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THE 1972 MONTANA STATE CONSTITUTION:
ITS PROVISION FOR MONTANA INDIANS:
A PROMISE UNFULFILLED

by

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ABSTRACT

For the purpose of illuminating how constitutional provisions or promises do not necessarily realize envisioned outcomes, a study was done to follow the evolution of the Montana Indian Studies Law from its legislative mandate to its revision as a permissive statute.

Using such sources as the minutes of the 1972 Constitutional Convention, surveys, personal interviews, letters, the Indian Culture Master Plan and other documents and published materials, the study details the reaction to the mandate at various bureaucratic levels. In addition, the original purpose of the constitutional promise is discussed. The study shows the obstacles the law encountered when compliance efforts were undertaken. These obstacles formed a bureaucratic gauntlet through which the law had to pass during implementation. This "passage" led to the law being changed to a permissive provision and caused a constitutional promise to be unfulfilled.

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I. INTRODUCTION

On June 6, 1972 the voters of Montana ratified the current state constitution. This action started implementation of a document adopted by the Montana Constitutional Convention of 1972. The "new" Constitution was the result of a need for a document which would be more responsive to the people during a time of profound and rapid change. The proponents for a new constitution believed the 1889 document "...hamstrings Montana's government at many points at a time when more and more is expected, even demanded of government."¹ Agreement existed that a need for change was evident. Part of the need was met as a result of the executive reorganization undertaken during the administration of Governor Forrest Anderson in 1971. But this endeavor was not enough, and a referendum for call of a constitutional convention was placed on the 1970 general election ballot. The referendum passed by a vote of 133,482 to 71,643; the 1971 legislature subsequently passed enabling legislation for the convention whose delegates were elected in November, 1971.²

¹Leo C. Graybill, Jr., "Convention Process," Montana's Proposed Constitution of 1972, Bureau of Government Research, Report Number 11, April, 1972, (Missoula, Montana Public Affairs, Bureau of Government Research, University of Montana, Missoula, Montana).

²"Interpretations," Montana's Proposed Constitution of 1972, Ellis Waldron, Director, Bureau of Government Research, Report Number 11, April, 1972 (Missoula, Montana Public Affairs, Bureau of Government Research, University of Montana, Missoula, Montana).

The convention began work on January 17, 1972; the constitution writing task was finished by the following March and the new document was adopted by the convention on March 22, 1972.

The 1972 Constitutional Convention has been described as a "populist" people-oriented undertaking.³ One reason for characterizing the convention as populist was that the delegates were not for the most part experienced politicians. Since the Montana Supreme Court ruled that no current legislators could serve as constitutional convention delegates, the delegate seats were filled by "...newcomers, reformers, 'nouveau' politicians, and a few elder statesmen...." They had a far-reaching impact on the convention. They were "...a sincere, intellectual, dedicated group, without many deep political ties or preconceptions."⁴

The result was a studious, inquiring and open convention which addressed future as well as immediate concerns. These so called populist constitution writers, therefore, formulated a document that has been credited as a model constitution providing for such innovations as single member legislative districts, statewide property tax assessment and major efforts to strengthen

³Graybill, op. cit., p.2.

⁴Ibid.

the legislature.⁵ The "Declaration of Rights" detailed in Article II contains progressive principles which support the claim that the 1972 Constitution is a model document. One clause seeks to protect people against discrimination on the basis of race, sex, color, culture, social origin or condition, or for political or religious ideas. The inclusion of the term "culture" is significant for Montana because the reference regards protection for the state's largest ethnic minority, the Native Americans.

Such reference to protection against discrimination based on culture encompasses, of course, people other than Native Americans, but the Constitution does contain specific provisions pertaining to the Indians of Montana. Paragraph Two, Section One of Article X, Education and Public Lands allows that, "The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity."⁶ This specific focus on the cultural integrity of Montana Indians represents an innovation in constitution writing. Moreover, the passages in the

⁵"Montana: Fresh Chance Gulch," Time, The Weekly News Magazine, (Time Inc., New York, New York, April 10, 1972), p.18.

⁶Constitution of The State of Montana, as Adopted by the Constitutional Convention March 22, 1972 and as Ratified by The People, June 6, 1972, (Helena: Frank Murray, Secretary of State, Helena, Montana, 1971), p.31.

"Declaration of Rights" and the provisions in Article X held considerable promise for Indians in Montana. The commitment of a state's educational goals which emanate from constitutional authority and which pledge the preservation of the American Indian's cultural integrity certainly represents important progress towards improving the lot of the state's largest ethnic minority.

The special recognition given the Montana Indians suggests that unlike the 1889 "Statehood" Constitution, the 1972 constitution is reform oriented. However, the inclusion of such special reform language does not guarantee that the promise will be fulfilled. Will the reform be carried out? Will it make a difference?

The history of governmental reform efforts amply documents the proposition that a significant gap often exists between promise and final outcome. Attempts to implement reform are frequently hindered. After a provision for reform becomes law, the political climate which favored passage can have changed to the degree that agencies and administrators responsible for implementation encounter formidable obstacles. The individuals undertaking implementation may be thwarted by interest groups opposed to provisions of the reform. In fact, enabling laws concerning reform undertaken at the constitutional level may not really reflect the original intent for which reform was initiated.

Consequently, the target group for whom the reform was generated may oppose action taken by a responsible agency or administrator. Also, cases may exist in which responsible agency persons may not implement the reform policy with the energy and effort necessary for success.

Cases exist in which well-intended efforts for reform experience outcomes, far removed from -- or even opposite to -- what was envisioned. At the federal level the Volstead Act and Amendment XVIII to the Constitution prohibited the sale and use of alcoholic beverages. These so-called reforms resulted from efforts exerted by such special interest groups as the Women's Christian Temperance Union and the Anti-Saloon League. The outcomes did not resemble results anticipated by the proponents. The drinking habits of citizens were little affected. Drinkers merely switched from legal to "bootlegger booze." The law proved to be counterproductive as some nondrinkers began to drink as a protest against a law that meant increased federal power over private citizens as they were told what they could not drink. The desired reform was not realized and this attempt to legislate morality was repealed in 1933.

In Montana the 1972 Constitution incorporated provisions for a variety of governmental reforms. Among the sections are

provisions regarding statewide property tax assessment, single member legislative districts and executive branch consolidation. A major area was the "Declaration of Rights" which provides that,

Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Moreover, as already noted in Article X, Section 1, Paragraph 2, special consideration is given American Indians.

This paper addresses the ramifications of this passage. The paper chronicles action subsequent to the passage of the constitution in order to provide an illustration of how a gap between envisioned reform policy and the actual outcomes can emerge. The discussion will also address how actions taken by the agencies and persons charged with implementation might have changed the original intent of the provision and thereby contributed to a significant modification of the policy's force.

The chronicle covers the events which led to incorporating special consideration of American Indians into the language of the constitution. The intent of the constitutional convention delegates, the constitutional passage, and the subsequent enabling legislation are defined. The action taken to carry out the mandates of the law are discussed for the purpose of showing

the obstacles, concerns and attitudes which eventually cause the force of the provisions to be reduced.

Finally, an analysis of why the reform was not fully realized will be made. This analysis will include lessons that are pertinent to public administrators responsible for carrying out laws and rules concerned with reform or substantial change.

II. THE PROMISE AND ENABLING ACTION

The lot of Montana Indians has not been enviable. An ample supply of testimony, writing, and other evidence exists which unfolds a tale of land expropriation, destruction of traditional lifestyles and culture, broken treaties and de facto incarceration on remote reservations. Until recently Indians (after being placed on reservations) were an almost invisible society except on occasions that too often were associated with skid row bars, jails, off-reservation ghettos, violence, poverty, despair, suicide and considerable misunderstanding. Policymakers at the national, state, and local levels do not have commendable records regarding the formulation and administration of policy pertaining to Indian affairs. The administration of Indian education, for example, has been evaluated as a failure. The educational system has not given the majority of Indian children the means by which they can cope successfully in the majority society. School instructional programs, furthermore, have not recognized and endeavored to perpetuate the culture and values of the Indian people.

The 1972 Constitution, therefore, contains a promise that the status of American Indians will be addressed in the state's educational goals. Still, any promise detailed in the language of a constitution is hollow until subsequent enabling action is taken to

fulfill the pledge. By 1973 enabling action was forthcoming. House Bill 343 (codified as Sections 20-4-211 to 20-4-214) was passed by the 1973 Legislative Assembly and signed by the governor.⁷ The original language of the bill provided that by July 1, 1979 "...only those certified personnel who have completed training in American Indian studies shall be employed in those schools whose Indian population qualifies them to receive federal funds for Indian education programs."⁸ The language further disclosed the conviction that teachers and other school personnel should be able to relate effectively with Indian students and their parents. For people unfamiliar with the history, customs and culture of Indians, the bill contained additional provisions for training and education to foster effective relationships and understanding. By the end of the Forty-second Legislative Session, the American Indians, in Montana at least, had gained statutory support and recognition of their special heritage.

Passage of HB343 and its incorporation into law was one step towards fulfilling a constitutional promise. However, the passage

⁷School Laws of Montana, 1979, (Superintendent of Public Instruction, Helena, Montana), Pp. 182-183.

⁸"House Bill 343," 42nd Legislative Session, Introduced by Holmes, Kimble, Fagg, et. al. (Helena, Montana, 1973).

of a law does not always ensure swift enforcement and compliance. One learns that school districts and colleges were less than prompt in responding to the law. Meanwhile the 1974 Legislative Session convened and additional recognition was given to Indian education.

House Joint Resolution 60 was introduced, considered, and passed by the Forty-third Legislative Assembly. HJR60 reflected wide concern for the status of Montana Indians. The language of the resolution instructed the Montana Board of Public Education and Board of Higher Education to devise a master plan for enriching the background of all public school teachers in American Indian culture. Although resolutions do not have the force of law, HJR60 was more encompassing because it addressed all public school teachers while HB343 focuses on only those teachers and other certified staff on or adjacent to Indian reservations. Moreover, the resolution symbolized wide support for realizing constitutional promise.

HJR60 passed easily in both the House and the Senate. In the House 67 members voted yes, 23 voted no and 10 did not vote. In the Senate 38 members voted yes, 7 voted no and 5 did

not vote.⁹ The resolution had bipartisan sponsorship and support. Thus, in the two years since the 1972 Constitution went into effect, the populist sentiment still appeared to be in evidence. The citizens of the state demonstrated by action regarding Indian studies that the promise of equal educational opportunity would be met insofar as Montana's Indians were concerned. The supporters of HJR 60, like the majority of delegates at the Constitutional Convention, believed that the Indians needed special consideration in order to achieve equal educational opportunity.

During the 1972 convention proceedings members of the Education and Public Lands Committee expressed a belief that cultural status could be an obstacle to equal educational opportunity. One delegate, Dorothy Eck, Bozeman, Montana, therefore submitted the amendment to "Section One" of the education article which resulted in the ensuing language regarding Montana Indians. Mrs. Eck pointed out that during a committee hearing two young Indian students representing Indian students on the Fort Peck Reservation asked what could be done:

⁹ House Journal of the Forty-Third Legislature of the State of Montana, p.292, Helena, Montana 1974. Senate Journal of the Forty-Third Legislature of the State of Montana, p.389, (Helena, Montana 1974).

...to assure them that they would have the opportunity... to study their own culture, perhaps their own language and to develop a real feeling of pride in themselves for their own heritage and culture and also a hope that other students all over Montana would recognize the importance and the real dignity of American Indians in the life of Montana."¹⁰

If inclusion of language providing special recognition of Montana's Indians was believed to enhance the idea of equal educational opportunity, the interpretation could be made that the measure would foster cultural equality rather than financial or material equality. Dorothy Eck pointed out years later that the intent of her amendment was to provide recognition through education for Montana Indians.¹¹ Reading the supporting testimony during discussion and debate of the Committee of the Whole on March 10, 1972 indicates that the intent was recognition through education.

¹⁰ Transcript of Proceedings, Montana Constitutional Convention, March 10, 1972 - March 12, 1972, Vol. VIII, (Convention Hall, State Capitol, Helena, Montana), Pp.5960-5961.

¹¹ Telephone interview with Dorothy Eck, Constitutional Convention Delegate, Bozeman, Montana, 12/3/80.

The support for such intent was overwhelming; the vote on the Eck amendment was 83 ayes and one no.¹²

Consequently, the passage of HB343 in 1973 and HJR60 in 1974 were manifestations of legislative desire to carry out constitutional intent or promise.

The State Board of Education now had the charge to develop a master plan that detailed action alternatives to meet the mandate of HB343 and respond to the urgings of HJR60.

Such a plan was formulated and promulgated by the State Board of Education. The product of the Board's efforts was the Indian Culture Master Plan which was formally adopted on December 15, 1975. The plan finally provided specific information regarding ways the university system and public school districts could reply to policy mandates based on constitutional intent. Moreover, the plan incorporated the provisions of HB343 and HJR60 as specific Indian studies objectives were composed to elucidate constitutional intent. Also, the plan was shaped by input of Montana Indians.

According to the plan the intent of the legislation was to "...accord recognition to and support for the unique heritage of

¹²Transcript of Proceedings, Vol. VIII, op. cit., p.5979.

Indian people and ... to make that heritage accessible to non-Indians."¹³ The contents of the plan reflected this intent. The content, in addition, reflected thorough study and research by a Blackfeet tribal member, Mr. Ken Horwood, who spent a year gathering material, compiling information, meeting with Indian people and identifying alternatives for implementation. An important aspect of this endeavor was the input given by Montana Indians. In fact a 45-member advisory committee was formed to assist in the formulation of the plan. The majority of the members were Native Americans. Thus, the populist characteristics of the constitutional provisions were still in evidence as a wide mix of people, including those towards whom the planning effort was aimed, had control.

The finished plan promulgated program guidelines for meeting the mandates of the law and the goals of the resolution. Adherence to the guidelines ideally would advance the following outcomes:

1. teachers knowledgeable about Montana Indians and Indian cultures;

¹³Indian Culture Master Plan, A Master Plan for Enriching the Background of Public School Personnel in Native American Culture, adopted December 15, 1975, (State Board of Education, Helena, Montana), p.1.

2. teachers who are able to demonstrate their sensitivities and concerns for Montana Indian people to students through educational programs;
3. the development of programs of study and course offerings that include Indian history, traditions, customs, values, beliefs, ethics and contemporary affairs as seen from tribal perspective, and
4. the participation and assistance of Native American people.¹⁴

These four ideals were addressed by specific compliance procedures which provided action alternatives. They were:

- a) a formal course of study offered by a unit of higher education developed with the advice and assistance of Indian people.
- b) in-service training developed by the Superintendent of Public Instruction in cooperation with educators of Indian descent and made available to school districts, or
- c) in-service training provided by a local board of trustees, which is developed and conducted in cooperation with local Indian people.¹⁵

¹⁴ Indian Culture Master Plan, op. cit., p.3.

¹⁵ Ibid, p.5.

The compliance procedures also included options by which evidence of meeting the Indian studies requirements would be available:

1. A transcript from a unit of the Montana University System which indicates completion of requirements for teacher candidates in Native American studies;
2. A letter from the board of trustees of the school district to the participant certifying completion of the in-service training program developed by the Superintendent of Public Instruction;
3. A letter from the board of trustees of the school district to the participant certifying completion of a locally developed in-service training program.¹⁶

Finally, criteria was established to ensure comparability between in-service programs and formal university courses:

- a) a total of six college quarter credits in courses designated as satisfying the requirements;
- b) in-service training of thirty clock hours duration developed either by the local district or by the Superintendent of Public Instruction;
- c) a combination of University System courses and in-service training which is comparable to either of the above.¹⁷

¹⁶ Indian Culture Master Plan, op. cit., p.5.

¹⁷ Ibid.

The plan even included a discussion of pertinent media materials and the places from where they could be obtained for use in Indian studies courses and workshops. The plan seemingly was an instrument to be used in carrying out the promise of Article X, Sec. 1 (2) of the 1972 Montana Constitution. All that remained was for the people covered by the mandate of the Indian studies law to take action guided by the language of the plan.

One provision the plan did not include was who would provide the funds for the suggested budget.

By December 15, 1975, then, persons responsible for carrying out the plan needed to act in order to meet the July 1, 1979 deadline - the time by which certified personnel employed in schools on or near Indian reservations had to complete the Indian studies requirements. They had three and one half years to fulfill the obligations of the law.

regarding whether or not the course work met the criteria of the Master Plan; confusion existed and the decision makers faced a dilemma.¹⁸

The language of the law and the master plan provided that the content of NAS courses and in-service training will reflect the perceptions, values, and beliefs of Native Americans. Consequently, an administrative decision was made to review course work which professors and students believed met the requirements of the master plan and the Indian studies law. If the courses in question did not reflect the American Indian point of view, they would not be accepted for compliance. Eventually some courses were approved and some were not. The outcome of these decisions generated some animosity on the part of students whose course work was rejected and on the part of the professors whose courses would experience declining enrollment because students would select courses meeting NAS approval.¹⁹

¹⁸Telephone interview with Elaine Clayborn, Acting Director, Native American Studies, School of Education, University of Montana, Missoula, March 26, 1981.

¹⁹Ibid.

After the master plan was promulgated, local school districts, as already noted, did not engage in a "mad rush" to comply. Some district administrators waited to schedule course enrollment and in-service training for their certified staff until specific criteria was prescribed. In addition, some individuals may have procrastinated since there was after all sufficient time to address the mandate. Still some school district administrators took action to comply. The Missoula County High School District took advantage of the proximity of the University of Montana and in 1978 arranged three in-service sessions for which sufficient credit to meet the master plan requirements was available. District administrators worked with university personnel in the Native American Studies Program in planning and scheduling the sessions. But when the workshops were conducted, significant animosity towards the sessions was demonstrated by numerous teachers. Part of their ire was directed toward some of the Indian people making presentations. Teachers alleged that certain individuals during their presentations displayed hostility towards the participants and this behavior seemed to center on the idea that the non-whites of today share some of the guilt for the wrongs done to Indians in the past. If such an allegation were

true, the result certainly could contribute to little rapport between the workshop participants and the instructors or professors. However, another reason may have been the cause for the anger and frustration manifested by the Missoula teachers.

One principal cause for the negative feelings displayed by the school teachers and administrators around Montana centered on the fact that the Indian studies law forced people to attend in-service training or to earn course credits they did not want. In fact when the Missoula County High School District arranged for the in-service sessions, the district administration did not issue a fiat that required district teachers to attend, but the teachers were admonished to utilize one of the alternatives to meet the mandates of the law or risk termination.

Teachers and other certificated personnel who did not comply with the law by July 1, 1979 would lose certification. School districts may employ only certified personnel and therefore district administrators faced the dilemma of possibly dismissing staff once the timeline passed or exerting pressure for attendance at in-service sessions and courses.

During the time when school districts began to respond to the law, some tenured teachers expressed the opinion that the law was not applicable to them because of their tenure status; therefore, they felt they should be "grandfathered." The number of people holding this opinion was significant enough to cause the Montana Superintendent of Public Instruction to seek an official opinion from Montana's Attorney General in order to clarify the issue. The Superintendent posed the following question to the Attorney General:

Can a board of trustees for elementary and secondary public school districts on, or located in the vicinity of Indian reservations, refuse to re-employ tenured teachers who have not satisfied the requirements for instruction in American Indian Studies, as defined in Section 75-6130, RCM 1947 (Sic).²⁰

In response to this query, the Attorney General issued this opinion: "While the Indian Studies Act does not specifically mention tenured teachers, it broadly applies to 'certified personnel' ... A school district may employ only certified teachers

²⁰"Montana's Indian Studies Law: Will It Survive?" The Medicine Bundle, Vol. 6, No. 3, (Montana United Scholarship Newsletter, Great Falls, Montana, December, 1978), p.1.

and therefore 'certified personnel' ... refers to both tenured and non-tenured teachers."²¹

Thus, the force of law fostered much of the negative response to participating in the courses and in-service sessions. As implementation of the law was undertaken by concerned school districts and agencies, the populist feeling evident during the 1972 Constitutional Convention was evidently ebbing. Still, many school districts like the Missoula High School District took action towards compliance. Such districts as Busby, Browning, Brockton, Columbia Falls, Havre, Bigfork, Billings, Lockwood, Charlo, Cut Bank, Frenchtown, Hardin, Hot Springs, Kalispell, Lame Deer, Medicine Lake, Missoula and Ronan held workshops and in-service sessions.²²

Adherence to the law, however, did not mean resistance was declining. Teachers and educators continued to protest against legislated curriculum which forced workshop participation and threatened loss of employment. Tenured teachers were the most vociferous in complaining that the law possessed ex post facto characteristics since they already had earned their degrees and

²¹ The Medicine Bundle, op. cit., p. 2.

²² Compliance data obtained from the files of Bob Parsley, Manager, Indian Education, Office of Public Instruction, Helena, Montana.

obtained teaching certificates and should not be required to comply with a statute passed after they started teaching. They still would not accept the Attorney General's opinion that the law applied to all certified personnel, tenured or non-tenured, who were influenced by the statutory provisions.

IV. INDIAN STUDIES MADE PERMISSIVE

The law and its implementation generated proponents and opponents both Indian and non-Indian. Evidence exists that positive outcomes resulted from a state policy providing special recognition for Montana Indians. The official acknowledgement alone is a source of pride for the Indian people in this state. The constitutional provision, the Indian studies law, the House Joint Resolution and the Indian Culture Master Plan all represent unique understanding and leadership on the part of progressive Montana lawmakers. Yet, the measures had opponents and they seem to be the most vocal and active in their opposition. The opposing teachers, for example, constitute a strong special interest group. By January, 1979 when the forty-sixth Legislative Session convened, the teachers and other interest groups caused a bill to be originated which threatened the life and viability of the Indian studies law and the endeavor to provide for compliance. The aim of the new legislation was to rescind the mandatory language in the law; the education and training requirements would become permissive.²³

House Bill 219, introduced and sponsored by Representative Carl A. Seifert, (R) Polson, District 26, was passed and signed

²³H.B. 219, Introduced by Rep. Carl A. Seifert, et. al., 46th Legislature, 1979, Helena, Montana.

into law during the Forty-sixth Legislature. The provisions of the bill made the Indian studies law requirements permissive rather than mandatory.²⁴ The language of the bill allowed that "Any board of trustees for an elementary and/or secondary public school district on or for a public school located in the vicinity of an Indian reservation where the enrollment of Indian children qualifies the school for federal funds for Indian education programs may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies as defined in 20-4-211." Passage of H.B. 219, then, transfers compliance authority from the State Board of Education and the Office of Public Instruction to the local school boards if these boards wish to require compliance. Administrators at the state level no longer need to be concerned with carrying out an element of constitutional policy.

At the time H.B. 219 was being considered by the Forty-sixth Legislature, the opponents to the bill argued that its permissiveness would neutralize the law to the degree that the aims and goals of the constitution, H.B. 343 passed in 1973,

²⁴H.B. 219, op. cit.

HJR60 and the Indian Culture Master Plan, will become merely symbolic. Larry Elkin, Associated Press writer, noted in an article printed in The Missoulian on March 15, 1979 that, "House Bill 219 allows local school boards to retain the requirement, but does not force them to. Essentially it scraps the law while inviting school boards that like to to revive it." H.B. 219's opponents believed that local boards were not likely to "revive it." Board members in such pertinent districts as Poplar, Wolf Point, Ronan and Hardin are predominantly white and these boards employ mainly white staff. Both groups must interact during collective bargaining and the issue of mandated curriculum and in-service training is an issue better avoided by boards and school district administrators. Teachers certainly demonstrated opposition to the issue. Teachers were not agreeable to such course work and in-service training.

Opponents to H.B. 219 defended the Indian studies requirement and pointed out during committee hearings that some teachers did not oppose the requirement and believed the course work and training was worthwhile. Testimony detailed that the Indian studies law was working. In 1979 the requirements of the law covered approximately 3,400 certified educational personnel and of that number 2,039 had completed or partially completed

Indian studies through in-service sessions conducted by the Office of Public Instruction.²⁵ Additional testimony noted that implementation of the law was helping Indian children and was reducing the Indian student dropout rate.²⁶

As H.B. 219 successfully progressed through the legislative process, it became apparent to the opponents of the bill that they did not have the votes to table it or have it killed on the House or Senate floors. In the House it passed third reading by a margin of 78 Ayes to 20 Noes and the third reading vote in the Senate was 38 Ayes to 10 Noes.²⁷

Consequently they tried to generate compromise in order to save some element of the law's force. Two alternate bills were written. They were Senate Bill 218 sponsored by Senator Jean A.

²⁵Testimony given before the House and Senate Education Committees, 46th Legislature, Helena, Montana, 1979, by Edward Eschler, Social Studies/Environmental Education Consultant, Office of Public Instruction, Helena, Montana.

²⁶Testimony given before the House and Senate Education Committees, 46th Legislature, Helena, Montana, 1979, Carmen Taylor, Former Cultural Awareness Specialist, Office of Public Instruction, Helena, Montana.

²⁷House Journal of the Forty-sixth Legislature of the State of Montana, Vol. I, p.508. Senate Journal of the Forty-sixth Legislature of the State of Montana, Vol. II, p. 928. Held in Montana, the Seat of Government commencing in regular session January 3, 1979 and ending April 20, 1979.

Turnage (R) District 13, Polson, Montana and House Bill 880 sponsored by Daniel Kemmis (D) District 94, Missoula, Montana and others. Both bills sought to revise the Indian studies law by reducing the mandates; tenured teachers would be "grandfathered," and non-tenured teachers would be given increased time for compliance. In addition, entry level teachers and university students seeking education degrees would be expected to fulfill the requirements. The compromise bills were short lived. S.B. 218 died in committee. H.B. 880 was killed on second reading.

Yet, the desire to preserve some vestige of the law's "clout" did not ebb, and an attempt was made to amend H.B. 219 by incorporating language from S.B. 219 and H.B. 880. The endeavor failed.

Finally, one last attempt was made to keep H.B. 219 from becoming law. Proponents of Indian studies urged the incumbent governor, Thomas Judge, to send the bill back to the legislature with an amendatory veto. The action would change the law to incorporate the compromise language of H.B. 880 and S.B. 218. The endeavor to persuade the governor to initiate the amendatory veto also failed. In an April 3, 1979 article in the Great Falls Tribune the article disclosed that:

Judge said he wanted to amend the bill to keep the requirement in effect for future teachers, and to require current teachers to meet the requirements "in the normal pursuit of their continuing education." But he expressed doubt the Legislature would concur.

"I firmly believe that those educators involved in an educational system which serves any minority group should be aware of and versed in the culture of that minority group, ..." "My original intent was to amend this bill to require educators to gain their credits either before obtaining their degree or in the normal pursuit of their continuing education. However, similar amendments have been rejected by the Montana Legislature, as well as the delegate assembly of the Montana Education Association meeting in Helena March 30th.

"My signature must not be interpreted as an abdication of Montana's responsibilities to minority citizens and, particularly, American Indians. If I determine that school districts or educators are using this bill as a means to abdicate their responsibility in this area, I assure you that I will personally support legislation in the 1981 session of the Montana Legislature that will correct the situation."²⁸

²⁸"Judge Signs Indian Studies Bill," Great Falls Tribune, Great Falls, Montana, April 3, 1979, p.4

Thus, H.B. 219 became law and the Indian studies provision became permissive. Governor Judge promised action if the new language of the law caused a demise of the constitutional promise. However, Thomas Judge was not to be in office when the 1981 Legislature convened so his promise became hollow.

V. RESULTS OF A PERMISSIVE LAW

By 1979 the populism which during the constitutional convention manifested itself in part by incorporating special promise to American Indians in the new constitution had apparently diminished. The ensuing action against the Indian studies mandate suggests this decline. Other concerns also may have influenced action against Indian studies.

Since the 1960's Native Americans have been asserting themselves in a quest to gain economic, political and social equality. Such groups as the American Indian Movement (AIM) represented Indian activism which is characterized by militancy evidenced by the occupation of Alcatraz in 1969 and by the "second battle of Wounded Knee" at Pine Ridge, South Dakota during 1973.²⁹ Since then a more disciplined effort has allowed Indian people to win lawsuits which, "affirm their jurisdiction over their lands, natural resources, and guarantee their long-neglected civil rights."³⁰

The Native American victories won by "Fighting Back With White Man's Weapons," however, did generate anger and at the

²⁹Mark Kellogg, "Indian Rights, Fighting Back With White Man's Weapons," Saturday Review, November 25, 1978, p.26.

³⁰Ibid, p. 27.

federal level "backlash legislation" emerged. In 1978, for example, Senator Henry Jackson (D-Washington), then chairman of the Interior Committee, planned to introduce a bill limiting Indian water rights.³¹ The backlash was also evidenced by the organization of anti-Indian groups. Mark Kellogg, author of "Indian Rights, Fighting Back With White Man's Weapons," described the growth of the so called backlash:

Unfortunately for the Indians, legislators are responding to the anger and resentment of their constituents and of the country as a whole. Wherever there are pockets of Indian population, anti-Indian groups have formed to demand an end to what they conceive to be the disastrous practice of protecting Indians from their citizenship responsibilities.

One of the largest anti-Indian groups is the ... Interstate Congress for Equal Rights and Responsibilities (ICERR), with main offices located in South Dakota. Backed by businessmen, ranchers, and fishermen, the group boasts more than 10,000 non-Indian members in 17 states, and they are

³¹ Kellogg, op. cit., p. 27.

demanding that whites be considered in the judicial reinterpretation of the Indian's ... treaty rights.³²

Such groups exist in Montana. One organization is Montanans Opposing Discrimination (MOD) headquartered in Polson, Montana.

The objectives of MOD are the same as ICERR whose platform espouses that:

constitutionally guaranteed rights should be protected without regard to race and that all citizens should bear equally the responsibility and burdens of citizenship as prescribed under the laws of the states and their political subdivisions.³³

The MOD organization's real area of contention with Montana tribes probably centers on conflict associated with land acquisition, land use and water rights and jurisdiction. On the Flathead Indian Reservation the Confederated Tribes have taken authority over a large area of Flathead Lake, have assumed

³²Kellogg, op. cit., p. 27.

³³Ibid.

jurisdiction of the regulation of hunting and fishing and have blocked energy corporations from building electric power transmission lines across reservation land. On the Crow Indian Reservation tribal authorities until recently maintained authority over the portion of the Big Horn River that flows through the reservation. These incidents are examples which generated negative attitudes towards Native Americans and their endeavors. In the Polson area and throughout Montana such sentiments doubtless carried over to the Indian studies law and caused its force to be significantly reduced. Dr. Lee Christensen, Superintendent of the Polson Public Schools, has pointed out that the move to alter the law originated in Polson.

In the aftermath of the Indian studies law being made permissive, proponents of Indian studies wondered how much attention would be given in the future to Native Americans in the educational goals of Montana schools. Moreover, these proponents also wondered if an effort to resurrect the original force of the law would or should be made during the 1981 legislative session. Many people believed that the change in the law would cause the demise of Indian studies and that the gains and recognition made by Native Americans since the advent of the 1972 Constitution would be reduced. Some individuals did harbor hope that some

parts of the original mandate could be reinstated during the 1981 Legislature. One scheme focused on striving to have the force of the law cover only university students working towards a teaching degree. Indian studies would become a requirement for teacher certification.

During the past two years the Office of Public Instruction and The Montana Intertribal Policy Board did survey the state to determine the status of Indian studies since the end of the 1979 Legislature.

Bob Parsley, Manager of Indian Education in the Office of Public Instruction, Helena, Montana conducted a survey during December, 1979, nine months after House Bill 219 was signed into law. The purpose of the survey was to determine the status of Indian studies as a result of the passage of H.B. 219. Eighty-five school districts were surveyed. Fifty-seven surveys were returned. Only six districts indicated a requirement for Indian studies training for school district staff. One district did have a requirement for staff which regarded an in-service session devoted to "cultural human relations." In all, 23 districts required or had required at one time a program or in-service session concerned with Indian studies since the original law went

into effect.³⁴ This number is considerably less than the 72 schools in the 30 districts covered by the Indian studies mandate emanating from the original law.³⁵ These numbers are important since only six schools enforced a requirement during the 1979-80 school year, and prior to the signing of H.B. 219, the districts having any requirement at all did not maintain total compliance.

The survey also disclosed that only eleven schools included classes in Indian education in their instructional program.

The data does not suggest that the broad coverage envisioned by the Statewide Advisory Committee involved in formulating the Indian Culture Master Plan was to be realized. Moreover, the special recognition noted in the constitution was gaining less than over-whelming success.

Another survey was conducted by the Montana Intertribal Policy Board during 1980. The analysis of the survey is not yet complete. The survey experienced only a 50% return of questionnaires mailed. However, preliminary results indicate that a 33%

³⁴ Bob Parsley, Manager, Indian Education, Office of Public Instruction, Helena, Montana. Indian Studies Survey, December 14, 1979.

³⁵ Indian Culture Master Plan, op cit., p.16.

drop in school districts requiring Indian studies has taken place since the Indian studies law became permissive. When the final analysis of the survey is finished, this figure could change.³⁶

The outcomes of the two surveys do indicate a drop in the Indian studies requirement for teachers as well as a drop in the number of Indian studies course offerings in school instructional programs. However, the survey results do not provide enough information to ascertain whether or not the current permissive nature of the Indian studies law has caused a drastic decline in Indian related courses.

School district administrators, with some exceptions, do not lament the change in the law. During December, 1980, administrators of districts and schools with large Indian enrollments were queried by letter to ascertain what difficulties were encountered when the law was mandatory and what changes resulted after the law was made permissive. The letter was sent to sixteen individuals. Eight persons responded to the query. Of the eight respondents only one person lamented the change in the law. The remaining seven favored the change.

³⁶"Indian Studies Law Survey, 1980" (Unpublished). Donald Wetzel, Education Coordinator, Montana Inter-Tribal Policy Board, 711 Central Avenue, Billings, Montana 59102.

One administrator, Dr. Lee Christensen, Superintendent of the Polson Public Schools, observed that the original Indian studies law was, "an administrative nightmare." This individual believed that the task of training its staff in Indian studies was a burden which cost the district approximately \$7,000.00. Also, this person expressed that, "Any attempt by any special interest group to cause local school districts additional expense in terms of certification is wrong." In response to the idea that the mandate would be reinstituted in future legislative sessions, the respondent provided this input:

It appears to us that once again special interest groups, spearheaded by college instructors with an obvious special interest (job preservation) are attempting to achieve something which there is little interest or concern about as far as the local citizenry is concerned. I doubt very much if you could find more than 5% of our total Indian population that feels that this [Indian studies] is a necessary requirement. During the past two years I have had absolutely no concern expressed about passage of House Bill 219. As with any subject of concern to local school boards, I would recommend that if a School Board feels that this [Indian Studies mandate] is a necessity then let the School Board make it a requirement for employment in their district. To make it a statewide requirement is ludicrous.

Except for the one instance already noted, all the other respondents supported the above. One individual did support the idea of having Indian studies a requirement for certification of pre-service, entry level teachers.

Mr. Thomas Thompson, Browning Public Schools, expressed opposition to the change in the law and noted that the original law could have survived if the state agencies had more actively addressed the "commitment." He further observed that:

Prior to the recent legislative changes in the "Indian Studies Law" the Office of Public Instruction made some token efforts at providing material and human resources to school districts wishing to adhere to the law. The efforts were piecemeal at best, however, and no tangible product for inservice teacher training emerged. Had the Office of Public Instruction assumed a leadership role, many of the administrative problems that resulted for some districts would have been overcome.

All the administrators who responded to the letter survey did indicate that Indian studies were included in their instructional program. Seemingly, these administrators believe that the Indian studies issue is being addressed and that a mandate is not necessary.

The Montana Intertribal Policy Board, however, agrees with Mr. Thompson who expressed the belief that the Constitutional promise is not being met. Consequently, the board has requested and lobbied the Montana Board of Public Education to incorporate Indian studies requirements in the Standards for Accreditation of Montana Schools. Such action would cover all the public school districts in Montana since they are all required to comply with the standards in order to receive accreditation.

The Board of Public Education, upon receiving the request from the Intertribal Policy Board, decided an Attorney General's opinion was needed in order to determine if the board had the authority to put such a requirement in the Accreditation Standards. The Attorney General issued his opinion to the board April 2, 1981. The opinion held that the, "Board of Public Education does not have the authority to require that all certified teachers complete six inservice credits in Indian studies."³⁷

This opinion seemingly could end the issue but the Montana Intertribal Policy Board is continuing its efforts to reintroduce an authoritative requirement for Indian studies. During the forthcoming July, 1981, meeting of the Board of Public Education a

³⁷Mike Greely, Attorney General, State of Montana, Vol. 39, Opinion No. 11, Pp.2-3.

decision will be made regarding the Inter-tribal Policy Boards endeavor to provide a teaching endorsement in Indian studies.

It remains to be determined, therefore, whether or not the provisions of the Montana Constitution has been met. The proponents of the Indian studies requirement think not. No information disclosing the feelings of the majority of Indian people in Montana is available. Further research is needed to discover if the Indians and non-Indians supporting the requirement do speak for the "majority." Yet, if the aim of the Constitution to commit the state "in its educational goals to the preservation of (the Indian) cultural integrity" is served by a permissive law, it is likely that the realization of such goals will receive a low priority.

Public school administrators currently are beset by many other issues such as funding and personnel problems. Therefore, they are not likely to devote considerable time and energy to an educational goal that they legally can ignore.

In 1982 the Montana Constitution will be a decade old. At that time it would be worthwhile to determine if the lot of the Montana Indians has improved as a result of the special recognition given them. If improvement is not evident, then the

judgment could be made that one particular constitutional promise is without substance.

VI. CONCLUSION

The Indian studies issue provides lessons for the public administrator and especially the public school administrator. Public administrators work in an environment constantly influenced by special interest groups. Administrators of public school systems are responsible to many interest groups, and when special recognition is given to one group the "ripple effects" can be negative. Other interest groups will protest and lobby for their "just desserts."

Administrators of agencies charged with complying with certain constitutionally established policies may exert just enough effort to satisfy legal requirements, but by so doing can earn the chagrin of groups affected by the policy. Moreover, certain administrators may be forced, from time to time, to reduce agency effort in meeting policy requirements when new issues arise that require high priority compliance. Such issues can divert an administrator's energies when these concerns involve interest groups whose political power is significant and whose views reflect prevailing political opinion.

When public administrators attempt to carry out certain policy, their endeavors can be hindered by the professionals who do the "front line" work of the agency. The public school teachers in the case of Indian studies certainly were instrumental in reducing the force of a law they opposed.

Administrators must be aware that the constitutional ideal expressed in the language of the document is significantly changed once enabling legislation is written and once compliance takes place. Policy carried out does not always mirror the outcomes envisioned by the creators of policy. Furthermore, considerable time may have to pass before the problems emanating from policy compliance can be solved.

Yet, the constitutional recognition of Montana Indians is in itself an important gain. The turbulent attempt to fulfill the promise has generated a more positive sense of identity on the part of Montana Indians. With continued effort and dialogue between concerned individuals, groups and agencies, the Indian people will gain a better place in the conduct of Montana's affairs. Public school administrators will continue to be concerned with the largest minority in Montana.

The mandates of the Indian studies law had a short life. One wonders why. Certain questions arise which may shed some light: Was the implementation design faulty? Were the people touched by the requirements of the law ill-willed? Was the support of top level administrators missing? Did special interest groups destroy support? Did the initial enthusiasm for Indian studies wane?

One finds difficulty in faulting the implementation design. The Indian Culture Master Plan as already detailed provides alternatives for complying with the law. Personnel in school districts could comply without leaving the community. In the case of credit or time requirements the argument could be posed that racial or cultural understanding cannot be measured by credits or hours, but the means for compliance exist only to fulfill the force of law.

In addition the people needing to comply had adequate time to act. Therefore, hostility regarding the law should not have been generated by the press of time.

The feelings of the people touched by the law did influence the demise of the mandate. In earlier sections of this paper examples of the teachers' actions are noted. Numerous teachers like many other citizens are not always pleased when laws are passed that force them to do things they did not want to do. Therefore, when enabling action was initiated in order to fulfill a constitutional promise, one must begin to realize that the individuals resisting the law may not hold the ideals manifested by the delegates of the constitutional convention. Certainly, teachers would be quick to point out their belief in racial equality and cultural recognition, but would still resist the specific means

by which a belief is addressed. One should be aware, therefore, that elected officials can act on an issue and not necessarily reflect the perceptions of their constituents. Thus, in this case the teachers who are at the "frontlines" of the public education bureaucracy resisted compliance and this resistance contributed to the change in the law.

The teachers alone did not cause the change in the law. Other levels of bureaucracy were involved. In this paper attention was given to the feelings held by some school district administrators. Some believed they already addressed the need for Indian studies. Others cited the burden of budget constraints. Like the teachers in their district, school administrators are beset with demands made by patrons of the districts. These demands center on such areas as district administrative policy and the instructional program and the number is so large that teachers and administrators are hard pressed to meet them. District administrators, consequently, are loath to shoulder such added responsibilities as ensuring that district certified staff meet the requirements of the Indian studies law. Many administrators who did undertake action to provide for staff compliance did so because they saw no way to avoid such

compliance. Their efforts were perfunctory. When teachers did protest, the administrators probably were sympathetic. .

The possibility also exists that the actions -- or, perhaps, inactions -- of administrators at even higher levels of the bureaucracy contributed to the change in the law. Two proponents of Indian studies have suggested this -- one individual (as noted earlier) implied that the Office of Public Instruction could have exerted greater leadership and that the efforts of the office to aid in compliance were "piecemeal." The degree of leadership given by the Office of Public Instruction is subject to interpretation. The Indian Culture Master Plan can help such an interpretation. On pages 4-5 of the plan is language regarding "Funding for Implementation." In these paragraphs is discussion of the plan's recommended budget (pages 12-13). The passage discloses that both the then incumbent Superintendent of Public Instruction and the Commissioner of Higher Education determined that:

concentration of funds at the administrative level for purposes of implementing the Master Plan would not be the most beneficial use of already inadequate resources.³⁸

³⁸ Indian Culture Master Plan, op. cit., p. 4-5.

They allowed that staff already available have the expertise and responsibility to address Indian studies. They further noted that their funding decision did not reflect "lack of commitment on their part, and that they were fully aware of their responsibilities.

This absence of significant budget support for implementation, however, can be interpreted as evidence of a low priority commitment to compliance. One individual, Dr. Robert Peregoy, made such an interpretation. This individual holds that the want of budget support at the university level prevented units of the Montana University System from hiring qualified Indian persons to teach Indian studies courses. Consequently, existing faculty were:

forced to teach some courses out of their areas of academic expertise. As a result, some portions of the course delivery rested on emotional issues, rather than factual presentations. This caused negative reactions among those enrolled in the classes.³⁹

³⁹Based on personal correspondence between Dr. Robert M. Peregoy, Director, Montana State University Center for Native American Studies, and the writer, June 9, 1981

In addition Dr. Peregoy further noted in 1977 that budget constraints threatened the ability to carry out the provisions of the Indian Culture Master Plan:

No additional funds have been allocated to NAS programs in order to accommodate the demands of the ICMP. As a result, both implementation of the program and development of the regular NAS programs have been hampered.⁴⁰

The absence of budget support at various bureaucratic levels can be considered as one factor weakening the progress of the Indian studies mandate. Dr. Peregoy, even allows that the different levels of bureaucracy involved in implementing the Indian studies mandate articulated an anti-Indian sentiment and played a role in "stonewalling" or resisting the implementation of the law.⁴¹

⁴⁰Based on correspondence between Dr. Robert M. Peregoy, Director, Montana State University Center for Native American Studies and Dr. Lawrence K. Pettit, Commissioner of Higher Education, Montana University System, August 24, 1977.

⁴¹Peregoy-Eschler correspondence, op. cit.

Consequently, there is evidence that the levels of bureaucracy constituted a "gauntlet" through which the Indian studies law had to pass as implementation took place. The gauntlet consisted of the governor, the legislature, the state education agency, the university system and the local school districts. These offices, bureaucracies and agencies all played a part in thwarting the success of the law.

The governor declined to send HB219 back to the legislature with an amendatory veto and thus foiled the attempt to save some of the "clout" of the law.

The legislature did not provide funding for implementation of the provisions of HB343 and HJR60 and also, in 1979, acquiesced to the interest groups espousing the goals of HB219. The legislative commitment to Montana Indians was short lived.

The Superintendent of Public Instruction did not commit funds from the agency budget to implement the provisions of HJR60.

The university system's commissioner also failed to give HJR60 a high priority nor did he commit adequate funds to implementation.

Administrators in local school districts were loathe to use local resources to provide for teacher in-service workshops and subsequent incorporation of Indian studies into the school program.

Teachers were unwilling to take courses or participate in workshops and training sessions. They refused to shoulder an inordinate share of a constitutional responsibility put upon them by higher levels of bureaucracy -- and by the people of the state who gave them the burden of fulfilling the constitutional obligation.

At this point one may even surmise that the constitutional convention delegates should be included in the gauntlet. They made the promise to Montana Indians. They, however, assumed no responsibility for carrying out the promise.

This writer now believes that the special recognition given the Indians was merely a gesture made during the "heady" days of constitution writing. Moreover the conclusion can be drawn that any time a special culture or ethnic group is singled out in the language of a constitution, the outcome will be less than anticipated because the promises in such a document should be addressed to all citizens.

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