

WHITE OPPRESSION AND ENDURING RED TEARS:
INDIAN LAW AND THE REAL RULES FOR WHITE CONTROL OF CROW LANDS

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INTRODUCTION: THE NFU CASE

So I returned, and considered all the oppressions that are done under the sun: and behold the tears of such as were oppressed, and they had no comforter; and on the side of their oppressors there was power; but they had no comforter.¹

The Spaniards pursued the Indians with bloodhounds, like wild beasts; they sacked the New World like a city taken by storm, with no discernment or compassion... The conduct of the Americans of the United States towards the aborigines is characterized, on the other hand, by a singular attachment to the formalities of law... The Spaniards were unable to exterminate the Indian race by those unparalleled atrocities... but the Americans of the United States have accomplished this ... purpose with singular felicity, tranquilly, legally, philanthropic, without shedding blood, and without violating a single great principal of morality in the eyes of the world. It is impossible to destroy men with more respect for the laws of humanity... The more I contemplate the difference between civilized and uncivilized man with regard to the principle of justice, the more I observe that the former contests the foundations of those rights, which the latter simply violates.²

¹Ecclesiastes 4:1

²De Tocqueville, Alexis, Democracy In America, The Henry Reeve Text as revised by Francis Bowen, 2 Vols., (New York: Alfred A Knopf, 1966), Vol. I, pp. 354-355.

As a practitioner of law among the Crow Indians of Montana for twenty years, I have concluded that the stated maxims of Indian law are irrelevant to the real rules that actually control the land and the lives of the Crow people. Let me illustrate this claim by telling the story of a recent decision of the United States Supreme Court,³ one that purports to vouchsafe self-government for the Crow.

This story begins May 27, 1982, the next to the last day of school at the Lodge Grass Elementary School, Lodge Grass, Montana. It was traditional for the teachers and students to celebrate with a picnic. The fifth graders of teacher Jonette Green chose to go to the town park for their outing. The day turned out to be cloudy, but all 21 students brought sack lunches from home, eager to picnic. So, about 11:00 am, they and their teacher walked to the park.⁴

The town is in the center of the Crow Indian Reservation of Montana, on the Little Big Horn River about 13 miles upstream from the site of the famous "Custer Battle." The school sits on a high bluff overlooking the town and valley. The area is at the foot of the beautiful Big Horn Mountains. Breaking hills, with scattered pines and chokecherry bushes, mixed with sagebrush and occasional sandstone outcroppings, make it easy to visualize the country before there was a town or a school. On such a spring day about

³National Farmers Union Insurance Companies v. Crow Tribe of Indians, 471 U.S.845, 85 L ed.2d 818, 105 S.Ct 2447 (1985).

⁴Green, Jonette, interview with James Yellowtail, Lodge Grass, Montana, August 24, 1982.

two hundred years ago, the Crow ancestors of those fifth graders would have been setting up their first spring tepee village along the river bank at the base of the bluffs. There would have been no formal school picnic that day; instead, there would have been the feast that always follows the kill of the buffalo roaming nearby.

But now, the students and teacher descended the bluff to a partly green, partly trashy park with vandalized rest rooms. After lunch and play, the group climbed the bluff back to the school. Ms. Green had to go to the bathroom; leaving the children unattended in the parking lot next to the school, she went into the building. The only bathroom stall was occupied. She passed time by going to the principal's office. When she returned the stall was still occupied. She waited again. Three-quarters of an hour passed before she returned to the students she left unattended in the parking lot.

By then an accident had occurred. A member of the class, Leroy Sage (Not Afraid), was hit by a passing motorcycle. He suffered a compound fracture of the right tibia. Because he was a Crow, he was taken to the agency hospital at Crow Agency, about 15 miles down the Little Horn River Valley. The doctor who set the leg feared a permanent disability.

Leroy's aunt and guardian, Flora Not Afraid, retained me as her attorney and filed a suit against the school for negligence in supervising the boy while he was in the parking lot. Unlike Crow plaintiffs before her, she sued her non-Indian tortfeasor, not in

state court, but in the Crow Tribal Court.⁵

Whites in control of the Lodge Grass School Board refused to appear in the tribal court. Instead, they filed a federal action for an injunction forbidding the tribal court to exercise civil jurisdiction over non-Indians.⁶ The federal court quickly issued a permanent injunction against the tribal court, which by now had granted a default judgment against the school for its failure to appear and defend itself.⁷ Both the tribe and Not Afraid appealed the federal order granting the injunction.

On appeal, the Ninth Circuit reversed the District Court, holding in essence that the Crow Tribal Court did have civil jurisdiction over non-Indians, and that the school board had improperly brought its action as a 28 USC 1331 action.⁸

The school then refused to either post bond or obtain a stay of execution of the tribal court judgment while it deliberated as to whether it would seek certiorari review of the Ninth Circuit decision. Consequently, on August 1, 1984, the honorable Tommy E. Roundface, chief judge of the Crow Tribal Court signed a writ of execution to force satisfaction of the tribal court judgment.

⁵Leroy Sage, a minor, by Flora Not Afraid, his guardian, v. Lodge Grass School District No. 27, Cause No. 82-287, Crow Tribal Court, Crow Agency, Montana, filed September 27, 1982.

⁶National Farmers Union Insurance Companies v. Crow Tribe, Cause No. CV-82-230-BLG (D.Mont.) filed November 2, 1982.

⁷The judgment was for the amount of the prayer in the complaint, \$153,000.00.

⁸National Farmers Union v. Crow Tribe, 736 F.2d 1320 (CA 9, 1984).

Until then, no tribal court had ever levied against any white person on the reservation, let alone a subdivision of the state. Nevertheless, tribal police obeyed the judge by seizing school computers valued at \$50,000.00, and by holding them for sheriff's sale to satisfy the judgment Not Afraid held against the school.

White ranchers in control of 95% of Crow Reservation lands⁹ had assumed for over one hundred years that any of their disputes with reservation Indians would be settled by white judges in state or federal tribunals. The prospect of suits between whites and Indians in tribal forums disturbed them greatly. One of them called the levy by the Indian judge a theft.¹⁰ Headlines of the local newspaper read, "Lodge Grass School Suit Ignites fear."¹¹ One prominent white lamented, "If this keeps up, it won't be safe to walk our streets."¹²

The white-controlled school board hired the largest law firm in Montana to get its property back. A former Republican candidate for governor and state senator took personal control of the case. As the board had previously done, he refused to go to the tribal court for relief; instead, he petitioned the federal

⁹See Annual Report of Caseloads, Acreages Under BIA and Surface Leasing, December 31, 1988, Real Property Management Branch, Bureau of Indian Affairs, Crow Indian Agency, Crow Agency, Montana; Reports No.'s 139, 170 Missouri River Basin Investigations Project, Bureau of Indian Affairs, Billings Area Office, Billings, Montana.

¹⁰ Hardin Harold, August 15, 1984.

¹¹ Ibid., August 8, 1984.

¹² Lundberg, Virginia, interview with Dian R. Belue, Hardin, Montana, August 1985.

district judge, himself a life-long Republican, former U.S. Congressman, Nixon appointee to the federal bench, and a person who made public statements in support of the John Birch Society.¹³ The judge ordered the unconditional return of the computers.

Judge Roundface replied to this federal order by issuing the tribal court's own order reminding the federal court of the tribe's sovereignty.¹⁴ He ordered, only as a matter of comity, release of the computers, if a bond was posted with the tribal court. This judicial act was countered by the whites with a motion to the federal judge to hold the tribal judge and me in contempt for proceeding in tribal court, instead of unconditionally obeying the federal order.

¹³Wolf Point Harold News, May 4, 1961, p. 11. This article quotes Battin, as a U.S. Congressman, saying that, "if the Society's program is to stamp out Communism, I find little to criticize."

¹⁴Leroy Sage v. Lodge Grass School District, supra, order dated December 20, 1984. The Tribal Court ordered: "This court does not seek conflict with any court. This Court has custody of property seized at its order. It will consider the concerns of any, including those of the United States District Court, as it fulfills its duty. . . This Court, as a matter of comity, welcomes the orders of the United States District Court. But, this Court cannot fulfill its solemn duty to the Crow Nation, to justly dispose of property in its custody, unless it exercises its own independent judicial wisdom to make that decision. . . IT IS FURTHER ORDERED that the plaintiffs, Flora Not Afraid and Leroy Sage, be and they hereby are ordered by this Court to make their return to the order of the United States District Court dated December 10, 1984, by certifying their obedience to that Court by the motion made to this Court for this order and by certifying their willingness to obey the orders of both this Court and the United States District Court until the proper jurisdiction of these two competing Courts is determined by the United States Supreme Court."

While waiting for the contempt hearing, Judge Roundface was approached secretly by the attorneys for the school and offered a bribe.¹⁵ They offered that, if Judge Roundface would offer his testimony (by way of affidavit) to the federal court to the effect

¹⁵During the week December 23-28, 1984 school and tribal attorneys engaged in negotiations without my knowledge as Not Afraid's attorney. See Affidavit of Jack Rameriz dated January 3, 1984, NFU v. Crow Tribe, D. Mont., supra. According to Rameriz's affidavit these secret negotiations sought to avoid the problems that would arise if a tribal judge was subpoenaed to testify in the federal court. The negotiations included a suggestion from the tribal attorney that the school attorneys offer to the tribal judge to dismiss contempt charges against him, if he would sign an affidavit stating that but for my motion as Not Afraid's attorney for the bond, the tribal court would have unconditionally released the computers. The school attorneys agreed to give this offer to the tribal judge, and on being told that Judge Roundface would accept, they considered the deal done, and dismissed their contempt charge against Judge Roundface. Thus, as far as they were concerned, they had made the offer to Judge Roundface to dismiss contempt charges, if he would alter his December 20, 1984 order. In fact, he refused the offer, stood by his order, and later testified that he considered he had been offered a bribe by their actions. He testified, in response to a question asking the nature of the agreement for his affidavit, "...that an affidavit was to be made that I was going to be held in contempt. And if I did sign this particular affidavit, that I would be released for contempt. And I got all upset with her (the tribal attorney) ... and I asked her where her ethics were and she informed me, 'Your ethics belong with the Tribe,' and that really upset me mainly because of the fact that the situation at hand was the importance of the Tribal Court maintaining its own consistency and trying to establish a judicial forum for the Tribe was really important. And here she was coming--I looked at it where she was trying to make me change my rulings without having Mr. Belue or any of the parties contacted, and it was very upsetting to me at the time." In The Matter of Clarence Thomas Belue, Cause No. 86-340, Supreme Court of the State of Montana, Trans., p.142. Critics who fail to view the acts of the school attorneys as bribery fail to recognize that the school attorneys were attorneys of record for the school in both the federal and tribal actions. They can not be excused just because their conduct constituted settlement negotiations for the federal action. Their conduct must also be viewed as the conduct of attorneys for tribal litigants explicitly intended to offer, ex parte, something of value to a judge to induce him to change his previous ruling. Viewed this way, the criminality of their conduct is clear: they attempted to bribe Judge Roundface.

that his tribal court order, "contemptuous" of the federal court, was solely my work, then the school attorneys would dismiss the charge of contempt against him. This would shift the focus of the case from the scope of tribal court power to the propriety of the behavior of Not Afraid's attorney.

Judge Roundface refused to sign. But subsequent events continued the desired shift of focus. I, on learning of the attempted bribe of the judge presiding over my client's case, filed a disciplinary motion against the school attorneys before the federal judge. They quickly replied that my motion was totally groundless, was an unwarranted attack on their unblemished reputations, and that my sole motive in complaining against them was to retaliate for the contempt charge they filed against me. Public attention followed the press coverage given these charges and counter charges between the various attorneys; the disrespect the federal court had exhibited against the tribal court attracted no public attention.

I was found in contempt,¹⁶ found to have brought totally groundless charges against the state senator and the other

¹⁶I did what I believe any attorney ought to do. I took the federal order to the tribal court that held the property and moved that it order the release of the property it held, if my client's interest was protected by a bond. The tribal court responded by ordering me to file the tribal court order of December 20, 1984 with the federal court as Not Afraid's return to the federal order, and as certification of her (and her attorney's) obedience to the federal order. See the previous footnote. The federal court treated this sovereign act of the tribal court as an act of contempt. It did so even though its own jurisdiction over this matter was at the time a principal issue in dispute before the Supreme Court.

attorneys, and was ordered to jail. Only an emergency order of the Ninth Circuit Court of Appeals to the federal district court saved me from actual imprisonment.

When the United State Supreme Court reviewed the case --National Farmers Union Insurance Company v. Crow Tribe¹⁷ (NFU)-- it ordered that the federal district court show more respect for the tribal court by staying its hand while the tribal court asserted civil jurisdiction over the persons and property of the reservation.¹⁸ The words of the written decision, of the highest court of the United States of America, called for Crow sovereignty over the lands and peoples of its reservation. For the first time since cattle replaced buffalo it appeared that Crows could have some power over their reservation. But this was not to be.

Back in Montana whites went back to work, this time to neutralize the effect of the NFU decision. Within a week¹⁹ they met to increase the smear campaign against me, who by then had also been elected county attorney and was advocating civil rights for Crows as citizens of the county.²⁰ On August 19,

¹⁷National Farmers Union Insurance Companies v. Crow Tribe of Indians, 471 U.S.845, 85 L ed.2d 818, 105 S.Ct 2447 (1985).

¹⁸105 S.Ct at 2447. The Court ordered the District Court to "stay its hand until after the Tribal Court has had a full opportunity to determine its own jurisdiction."

¹⁹In The Matter of Clarence Thomas Belue, supra., deposition of Edward Whaley, December 22, 1986, p.20.

²⁰I offered extensive testimony outlining my defense of Indian rights while county attorney of Big Horn County, Montana in a voting rights case of Crow and Cheyenne Indians against white

1985, they met in a county government building, as an organized anti-Crow organization called Citizens Rights Organization (CRO).²¹ This organization was linked with other anti-Indian racist organizations around the country, including the KKK.²² They hired a private detective to smear me and another Indian supporter. \$5,000.00 of their monies were spent "in hopes to

officials of Big Horn County. See Windy Boy v. Big Horn County, (D.Mont.) Cause No. CV-83-225-BLG, trans. p. 162-194

²¹A copy of the minutes of that meeting are appended as an exhibit to the deposition of the secretary of CRO. See In The Matter of Clarence Thomas Belue, supra, deposition of Julianne Pitsch, April 18, 1987, Exh. 3.

²²Richard Real Bird, Chairman of the Crow Tribe of Indians furnished an affidavit to the District Court for the District of Columbia whereby he asserted on information and belief that the CRO, "raised funds and sent delegates to meetings which included members of the Ku Klux Klan ('KKK') from Kalispell, Montana, for the purposes of depriving the Crow Tribe and its members of their property and their legal and civil rights." Crow Tribe v. United States, (D. Dist. of Col.) Cause No. 87-2155, Plaintiff's Opposition to Defendant's Motion To Dismiss and Memorandum of Plaintiff's Authorization in Support, Plaintiff's Exh. 4, para. 16. Other anti-Indian organizations of Montana include: All Citizens Equal (ACE) centered in Lake County, Montana, which according to an article in the Washington Post, October 29, 1984, aims to oppose public housing projects which bar non-Indians, civil suits against non-Indians in tribal courts, and cases of pro-Indian job discrimination and exclusion of Indian land from the tax rolls; Montanans Opposing Discrimination (MOD); North Slope Taxpayers Assn. (Cut Bank, Mt). All these Montana organizations are affiliated with Citizens Equal Rights Alliance, Inc., Big Arm, Montana (CERA) which is a "national" organization that includes similar organizations in the states of Washington, Arizona, New Mexico, North Dakota, South Dakota, Nebraska, Minnesota, New York, Michigan, Iowa, and Wisconsin. The Wisconsin affiliate, Stop Treaty Abuse, (STA) and its founder Dean Crist openly admits goals linked to those of the Ku Klux Klan. See p. 16,17, of "Keeping Our Word: Indian Treaty Rights and Public Responsibilities," an unpublished report on a recommended Federal role Following Wisconsin's Request for federal assistance by Rennard Strickland, Stephen J. Hersberg, Steven R. Owen of the University of Wisconsin Law School, dated April 16, 1990 (not the opinions of other faculty or staff or students of the law school).

prevent them from further disruption of the county."²³ His "investigation" of less than one month yielded a 1000 page report on me.²⁴ This report was then filed with the attorney disciplinary board for the state of Montana. Ostensibly the complainant was a group of whites calling themselves, "Concerned Citizens of Big Horn County."²⁵ In fact they operated secretly as a front organization of the CRO.²⁶ The attorney disciplinary board, likewise all white, had no problem dealing with this complaint. With its own "independent" and "impartial" investigator/prosecutor, an attorney whose law firm represented

²³Pitsch Deposition, supra.

²⁴In the Matter of Clarence Thomas Belue, supra., Investigation of Clarence Thomas Belue by Attorney's Service of Montana, Howard L. Peterson, Supervising Investigator, with letter of transmittal of report to Joseph Koebbe, Chairman, Concerned Citizens of Big Horn County, dated September 12, 1985.

²⁵Hardin Harold, October 23, 1985, p.1.

²⁶The committee functioned from June 1985 until October 1985 with no public recognition of its existence, in spite of the fact that it was organized and funded to investigate two elected officials, the County attorney and a county commissioner. The first public recognition of its existence was an article published in the Hardin Harold, October 23, 1985, after it had completed its work. Information for the article came from "a committee member, who asked his name not to be used." Hardin Harold, October 23, 1985, p. 1. The secretary of the committee when deposed, was asked, "Did you think of responding and revealing yourself to the community?" She replied simply, "No." In The Matter of Clarence Thomas Belue, supra., Deposition of Merna Kincaid, February 17, 1987, p. 40. The membership of the committee is also telling. The committee name implies that it represents Big Horn County, 46% of which is comprised of Indians, yet no Indians ever attended any committee meetings or participated in its work. Ibid., deposition of Joseph Keobbe, December 22, 1986, p.32.

one of the whites who voted the CRO money to investigate me²⁷, the outcome was fixed at the beginning. This prosecutor gathered testimony from the Republican governor candidate, the record of "contempt" before the federal judge, and from a host of other respectable white witnesses, who all combined against Judge Roundface and other "discredited" Indian witnesses to make the case against me "crystal" clear. The Supreme Court of Montana, acting on the board's recommendation, suspended me from the practice of law for three months.²⁸

While this diversion tactic created newspaper headlines of the attorney's "contempt" for the federal court, work was also

²⁷This attorney was Robert Smith, a partner of the Firm of Sandal, Cavin and Smith of Billings, Montana. Martindale-Hubbell, lists Scott Land and Livestock Co., as a client of this firm. The foreman of Scott is Brad Spear, one of the seven directors of CRO who voted to spend CRO money to investigate Not Afraid's attorney. See footnote 18 supra. In addition, James Sandall, the senior member of the firm is married to the sister of Dan Scott, the owner of Scott Land and Livestock Co. Scott is a major land owner and leaser of Crow Reservation lands, and one of the violators of Section 2 of the Crow Act described below. Smith himself grew up, in part, as the child of a rancher on Crow Reservation lands. These facts were brought to the attention of the Attorney's disciplinary board by James Thompson of Billings, Montana, a former president of the local bar with a suggestion to the board that Smith be replaced as the "impartial" investigator pledged to view complaints against the attorney impartially, for the reason that he had a conflict of interest that prevented him from acting impartially. This suggestion was rejected out of hand on the grounds that Thompson had no standing to make such a suggestion because he was not the accused's attorney of record.

²⁸In The Matter of Clarence Thomas Belue, supra. See also, 232 Mont.365, 766 P.2d 206 (1988). At the heart of this decision to suspend is a finding that I "intentionally disregarded Federal District Judge Battin's Order to release the property from attachment, and that I sought to evade the order by obtaining an order from Judge Roundface of the Tribal Court." This finding can only be appropriate, if you assume that the Tribal Court is not a sovereign, but merely a puppet of the Federal District Court.

being done to end the real threat to white control, the power of the Crow Tribal Court over Crow Country. Within a few months after the Supreme Court decision, the Bureau of Indian Affairs (BIA) terminated funding for the court. Having no funds of its own, the Crow Tribe could not fund its court.

The BIA went further. It unilaterally declared the court no longer a tribal court, but a BIA supervised "CFR" court, that is, a court to be ruled by the rules of the Federal Code of Regulations instead of Crow Tribal law.²⁹ The Crow Tribe immediately protested. There was no authority for such a declaration. The BIA rescinded its decision, but continued to refuse to fund the court.

Without funding, judges and personnel served for some time for part of their pay; then for a promise of pay; then as volunteers; finally, most went elsewhere. Cases were not heard. White litigants complained to the federal judge, who responded by issuing an order questioning the tribal court's ability to dispense justice, calling it "a kangaroo court."³⁰ The media publicized the order,³¹ but not lack of funding as a cause.³²

²⁹The author obtained a copy of this letter, but has misplaced it. Numerous attempts have been made to obtain another copy from either the BIA or the Crow Tribal Court. No other copy has been furnished.

³⁰Little Horn State Bank v. Crow Tribal Court, 690 F.Supp. 919 (D.Mont. 1988). The same federal judge that handled the district court phase of NFU said: "The Crow Tribal Court, acting as a sort of 'kangaroo court', has made no pretense of due process or judicial integrity." 690 F. Supp. at 923.

³¹The Billings Gazette, July 22, 1988.

In this atmosphere, the BIA decision against funding, initially questionable, seemed appropriate.

The tribal court was caught in a catch-22. No funding, therefore it dispensed no justice; no justice, therefore no entitlement to funding. National Indian policy for self-government mandated by Congress and endorsed by the Supreme Court was, for all practical purposes, a nullity. Civil disputes between Crows and whites on the reservation would again go to state or federal court, or go no place at all.

This account of NFU is given, not as an introduction to another analysis of the current state of Indian law,³³ but to question the relevance of such inquiries.³⁴ NFU paid lip

³²Ibid.

³³This approach is demonstrated very well in works of Ball, Milner S., "Constitution, Court, Indian Tribes." ABA Foundation Research Journal, Vol. 1987, p.1; and Wilkinson, Charles, American Indians, Time and The Law: Native Societies in a Modern Constitutional Democracy, (New Haven, Conn.: Yale University Press, 1987); There is also an extensive case note assessing the significance of NFU that hails it as a marker for Indian sovereignty and makes recommendations for procedures that will enable the tribes to exercise civil jurisdiction over non-Indians of the reservations. See Dussias, Allison M., "Tribal Court Jurisdiction Over Civil Disputes Involving Non-Indians: An Assessment Of National Farmers Union Insurance Cos. v. Crow Tribe of Indians and A Proposal For Reform", Journal of Law Reform, Vol. 20:1, Fall, 1986, p.217. For an excellent article more in keeping with the theme of this paper see: Williams, Robert A., "The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing The White Man's Indian Jurisprudence," Wis. L. Rev., 1986:219 (1986)

³⁴This kind of analysis assumes that court decisions and legislative acts ARE the law, and that justice is achieved by reform of these rules of law. This paper pursues another course, similar to that suggested by Curtis Berkey, saying: "Perhaps it is time to discard the old analysis which seeks uncritically to

service to current policy for Indian self-government.³⁵ But no autonomy followed it.

The state of Indian law, at least for the Crow Reservation, has not progressed past that set out for the Cherokee in the landmark case of Worcester v. Georgia, 1832.³⁶ In that case Justice Marshall then decreed that the laws of Georgia would have no application to the Cherokee Nation. But the people of Georgia, like the whites of the Crow Reservation, devised means by which they could not only ignore the decision, but whereby their ochlocractical rule would appear, not contrary to, but in conformity with law. Likewise, the white people of Big Horn County, Montana, principally the white ranchers, those of the CRO, who control the rich lands of the reservation, over the years have devised various means, most all of which bear the label of

distill every court decision into a test or rule that can be routinely applied in other circumstances...a way should be found to reestablish the concept of consent as the governing principle for the legal and political relationship between the United States and Indian nations. This restructuring would lay a strong foundation for the restoration of much of the autonomy Indian nations have lost at the hands of the United States." Berkey, Curtis, "Indian Nations Under Legal Assault," Human Rights, ABA Section of Individual Rights and Responsibilities, Vol. 16, No. 3, Wtr., 1989-90, p. 23. This paper assumes that pronouncements of Indian law often fail to define the real standard; they only serve as the justification or rationalization for the behavior of those in power; it is their behavior, not the law, that makes the rules in Indian country. Whites "lawfully" control Crow lands, but they do not rightfully do so; their rule is oppressive and violative of the Crow's inherent rights to autonomy.

³⁵The Court recognized both the commitment of Congress and the decisions of the Court to a policy of supporting tribal self-determination and self-government. 471 U.S. at 856.

³⁶Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

"lawful," but which effectively skirt stated National policy and Indian law in favor of their own "law," suited to their continued control of Crow lands.

This thesis questions a basic tenet of American jurists, that America is ruled by the rule of law, not of men. The experience of the author and the documentation contained herein sets forth a more sober theme: Announced Indian laws are usually nothing more than fictions for public pacification and rationalizations for the consciences of the whites who continue to rule. The real law for Indians, especially the Crows, is nothing more than what the whites who control the reservation lands decide it will be.

Support for this thesis will come from consideration of the background and facts of Worcester as the first and leading case demonstrating the existence of this American disparity, by NFU mentioned already, and by a third case entitled Crow Tribe v. United States, et. al., (Crow), a case still pending before the District Court, of the District of Columbia, Cause No. 87-2155. This trilogy of cases is illustrative of the past, present, and apparently the future control of Crow lands.

This paper offers no new theme in Indian-white relations; its story is the story of virtually every Indian nation. Its unique value lies in its documentation. I hope it establishes that the oppression of American Indians--in this case the Crow--by local whites, continues to this very day. Worcester in the last century, NFU a recent Supreme Court decision, and Crow Tribe, indicative of the future, all proclaim Indian self-government, but local whites,

by their various acts, behavior, and methods, make the real law that governs the reservation.

Before detailing these matters, one more introductory statement ought to be made. Both the white and Crow cultures seek to control the land. This shared objective is the principal source of friction between them.³⁷ This paper accepts the statement of the noted anthropologist, E. Adamson Hoebel, that "Land is a sine qua non of human existence" And, that, "All societies are territorial based..."³⁸ This work takes as a given that the culture which wields economic and political control over territory enjoys self-government thereon. Any other culture sharing the space, at least historically, has been deprived of self-governing powers by the dominant culture. Thus, this paper assesses Crow

³⁷Ball, supra, p.14. Ball stated: "One other fact about the Onieda [A Supreme Court decision of the 1985 Term] controversy is generally characteristic of Indian cases: land was the subject. Directly or indirectly, land was implicated in all the term's cases. Tribal identity and religion are tied to the land, and land is, more than anything else, the immediate reason for conflict between Indians and non-Indians." Ball cites NFU as a case demonstrating his point.

³⁸Hoebel, E. Adamson, Anthropology: The Study of Man, (New York: McGraw-Hill Book Co., 1972) p.272. See also the publication of the United Nations entitled, "Let Them Speak." published by the United Nations Department of Public Information, DPI/1047--403--April 1990--5M, p. 5 where an Australian aboriginal leader is quoted as saying: "My land is my backbone...I only stand straight, happy, proud and not ashamed about my colour because I still have land. I can dance, paint, create...as my ancestors did before me... My land is my foundation...Without land we will be the lowest people in the world, because you have broken down our backbone, took away my arts, history and foundation. You have left us with nothing."

self-government in terms of the extent of real Crow control³⁹ over the lands of their reservation.

Before considering Crow control, some consideration of the precedents for white control of Indian land ought to be considered. Worcester, the last of the "Marshall trilogy" that outlined early Indian law for the United States, is the principal precedent.

³⁹I use the word "control" to mean sovereign power over the land in its most extensive sense. This would include not only power over title to the land with the attendant economic benefits, but full judicial, legislative, and executive power over the land and the people who are associated with it.

THE PRECEDENT FOR WHITE LAND CONTROL: WORCESTER V. GEORGIA

Persons and groups reaching for illicit power customarily assume attitudes of great moral rectitude to divert attention from the abandonment of their own moral standards of behavior. Deception of the multitude becomes necessary to sustain power, and deception of others rapidly progresses to deception of self.⁴⁰

The "American Dilemma," referred to in the title of this book, is the ever-raging conflict between, on the one hand, the valuations preserved on the general plane which we shall call the "American Creed," where the American thinks, talks, and acts under the influence of high national and Christian precepts, and, on the other hand, the valuations on specific planes of individual and group living, where personal and local interests; economic, social, and sexual jealousies; considerations of community prestige and conformity; group prejudice against particular persons or types of people; and all sorts of miscellaneous wants, impulses, and habits dominate his outlook.⁴¹

⁴⁰Jennings, Francis, The Invasion of America: Indians, Colonialism, and the Cant of Conquest, (New York: W.W. Norton & Co., Inc., 1976), p. vii.

⁴¹Myrdal, Gunnar, the American Dilemma, (New York: Harper and Roe, 1944), p. xlvi.

To establish the nation... it was necessary to consider the Indian as less than human. That was the first precept of genocide... Genocide depends on the debasement of the victim prior to the act... [Genocide] demands a history of pragmatic ignorance without which the nation could not survive.⁴²

Worcester⁴³ is a foundation case, not only for Indian law, but also for American constitutional law.⁴⁴ But, like NFU, there is also a story that explains the real significance of Worcester.

By 1830 the people of the Cherokee Nation had succeeded at adopting the white man's way while at the same time retaining their national identity. They developed their own written language, were

⁴²Shorris, Earl, The Death of a Great Spirit, (New York: New American Library, 1971), pp. 64-65.

⁴³Worcester v. Georgia, 31 US (6 Pet.) 515 (1832).

⁴⁴At the risk of causing what was called by Charles Warren, "the most serious crisis in the history of the Court", (See Warren, Charles, The Supreme Court in United States History, Boston: Little Brown & Co., 1923, p. 189) Marshall went so far as to declare that: "The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress." 31 U.S.(6 Pet.) 515, 561-562 (1832). Worcester was also cited by more courts during the 1970's than all but three pre-civil war decisions. See Wilkinson, Charles, "Perspectives on Water and Energy in The American West And in Indian Country," 26 S.D.L.Rev. 393, 402 (1981).

universally literate, adopted a written constitution, established a supreme court which published its decisions, and circulated a national newspaper.⁴⁵ The myths and stereotypes⁴⁶ of the day used by whites to rationalize⁴⁷ the dispossession of Indians from

⁴⁵See generally, Strickland, Rennard, Fire and the Spirits: Cherokee Law from Clan to Court, (Norman: University of Oklahoma Press, 1982).

⁴⁶Two excellent works detail the mythological "Indian," "wilderness," "frontier," "savage," and other creations of the minds of the Europeans created to rationalize the taking of the lands and the lives of the first inhabitants. See Berkhofer, Robert F., Jr., The White Man's Indian: Images of the American Indian From Columbus to The Present, (New York: Random House, Vintage Books, 1979); Jennings, Francis, The Invasion of America, (New York: W.W Norton & Co., 1976. For understanding of the psychology of prejudice see: Allport, Gordon W., The Nature of Prejudice, abridged ed., (Garden City, New York: Double Day Anchor Books, Double Day & Company, Inc., 1958). For a history of the legal discourse of colonization of America by the Spanish, English and Americans see: Williams, Robert A., Jr., The American Indian in Western Legal Thought: The Discourses of Conquest, (New York: Oxford University Press, 1990).

⁴⁷The development of the firearm gave Europeans easy military superiority over the natives of the New World and enabled them to seize sovereign control over the land. See Roger Daniels and Harry H.L. Kitano, American Racism: Exploration of the Nature of Prejudice, (Englewood Cliffs, New Jersey: Prentice-Hall, Inc.), p.3. But Columbus took more to the "New World" than just newly developed firearms. He also carried with him the intellectual and legal thinking of his time. Emerging from the dark ages, the Europeans revived classical learning including Aristotelian logic and reason. Concepts of both theology and law were scrutinized for their rationale. Europeans of that day, in addition to technological superiority, needed a certain mind set if they were to actually take the land of other human beings. Their Christian leaders readily provided a "Divinely sanctioned" rationale for their oppressive conquest and colonization of the natives. This rationale has been traced back at least as early as 1246 when Innocent, Pope of the Roman Catholic Church, revealed the "Holy" view he and other faithful held of Ghengis Khan and his successors as infidels and heathens threatening the sovereign power of the Church over the eastern borders of the Roman Empire. See Williams, Robert A., "The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing The White Man's Indian

the eastern seaboard were patently inapplicable to these highly "assimilated" Cherokee. But the perfect merits of the Cherokee claim to sovereignty was no match for the whites of Georgia who coveted Cherokee lands within Georgia borders. Their general practices of racism⁴⁸ eventually led them to succession from the

Jurisprudence," Wis. L. Rev., 1986:219 (1986), pp. 226 et. seq. Williams suggests that the idea generated from a mythical concept of unity and hierarchy derived from the Pauline allegory of the mystical body of Christ (Corinthians 12:12, 27; 6:15; Ephesians 4:4, 16, 25; 5:30; Colossians 2:19) and whereby non-believers were seen as irrational, in error, and most importantly, without rights before the law, especially without rights to own property. Thus, not contrary to law and nature, but in conformity thereto, whites could take the lands of the infidels with a clear conscience. Viewed as non-believers, savages, and uncivilized, they had no rights under the law. Ibid., p. 243. Williams summarizes the holding of Lord Coke's in Calvin's Case, (77 Eng. Rep. 377 [1608]) saying: "Infidels, however, because of the remote possibility of their conversion, were presumed under the common law to be at perpetual war with the King. They were, therefore, without rights in the King's realm." Most importantly, they could have no rights to the land they occupied. Such assumptions enabled Europeans to take the lands of their voyages, including those of the American Indians, with out violation of law or Christian commandment. They had found the mental route around the pronouncement of the prophets and the founder of their religion that "Thou shalt not steal." The language and concepts have varied their shades and even color over the centuries, but whenever the words of the minds of the oppressors are ignored in preference to their conduct, the result is the same: the lands they control were obtained by theft. The foundation for the American version of this rationalization, as it is expressed by American Indian law are the pronouncements of Justice Marshall in Johnson v. McIntosh, 21 U.S.(8 Wheat.) 543 (1823) where he speaks of "impaired. . . rights to complete sovereignty." Ibid. at 573-574. But the result was that the Indians who had held the lands for millennia, had no legal title. Their lands were at the disposal of the whites. They had apparently appeased conscience with law.

⁴⁸Bruce Johansen and Roberto Maestas, Wasi'chu: The Continuing Indian Wars, (New York: Monthly Review Press, 1979). Braroe, Niels Winter, Indian & White: Self-Image and Interaction in a Canadian Plains Community, (Stanford, Calif: Stanford University Press, 1975); Roger Daniels and Harry H.L. Kitano, American Racism: Exploration of the Nature of Prejudice, (Englewood Cliffs, New Jersey: Prentice-Hall, Inc.); Freire, Paulo, Pedagogy of The

union and civil war, and their specific intent at the time of the Worcester controversy, greed for gold, led to the taking of Cherokee lands in the late 1820s.⁴⁹ Greed led their state legislature to enact laws which purported to abolish the Cherokee government, extend Georgia law to Cherokee lands, and distribute those lands among five Georgia counties.⁵⁰

Thus the Georgia legislature defied the terms of treaties the federal government had solemnly made with the Cherokee. For example, Commissioners from the Continental Congress under the Articles of Confederation concluded the Treaty of Hopewell with the Cherokee Nation March 15, 1785.⁵¹ Ostensibly the treaty dealt with the Cherokee as equals, and sovereigns. As Justice Marshall would later note in Worcester, the treaty placed the Cherokee, "in no inferior status."⁵² He would find their

Oppressed, trans. by Myra Bergman Ramos, (New York: Herder and Herder, 1972); Myrdal, Gunnar, the American Dilemma, (New York: Harper and Roe, 1944); Takaki, Ronald T., Iron Cages: Race and Culture in Nineteenth-Century America, (New York: Alfred A. Knopf, 1979).

⁴⁹The gold rush apparently started in 1827. This culminated in the Georgia legislation against the Cherokee in 1828. See Strickland, *supra*, pp. 66-67.

⁵⁰See the acts that purported to outlaw the Cherokee Nation by Georgia law; Act of Dec. 20, 1828, Compilation of The Laws of The State of Georgia (1819-1829) 198 (Dawson 1831); Act of Dec. 19, 1829, *ibid.*, at 198-99. See also Strickland, *supra*, fn. 50, p. 67.

⁵¹7 Stat.18.

⁵²31 U.S.(6 Pet.) at 551. This lip service to Indian sovereignty is inconsistent with Marshall's earlier opinion in Johnson v. McIntosh, *supra.*, fn. 42, whereby he accepted the "diminished status" of Indians which prevented them from holding title to their lands. Actually, the inconsistency of his reasoning provides more rhetoric for the whites attempting to legitimize

willingness to place themselves under the protection of the United States not "a surrender of their national character."⁵³

Marshall would reach similar conclusions as he construed the terms of the subsequent Treaty of Holston of 1791.⁵⁴ He would find that the treaty contained "stipulations which could be made only with a nation admitted to be capable of governing itself."⁵⁵

But the recalcitrant Georgians had powerful allies in Washington who would assist them when the Worcester case was reviewed by the Supreme Court. Most noticeable was the chief executive, Andrew Jackson. He provides a national example of the kind of behavior that helped widen the dichotomy between sovereignty for the Cherokee announced by Marshall and the local law of the Georgians. It was reported by Horace Greeley that President Andrew Jackson said of the Worcester decision: "John Marshall has made his decision; now let him enforce it."⁵⁶ Whether he made the statement is disputed,⁵⁷ but it is generally agreed the statement is representative of his personal views toward

their power. They can cite Marshall for either Ortiz or Victoria assumptions. It really makes little difference which view the decisions adopt if it is white conduct, not the written law, that dictates the extent of Indian control over Indian lands.

⁵³Ibid., at 552.

⁵⁴7 Stat.39.

⁵⁵31 U.S. at 555, 556.

⁵⁶As quoted in Getches, supra, p.45.

⁵⁷Ibid.

the sanctity of Indian rights. Jackson would be instrumental in the inhumane removal policy that forced the Cherokees and others from their lands that had been secured by solemn treaties.⁵⁸

Returning to the Worcester decision itself, it is noted that the state of Georgia refused to appear before the Supreme Court. This is analogous to the subdivision of the State of Montana which refused to appear in the Crow Tribal Court to resolve NFU. In spite of Georgia's absence and the constitutional crisis brewing, fueled by Andrew Jackson, Marshall handed down a decision that clearly decreed sovereignty for the Cherokee. He simply declared that: "The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with

⁵⁸See Cohen, supra, p. 93, 94. A closer look at Jackson's career reveals more about his Indian "policies." In his early career Jackson made a great deal of money by speculating in Indian land. In 1796 he paid \$100 for a half interest in 5,000 acres at the Chickasaw bluffs on the Mississippi. He immediately sold half his share for \$312. He kept the rest until he had negotiated the Chickasaw treaty and opened the area to white settlement; then he sold for \$5,000, a 500-fold increase of his original investment. See Takaki, supra, p. 93, 94. Part of the fame that propelled Jackson to the White House came from his adventures as an Indian fighter. He rationalized that Indians were "savage bloodhounds" and bloodthirsty barbarians." Ibid., p. 95. After the battle of Horse Bend against the Creek in 1814, Jackson sent the cloth worn by the slain warriors to the ladies of Tennessee, and allowed his own "soldiers" to cut long strips of skin from the bodies of the valiant Indians to be made into bridle reins for their horses. They also cut the tip of each dead Indian's nose, collected and counted them to verify casualty figures. Ibid., p. 96.

the acts of Congress."⁵⁹ It was clear. Cherokee land was to be controlled by the Cherokee; Georgia control was repugnant to the Constitution, laws, and treaties of the United States.⁶⁰

Yet, not surprisingly, the people of Georgia found a way to skirt the decision, making the local effect of Worcester little or nothing. Immediately after the decision procedural problems prevented timely enforcement.⁶¹ The case was then mooted by the granting of a pardon to Worcester, the petitioner to the Supreme Court, on the condition that he leave the state of Georgia.⁶² Thereafter, a new treaty and laws were procured whereby the Cherokees were totally removed from their lands.⁶³ The Georgians and Jackson ruled by their influence. Marshall's order against the state of Georgia was never carried out.

Thus, Worcester, a foundation case of American Indian and Constitutional law, became the prototype for disparity between announced Indian law and local law; Worcester, containing the granite words of the great Justice Marshall for Cherokee sovereignty, were ground to powder by Georgia belligerency and

⁵⁹31 US (6 Pet.) 515, 561-562 (1832).

⁶⁰Ibid.

⁶¹Getches, supra, pp. 44,45.

⁶²Cohen, Felix S, Felix S. Cohen's Handbook of Federal Indian Law, 1982 ed., edited by Board of authors and editors, Rennard Strickland, editor-in-chief, (Charlottesville, Virginia: The Michie Company, 1982), p.83.

⁶³Treaty with the Cherokees (New Echota), Dec. 29, 1835, 7 Stat. 478.

Jacksonian greed; Worcester, instead of marking the way to autonomy for a nation of people, became just another broken promise along the trail of tears. The people of Georgia could not, and would not, look at the Cherokee as human beings fully capable of governing themselves and their lands. Greed for gold and dirt prevailed over respect for the rule of law and human rights. Worcester was the prototype for NFU and other cases to come.

CROW PROPERTY CONCEPTS: LAND AND SELF-IDENTITY

Land is a sine qua non of human existence. It is therefore the most important single object of property. All societies are territorial based, and most sustenance is drawn from the soil, either directly or indirectly.⁶⁴

"The Apsaalooke (Crow) have always lived in close association with the land, its animals, its plants and its cycles. They know the buffalo, the chokecherry, and the river as they know their own children. And through this kinship, they have been receptive to any lessons the buffalo or the river have to offer."⁶⁵

It (land) was to the Indian, life itself.⁶⁶

⁶⁴Hoebel, supra, p. 272.

⁶⁵Frey, Rodney, The World of the Crow Indians As Driftwood Lodges, (Norman: University of Oklahoma Press, 1987), p.3.

⁶⁶Medicine Crow, Joseph, "The Effects of European Culture Contacts Upon The Economic, Social, and Religious Life of The Crow Indians." Thesis, M.A., University of Southern California, Los Angeles, California, p. 12.

Crow elders tell what they heard from their grandfathers about the origin of their people and their relationship to their ancestral lands of Montana and Wyoming.⁶⁷ These oral traditions, a version of which follows, approximate what little is known historically, and additionally, provide the roots of present day Crow belief as to their origins and land ties.⁶⁸ This Crow origin story seems to have occurred at some time between 1500 and 1700 when the Hidatsa Indians were living somewhere in what is now Wisconsin.

The story is that the chief of the Hidatsa called in his two sons, No Vitals, and Red Scout, and told them to go on a vision quest. They did so. After four days of fasting and prayer the sons shared with each other the visions they had received. No Vitals, being the older, spoke first, and told how the "force" or spirit instructed him to go toward the mountains, saying that he would find a seed which would grow a sacred tobacco. By adopting that way he would be given further instructions after he found the plant. No Vitals was also told his life would be that of a hunter and warrior, and that he was to take his followers and come toward the Mountains that he would fare well if he did that.⁶⁹

Red Scout's vision told him to stay in one place and till the soil. The sons reported their visions to their father, who

⁶⁷Nabokov, Peter, "Cultivating Themselves: The Inter-play of Crow Indian Religion and History," Ph.D. Diss., University of California, Berkeley, 1988, p. 119.

⁶⁸Ibid.

⁶⁹Ibid., p. 121.

agreed that their stories had both come from "some force." He declared that the camp of their people should divide to fulfill the destinies foretold. This was done.

No Vitals and those who followed him then went on an odyssey for a number of years. They traveled a somewhat circular path around the Western United States going northwest from Wisconsin to Canada, south to Utah, east to Oklahoma, and then north to Wyoming-Montana. There, at the foot of the Big Horn Mountains, near Big Horn, Wyoming, they found the promised sacred tobacco seeds. "That's how we became Crows," said Old Coyote, one of the elders who tells the story.⁷⁰

No Vitals was then taught by the force how to plant the tobacco seeds each year. Ceremonies still practiced today grew out of the sacred tobacco planting. One such ceremony is the Tobacco Society adoption ceremony, which contains symbolism representing the adoption of the Crow people by their lands surrounding their sacred Big Horn Mountains. By practice of this ritual they reinforce their belief that they are the adopted children of their lands they called Crow Country. Peter Nabokov, anthropologist and student of Crow history, asserts a link between the Crow people and Crow Country.⁷¹ They developed a sense of identity, unity, and nationalism out of the origin story and the tobacco ceremony. Each year they renewed their links to Crow Country by ritual, renewing their understanding of

⁷⁰Ibid., p. 122.

⁷¹Ibid., p. 351.

themselves as orphans who had wandered through out the West, until they were nurtured and adopted by their sacred lands, Crow Country. Thus, Crow legacy embodies the concept of a chosen people and a promised land,⁷²--a concept found in the origins of other nations such as Israel, which, according to the Hebrew "origin story," is a nation born of God's covenant with Abraham that the "Promised Land" of Canaan would be for him and his seed "an everlasting possession."⁷³

The numerous statements of Crow elders make evident the impact of their origin story, rituals, and experiences upon the thinking of the Crow people.

In 1885, Henry J. Armstrong, the government agent placed over the Crows, reported to the Secretary of the Interior, "I do not think there is any Crow Indian who feels that he needs to be saved. They think they are the chosen people."⁷⁴

Iron Bull, chief during the buffalo days, expressed it another way. After drawing a circle on the ground for Father Prando, missionary to the early reservation Indians, he located points around the circle for the country of the Sioux, Piegans, Snakes, Flatheads, and others. Then, placing the Crow in the middle, he said, "The Great Spirit put us right in the middle of

⁷²Ibid.

⁷³Genesis 17:8

⁷⁴Annual Report of the Commissioner of Indian Affairs to the Secretary of Interior for the Year 1885, Government Printing Office, Washington, D.C.

the earth, because we are the best people in the world."⁷⁵ And on another occasion he explained to William Clark that the Great Spirit founded Crow Country for the Crows by revelation with the divine words:

This is your country; the water is pure and cold; the grass is good. It is a fine country, and it is yours. I made all this country round you. I have put you in the center. I have put these people round you as your enemies. They will fight you and keep fighting you, until you are greatly reduced in numbers, and then I will come and help you.⁷⁶

Again, the Crow view is apparent in a statement of Sees-the-living-bull to S.C. Simms,⁷⁷ telling the words of Old-Man (a mythical being) who said:

The land I gave you is the best of lands made by me and upon it you will find everything you need--pure water, vegetation, timber, game, etc. I have put you in the center of it and I have put people around you as your enemies. If I had made you in large numbers you would be too powerful and would kill the other people I have created. You are few in number but you are brave.⁷⁸

⁷⁵Nabokov, *supra*, p. 359.

⁷⁶Clark, William P., The Indian Sign Language, (Lincoln: University of Nebraska Press, Bison Books, [1885] 1982), p. 137.

⁷⁷Simms, S.C., Traditions of the Crows, Field Columbian Museum, Anthropological Series, 2(6): 218-324, p. 282.

⁷⁸Nabokov, *supra*, p. 360.

And the statement of Rotten Belly to Robert Campbell of the Rocky Mountain Fur Company, reported by Captain Bonneville through Washington Irving⁷⁹ goes as follows:

Crow Country is a good country. The Great Spirit put it exactly in the right place. While you are in it you fare well. Whenever you are out of it, which ever way you travel, you fare worse.

If you go to the south, you have to wander over great barren plains; the water is warm and bad, and you meet the fever and ague.

To the north it is cold; the winters are long and bitter, with no grass; you cannot keep horse there, but must travel with dogs. What is a country without horses? On the Columbia they are poor and dirty, paddle about in canoes, and eat fish. Their teeth are worn out; they are always taking fish-bones out of their mouths. Fish is poor food.

To the east, they dwell in villages; they live well; but they drink the muddy water of the Missouri-- that is bad. A Crow's dog would not drink such water.

About the forks of the Missouri is a fine country; good water; good grass; plenty of buffalo. In summer, it is almost as good as Crow Country; but in winter it is cold; the grass is gone; and there is no salt weed for the horses.

Crow Country is exactly in the right place. It has snowy mountains and sunny plains, all kinds of climate and good things for every season. When the Summer heats scorch the prairies, you can draw up under the mountains, where the air is sweet and cool, the grasses fresh, and bright streams come tumbling out of the snowbanks. There you can hunt elk, the deer and the antelope, when their skins are fit for

⁷⁹Irving, Washington, Astoria or Anecdotes of an Enterprise Beyond the Rocky Mountains, (Philadelphia: J.B. Lippincott Co., [1836] 1961), p. 164.

dressing. There you will find plenty of white bear and mountain sheep.

In the Autumn, when your horses are fat and strong from the mountain pastures, you can go into the plains and hunt the buffalo, or trap beaver on the streams. And when Winter comes on, you can take shelter in the woody bottoms along the rivers. There you will find buffalo meat for yourselves, and cottonwood bark for your horses. Or you may winter in Wind River Valley, where there is salt weed in abundance.

Crow Country is exactly in the right place. Everything good is to be found there. There is no place like Crow Country.

Curley, the Crow scout who rode with Custer, refused to agree to cede Crow lands to whites, saying:

The soil you see is not ordinary soil--it is the dust of the blood, the flesh and bones of our ancestors. We fought and bled and died to keep other Indians from taking it, and we fought and bled and died helping the Whites. You will have to dig down through the surface before you can find nature's earth, as the upper part is Crow.

The land as it is, is my blood and my dead; it is consecrated; and I do not want to give up any portion of it.⁸⁰

Finally, the words of Plenty Coops, to his biographer Linderman, (called by the chief, Signtalker) pleading with the white man not to take the lands of the Crow:

We love our country because it is beautiful, because we were born here. Strangers will

⁸⁰Seton, Ernest Thompson, The Gospel of the Red Man, (New York: Doubleday Dorn, 1936), pp. 58, 59.

covet it and some day try to possess it, as surely as the sun will come tomorrow. Then there must be war, unless we have grown to be cowards without love in our hearts for our native land. And whenever war comes between this country and others you people [whites] will find my people pointing their guns with yours. My heart sings with pride when I think of the fighting my people, the red men of all tribes, did in this last great war; and if ever the hands of my own people hold the rope that keeps this country's flag high in the air, it will never come down while an Absarokee warrior lives. Remember this, Sign-talker, and help my people keep their lands. Help them hold forever the Pryor and Big Horn mountains. They love them as I do and deserve to have them for the help they have given the white man, who now owns all.⁸¹

Perhaps this string of quotes is excessive, but somehow the place of land in the Crow world must be emphasized.

The importance of land to Crows is reinforced by their native religious beliefs. From their origin story it is evident that they do not see land as an economic object, to be personally possessed, to enrich, as Europeans do. Crows see land more as if it were another being, living, a spirit, a giver of life, something very personal, and definitely not something for barter or trade. Such a "being" is not something that can be the subject of a treaty; it can not be sold or traded, as the whites required of all Indians.

This is not to deny that Crows valued their lands for

⁸¹Linderman, Frank Bird, Plenty Coups: Chief of the Crows, Lincoln: University of Nebraska Press, Bison Books, [1930] 1962), pp. 307, 308.

their economic value. Crow Country provided virtually everything Crows needed for the sustenance requirements of their subsistence economy. The grasses nurtured plenty of buffalo that gave them not only food, implements, and fur clothing, but their shelter, the tepee. The buffalo hunt supplied their needs for work, recreation, social life, government, religion, and worship. When the whites killed the last buffalo in 1884, the Crows like other plains Indians were disoriented, lost. Two Leggins was so affected he would not talk about it, saying, "Nothing happened after that. We just lived."⁸² And Plenty Coups was similarly affected, saying, "When the buffalo went away the hearts of my people fell to the ground, and they could not lift them up again. After this nothing happened."⁸³

However, in spite of loss of the buffalo, Crow leaders continued determined to preserve their home lands. This is well illustrated by events of 1908. By then factions were splitting the people, some following white influence toward assimilation, and others hoping for some return of the old ways. But when whites pressed to open the reservation to burgeoning numbers of homesteaders, the quarreling Crows immediately and unanimously united to oppose the proposal.⁸⁴

⁸²Nabokov, supra, p. 197.

⁸³Linderman, supra, p. 311.

⁸⁴Hoxie, Fredrick E., "Building a Future on the Past: Crow Indian Leadership in an Era of Division and Reunion," Indian Leadership, Walter Williams, ed., (Manhattan, Kansas: Sunflower University Press, 1984), p. 82.

Similar unity amid conflict has been demonstrated repeatedly to this day. For example, in the 1950's the whites mounted great pressure to build a dam in the Big Horn Canyon for their own hydro-electric and recreational purposes. Their influence over Congress and subversion of Crow interests to achieve their objective is well documented.⁸⁵ Similarly, white interests have tried to build a "transpark highway through the mountain recreation area adjacent to the Big Horn Lake and Dam. Crows have opposed these efforts for over thirty years, in spite of the fact that economically such a development would benefit the tribe.

Crow history reveals other roots of Crow affection for their lands. In the buffalo days the Crow Nation was organized as a war society dedicated to the defense of its buffalo lands.⁸⁶

Defense of their lands was a most vital objective. The Crow were surrounded by enemies who constantly vied for the lush buffalo grasses and numerous streams of water that cross Crow Country. To the north were the Blackfeet; to the east the Sioux; to the south the Cheyenne and Arapaho; to the west the Shoshone, Flathead and Nez Perce. And the Crow were vastly outnumbered by most of the these tribes. James Mooney, Bureau of American Ethnology, estimated the populations of these tribes in 1780 as

⁸⁵Brooke, William M., "Yellowtail Dam: A Study in Indian Land," Honors paper submitted to the Department of History, Carroll College, Helena, Montana, 1981.

⁸⁶Curtis, Edward, The North American Indian, vol. 4, "The Apsaroke or Crows, (New York: Johnson Reprint, [1909] 1970), p. 39; Medicine Crow, supra, p. 55; Stafford, John Wade, "Crow Cultural Change, A Geographical Analysis." Thesis (Ph.D) Michigan State University, 1971, pp. 2, 15.

follows:⁸⁷

Blackfeet	15,000
Cheyenne	3,400
Arapaho	3,000
Crow	4,000
Sioux	25,000
Shoshone	1,500
Nez Perce	4,000

Hence, the Crows, a nation of 4,000, were surrounded by 51,900 enemies. To compensate for their lack of numbers they perfected their skills as horsemen and as fierce warriors. They were the most wealthy plains Indians in terms of numbers of horses⁸⁸ and were among the most formidable warriors.⁸⁹

⁸⁷Lowie, Robert H., Indians of the Plains, (New York: American Museum of Natural History, 1954, reprint, Lincoln: University of Nebraska Press, 1982), pp. 10, 11.

⁸⁸Denig, Edwin Thompson, Five Indian Tribes of the Upper Missouri, John C. Ewers, ed., (Norman: University of Oklahoma Press, [1865] 1961), 144. Denig's 1865 observation was: "The Crow are perhaps the richest nation in horses of any residing east of the Rocky Mountains. It is not uncommon for a single family to be the owner of 100 of these animals."

⁸⁹Oswalt, Wendall H., This Land Was Theirs: A Study of North American Indians, 3rd Ed., (New York: John Wiley & Sons, 1978), p. 272. His research prompted his conclusion: "As warriors the Crow were daring and merciless enemies. In open battles, especially if a number of Crow were killed, they slaughtered men and then tortured the wounded to death. Hands and feet were cut off, eyes gouged out, and intestines exposed to be pierced with sharp sticks."

Defense needs influenced most facets of Crow culture, thereby accentuating Crow bonding to their lands. Their form of government centered around chiefs who gained status only by feats on the field of battle; their clan system influenced the organization of war parties; their religious rites and symbols influenced morale--all had ties to warfare and its institutions. Even though the need to defend Crow lands from other tribes ended with the coming of reservation life, Crow institutions and practices continue to reinforce the Crow attachment to the land. Land is a sine qua non of Crow culture.

In summary, the Crow culture maintains a very close and vital relationship with Crow lands. Their efforts to preserve their land has been a fight to retain their identity, their autonomy as a distinct people. Loss of land control threatens their culture. This threat is recognized by them in the form of a prophesy they tell in association with their origin story, that if they ever cease to perform the tobacco ritual symbolic of their adoption as the children of their lands, they will cease to exist as a people.⁹⁰

The white man that came to Crow Country in the 19th century, took control, and continues to control Crow lands, and consequently, the lives of the Crow people today. How whites came to control the Crow Indian Reservation is the next subject for

The brains and hearts of the dead were hurled in the faces of the living while the victors scorned their victims."

⁹⁰Denig, supra, p. 189.

consideration.

INDIAN-WHITE LAND DISPUTES: THE CESSION OF CROW LANDS

When the Crow Reservation shall have been opened for settlement, Billings will receive a great impetus, for it is situated at the natural outlet for the most of that country, and when the big ditch, which is in course of completion, brings sufficient water to irrigate the fertile valley in which it is located, its population will be trebled.

Within fifty miles of this town, nearly one hundred thousand head of cattle range. This is the outfitting and shipping point for the cattle men; and their trade, with that of the farmers and the freighters to the Maginnis mines, make quite a lively business. Two papers are published there, which are well supported. Coal in great quantities has been found on the slopes of the Bull Mountains, within twenty miles of the town, and a branch road to the mines from this place is an assured fact for 1884.⁹¹

St. Louis, Nov. 17 [1884] -- The first National convention of cattlemen ever held in the country opened its session this morning. Delegates are present representing nearly all the western states and territories as well as several eastern states and Mexico, England and Scotland. . . General Sherman also responded, and made a brief address of a general nature. He concluded as follows: I used to regret to see buffalo, elk and antelope disappearing from the plains, and see in their stead a race of scrawny, longhorned, Texas cattle. I can now see, however, it was the decree of nature, and that you gentlemen have reared a race of twenty millions of fine breeding cattle, which supplies the world with meat.⁹²

⁹¹Topping, E.S., The Chronicles of the Yellowstone, (Minneapolis: Ross & Haines, Inc., 1883), p. 240, 241.

⁹²The Billings Harold, November 18, 1884.

It begins to look as if there were a fair prospect of this immense reservation being thrown open in spite of the obstinacy of the Crows in refusing to treat with the Indian Commission last summer. A well authenticated report comes that Secretary Teller, will recommend in his annual report the cutting down of the great Crow Reservation, which now amounts to about 3,000 acres to each Indian. He says that while the whole power of the government is just now being exerted to hinder a white man from getting more than 160 acres of land, although he may be ready to make it productive at once, there is sentiment which demands that an Indian shall not keep 1,000 acres or more which he makes no use of and is willing to part with if he is left alone. He is in favor of cutting down all the great reservations to the actual needs of the Indians, paying them just what the surplus is worth and spending the money for the education of their children and furnishing them supplies, farming implements, etc. He does not regard it as a matter of sentiment, but good public policy and common business sense.⁹³

There is evidence that the first whites to Crow Country came in 1743, the exploration of the La Verendrye brothers of France who were seeking a passage to the Pacific Ocean.⁹⁴ Others followed, including the Lewis and Clark expedition.⁹⁵ But the first white to make significant contact was Manuel Lisa, a fur

⁹³Daily Harold, Billings, Montana, October 23, 1884.

⁹⁴Brown, Mark H., The Plainsmen of the Yellowstone: A History of the Yellowstone Basin, (New York: G.P. Putnam's Sons, 1961), p.22, 23.

⁹⁵Ibid.

trader. He was in St. Louis in 1806 when Lewis and Clark returned from the Rocky Mountains. He listened intently to their stories of many beaver on the tributaries of the Yellowstone. Desiring a fur fortune, Lisa hired John Colter and George Druillard, two scouts and mountain men of the Lewis and Clark expedition; and on April 19, 1807, they set out with forty-two men and four keel boats, up the Missouri for the Yellowstone. They sought as trading partners the Crow, already identified as a people friendly to the whites, and living in a land abounding in beaver.⁹⁶

On November 21, 1807 Lisa built a fort, called Lisa's Fort, on the Yellowstone, at the mouth of the Big Horn.⁹⁷ This fort was the first permanent building of the white man in what would be the state of Montana. More importantly, it was built for the purpose of establishing a trading relationship with the Crow.

Lisa did not seek trade with the Crows solely because they were friendly and inhabited a fur paradise. The Crow were already established traders.⁹⁸ They were the richest plains

⁹⁶Oglesby, Richard E., Manual Lisa and the Opening of the Missouri Fur Trade, (Norman: University of Oklahoma Press, 1963), p.54.

⁹⁷Hamilton, James McCellen, History of Montana From Wilderness to Statehood, (Portland, Oregon: Binfords & Mort, Publishers, [1957] 1970), p.66.

⁹⁸Hoxie, Fredrick E., The Crow, (New York: Chelsea House Publishers, 1989), pp. 50-53; Lowie, supra, p. 115.

Indians in the most common item of barter, horses.⁹⁹ The location of their lands was ideal. They had been acting for some time as middle men for trade between the Pacific coast and Rocky Mountain areas on one hand, and the plains on the other. They maintained trade ties with the Mandan, Hidatsa, and Arikira to the east, and to the west with the Nez Perce, Flathead, and Shoshone. Even their perpetual enemies, the Sioux, Cheyenne, Blackfeet, and Arapaho, were in alliance with them at certain times, for purposes of inter-tribal trade.¹⁰⁰

The era of trade begun by Lisa in 1807 lasted well into the 1870's and to a large degree was of mutual benefit to both parties. This era of reciprocity peaked with the signing of the Fort Laramie Treaty of 1851 (11 Stat.749). This treaty recognized essentially all of Crow Country as part of The "Crow Nation," over 38 million acres, and limited white intrusion to that necessary to build military roads and forts. Probably most important to the Crow at the time, it pledged the Sioux, Cheyenne, Arapaho, and other tribes who also signed the treaty, to "abstain in the future from all hostilities whatever against each other...[to] make an effective and lasting peace."¹⁰¹

⁹⁹Denig, Edwin Thompson, Five Tribes of the Upper Missouri, John C. Ewers, ed., (Norman: University of Oklahoma Press, [1856] 1961), p. 144.

¹⁰⁰Weist, Kathrine M., "An Ethnohistorical Analysis of Crow Political Alliances," The Western Canadian Journal of Anthropology, Vol. VII, No. 4, p. 49.

¹⁰¹Ibid., Art. 1.

By the terms of this treaty the Crow Nation was given sovereign recognition, with virtually all Crow homelands guaranteed; their enemies pledged to peace, and that peace was to be preserved by an alliance with the ever increasing might of the whites. The Treaty of 1851 called for the perpetuation of the Crow Nation.

However, it must be noted that these benefits of this treaty were not conferred out of any white policy respecting Crow interests. Crow interests were merely compatible with white interests at the time. Whites then wanted furs, not lands. Fur traders had no direct need for the land, and depended at least in part upon the Crows to trap and trade for the furs they sought. This relationship was compatible with the principal Crow use of the land, the pursuit of the buffalo.

But the fur trade was dying, even as the treaty was signed in 1851; white fur traders were replaced during the latter part of the century by permanent white settlers. Immigrants, miners, and cattlemen sought the land itself. Although the first waves of these whites to the west headed for Oregon (1840s) and California (1850s), by-passing Crow Country, they stirred interest in Crow lands. A number of publications of this period reported the beauties of Crow Country. Washington Irving described the area in widely read works such as Astoria (1836) and Adventures of Captain Bonneville (1837). The published reports of John C. Fremont and other works also increased white interest in the

land whites would come to call Montana.¹⁰²

The California gold rush of 1849 spurred interest in the whole West. In 1857, a man by the name of Granville Stuart and his brother James, drove a herd of cattle into what would become Montana.¹⁰³ More will be said about Granville Stuart hereafter. These brothers were among the very first whites to settle in Montana.

In 1863 John Bozeman blazed the Bozeman trail across Crow lands, a violation of the Treaty of 1851 which allowed only government established roads.¹⁰⁴

Discovery of a large gold find at Alder Gulch, May 26, 1863, brought thousands of people to "Montana."¹⁰⁵ By May 26, 1864, the day Lincoln signed the bill creating the Montana Territory, there were 20,000 whites in Montana.¹⁰⁶ On that day the white settlers became a sovereign people. There seems to be a direct correlation between their ascendancy to political power over the lands of Montana, and deterioration of Crow power over Crow Country.

¹⁰²Burlingame, Merrill G., an unpublished paper entitled "Historical Background For the Crow Treaty of 1868," prepared for the case before the Indian Claims Commission, entitled, Crow Tribe of Indians v. United States of America, Docket No. 54, submitted to Wilkinson, Cragun, Barker and Hawkins, Attorneys at law, Washington, D.C.

¹⁰³Hamilton, supra., p. 132.

¹⁰⁴11 Stat.749, Art. 2.

¹⁰⁵Hamilton, supra., p.275.

¹⁰⁶Ibid., p. 279.

Thereafter, events occurred with almost lightning speed. On July 2, 1864, the Northern Pacific Railroad obtained its charter from Congress for building a northern rail route from Minnesota to Washington. Land grants of alternate sections along the route were promised to the railroad developers. With the end of the Civil War, the Union Army turned its soldiers to the "Indian Problem." Soon forts and expeditions appeared in Montana to aid the "tide of empire".¹⁰⁷

The first cattle from Texas were driven into Montana by Nelson Story in 1866.¹⁰⁸ After trespassing across Crow lands, he drove them to a point near Bozeman, Montana. Story's drive thus started the herds of Texas cattle to Montana, to Crow Country. It also signaled the beginning of what would be called the "cattle barons" of Montana, an exclusive group of whites who sometimes became rich, sometimes went bust, but who gained control and keep control of Crow lands until this day.

These cattle barons, and the other 20,000 whites recently arrived in Montana, wanted roads, steamboats, railroads, cattle, grain, and gold. They needed Crow lands for railbeds, grazing and minerals. The Treaty of 1851 blocked realization of their vision of a Montana Empire. This white pressure for empire led to the next treaty, of 1868, which took from the Crows, without compensation, 30 of the 38 million acres of Crow Country. How this was done is not as instructive for understanding Crow-white

¹⁰⁷Burlingame, supra, p.52.

¹⁰⁸Ibid., p. 48.

relations as is a consideration of the justification given by the whites for doing so. It provides an example of white use of law to oppress which is reminiscent of the Spanish and Cherokee experiences.

Granville Stuart, mentioned above, wrote his own diary and views on Montana from which a great deal can be learned.¹⁰⁹ He established himself as a national authority on the subject of Montana.¹¹⁰ Called Mr. Montana by one biographer,¹¹¹ Stuart was a miner, legislator, artist, librarian, author, cattle rancher, and vigilante. He recorded in his journal a trip he took to Crow Country looking for grass for his cattle, noting that the reservation "would be an ideal cattle range."¹¹²

Having viewed the lush grass and plentiful water, Stuart adopted the view popularized by President Jackson a generation before, and by Ortiz centuries before: he stated Crows were the lowest of Indians, calling them "the most treacherous and insolent of all the native tribes" who "professed friendship for the whites but never lost an opportunity to steal horses or murder white men

¹⁰⁹Stuart, Granville, Pioneering in Montana, (Lincoln: University of Nebraska Press, Bison Books, [1925] 1977).

¹¹⁰William Kittredge and Steven M. Krauzer, "Mr. Montana" Revised: Another Look at Granville Stuart," Montana The Magazine of Western History, Autumn, 1986, Vol. 36, No. 4, pp. 14-23.

¹¹¹Treece, Paul Robert, "Mr. Montana: The Life of Granville Stuart, 1834-1918," Ph.D. dissertation, Ohio State University, 1974.

¹¹²Stuart, supra., p. 122.

if they got a chance."¹¹³ Of course, the Crow never fought the whites, and the truth of their boast of having never killed a white is generally accepted by authorities.¹¹⁴ But Stuart needed to rationalize the taking of Crow lands. He did so by calling the Indian reservations of Montana breeding grounds for a race of permanent and prolific paupers.¹¹⁵ The height of rationalization for this "father" of Montana seems to have come when he headed what was called "Stuart's Stranglers," a vigilante band that executed seventeen victims in less than one month for allegedly stealing cattle.¹¹⁶ Before he had finished thirty-five human beings were killed,¹¹⁷ and some may have been innocent of wrong doing.¹¹⁸

Of course, Stuart was not the only white with his eyes on Crow lands. As mentioned, Nelson Story drove the first cattle from Texas to Bozeman, Montana in 1866. By 1869 the transcontinental railroad was completed. Thereafter one could take the rail to Utah, and then trek by wagon the reduced distance of less than 500 miles to Montana. This route offered an additional advantage in that it avoided the Bozeman trail which, exposed

¹¹³Ibid., p. 59.

¹¹⁴Denig, supra, p. 148.

¹¹⁵Stuart, supra., p.224.

¹¹⁶Kittredge, supra., pp. 19.

¹¹⁷Jon H. Rosenbaum and Peter C. Sederberg, eds., Vigilante Politics, (Penn. Station: University of Pennsylvania Press, 1976), p.85.

¹¹⁸Kittredge, supra., p. 19, 20.

travelers to warring Sioux and Cheyennes.

By 1868 settlers also gained the benefits of the provisions of a treaty negotiated with the Crow that year.¹¹⁹ The treaty ceded over 30 million acres of the "Crow Nation" recognized by the treaty of 1851. Before the ink was dry on the 1868 treaty, the Montana Territorial Legislature objected that even the remaining 8 million acre reservation was being wasted by the Crows, and therefore, ought to be opened for white settlement. According to a memorial of the legislature, these lands, if left under Crow control, would "arrest the tide of empire in the territories."¹²⁰

By 1880 this white clamor for Crow land reached a fevered pitch. Among others J.J. Donnelly, a lawyer and speaker of the territorial legislature, warned Governor Potts that "cattlemen were beginning to take 'matters into their own hands' regarding roving bands of Blood, Crow, and Sioux." Potts in turn passed the warning to the Commissioner of Indian Affairs, pleading for more cessions of Crow lands.¹²¹

On June 9, 1881 Granville Stuart and 74 other ranchers sent a petition to the commissioner complaining about the Crow and

¹¹⁹15 Stat.649

¹²⁰Montana Laws, 1867, pp. 273-279.

¹²¹Smith, Burton M., "Politics and the Crow Land Cessions", Montana The Magazine of Western History, Aut., 1986, Vol. 36, No. 4, pp. 31.

other Indians, calling for federal action.¹²² Congressional response was two-fold. First, the Act of April 11, 1882 (22 Stat. 42) ceded another 1.5 million acres. Now the Crow had a little over 6.5 million acres. Second, Congress passed the Act of July 10, 1882 (22 Stat.157) taking a 400 foot right-of-way across the entire reservation to make a bed for the Northern Pacific Railroad.

Whites continued their unrelenting quest for Crow lands. Stuart was quoted by the Billings Daily Gazette, June 28, 1885 as saying:

It is about time that we drag this disgraceful Indian business down from the heights of sentimental bosh and religious rascality. Give them their lands in severalty, a whole section apiece if deemed necessary and as widely scattered as possible. Throw open all the rest of their land to settlement. This breaks up their tribal organizations and sandwiches them among the whites where they must learn by force of example.¹²³

This kind of pressure produced the cession of the Act of March 3, 1891 (26 Stat.989) ceding another 1.8 million acres, the foothills of the Beartooth Mountains, the principal part of which had been lost in the earlier cession. Thereafter, only 4.5 million acres remained.

Then in 1904, the Act of April 27 (33 Stat.352) took another 1.1 million acres. Crow Country, once over 38 million acres,

¹²²Ibid.

¹²³The Billings Daily Gazette, June 28, 1885.

the size of Wisconsin, was reduced to about 3 million acres. Then other railroad right-of-ways were taken.¹²⁴ The final blow to the Crow was the taking of an area for the City of Hardin by the Act of August 31, 1937.¹²⁵ This act made Hardin the major off-reservation distribution point for alcohol to the Crows.¹²⁶

After all cessions, the reservation stood at about 2.28 million acres,¹²⁷ where it has remained. Even these few acres remaining have come under virtually total white control by another legal device of the whites, leasing.

¹²⁴Smith, supra, p. 33.

¹²⁵50 Stat.884.

¹²⁶Charles Crane Bradley, Jr. and Susanna Remple Bradley, From Individualism To Bureaucracy: Documents On the Crow Indians 1920-1945, an unpublished work of authors dated 1974 in the Little Big Horn College Library, pp. 133, 134.

¹²⁷Missouri River Basin Investigation Project, Report No. 139 (1953), Report No. 170 (1963), Bureau of Indian Affairs, Billings Area Office, Billings, Montana.

LEASING OF CROW LANDS: CROW TRIBE V. UNITED STATES,
AND WHITE CONTROL TODAY

His locale was the leased 3,800,000 acre Crow Indian Reservation known as the Antler Ranch, the brand itself used by his father in 1884.

* * *

Livestock, Matt put it, was just a means of cashing in on grass. He considered himself primarily in the grass business. His peak livestock capacity was 20,000 steers or 100,000 sheep and usually he ran some of each.

At one time, his grazing cost was so low that he could take on a partner's steers for 50 cents per head per month; provide all the range at 25 acres per head, the labor and paper work; guarantee the return of principal with 5 percent interest; throw in a 2 percent loss clause and still have a good deal for himself, even if the steers just held the money together. Usually they did much better than that and successful partners included Adolf Swartenberg, Prince of Luxenberg, Floyd Skelton of Idaho Falls, Idaho, Ralph Cunningham of Billings, Montana, Ned Randolph of Denver, Colorado, and Robert Cobb of Hollywood California.¹²⁸

Indians have been victims of war and aggression for most of the past five hundred years. The so-called Indian wars were always fought over the issues of land and resources. We have always had something the Wasi'chu [greedy whites] wanted. Even after five

¹²⁸Big Horn County Historical Society, publisher, Lookin Back: A History of Big Horn County, Montana, (Billings, Montana: Western Printing Co., 1976), p. 257. This statement about Matt Tshchirigi, the cattle baron, was contributed to the Big Horn County Historical Society by his grand-daughter, Geri Tshchirigi Glenn.

hundred years of war and genocide, we still have something they want.¹²⁹

Outright greed is certainly a cause of prejudice. If we took a historical over-view of feelings against colonial people, Jews, and aborigines (including the American Indian), we should probably find the rationalization of greed is a principle source. The formula is simple enough: Greed [to] grabbing [to] justifying.¹³⁰

The government never could stop whites from doing what they wanted with Indians. If they wanted Crow minerals, they got it. If they wanted Crow land, they got it. If they wanted Crow money, they could get that, too.¹³¹

Walsh [Senator Thomas J. Walsh of Montana] wanted Section 2 in the Crow Act of 1920 to get even with the Republican cattle barons; he didn't do it to help the Crows.¹³²

As a method of white control, leasing of Crow lands actually started in 1882 when a battalion of cavalry under Major Merrill was stationed near Billings on the south side of the

¹²⁹John Redhorse speaking for the introductions to: Johansen, supra, p. 11

¹³⁰Allport, supra, p. 347.

¹³¹Bradley, From Individualism To Bureaucracy, supra, p. 359.

¹³²Pease, Eloise (Crow historian), interview with author, March 1, 1990, Little Big Horn College, Crow Agency, Montana.

Yellowstone River.¹³³ At the time, James L. Ash supplied milk for the soldiers and was allowed to graze his cows on the reservation. Soon others were grazing and trespassing with cattle. By 1891 the Indian agent could not stop the trespassers so the whole reservation was divided into five districts, and grazing by bid and contract was instituted.¹³⁴

The ranchers constantly tried to find new tricks to obtain free grass, and the Indian office tried to keep up with them by plugging loopholes in the system,¹³⁵ but the cattle business by leasing soon became big business; the cattle barons had come to the Crow Reservation.

A good example is Frank M. Heinrich, who came to the reservation in 1903 with 79 head of cows. Ten years later his herd numbered 23,000. But the most amazing fact is that he subleased to other stockmen part of the land he rented from the Crows for the same \$44,850 per year he paid the Crows. He then grazed his own 23,000 head for nothing.¹³⁶

The story of Matt Tschirigi is similar.¹³⁷ As noted by the account of his leasing operation by his grand-daughter in the

¹³³Bradley, From Individualism To Democracy, p. 61.

¹³⁴Ibid., p. 76.

¹³⁵Ibid., p. 95.

¹³⁶Williams, Minnie R., Crow Cattle History, Unpublished manuscript, Montana Historical Society, Helena, Montana, Microfilm Collections.

¹³⁷Big Horn Historical Society, *supra*, p. 257.

quotation that begins this section, Tschirigi also built a financial empire from leasing Crow lands. As she said, he was in the grass business, and his locale was the Crow Indian Reservation. It was "his" land.

The golden age of these cattle barons came just before passage of Crow Act of 1920,¹³⁸ legislation that greatly influenced white-Crow relations. Until then the barons had free run of the whole reservation, leasing whole districts of land through the Indian agent. But the act changed equitable ownership from the tribe to individuals. Ostensibly it was enacted for the benefit of the Crows, to allot land and encourage individual development and assimilation. In fact its roots go to the whites of Montana, their needs, desires, and politics. To understand white interests fulfilled by the act, and its effect on control of Crow lands, it is necessary to consider more of the white political climate of Montana around 1920.

Montana became a state in 1889. From then until the elections of 1924, the Indians of Montana, for the most part, were not citizens and, therefore, could not vote. This makes it easy to understand why Montana politicians of those days did not reflect Crow interests.

Demographics of the two cultures of the state also explains white power and Indian "impotence." Table 1 follows:

¹³⁸Act of June 4, 1920. 41 Stat., 751.

TABLE 1

POPULATION AND RATE OF POPULATION CHANGE
 WHITES, ALL INDIANS, AND CROWS, MONTANA, 1900-1990

Year	Whites	Indians	Crows	White % Change	Indian %	Crow %
1870	20,595	19,300	4300			
1880	39,159	21,650	3470	90.1	12.1	-19.3
1890	132,159	10,765	2456	237.5	-50.3	-29.2
1900	226,283	11,343	1875	71.2	5.3	-23.7
1910	360,580	10,745	1832	59.3	-5.3	-2.3
1920	534,260	10,956	1720	48.2	2.0	-6.1
1930	519,898	14,798	1963	-2.7	35.1	.4
1940	540,468	16,841	1917	4.0	13.8	-2.3
1950	572,038	16,606	2702	5.8	-1.4	40.9
1960	650,738	21,181	3332	13.8	27.6	23.3
1970	663,043	27,130	3912	1.9	28.1	17.4
1980	740,148	37,153	4994	11.6	36.9	27.6
1990*			6552			31.1
2014*			17,523			167.4

Sources: Weber, Journal of Ethnic Studies, 16:4; Crow Indian Agency, Crow Agency, Montana; Hamilton, supra, p. 352, 356; U.S. Census.

* Projected, Mathematics Department, Little Big Horn College, Crow Agency, Montana.

As can be seen from the table, whites came to Montana principally from 1880 to 1920, at the rate of about 100,000 per decade. By far the most dramatic white increase came during the decade preceding the Crow Act, when almost 200,000 whites moved

into the state.

Newspaper reports of this period give figures more meaning. The Hardin Tribune, April 6, 1917, reported that ten carloads of homesteaders per day were arriving in Montana on the Milwaukee Railroad Line; On April 20, 1917 this paper reported that the Glasgow Land Office was receiving about 50 homestead filings per day.

These homesteaders represented a block of votes for aspiring for politicians. Senator Thomas J. Walsh, then United States Senator from Montana, was one who tried to court these newcomers.

Walsh came from a background similar to those he courted. He was born in Two Rivers, Wisconsin, June 12, 1859, the son of a tannery employee. He first pursued teaching, then studied law, graduating from the University of Wisconsin Law School in 1884.¹³⁹

Walsh's first law practice, at Redfield, South Dakota, was centered in title and claims with homesteads and Indian lands. In 1890 he moved to Helena, Montana and established his practice in the new state, just one year after it was admitted to the union.

In Montana, Walsh represented railway workmen against railroads and became known as a lawyer for the working man, against large corporations. He went into politics as a Democrat and ran for the United States House of Representatives in 1906,

¹³⁹O'Keane, Josephine, Thomas J. Walsh, a Senator From Montana, (Francestown: N.H.M. Jones Co., 1955), p. 11.

but lost.

This was an era when the Republican Party was doing very well, both nationally and in Montana. Nevertheless, Walsh continued to campaign as the common man's candidate. In 1912, he ran again, this time for the Senate. Roosevelt had split the Republican party, and Progressives also ran for offices in Montana; as a result, Walsh's Republican opponent, Henry C. Smith, shared votes with Joseph M. Dixon running as a Progressive. The result was that Walsh was elected for his first term as Senator.¹⁴⁰

However, anyone could see that Walsh's position was precarious. A unified Republican Party could easily oust him. The returns for Yellowstone and Rosebud counties, from which Big Horn County would be formed the next year, and which contained the entire Crow Reservation, were very instructive to Walsh in this regard. In Yellowstone he had received 1192 votes; Dixon, 1524; Smith, 943. In Rosebud Walsh received 292; Dixon, 372; Smith, 371. So, even though Walsh won statewide, he had lost in both Yellowstone and Rosebud counties; Yellowstone County, particular, was a crucial county.

To get more votes in these counties Walsh looked to the hoards of homesteaders entering the state. To court them he extended his pitch for the common man against railroad corporations and the Copper Kings who ran the mines of western

¹⁴⁰Ellis Waldron and Paul B. Wilson, Atlas of Montana Elections 1889-1976, (Missoula: University of Montana Publications in History, 1978).

Montana to a crusade against the cattle barons of the Crow Reservation.

It seemed the perfect way to seek the homesteader vote. Big stockmen already opposed the Homestead law, so that a natural division already existed¹⁴¹ The barons were mostly Republican; a Democrat like Walsh, the champion of the little man against power interests such as the barons, had a tremendous opportunity to persuade the homesteaders to vote Democratic.

There were additional reasons why the opportunity to pursue this strategy was especially good in Yellowstone and Big Horn County. Billings, as a growing rail, distribution, and agricultural center, held many of the potential voters of the state. Another factor was that Billings was adjacent to the Crow Reservation. As one historian said, "An easy way for Montanans to win elections to Congress was by suggesting that the Crow Reservation be opened to homesteading."¹⁴² This implied not only opposition to cattle barons, and support of homesteaders, but also carried the almost religious theme of "manifest destiny," with its attendant opposition to the "savagery" that Andrew Jackson had popularized for his political victories during the previous century.

With this view Walsh supported legislation for opening the reservation. He was joined by many whites. There had not been a cession of Crow lands since 1904, in spite of the huge influx of

¹⁴¹Hardin Tribune, February 16, 1917.

¹⁴²Bradley, From Individualism To Democracy, supra, 114.

settlers during the first two decades of the century. The cry was to "open the reservation to white settlement." The Hardin Commercial Club (predecessor to the Hardin Chamber of Commerce) had resolved as early as February 11, 1909 to open the reservation.¹⁴³ That same year, a similar call came from a joint memorial of the Montana legislature.¹⁴⁴

By 1916 a number of bills had been considered by Congress, but had met fierce opposition from the Crow, who sent delegations to Washington to speak out against the bills. Walsh led the fight for these proposals.¹⁴⁵ He was flanked by lobbyists from the Billings and Hardin Chambers of Commerce.¹⁴⁶ Walsh argued that a few millionaires of Montana were controlling the Crow Reservation, stating they had more influence with the Crow Tribal Council than the Montana legislature had with Congress.¹⁴⁷ He was referring to the lock the cattle barons had on leasing of the reservation. He was able to castigate the barons truthfully as persons "who paid no taxes to Montana, or the nation, and are allowed to pay only a few cents per acre to the Crow Indians, and thus are blocking the Western march of Caucasian

¹⁴³Bradley, "After The Buffalo Days: Documents on the Crow Indians From the 1880's to the 1920's," Thesis (M.S.), Montana State University, Bozeman, Montana, 1970, p.216.

¹⁴⁴Ibid.

¹⁴⁵Bradley, After the Buffalo Days, supra, p. 220.

¹⁴⁶Hardin Tribune, February 23, 1917; Bradley, After the Buffalo Days, supra, p. 222.

¹⁴⁷Ibid., p. 220.

Civilization...and are growing rich while the Indians are reduced to economic want and misery.¹⁴⁸

Robert Yellowtail, reporting debates between the Crows and Walsh, noted that the senator was seeking "to boost his politically inspired bill through the Congress and make the tribal lands of the Crow Reservation a present to the non-Indian voting constituents of Montana who he expects to come to his rescue with votes when he again seeks re-election to the U.S. Senate...[and that] the great Crow Indian Reservation has not been a reservation for the Crow Tribe but instead a reservation for the cattle and sheep barons who pay a very small sum as rental and are growing rich.¹⁴⁹ With the support of eastern Congressmen sympathetic to the Crows, Yellowtail and his delegation were able to defeat the various bills up to the 1918 election. The Hardin Tribune of January 12, 1917 quoted Frank Yarlot of the Crow tribe as saying that with the defeat of the Myers Bill of that year the Crows, had been asked to draft their own bill regarding their lands. Yellowtail went on to note that Walsh was seeking one thing in supporting the opening of the reservation, votes;¹⁵⁰ and the Crows, not being citizens, had no votes. They had some influence in Washington, but back in Montana they had no voice, or vote, in the affairs of the whites

¹⁴⁸Yellowtail, Robert Summers, Sr., Robert Yellowtail's Story, (Albuquerque, New Mexico: Cold Type Services of New Mexico, 1973), pp. 9, 15.

¹⁴⁹Ibid., p. 15.

¹⁵⁰Ibid.

who were shaping policy there. By ignoring Crow concerns, Walsh lost no votes, and gained the votes of incoming homesteaders.

His only opponents were the few Republican cattle barons who then monopolized the reservation. Consequently, he spent his time carrying on "an extensive correspondence with countless settlers¹⁵¹ as part of his preparation for the election of 1918.

And Walsh's time was not wasted, for he was re-elected as senator, carrying Yellowstone, Rosebud, and Big Horn County, most probably because of the support homesteaders. The Results:

	<u>Yellowstone</u>	<u>Rosebud</u>	<u>Big Horn</u>
Thomas J. Walsh (D)	1749	553	257
Jeanette Rankin (Natl)	752	123	105
Oscar Lanstrum (R)	1667	488	196

Walsh's strength in these Republican strongholds can only be explained by the stand he took for homesteaders, opening the reservation, and against cattle barons. He sought to change control of Crow lands from a Republican to a Democratic constituency.

When he returned to Congress, Walsh tried to keep his promises by writing a Crow bill that would pass. He wanted a bill that would open the reservation to white settlers, that would exhibit his stand against cattle barons, and that would

¹⁵¹O'Keane, supra, p.54.

receive the approval of the eastern congressmen, sympathetic to the Crow, and who had defeated the past bills designed to open the reservation. He accomplished his objective by making some important changes that distinguish the Crow Act from other acts of the time designed to open Indian reservations to white settlement.

First, contrary to the usual provisions that allotted tracts to the individual tribesmen, and opened the surplus to white settlers,¹⁵² this bill allotted the whole reservation, except for the Big Horn and Pryor Mountain areas. It thus appeared on its face to have excluded the reservation from white settlement. By this disguise the bill received the support of the Crows and eastern Congressmen alike.

Second, in spite of this lack of a "surplus" section, the bill contained features that made lands readily available for homesteading by whites. For example, section 15 allowed the Secretary to sell, with the consent of the allottee, lands to veterans of World War I. Section 13 allowed competent Crows, after twenty-five years, to sell, and if they died before that time a patent could be issued immediately. Experience had shown that similar provisions in the General Allotment Act of 1887 had in effect passed many tracts to whites. Examination of the records of public sales before the Act of 1920, reveal that barons like Heinrich were buying up key tracts at rate of a few hundred acres every few months as these sales were completed.¹⁵³

¹⁵²Cohen, supra, p. 613, 614.

¹⁵³Hardin Tribune, October 18, 1917.

By these various provisions, most of The Crow Reservation was in fact opened for white settlement, even though the rhetoric peddled to the Crows and in Washington implied a different intent.

Indeed, both the Crow Indian Agent at the time¹⁵⁴ and the Hardin newspaper¹⁵⁵ represented the bill as a means of opening the reservation. A circular of the Hardin Chamber of Commerce at the time headlined its summary of the Act with the words, "Crow Reservation Now Open."¹⁵⁶ By allotting the whole reservation, Walsh achieved, at least to the satisfaction of those scrutinizing the bill, an apparent synthesis of two conflicting aims, opening the reservation and preserving Crow lands for the Crows.

Third, allotment promised to break the power of the barons over leasing, and pass it to the homesteaders. Prior to the 1920 Act, the cattlemen had leased virtually the entire reservation as it was divided into a number of grazing districts. With wholesale allotting, and a coupling act allowing allottees who were determined competent to lease their own lands without the permission or interference of the BIA, leasing became primarily a contractual arrangement between white ranchers and individual Crows instead of with the Indian agent. It became

¹⁵⁴Letter from C.H. Asbury, Superintendent, Crow Indian Agency, to the Commissioner of Indian Affairs, June 5, 1919, pp. 4-6, copy in Eloise Pease Collection, Little Big Horn Archives, Little Big Horn College, Crow Agency, Montana.

¹⁵⁵Big Horn County Historical Society, *supra*, p. 330.

¹⁵⁶*Ibid.*

easy for the small operator to lease Crow lands, and virtually impossible for the barons to lease the huge districts they had previously controlled.

Fourth, Walsh personally wrote a section into the Crow Bill, Section 2¹⁵⁷ which provides:

No conveyance of land by any Crow Indian shall be authorized or approved by the Secretary of the Interior to any person, company, or corporation who owns at least six hundred and forty acres of agricultural or one thousand two hundred and eighty acres of grazing land within the present boundaries of the Crow Reservation, nor to any person who, with the land to be acquired by such conveyance, would become the owner of more than one thousand nine hundred and twenty acres of grazing land within said reservation. Any conveyance by any such Indian made either directly or indirectly to any such person, company, or corporation of any land within said reservation as the same now exists, whether held by trust patent or by patent in fee shall be void and the grantee accepting the same shall be guilty of a misdemeanor and be punished by a fine of not more than \$5,000 or imprisonment not more than six months or by both such fine and imprisonment...

The plain meaning of these words prohibit whites from buying tracts of more than 1920 acres of Crow lands. It would seem the section was written to protect Crows, but research reveals other

¹⁵⁷U.S. Congress, House, Committee on Interior and Insular Affairs, "Sale of Crow Indian Lands, Hearings Before A Special Subcommittee on Indian Affairs on H.R. 2381, H.R. 7255, and S.B. 332," 85th Cong., 1st Sess., p. 154.

intent, more compatible with Walsh's political ambitions and totally void of intent to protect Crows. And pertaining to the thesis of this paper, his real intent indicates that what the law states is not as important as the way whites use it for their own purposes.

To understand Walsh's real intent, it is first important to consider the way the whites construed Section 2. Immediately after its passage in 1920, at the same time the homesteaders were seeking land, public sales of Crow lands were held regularly. Public notices of sales contained a warning to bidders of the limitations imposed by Section 2.¹⁵⁸ At that time, the homesteaders having no lands, and the barons having large holdings, the notices spoke only to the barons. As the power of the barons declined, and that of the homesteaders increased, the two groups became almost indistinguishable in terms of the numbers of acres each held. The acreage limitation became a barrier against both groups.

At that time, about 1946, a predictable thing happened: for reasons "no one seems to know," the Section 2 warnings ceased to be stated as part of the notices of sales.¹⁵⁹ No enforcement of the section was made whatsoever. Then, in 1956, someone brought to the attention of BIA officials the fact that many sales had been made, and were being made, in violation of the section. The BIA responded by ordering a temporary stop to sales.

¹⁵⁸Ibid., p. 148.

¹⁵⁹Ibid., p. 22.

The white ranchers of the reservation then organized what was called the "Crow Reservation Association" to protect themselves against possible action against them.¹⁶⁰ By then many ranchers had holdings in excesses of the Section 2 limitations. They feared both civil and criminal sanctions. Apparently they went to key Crow leaders like Yellowtail and argued that if Section 2 was enforced against them, they would have to terminate their leases with the Crows. Thereby the Crows would lose what meager income they had.

The threat concerned Crow leaders like Yellowtail. He was prompted to go to the Crow Tribal Council, where he proposed on April 14, 1956, Resolution No 77, calling on the Senate and House of Representatives to enact a bill repealing Section 2.

A companion resolution stated that "the abrupt closing of the sale of trust and restricted lands against the Crows has worked, and is working an unnecessary economic hardship upon every Crow Indian."¹⁶¹ The two resolutions were passed together.¹⁶²

A bill was prepared quite quickly, and passed by the United States Senate as S. 332, March 25, 1957. The Crows came to a typical dilemma at this point. To oppose the bill would incur the wrath of their white lessees who were giving them what little income they received; to support the bill would be to

¹⁶⁰Ibid., p. 18.

¹⁶¹Ibid., p. 203.

¹⁶²Ibid, p.201.

approve the wholesale violations of Section 2, and lose any chance of getting some compensation or return of lands illegally purchased away from Crows.

Their predicament is suggested by the minutes of the Tribal Council of April 20, 1957 when they considered rescinding resolution 77. When the chair announced consideration of repeal of Section 2, Donald Deer Nose moved to table the matter, apparently thinking about his need for lease payments from his white lessees. Apparently John Holds then explained that Section 2 "was designed to prevent the alienation, passing out of Indian ownership, of the land belonging to individual members of the Crow Tribe and their heirs, as well as to protect tribal owned lands from being alienated."¹⁶³ Those present were also informed that resolution 77, and the bill to repeal Section 2 would confirm the illegal titles of the whites which were "unjust and in violation of the right and power of the individual heirs and allottees from attacking the illegal titles."¹⁶⁴ This argument changed the mind of Donald Deer Nose, as he then not only supported the motion to rescind Resolution 77, but also moved to amend the motion on the floor to add a demand for immediate prosecution of violators.¹⁶⁵

Thereafter the Crows were unified against repeal. A special Congressional subcommittee on Indian affairs came to the

¹⁶³Ibid., p. 206.

¹⁶⁴Ibid.

¹⁶⁵Ibid.

reservation and held hearings October 18 and 19, 1957. The subcommittee heard testimony from the white ranchers and their supporters favoring the bill, as well as the Crows. The result was that S. 332 and similar bills died.

A number of facts came to light as result of the hearings:

1. Although extensive violations occurred between 1940 and 1956, Section 2 was never enforced.

2. The whites and federal officials could offer no reason for the violations or for the lack of prosecutions.

3. With one exception, all witnesses agreed with John Holds that the purpose of the section was to prevent alienation of Crow lands.

4. That exception was Yellowtail, who boldly stated Section 2 was not enacted for the Crows, but was nothing more than a political move of Senator Walsh to transfer control of reservation lands from the cattle barons to homesteaders. At the hearings held in 1957, Yellowtail said he was present when Walsh wrote section 2. The exact date it was drafted by Walsh was probably at some time during the summer of 1919.¹⁶⁶ Yellowtail recalled the incident saying:

¹⁶⁶Yellowtail's testimony before the special House subcommittee which investigated the subject of Section 2 violations during the summer of 1957, U.S. Congress, supra, pp. 152-172, does not give a date. Research by the white ranchers concluded that Section 2 apparently was not in the original draft, but was inserted after the hearings before the Senate committee in the summer of 1919. U.S. Congress, supra, p. 21. Thus, Section 2 was apparently written during the summer of 1919, during the course of the hearings that preceded passage of the bill finally passed as the act June 4, 1920 (41 Stat.751).

Senator Walsh wrote Section 2. He sat down in the committee room and said, 'Wait a second.' He wrote section 2 in a pencil notation. It just so happens that everybody that was present at that meeting are all dead and gone with exception of myself...Senator Walsh made no bones about this, gentlemen. At that time the leasing on the Crow Indian Reservation was under the control and in the hands of Republican stockmen...He stated that he did not want to see these lands fall into the hands of a few cattle barons or sheep barons, that section 2 would in his judgment do that...bitter as it might be, there was no intent--again I refer back to the testimony that was made in response to, I think, your question--was it to protect the Indians? No, it was not. It was to protect the public, probably for the government or somebody else, against the controlling of large grazing areas by cattle and sheep barons. Indirectly, Senator Walsh was the first Democratic Senator we had in the State of Montana. As a Democrat, he was doing here what he thought was probably against these gentlemen that were in control of the Crow Reservation leasing...I tried to go back to 1913 when the genesis of this law began up here, and to point out to you that Senator Walsh wrote this act up here to curtail the actions of stockmen he called cattle and sheep barons to control the Indian tribal lands.¹⁶⁷

There is ample evidence to support Yellowtail's testimony. First, it has already been noted that Walsh wanted to break the Republican cattle barons and replace them with his constituency, homesteaders, Democrats. Of course, determining his intent is hard, but this conclusion is supported by examination of the election returns of Big Horn County for 1924. That year Walsh ran against Frank B. Linderman, the biographer of

¹⁶⁷Ibid., pp. 154, 155, 158.

Plenty Coups and a friend of Indians around the state. This was the first election held after the Act of 1924 enfranchising Crows. Yellowtail registered over 400 new Crow voters for the election held that year.¹⁶⁸ Although Walsh won by a large majority state-wide, he did not take Big Horn County, despite the homesteader vote he had nurtured in 1918 and retained in 1924. It seems that the Crow vote made a difference, that Walsh was perceived by Crows as anti-Crow, a perception consistent with Yellowtail's testimony that Walsh did not write Section 2 to benefit Crows, but to break the barons.

None of the facts that surrounded the writing of Section 2 support the now popular view that it was enacted for the Crows. At the time it was drafted, the intent was clearly to transfer power over reservation lands from the barons to the homesteaders;¹⁶⁹ whites had no intent whatsoever to empower Crows. After the barons were displaced there was no longer a need for the section, which explains why the notices of sales after 1940 deleted the warning, and why violations were never enforced. This gives support to the contention that failure to

¹⁶⁸See, Anson H. Pease v. Carl Rankin as County Clerk and Recorder of Big Horn County, Thirteenth Judicial District Court, State of Montana, Cause No. 1593, Filed October 28, 1924. The petitioner, a Crow, was a Republican candidate for sheriff that year, running against R.P. Gilmore, the white Democratic incumbent. Gilmore and Rankin, the County Clerk, were planning to challenge the Indians Yellowtail registered at the polls, preventing them from voting. Pease sought an injunction to prevent them from interfering. The injunction was granted.

¹⁶⁹Bradley, From Individualism to Democracy, supra, pp. 178, 318.

enforce was deliberate rather than unintentional.

At any rate, enforcement continued to be a problem as the words of the section are plain. Congress decreed that no person shall own Crow lands in excess of the stated acreage limitation. It seems that Walsh and the other controlling whites outsmarted themselves. In their zeal to favor one white faction over another, they accidentally wrote into law a provision that could empower those oppressed. By the words of this written law, Crows have every right to insist upon enforcement for their benefit. However, this would empower Crows over their lands at the expense of the whites. As might be expected whites took action to establish their own de facto law as they have done so many times before.

After the decline of the barons and ascendancy of the homesteaders, leasing became a contest for leases of individual allotments between all white ranchers. As homesteaders "bought in", they bought tracts whereby they too exceeded the Section 2 limitations. At that point Section 2 became a stumbling block for the homesteaders it was originally enacted to benefit. Hence the period of non-enforcement, which the ranchers and BIA officials would by 1957 claim they could not explain, except that it had been unintentional.¹⁷⁰ As the purpose for Section 2

¹⁷⁰The Crow Reservation Association, the organized ranchers at the time filed a statement with the House Special Subcommittee investigating the matter, that said, "There can be no question as to the good faith of the landowners, as well as of the Government officials. We feel that the landowners involved in this case are as honest and as law-abiding a group of citizens as exist anywhere, and the character and integrity of the Government officials are

was political and economic, and as those purposes had been fulfilled, as far as the whites were concerned, there was no further need for Section 2. They could simply ignore it until pressed; then they could move to repeal it, and claim no "intentional" violations.

By 1956 the Crows realized that the section could be interpreted to protect their lands. They then started pushing for this interpretation and for enforcement for their benefit. At first, this must have perplexed white ranchers and BIA officials of a later era unfamiliar with the "lost" history that explained the existence of a law against their interests.

To try to solve the problem, the ranchers tried to persuade their dependent Crow "lessors" that to repeal the section would be for their own benefit. The BIA initially went along to avoid embarrassment for failure to perform its trustee duties. Yellowtail, by then the only one living who remembered Section 2

above reproach. An intentional violation of the law would have to be a conspiracy between the Secretary of the Interior, the Commissioner of Indian Affairs, the superintendent of the Crow Reservation, a couple of hundred Government key employees, a couple of thousand Crow Indians, and three or four hundred white purchasers. Such a conspiracy could not exist." U.S. Congress, supra, p. 22. This forceful argument does not answer the simple question of how such a simple straightforward law could be so totally ignored if there was not some sort of understanding between the violators and the "enforcers" that it would not be enforced. George Hogan, Vice Chairman of the Crow tribe, testified, questioning the good faith of whites saying: "I do not think Section 2 was administered in good faith. Good faith does not appear to exist. You are also told the illegal sales were unintentional. We intend the consequences of our conscious acts. They bought and sold land in violation of the law not knowing for a fact that the law had been repealed." U.S. Congress, supra, p. 255.

as a device to break the barons, apparently thought repeal appropriate as the section had outlived its purpose. So he sponsored and procured passage of resolution 77 of the Crow Tribal Council supporting repeal. In accordance with this resolution and white lobbying, a repeal bill was passed by the Senate. But by then the Crows realized the possible benefits to be gained by enforcement of the section. It could be used to preserve their sacred land base.

This realization lead to the motion of April 1957, followed by Resolution No. 132 passed by the Tribal Council on June 8, 1957,¹⁷¹ stating "that the Crow Tribe hereby goes on record as declaring that it is concerned as a tribe to consistently oppose any legislation or litigation designed to deprive allottees or heirs of allottees of their right to recover possession of land illegally lost to large white landowners." The resolution went on to tentatively engage private attorneys to pursue remedies for Section 2 violations.

Crows further solidified their position by passage of an amendment to resolution No. 132, passed July 27, 1957, noting the failures of the United States Attorney to enforce section 2, and a statement of pessimism that he would act any differently in the future. This amendment was coupled with Resolution No. 142, which formally requested the United States Attorney to enforce the section.¹⁷²

¹⁷¹U.S. Congress, *supra*, p. 217.

¹⁷²U.S. Congress, *supra*, p.224.

But no prosecutions of Section 2 violations have ever been initiated. This is a fact in spite of a list of Section 2 violators compiled by the Inspector General as part of an Audit Report of March 3, 1986.¹⁷³ The list details over 300,000 acres transferred in violation, and the names of 61 violators.

As late as November 24, 1986 the Crow Tribe memorialized again its formal request to the BIA to enforce the Crow Act.

A significant step was taken August 1, 1988 when the tribe, through its attorney Charles Cervantes of Washington D.C., filed a civil suit in the Federal District Court of the District of Columbia against the United States, the Attorney General, and Secretary of the Interior for a writ of mandate directing enforcement of Section 2.¹⁷⁴

After filing the case, Cervantes ran into the usual troubles persons encounter who challenge the white hold on Crow lands. The BIA would not approve his employment contract. He was forced work for nothing, although the tribe had properly hired him. And the person who was instrumental in preventing him from receiving his pay was an attorney named Harold Stanton. Stanton has made his principal living from patenting Indian lands and selling them to whites.

At the time Cervantes was prosecuting the Section 2 case, Stanton was involved with the Crows in two significant ways.

¹⁷³Crow Tribe v. United States, supra, Appendix to brief of Plaintiff. See copy in Appendix herein.

¹⁷⁴Ibid.

First, he was retained by the Crows in their suit against major utility companies, the State of Montana, and the federal government to obtain return of some 30 million dollars owed to them from illegal coal severance taxes paid by the utility companies to the state for extracting Crow coal. Stanton controlled, under the auspices of the same federal judge involved in NFU, the spending of these millions of dollars of the Crows, the only money they had with which to pay Cervantes to fight the Section 2 case.

Second, Stanton represented one of the largest white land owners of the reservation, Campbell Farming Corporation, which was trying to cut a deal whereby the Crows would spend a major portion of this 30 million to purchase back huge tracts of lands held by Campbell Farming, much of in violation of Section 2.¹⁷⁵ Cervantes advised the Crows not to buy because they might automatically get most of these lands back if the original conveyances were to be adjudicated void as Section 2 provided.¹⁷⁶ Stanton was furious when Cervantes so advised the Crow;¹⁷⁷ as a sort of modern day Andrew Jackson dealing in Indian land he stood to make substantial gains, if he could close the deal with the Crows. These facts makes it easy to understand why Stanton saw to it that Cervantes received no pay.

¹⁷⁵Cervantes, Charles, phone interview with author, January 24, 1991.

¹⁷⁶Ibid.

¹⁷⁷Ibid.

This kind of pressure continued to be placed upon Cervantes, but he persevered. The government moved to dismiss the case before the D.C. federal court basically on the grounds that the tribe had no standing to sue the federal government, that the trust duty to enforce Section 2 was discretionary from which the remedy of mandamus could not arise, and that the complaint generally did not state a cause of action.

After briefing and argument before the Honorable Norma Holloway Johnson, presiding district judge, the court by order of July 20, 1990, denied the government's motion.¹⁷⁸ The judge found that the complaint did state a cause of action, that it alleged a serious breach of duty by the government, that it would appear that "a conveyance of land that violates this provision is subject to two distinct components of the provision: one: the conveyance is per se void; and two, the grantee [rancher, non-Indian]...is guilty of a misdemeanor." And the judge further found that "the purpose of restricting the alienation of allotted lands through the enforcement of Section 2 is to prevent any one firm, person, or corporation from acquiring a large acreage of land within the Crow Reservation. Such ownership of reservation land by non-Indians is inconsistent with the interests of the Crow Tribe in preserving the integrity of the reservation."¹⁷⁹ Here, at last, was a judge willing to tell it

¹⁷⁸Crow Tribe v. United States, supra, order dated July 20, 1990.

¹⁷⁹Ibid.

like it is. As one tribal attorney said, "The facts are so obvious, so clear, I don't think there is much question...its pretty much a formality to put the facts in and then get a final decision."¹⁸⁰

Put more simply, the order in Crow Tribe dictates victory for the Crows which could result in wholesale declarations by the court that the titles of most whites to Crow lands are absolutely void. The magnitude of such a Crow victory, and such a white defeat, can not be overstated. It would be ironic indeed if a law originally enacted to cut out one group of oppressive whites in preference for another, would actually lead to a decline of white power and empowerment of the Crow.

As might be expected, however, whites again acted to nullify Crow gains. The white controlled press did not report Judge Johnson's decision. Why, is not known, but it certainly seems that a decision with such far reaching implications for both Crows and whites would at least make the back page of the Billings and Hardin newspapers. But no story.

Apparently, with no news coverage, the Crows failed to appreciate the significance of the decision for they continued to fail to pay Cervantes.¹⁸¹ The case had become an emotional and financial burden on him and his family; he was forced to withdraw

¹⁸⁰Towe Thomas (Crow Tribal Attorney), as quoted in an article published by the Lakota Times, August 21, 1990.

¹⁸¹Cervantes, supra.

as counsel.¹⁸²

It will be recalled that withdrawal of funding for the Crow Tribal Court by the BIA was the principal reason that the principles laid down in NFU have not been implemented. A pervasive lack of tribal funding continued from then to 1990 hindering prosecution of the Crow case as well. When the tribe proposed to address this problem on its own without federal aid, that is to impose a real property tax (remember 95% of Crow land is controlled by whites) the white reaction was immediate and threatening. A petition was circulated by the president of CRO objecting and protesting the proposal, threatening to terminate leases of Crow lands, if the tax was imposed.¹⁸³ The petition was signed by about 2,000 persons, mostly whites. For the poor individual Crows who are so dependent on lease monies from their white renters, the threat of the loss of their lease monies was too much. Tribal leaders were persuaded to drop their proposal for taxation. The most effective deterrent whites have to prevent Crow power is maintenance of Crow poverty.

At about the same time, the tribe elected a new tribal chairman, Clara Nomee, a former BIA employee. She and her

¹⁸²Ibid.

¹⁸³"Objection To Taxation By Crow Tribe," a petition presented to Crow Tribal officials at a public hearing, Crow Agency, Montana, dated March 18, 1987. The petition is certified by Hale C. Jeffers, president of CRO, although sponsorship by CRO is not stated on the document.

supporters refused to actively oppose white interests.¹⁸⁴ She did not return Cervantes's calls for direction for the future course of the Crow case. The propensity of Clara Nomee and her faction for assimilation rather than Crow autonomy divides and weakens the Crow people.

The Crow case is still pending, but without strong Crow leadership to prosecute it, and with the usual white pressures and actions opposing it behind the scenes, and as noted above, it appears that one way or the other, this case of greatest potential for winning back both title and control over Crow lands, will go nowhere. The same old forces that organized at the beginning of Spanish explorations, that led to the expulsion of the Cherokee from Georgia, that took Crow lands, and that skirted the holding of NFU, continue to preserve white power despite another piece of paper dictating Crow control of Crow lands.

Leaders of Congress call for Indian sovereignty;¹⁸⁵ decrees and orders of the courts uphold the principle; the Chief Executive, as recent as Ronald Reagan, declare commitment to Indian

¹⁸⁴She was a member of the Lodge Grass School Board during the pendency of NFU, and failed to speak out for Crow sovereignty.

¹⁸⁵Daniel K. Inouye, speech given at Forum on Sovereignty, University of Wisconsin at Stevens Point, Stevens Point, Wisconsin, October 9, 1990. His concluding remarks included: "Around the country, you find state and tribal governments working together...they do so, recognizing each other as equals, with equal rights to govern their respective territories. They are sovereigns, dealing with each other as sovereigns."

self-government;¹⁸⁶ departments purport to implement and enforce--but there is no Crow control of Crow lands. Local white conduct continues to define the rules for control of Crow land.

¹⁸⁶Ronald Reagan, statement of January 24, 1983, as set forth in Documents of United States Indian Policy, Second Edition, Expanded by Francis Paul Prucha, editor (Lincoln: University of Nebraska Press, 1990. p. 301.

CONCLUSION: LAND, LAW, AND AUTONOMY

How can we explain the fact that despite all the respect and reverence shown the principle of Indian self-government across four centuries, there is so little left today of the fact of Indian self-government? How can we explain this discrepancy between word and deed?

The simplest explanation, of course, and the one that easiest for simple, unsophisticated Indians to understand is the explanation in terms of white man's hypocrisy.

* * *

There are two answers to this double-talk: One is to deny the cliches and to insist that there is nothing wrong about having a state within a state; that, in fact, this is the whole substance of American federalism and tolerance. We may go on to say that the right of people to segregate themselves and mix with their own kind and their own friends, is part of the right, of privacy and liberty, and that the enjoyment of this right, the right to be different, is one of the most valuable parts of the American way of life. We may say further that it is not the business of the Indian Bureau or of any other federal agency to integrate Indians or Jews or Catholics or Negroes or Holy Rollers or Jehovah's Witnesses into the rest of the population as a solution of the Indian, Jewish, Negro, or Catholic problem, or any other problem; but that it is the duty of the federal government to respect the right of any group to be different so long as it does not violate the criminal law.¹⁸⁷

¹⁸⁷Cohen Felix S., "Indian Self-Government." The American Indian, Vol. V., No. 2, pp 3-12.

The Crow Indian land and reservation was not a gift or a grant by the United States to the Crow Tribe. It was given to the Crow Indians by the Almighty God before the white man ever thought of coming to America.

* * *

Crow Indians are at the mercy of the white man. If we take our troubles to the courts, the jurors will be white men, the attorneys white men, the judge a white man, the Commissioner of Indian Affairs a white man, the Secretary of Interior a white man. Also most of the members of Congress are white men as well as the other executive offices of the Government. So you know now what position the Indian is in when it comes to asking for just rights as we have to ask you.¹⁸⁸

I believe I witnessed the last public address of Robert Yellowtail, the venerable leader of the Crow for most of the twentieth century. It was at Crow Agency, Montana, in July of 1984, during the time that the NFU controversy was raging. Yellowtail was speaking to the Crow Tribal Council. He was over 95 years old. I am not sure those present realized who stood before them. At the time, I didn't. He was the only living link to the chiefs of the buffalo days; Plenty Coops, Two Leggins, and Medicine Crow. He had lived the flower of his own manhood as the cessions of Crow land went over to the whites. He had dealt with

¹⁸⁸U.S. Congress, supra, Testimony of John B. Cummins, Lodge Grass, Montana, Official Delegate of the Crow Tribe of Indians to the Subcommittee, p. 247-249.

the cattle barons and early homesteaders as they took total control of Crow Country. He had served as the first Indian superintendent of an Indian agency, and had served through the Indian New Deal Era of Collier, the Termination Era, and into the present day. Though almost 100 years old he could remember most of all that happened during his lifetime.

As I sat on the bleachers of the old tribal gym where the council meeting was held, I watched him, a very, very old man, stooped over. Aided by his younger second wife, and his twisting wooded cane, this man of 95 summers spoke from a mouth surrounded by sun wrinkles on his chiefly face. He steadied himself by holding to the dilapidated podium.

"Autonomy...Autonomy...Autonomy...Autonomy," he said over and over again. "That is most important to our people. Whatever we do, we must have autonomy for our Crow people." Before, and after those English words, he spoke in Crow; I assume he said the same thing in his mother tongue.

As I sat listening and watching him, children crawled up and down the bleachers and chased one another on the floor right in front of him. They would never remember being in the presence of this one who had counseled with Plenty Coops and Medicine Crow. Even I, a formally educated white who had come to learn from the Crows, now, after 6 years have passed, cannot remember the specific question of tribal debate then on the floor. All I remember is "Autonomy...Autonomy." What did Yellowtail mean?

I wondered then why he used the word repeatedly, so

forcefully. It seemed he was trying to say something that I, and even the Crows present, were not really understanding. Something he knew his impending passing would prevent him from ever saying again. We, everyone there with him, probably appeared to be like the children on the bleachers, preoccupied with our own agenda, not interested in this old man with the cane.

I had almost forgotten Yellowtail's last speech until the other day when I obtained a copy of an unpublished paper he wrote in 1973 entitled, "A Brief Review of the History of the Crow Reservation and the Crows (1889-1973)."¹⁸⁹ In the paper, Yellowtail recalled reservation life and his observations since his birth 84 years earlier. He concluded his summary of history spanning the length of his life by saying that the early years of the reservation were marked by "autocratic-absolutism and a denial of the most basic of human rights ever imposed on any conquered people in the history of the world including the Spanish Inquisition." But his last words were that "a new day has dawned for the American Indians and it is up to them to organize and become potent politically so that their civil and constitutional rights will always be respected. They must remember that things and questions of policy and administration are decided politically at Washington and at the State Capitol and this means that the Indians must organize and become politically potent if they ever expect to have their civil rights

¹⁸⁹Yellowtail, Robert, an unpublished manuscript, Little Big Horn College Archives, Little Big Horn College, Crow Agency, Montana.

respected by the administration in power in Washington."

Yellowtail went on to recall the days of despotic, "autocratic absolutism" of the Indian agents who ruled the early reservation. He remembered how as a child had been forced to white schools, as he told it, as "one of such imprisoned children since I was 4 years old, kidnapped from my mother's arms by policeman White Arm and literally thrown into the Crow Agency Jail School.¹⁹⁰

As I read on Yellowtail's last speech came back to my mind. He had recalled what the chiefs had lived--the freedom and harmony of life in cycle with the roaming of the buffalo. And yet the force of his voice was more than the exaggerated memories of an old man. There was something more.

Fredrick Hoxie, a learned student of the Crows, concluded that the Crow definition for autonomy changed over the years, moving from the concept of complete independence from outside control, to the realization that cooperation with the federal government imposing trusteeship upon them was necessary.¹⁹¹ They then tried to act obedient to federal authority, while attempting to retain internal autonomy under the institutions and practices they developed during the early era of their reservation oppression. While Hoxie may have expressed the choice of Crow

¹⁹⁰Ibid.

¹⁹¹Hoxie, Fredrick E., "Crow Leadership Amidst Reservation Oppression. The Newberry Library, D'Arcy McNickle Center For The American Indian, Occasional Paper in Curriculum Series, No. 11, The Struggle For Political Autonomy, pp. 94-106.

leaders who could do little else, his thesis does not capture the intent of Yellowtail's words. Yellowtail was calling for more than compromise in the face of power.

As I reflect on a twenty year career as a white attorney in the service of the Crow people, Yellowtail's words of autonomy ring in my ears again and again. I see the whites, who continue their strangle hold on the land and all it gives. There is little sharing. They have improved on the rhetoric of their forefathers, who spoke in terms of paternalism and assimilation; instead, they speak of fairness, equality, opportunity, and self-government for Indians; they speak of unity and sharing, but their conduct betrays their continuing selfish greed for Crow land.

This is demonstrated, not by events long ago, but by those of 1989 when the whites published what they call the "Economic Development Master Plan"¹⁹² for Big Horn County, a master plan supposedly for a county now more than 50% Indian. The plan names an Economic Development Committee which includes the wife of the CRO president that voted \$5,000 against those who fought for NFU.¹⁹³ The committee has five other members, only one an Indian, and that sole Crow refused to work with such a group known among Crows for racism.¹⁹⁴ The plan names an advisory

¹⁹²"Big Horn County Economic Development Plan, 1989," a draft text prepared and circulated prior to a public meeting of March 23, 1989 for public review and comment. Prepared by the Hardin Area Chamber of Commerce and Agriculture, 200 Center Avenue, Hardin, Mt. 59034.

¹⁹³Betty Whaley, wife of Ed Whaley, President of CRO in 1985.

¹⁹⁴Joseph Wallace, interview with author, March, 1989.

board of 23 people, none of whom are Indians. It declares with underlined words that the land base is the source of Big Horn County's wealth, but it does not mention that 80% of that land lies within a tribal jurisdiction promised self-government by treaties, Acts of Congress, and court decisions of the highest court of the land.

The plan concludes by listing 27 "Projected Activities" for Economic development of the county. None, I repeat, none of the 27 deal with any matter of unique concern for the Crows. One solitary subject, of the 27 listed, is of mutual concern to the two cultures. It is worded as a goal to formalize a communication system whereby Indians and non-Indians can discuss issues of mutual concern by May 15, 1989.¹⁹⁵

Not only has the May 15, 1989 deadline for Crow-white dialogue passed, but so has all of 1990 passed in silence. There is no communication. Regardless of words, papers, and laws, white behavior continues to demonstrate selfishness, greed, power, oppression. The plain things to be seen in Big Horn County spell the Yellowtail definition of autonomy: It means that simple inherent right within groups of people of one language, culture, and heritage, to rule themselves and their lands. As the report of the American Indian Policy Review Commission concluded in 1977, "The Native people in this country possess a right to exist as separate tribal groups with inherent authority

¹⁹⁵Hardin Area Chamber of Commerce, supra, p. 72

to rule themselves and their territory."¹⁹⁶ Put as a message to whites: Stop acting superior to us; we are free to pursue our own course. Give us back the land that adopted us as its children long ago, and it will nurture and preserve us.

Will Crow Autonomy return? The Economic Development Plan is totally void of address to Big Horn County's biggest problem, white denial of the existence of a separate people, and their inherent right to pursue their own agenda. Whites want Crow land; they have rationalized the taking. Their only objective now is to preserve their power. Any rhetoric to the contrary, even rhetoric crowned by codification, is always nullified by white conduct. To recognize the Crow as a separate people is to recognize white greed, and to abandon it. Whites would rather pretend the Crows are not really there, or blame Crow ills on Crows. When confronted with the truth--their oppression of a people--they rationalize their continuing wrongs. The only white changes over the centuries are changes in the myths they make. Their words evolve, but not their conduct.

Hope for the Crows is not to be found in any recent court decision, or any interpretation of law by the authorities. Local whites exercise a quite basic form of power; power unrelated to the rule of law, in spite of their pretensions. They have ruled in the past, and they still rule, ultimately, by the sheer force of

¹⁹⁶American Indian Policy Review Commission Final Report, 1977, p. 622. See also "Convention Concerning Indigenous And Tribal Peoples In Independent Countries." Convention 169, International Labor Conference, United Nations, June 7, 1989. Text of Convention printed in 28 I.L.M. 1382 (1989).

their numbers.

The only hope for Crows (and it will bring only limited relief) comes from the fact that the future points to a demographic shift that may destroy white power, at least in Big Horn County, Montana. The Little Big Horn College, the Crow community college, recently projected populations of the two cultures to the year 2014.¹⁹⁷ The projection is that by then there will be 17,523 Crows in Big Horn County compared to 2,957 whites. At least control of Big Horn County offices and representatives would pass to total Crow control. It would be a start toward the return of Crow autonomy.

Maybe more significant is the simple fact that in spite of more than a century of white rule, with all its attendant ills and overwhelming burdens placed on the Crows, they continue to resist assimilation, continue to see themselves as a separate people, continue to look for a return of their lands, continue to speak of autonomy. Their demise has been falsely forecast many times, just before they weathered another unweatherable storm. They are growing in numbers and they understand better the ways of the white man. As the white man, and his laws, become better known for what they really are, oppression, the Crow see more clearly the need and the way¹⁹⁸ for a return to autonomy.

¹⁹⁷Little Big Horn College, Crow Agency Montana, an unpublished computer projection by Robert Madsen, Mathematics-Science Department, based on 1980 census data.

¹⁹⁸See Appendix II, *infra*.

APPENDIX I: List of Section 2 Violators

<u>NAME</u>	<u>ACREAGE</u>
1. Anderson, Harvey Anderson, Harvey, et al.	1,476.37 600.00 <u>2,076.37</u>
2. Boyd, Phillip Lee & Donna Jean Boyd, Phillip Lee	4,489.58 362.92 <u>4,852.50</u>
3. Brown, Murray J. Brown, Murray J. Jr.	1,876.20 1,240.00 <u>3,118.20</u>
4. Burnham, Rulon Rex, & Charles W. Burnham, Rulon Rex Sr. Burnham, Rulon Rex & Adal	2,142.47 1,230.00 120.00 <u>3,542.47</u>
5. Crawford, Madge c/o William R. Crawford Crawford, William R. & Doris Ann Crawford, William R. & Madge Crawford, William R.	1,040.00 873.31 630.00 202.07 <u>2,795.38</u>
6. Crosby, Rodney L. Crosby, Rodney W. Crosby, Rodney Sr. & Ethel Lewis, C. A. Jr. c/o Crosby, Rodney W.; Crosby, Rodney Sr. & Ethel (Trustee)	850.00 234.17 7,630.80 <u>8,144.97</u>
7. Consolidation Coal Co., c/o Conoco Tax Division	2,440.95
8. Dabney, Gene & Jean	3,293.61
9. Denius Cattle Company	3,939.62
10. Ellis, Ervin D. Ellis, Ervin D. & Ethel J.	1,640.00 2,892.69 <u>4,532.69</u>
11. Esp, Henry Lee & Donna	3,877.72
12. Fellows, Charles; c/o Martin, Lawrence R. & Knutson, Marvin Fellows, Feather W., c/o Martin, Lawrence R. & Knutson, Marvin Weibert, Palmer, c/o Martin, Lawrence R. & Knutson, Marvin Weibert, Fred, c/o Martin, Lawrence R. & Knutson, Marvin	120.00 40.00 234.61 2,085.69 <u>2,480.30</u>
13. Fuller, Lawrence S. Jr. Fuller, Ranch Co. Fuller, David B. Fuller, Charles F. (might be members of same family)	2,414.67 1,956.67 248.89 1,151.54 <u>5,771.77</u>
14. Graham, WJB & William S. Graham, WJB & William S. c/o Murphy Ranch Graham, WJB, Ruth, WS & L Lavere C.	1,574.72 716.13 720.00 <u>3,010.85</u>
15. Hammond, George J. Hammond, George J. & Joannette Hammond, Joannette	728.02 1,996.34 2,237.16 <u>4,961.52</u>
16. Hope, Joe & Barbara	5,719.63
17. Hunt, N. B. Little Horn Land & Investment Co.	32,246.29 1,832.92 <u>34,079.21</u>

18.	Jones Bros. Livestock Co. (some additional land owned under this title is located very near reservation and could possibly be on the reservation.)	1,802.34
19.	Jeans Fork Cattle Co.	2,090.45
20.	Kelley, Edmund & Ruth	3,006.65
21.	Kendrick, Cattle Co.	2,278.66
22.	Knowles, Land Co.	2,320.00
23.	MacClean Ranch	2,520.00
24.	Millers, Inc., Caroline Brown, et al; c/o Millers, Inc.	5,408.05 <u>1,146.50</u> 6,554.55
25.	Montaylor, Corp.	3,314.84
26.	Murdock, Ellis Murdock, Ellis; A & F Allene Murdoc, Ellis & Wayne	720.00 1,248.11 <u>140.13</u> 2,118.24
27.	Rugg, William (Questionable, some land is located right on reservation line.)	1,962.40
28.	Schaak, Aaron Schaak, Aaron & Dorothy	377.40 <u>2,086.21</u> 2,463.61
29.	Schwend Ranch (Glen Schwend)	3,251.41
30.	Scott, Dan S., et al. Scott, Dan S. Scott, Dan S; Homer A.Jr.; Thomas W.; James R.; & Susan S.	36,609.97 520.00 <u>2,760.00</u> 39,889.97
31.	Soap Creek Cattle Co. (P.R. Krone)	15,216.01
32.	Spear O Ranch Company Spear, Bradford J.	5,905.98 <u>1,564.87</u> 7,470.85
33.	Standish, Dell Standish, Dell & Agnes Standish, Agnes	2,377.04 560.00 <u>320.00</u> 3,257.04
34.	Stimpson, Harold E. & Norma M.	3,616.71
35.	Tillet; Royce, Lloyd S. & Rob Roy	3,876.73
36.	Torske, James E. Kopac, Ed/ c/o Torske, James E.	1,384.81 <u>1,903.16</u> 3,287.97
37.	Torske, Nils & Lois B. (on June 17, 1977, Nils Torske conveyed 1300 acres to T.T. Ranch which might be owned by Nils T.)	2,320.04
38.	Tritschler, Mary L. Tritschler, Mary or J. Andrew Jr.	1,708.73 <u>560.00</u> 2,268.73
39.	Vale Creek Cattle Co. Vale Creek Ranch	160.00 <u>1,772.17</u> 1,932.17
40.	Walborn, John E. Walborn, Florence A. Walborn, Cattle Co.	2,075.08 3,745.91 <u>551.95</u> 6,372.94
41.	Wallop, Edward John	4,530.77
42.	Warren, Floyd Inc.	3,817.27
43.	Wells, Florence; c/o Irwin G. & Hults, Maurice, Irwin, G. & Hults, Ralph; c/o Jack Owens Lobo Ranch (Might be under acreage limitation depending on who is holding title)	3,383.14 1,500.00 <u>4,883.14</u>

44.	Westwood Cattle Company	3,927.42
	Westwood, Florecne E. 1	1,212.62
	Westwood, Jack	432.32
	Westwood, Florecne E. & Jack R.	282.25
		<u>5,854.61</u>
45.	Wolfe, Ellen Treadway	5,786.99
46.	Young, Larue	3,155.80

YELLOWSTONE COUNTY, MONTANA
Crow Section II - Violators

1.	Bureke, Peterson, c/o Leachman Cattle Co. 3135, Sycamore Ln, Billings	4,172.22
2.	Farley's Inc., Route 1, Suntley, Montana	7,843.88
3.	Fraser, Robert B. Jr. Box 1352, Billings or 300 E. Santa Inez, San Mateo, CA.	2,193.89
4.	Fraser Land & Lvstk Co., Box 1352, Billings, Mt.	1,114.21
5.	Carol R. Fraser, Pryor St. Rt., Billings, (might related to 3 & 4 above)	1,898.36
6.	Kukowski, Ray & Kukowski, Claire; 4431 Laurretta Dr., Billings	160.00
	Cormier Bros. Inc. c/o Kukowski, Ray & Claire (add. same as above)	4,122.37
7.	Northwestern Mortgage, Box 95 Billings (Acreage unknown since title is in various individual names, book indicates that there is possibly an excess of 2,000 acre	
8.	Pryor Land Co. (Adolph Schaak) Box 1214, Billings, Mt.	5,538.17
9.	Schaak, Wm & Lawrence, 2851 Colton Blvd, Billings, Mt.	2,998.51
	Schaak, Larence 2414 spruce St. Billings, Montana	680.00
10.	Vale Creek Ranch, Pryor Star Rt., Billings, Mt.	4,526.30

ADDITIONAL VIOLATORS

1.	T en Mile Land Cattle Co.	3,314.00
2.	Faddis & Robert Kennedy	14,342.00
3.	Campbell Farming Corp.	21,472.00
4.	CAROL Graham	2,492.90
5.	Brooks Ranch, J. Loren & Robert E.	18,360.92

APPENDIX II: Steps Toward Autonomy

Some steps tribal leaders are considering toward achieving more autonomy are:

1. Enact a tax on all reservation lands to fund the operation of the tribal court. In this way good judges can be obtained who will exercise fair judicial power over lease disputes and thereby bring equity into the leasing "racket" whereby whites control virtually the whole reservation.

2. Enact a tribal ordinance that requires all competent leases to contain provisions whereby the lessee agrees to submit lease disputes to the jurisdiction of the tribal court, and furthermore disavows affiliation with or support of any organization, including the CRO, whose purpose is to oppose in any way tribal sovereignty and self-government or any of its appendages. This will bring members of the CRO out of the closet. They will have to defend their anti-Indian position for just what it is, a ploy for Crow land control. Crows need not be ashamed of their desire to control their own lands, and whites should be ashamed of their greedy motives.

3. Those who will not sign such leases and who continue to oppose Crow sovereignty should have their names published so that all know who they are. A tribal ordinance ought to require immediate cancellation and voidance of these persons existing leases. They should be boycotted until they are willing to

accept the right of Crows to govern themselves on their own reservation. Whites need to learn that it is not unfair to be taxed and ruled by the Crows in Crow Country. Public opinion must be changed until whites realize the rule of thousands of years ago, "When in Rome, do as the Romans do."

4. Remembering that Congress ultimately makes Indian policy, and could wipe away all sovereignty by one vote, a powerful pan-Indian lobby for sovereignty needs to be built, one that will secure and maintain self-government for all tribes.

5. Revive both the tobacco planting ceremony and the peace pipe to bring back the sense of unity and tranquility that was, in the past, so characteristic of Crows especially in times of friction and discord. The offering of the pipe ought to be the fail-safe that would avoid the factionalism so conducive to white oppression. Revival of such a ceremony would also re-cultivate the Crows to their lands, which as Medicine Crow noted, is their life. Reinforcement of moral and spiritual priorities is mandatory if Crows hope to prevail over a force of enemies now better organized, and more cunning, subtle, and secretive.

6. Search for a new way to choose moral, good men, for tribal leaders, analogous to the way the chiefs of old were chosen, by proving themselves on the field of battle. A way is needed to count coops of those who are not selfish, not given to alcoholism, and who will keep always the welfare of the tribe utmost in their deliberations, as if they were the camp chief

choosing the next site for hunting, knowing that the welfare of the people depend upon him.

7. Prepare for the population shift that is coming by training leaders not only for the Crow Reservation but for all of Big Horn County and the State of Montana. As the studies of the Little Big Horn College indicate, by the year 2014 Crows will out number whites about 8 to 1. The day is fast coming when sheer numbers will place power into the hands of the Crow. It will not automatically bring Crow sovereignty, but it will increase Crow power over the local government of Big Horn County.

8. Take their case for autonomy to world forums such as the United Nations. This approach was tried in the 1920s when American Indians approached the League of Nations with no success.¹⁹⁹ And, "Indigenous peoples seeking to ground a right to self-determination in international law face many barriers."²⁰⁰ But in recent years the voice for indigenous rights has grown clearer and louder.²⁰¹ In this day of renewed rhetoric for democracy

¹⁹⁹United Nations, Centre For Human Rights, "The Rights of Indigenous Peoples," Fact Sheet No. 9, Human Rights Fact Sheets Series (Centre for Human Rights, United Nations, New York, NY 10017), May, 1990, p.5.

²⁰⁰Clinton, Robert N., Nell Jessup Newton and Monroe E. Price, American Indian Law, Cases and Materials, (Charlottesville: The Michie Company, 1991) p.1283.

²⁰¹See for example Article 1, Section 1, International Covenant on Human Rights as quoted in Clinton's American Indian Law, supra., p. 1280, as follows: "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." See also the First Revised Text of the Draft Universal Declaration on The Rights of Indigenous Peoples, as presented by The Chairman/Rapporteur, Ms. Erica-Irene Daes,

and "coalition partnerships" against aggressors who would take the lands of weaker neighbors, the time is right for the Crows to press their claim for their lands to forums other than American ones.²⁰²

E/CN.4/Sub.2/1989/36/Annex II, as also set forth in Clinton, supra., p. 1297-1301, particularly Part III pertaining to land rights. See also Part II, Land, Convention 169, General Conference of the International Labor Organization, United Nations, 28 I.L.M. 1382 (1989).

²⁰²See the Wisconsin State Journal, April 3, 1991, which as recently as April 3, 1991, reported that a group called the Black Hills Steering Committee held a human rights hearing at Rapid City, S.D. and characterized the seizure of Sioux land of South Dakota in violation of treaties with the Sioux to the Iraqi invasion of Kuwait. Miguel Alfonso Martinez, a representative of the UN Human Rights Commission was slated to attend this and other similar hearings set for New York, Olympia, Wash, San Francisco, and Phoenix, but he was denied a travel visa from Cuba for what Bush administration officials called a mixup in paperwork.

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