. In fact, that precise demand was the fourteenth point of AIM’s 20 Points presented in the 1972 Trail of Broken Treaties, as well a prominent feature of the 1974 Pine Ridge presidential platform of Russell Means, a key participant in the Wounded Knee standoff.

Yet despite his largely negative verdict on the IRA, Biolsi concludes that it drastically revised the “*representation of power.*” The act “opened up political space for Lakota people of all political stripes and elicited their demands—newly defined as not only legitimate but as necessary—for empowerment” (185). Having reestablished the principle of tribal consent and recognized the notion of inherent rights, the U.S. government could not easily return Indians to the subordinate status of incompetent wards. It is noteworthy in this regard that the ideology of termination--the most direct assault on tribal sovereignty since the assimilation era--was itself couched in the rhetoric of self-determination and liberation from the yoke of federal supervision. That association may also go some way towards explaining what Biolsi perceives as a reluctance of tribal members to focus their energies on abolishing the Bureau of Indian Affairs.

Paul Robertson’s study of the Lakota during the pre- and post-IRA period, *The Power of the Land*, nicely complements Biolsi’s. Rejecting the latter’s dependency theories, Robertson argues that Lakota full-bloods were active participants in the cattle-ranching economy prior to World War I. Their initial success as subsistence ranchers was due in part to the ability of the traditional Oglala Council (*Omniciye*) to resist pressure from the OIA to lease grazing lands on the reservation to large ranchers. The Council was based on one of the pillars of Lakota social organization—the *tiospaye*, meaning extended family cooperatives occupying common land. Each *tiospaye* had its recognized leader on the *Omniciye*, and the Council was further legitimized by presiding over large, participatory gatherings of the people. Under traditional leadership, the Lakota had

fiercely opposed allotment in the late 19<sup>th</sup> Century and had actively contested the OIA for control of reservation trust land ever since.

During a WWI spike in beef prices, however, Pine Ridge Superintendent Henry Tidwell signed agreements with big cattle outfits to lease roughly 6,000 Oglala allotments encompassing nearly 2 million acres of land. He did so without the consent of either the Council (which he attempted to outlaw and replace with an elective council) or the individual tribal owners. Naturally, the cattle did not respect land boundaries and proceeded to trample family gardens and devour hay in unleased areas. The OIA failed to curb trespassing or collect lease money, placing the onus on Oglala allottees to fence off their own lands and collect dues from hostile ranchers. The invasion of common and individual grazing areas by massive outside herds ultimately forced many Oglalas to sell their own cattle and seek compensation for their losses. Some Lakota were coerced by the government into signing lease agreements in order to receive due payments, others were denied leases or grazing permits to their own lands. Despite a government ban on its meetings, the Oglala Council was nevertheless able to spearhead the political defeat of an OIA puppet regime known as the “21 Council” by the early 1930s—shortly before the Lakota would encounter John Collier’s more sophisticated attempt to implement elective representation. (170-72)

Narrowly approved by the Oglala in a referendum boycotted by many traditionals, the Indian Reorganization Act exacerbated existing cleavages between mixed- and full-blood Lakota. The act enfranchised the mixed-blood *ieska* (literally, translators) by preempting the *tiospaye* as the basis for political representation. IRA opponents viewed the *ieska*, somewhat unfairly, as having sold their lands during allotment and feared their

ability to dominate the new form of government. Traditionalists largely abstained from the first post-IRA balloting in 1936, leading to the election of mixed-blood President Frank G. Wilson with just 900 votes (2,264 had voted in the ratification referendum). Accusing Wilson of discrimination and civil rights violations, the Oglala decisively defeated the president in a 1937 referendum on adoption of a corporate charter. By the following year, more than 1,000 tribal members had signed a petition to revoke the IRA constitution. It is difficult to square such a level of political engagement with Biolsi's theory of Lakota resignation and dependence upon vastly overstated government largesse.

Robertson goes on to trace the continuity of the struggle for land and political identity through the armed Wounded Knee occupation in 1973 and up to the 2000 occupation of Pine Ridge tribal headquarters by traditionalists known as Grass Roots Oyate (people). Identifying the historical basis for what might be referred to as blood quantum politics, Robertson nevertheless argues that the traditional mixed blood-full blood dichotomy ultimately plays into the colonial strategy of "divide and rule." He asserts that federal funding under the IRA has created more of a class system than a racial hierarchy, with a mixed-blood political elite at the top and the masses of ieska and Oglala at the bottom. The fact that internal and external groups continue to attempt to influence Oglala Sioux Tribal Council policy serves as evidence to Robertson that the IRA-organized Oglala Sioux Tribe does exercise institutional power—an elusive capacity which could potentially be harnessed to address the longstanding demands of the people for land and sovereignty.

Perhaps the best historical test of the IRA will come if Russell Means is ever sworn into office as Pine Ridge president. As Means posits in *Where White Men Fear to Tread*, the only legitimate political leadership rests with the old chiefs who authorized AIM's actions on the reservation, and he vows to lead the return of Pine Ridge to traditional sovereignty. With some justification, Means views himself as heir to the tradition of larger-than-life Lakota leaders such as Red Cloud and Sitting Bull. Means first campaigned for office in 1974 during his trial for the Wounded Knee occupation, winning a probable majority of votes in an election marked by fraud and intimidation. He describes his 1984 campaign platform for "immediate independence" as follows:

If I was elected, I would give the BIA and every federal agency from that day until the end of their fiscal year—about six months—to leave Pine Ridge...Every government bureaucrat or official, Indian or not, would have to leave the reservation. We would also terminate all land leases to non-Indians, totally disconnect from the white man's legal strictures. That was within our rights. Every law passed without our consent since the 1868 treaty remains illegal, since for us there is no white man's law except treaty law. (436-7)

In 2004, Means again won the primary election by a large margin but lost in the runoff to Cecelia Fire Thunder, who would become the first female Oglala president.

If Means lost the recent election due to the women's vote, it may be in part because his emphasis on personal toughness and confrontational politics seem somewhat dated in today's climate on Pine Ridge. When Means first ran for office in 1974, paramilitary goons patrolled the reservation with automatic weapons and Oglalas feared speaking openly against the tribal council or the federal government. Barred from the reservation by tribal edict, Means was forced to organize secret campaign rallies on weekends during his federal trial. Today, an independent tribal radio station features

wide-ranging discussions on a range of tribal issues, and traditional Lakota associations and individuals express themselves openly without fear of retribution. The changes which have taken place at Pine Ridge can clearly be attributed in large part to the resistance movement in which Means played a significant part. Whether he will be able to adapt to or take advantage of the new political environment remains to be seen. Means has shown himself to be politically creative and ideologically flexible in diplomatic relations. He broke with many of his AIM comrades (including his brother, Bill Means) over his support for the Miskito rebellion against the ruling Sandinista party in Nicaragua and courted support from such diverse groupings as the Unification Church, the Libertarian Party, and even the white supremacist Posse Comitatus.

Like Means, Mary Crow Dog points out in her autobiographical *Lakota Woman* that the 1970s movement on Pine Ridge was not simply a reflection of political radicalism. “Wounded Knee was not the brainchild of wild, foaming-at-the-mouth militants, but of patient and totally unpolitical, traditional Sioux, mostly old Sioux ladies” (113). Crow Dog places the blame for the conflict squarely on the Indian Reorganization Act for having “brought into being a class of half- and quarter-blood politicians whose allegiance was mainly to Washington.” (113-14) She contends that the act created a huge political divide between those who owed their allegiance to the tribal government and those who viewed IRA councils as a usurpation of traditional leadership. Conceding the positive intentions of the reformers, Crow Dog goes on to write, “Sometimes I think that the do-gooders do us more harm than the General Custer types.” (113)

Crow Dog also points to what may have been the greatest flaw of the Collier policy—the imposition of tribal constitutions creating small governing bodies vested with

executive, legislative, and judicial powers. It is noteworthy in this regard that both the American Indian Movement and the Oglala Sioux Civil Rights Organization, which formed the nucleus of support for the Wounded Knee occupation, were initially formed to defend individual liberties and persons from abuses of political power. Biolsi may find in this focus a failure to confront the colonial roots of the problem, but an equally tenable conclusion is that Native peoples are fervent believers in principles of personal freedom, human rights, and political accountability. If they have been conditioned by history and counseled by tradition to limit the scope of their demands to address the most immediate threat, it does not follow that they have accommodated themselves to colonial boundaries.

The Indian New Deal was in the end a historical improvement, in terms of popular influence, over the adaptive traditional response of sending petitions to Washington protesting the arbitrary actions of colonial Indian agents--even if the act did conflate the roles of tribal and U.S. governmental officials. It did not create the oppressive agency system, but it inevitably took shape within it. To the extent that it failed to meet the expectations it inspired, the IRA also gave rise to a militant pan-Native demand in the 1970s for a radically different paradigm. The act may well have been only the most recent in a long trail of broken treaties, but only time will tell whether tribal peoples will be able to build on (and/or dismantle) its structures in order to exercise a meaningful level of democratic self-determination.

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<sup>1</sup> Kenneth Philip, *Termination Revisited: American Indians on the Trail of Self-Determination, 1933-1953* (Lincoln and London: University of Nebraska Press, 1999) 72-4