Strangers in their Own Land : American Indian Citizenship in the United States

Yasuhide Kawashima

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I- Introduction

American Indian citizenship is unique on several scores. Quite different from the immigrants, who are only racial groups, Indians are political as well as racial groups. Indian tribes are limited sovereigns that retain their original inherited powers of sovereignty over their peoples and their territories, except for those powers specifically removed by treaty, federal law, or by natural implication as a result of their dependent status.

Compared with the immigrants, who have federal/state citizenship, an American Indian as a tribal member has three citizenships. Nor is the acquisition of citizenship by the Indians similar to the simple process of naturalization and citizenship the immigrant groups have to go through: denouncing the original citizenship and acquiring the new one.

This paper will analyze the evolution of American Indian citizenship in the United States from colonial times to the present in four specific periods: the colonial period to 1789, the national period to 1887, 1887-1924, and 1924 to the present.

II- The Colonial Period to 1789: The Period of Expectation and Disappointment

The English North American colonies established very liberal naturalization policies in order to attract newcomers from

Europe because they provided valuable labor and a market for the rapidly expanding colonial economy. Maryland, Pennsylvania, New York, Virginia, and South Carolina had already passed naturalization laws in the seventeenth century, and these laws were improved in the course of the eighteenth century and imitated by other colonies.

Usually the conditions of naturalization were very attractive, liberally bestowing upon foreigners the benefit of citizenship with minimum basic requirements which almost every European could meet eventually: fifty acres of land and a residence of one to two years in the colony. Some colonies actually offered the immigrants tax exemption for a period of years and even gave a five year exemption from suits for recovery of debts contracted before emigration.[1]

The two non-European groups, the American Indians and the Negroes, both slaves and free, were treated differently.

At the beginning of their colonization, the English hoped to turn the American Indians into respectable members of colonial society, but such hopes quickly evaporated. Yet the colonists continued their endeavor to « westernize », « civilize », and Christianize the Indians by breaking up their tribal structure and placing them under colonial jurisdiction as groups in somewhat artificially established plantations (« praying villages ») or inducing them to live individually in the white communities. In the course of colonization, the English turned the American Indians into three distinct groups: the Indian tribes, who lived either outside the colony or within the colonial boundary while still maintaining their independence, the « plantation (praying) » Indians, and individual Indians who lived within the English communities.

The independent tribes had been considerably reduced in number and strength throughout the colonial period. Through treaties the colonial governments persistently attempted to make these tribes subjects of the English king and acknowledge the colonial authority. Even as early as the 1640s, the Narragansetts, in

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1 Curtis P. Nettels, *The Roots of American Civilization: A History of American Colonial Life*, Second ed. (New York, 1963), 401-402; Max Savelle and Robert Middlekauff, *A History of Colonial America*, Revised ed. (New York, 1964), 456-457.

order to challenge the possible intervention of the Massachusetts Bay Colony, sent the formal act of submission to the English king, and demanded the Bay colony to stay out of their problems involving only the Indian tribes. Although some colonists supported the Indians' position, asserting the independence of the tribes from the colonies, such a demand was never taken seriously by most of the colonists. By the middle of the eighteenth century, the independence of the Indian tribes from the colonies became even more precarious. The Indians ceased increasingly to be a separate and distinct people and came under the jurisdiction of the colonies, as subjects. Such formal submission to the colonial authorities did not provide tribe members with any basis for future naturalization.[2]

Meanwhile, the colonists attempted to Westernize, « civilize », and Christianize the Indians, by establishing plantations or « praying villages », in which the Indians drawn from the tribes were to be taught the English way of life so that they could be made worthy members of colonial society. In New England, John Eliot as early as the 1650s played an important role in Christianizing the Indians, but the idea of making Indians good citizens came to an end by the outbreak of King Philip's War, because the Indians consistently failed to meet the colonists' expectations. After the war, a drastic change in policy was made to turn the praying village into a reservation, a means of controlling the natives. At the beginning the Indian village was designed as a step for the eventual incorporation of the Indians, but this hope was never realized. It never became an integral part of the political system of the colony; it did not attain the status of the English township, the basic political and territorial unit in the colony. Nor did the reservation ever send its representatives to the colonial assembly.[3]

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2 W. Stitt Robinson, Jr., « The Legal Status of the Indian in Colonial Virginia », *Virginia Magazine of History and Biography*, LXI (1953), 247-259; Yasu Kawashima, « Jurisdiction of the Colonial Courts over the Indians in Massachusetts, 1689-1763 », *New England Quarterly*, XLII (1969), 532-550; James H. Kettner, *The Development of American Citizenship*, 1608-1870 (Chapel Hill, NC, 1978), 288-291.

3 Yasuhide Kawashima, « Legal Origins of the Indian Reservation in Colonial Massachusetts », *American Journal of Legal History*, XIII (1969), 42-56; Yasuhide Kawashima, *Puritan Justice and the Indian: White Man's Law in Massachusetts, 1630-1763* (Middletown, CT, 1986), 232-234.

The individual Indians who had lost or relinquished their tribal connection and come to live in the English communities merged into the white population. But for these resident Indians, who included students at colonial schools, servants and maids, and individuals living as freemen, the English community, where strong negative feeling and racial prejudice prevailed among the settlers, was a dead end where there was no possibility of securing citizenship.[4]

The English colonists, who at the beginning hoped to make Indians full members of their society, became more and more convinced that the Indians could not live up to their expectations, expectations which the Indians found unreasonable and impossible. Thus Indians, whether tribal, plantation, or individual, came to be barred from citizenship no matter how long they lived in the colony.

During the American Revolution, the central government assumed primary authority over Indian affairs, which had so far been handled by the colonial governments. The Continental Congress from 1775 to 1781 and the Congress under the Articles of Confederation from 1781 to 1789 dealt with the Indian tribes, especially those outside the boundaries of existing states, through treaties. Some of these treaties with the tribes such as the Delaware and the Cherokees did envision the admission of separate Indian states into the Confederation. None of these provisions, however, was put into operation.[5]

III- The National Period, 1789-1887: The Era of Limited Accommodation

The first federal naturalization act, which passed in 1790, followed the liberal colonial policy. Any « free white person » who resided for two years within the United States and for at least one year in the state where he sought admission, proving his « good character » and taking an oath to « support the Constitution of the United States », was to be « considered as a citizen of the United States ».[6]

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4 Kawashima, *Puritan Justice*, 235-237.

5 Kettner, *American Citizenship*, 292.

6 *Act of March 26, 1790*. Kettner, *American Citizenship*, 236.

But soon the majority in Congress considered the existing requirements too liberal and passed a new law in 1795, increasing the period of residence from two to five years and requiring the applicant to declare publicly his intent to become a citizen three years before submission.[7]

During the Quasi War with France, the Fifth Congress dominated by the Federalists passed the *Alien and Sedition Acts* to increase national security and to eliminate the French threat from the United States. One of the acts, the naturalization law, passed in June 1798, amended the law of 1795 and extended the residence from five to fourteen years before the applicant could be admitted and required a declaration of intent to become a citizen five years before admission. Enemy aliens were barred from naturalization while their native country was at war with the United States.[8]

When Thomas Jefferson became president in 1801, he quickly had the obnoxious law repealed. A new law passed in 1802 reinstated the general requirement established in 1795: residence of five years with a declaration of intent three years before admission; oaths or declarations rejecting titles and foreign allegiance and swearing attachment to the principles of the Constitution; and satisfactory proof of good character and behavior. The act, however, still barred alien enemies from naturalization.[9]

The *Naturalization Act* of 1802 was the last major piece of legislation during the nineteenth century. Although a number of minor revisions were introduced, these did not change the basic nature of the admission procedure. At the heart of the naturalization process remained the idea that a reasonable length of residence was the surest way of guaranteeing an alien's attachment to the country and adoption of its ways. The Indians were barred from this system of naturalization as long as it was restricted to « free white aliens ». After ratification of the Fourteenth Amendment after the Civil War, however, the naturalization laws came to be extended to aliens of African nationality and to persons of African descent,[10] but these laws

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7 *Act of January 29, 1795.* Kettner, *American Citizenship*, 242.

8 *Act of June 18, 1798.* Kettner, *American Citizenship*, 244.

9 *Act of April 14, 1802.* Kettner, *American Citizenship*, 245-246.

10 *Act of July 14, 1870.* sect. 7, 16 *Statutes* 254. 256.

were never applied to Indians; the federal courts continued to rule against birthright citizenship for Indians[11].

Why, then, were the Indians barred from citizenship ? Among many reasons, tribal organization became the major barrier for the Indians and the white man's justification for denying the privilege of citizenship.[12] A clearest statement on the issue of citizenship was made by John Marshall in *Cherokee Nation v. Georgia* (1831), in which the Cherokees sought to enjoin the state of Georgia from enforcing state law within the territory reserved for the tribe, insisting that they were a « foreign State, not owing allegiance to the United States, nor to any State of this Union ». Chief Justice Marshall held that the Cherokees did not constitute a foreign nation but a domestic dependent nation, occupying a « state of Pupilage »; hence the tribesmen were not qualified to be American citizens.[13]

In *Worcester v. Georgia* (1832), Marshall went further in clarifying the relation of the Cherokees to the federal government, maintaining that it « was that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to the laws of a master ». The tribes, Marshall pointed out, were sovereign enough to give protection to and demand allegiance from their members. All Indians who retained this relationship - regardless of their ultimate dependency on the United States - were aliens.[14] Thus by Marshall's reasoning, the possibility of individual Indians expatriating themselves from their tribe and merging with the white population was nil unless there was a positive act of the government.

Although Indians were barred from naturalization under the general statutes, the federal government had the power to make treaties with Indian tribes, establishing procedures for the

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11 *McKay v. Campbell*, 2 *Sawyer* 118 (U.S.D.C., Ore., 1871); *United States v. Osborne*, 6 *Sawyer* 406 (U.S.D.C., Ore., 1880); *Elk v. Wilkins*, 112 *U.S.* 94, 98-109 (U.S., 1884).

12 Kettner, *American Citizenship*, 293-294.

13 5 *Peters* 1, 3, 16, 17 (U.S., 1831; Wilcomb E. Washburn, *Red Man's Land/White Man's Law: A Study of the Past and Present Status of the American Indian* (New York, 1971), 62-69, 181-182.

14 Kettner, *American Citizenship*, 296.

admission of tribal members to citizenship. The Cherokee treaties of 1817 and 1819 provided for land grants to heads of families « who would break away from the tribe and may wish to become citizens of the United States ». Implicit in such an arrangement was the notion that citizenship was incompatible with continued participation in tribal government or ownership of tribal property and thus the natives were allowed citizenship only if they would abandon the tribal system.

The best example of this policy is the Treaty of Dancing Rabbit Creek concluded in 1830 between the Choctaw Indians and the United States government, forcing the Choctaws to move to the Oklahoma territory. The treaty gave the individual Indians a choice: tribal membership and removal on one hand and land and citizenship on the other. Each head of the families who decided to remain in Mississippi was given 640 acres of land together with the grant of the United States citizenship. In addition, lucrative extra land grants were provided to prominent tribal families: four sections of land (2,560 acres) for each of the three chiefs (mingoes), one section (640 acres) for each captain, and one-half section (320 acres) for each subcaptain and principal man.

One of the chiefs, Greenwood LeFlore, was not only given United States citizenship but also elected in 1831 as Representative from his district to the Mississippi House, due partly to the support of the newly enfranchised Choctaw voters, and was reelected in 1835. He became a state senator in 1841 serving for three years. He developed an extensive plantation of 15,000 acres, worked by 400 slaves.[15]

Special groups could also be admitted to citizenship in consequence of the federal government's power to acquire territory. According to the Treaty of Guadalupe Hidalgo (1848), which ended the Mexican War, Mexican citizens in ceded territories would automatically become United States citizens within one year unless they publicly elected to remain Mexican citizens.[16] Mexicans in California and Indians in California and New Mexico could thus

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15 Yasuhide Kawashima, « Greenwood LeFlore, » *American National Biography* (New York, 1999), XIII, 422-423.

16 Articles VIII and IX of the Treaty of Guadalupe Hidalgo, Richard Griswold del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman, OK, 1990), 189-190; Washburn, *Red Man's Land/White Man's Law*, 139-140.

claim citizenship under this treaty, but they never acquired United States citizenship for a long time in clear violation of their rights under the Treaty.

When California became a state in 1850, the framers of the state constitution sought to exclude Mexicans, Blacks, and Indians, extending the vote only to « every white, male citizen of Mexico who shall have elected to become a citizen of the United States ». The convention agreed that Indians and Blacks might be given citizenship at some future date, but they could still be excluded from voting because it was not an absolute right of citizenship. It also declared that Mexicans remaining were not in fact American citizens, and some further action of Congress was required to make them citizens.[17] The violations of Mexican rights under the Treaty were fully tested in *People v. de la Guerra* (1870), in which the California Supreme Court ruled that the admission of California as a state constituted the positive act that conferred citizenship on former Mexican nationals.[18]

The fate of the California Indians constituted an even more flagrant violation of the Treaty. The Indians, who had been full Mexican citizens under the Mexican Constitution of 1824, received neither United States citizenship nor the protection of the treaty as specified in Article VIII.

In New Mexico, where the largest Hispanicized Indian population lived, the franchise was limited to whites only. Because New Mexico became a territory, not yet a state, the civil rights of its inhabitants were less than those in California. The Hispanos of New Mexico did not obtain all the rights of United States citizens guaranteed by the Treaty until its statehood in 1912.

The most obvious victims of the transfer of sovereignty in New Mexico as in California were the Indians. Approximately 8,000 Pueblo Indians, who had been Mexican citizens, were disenfranchised. In 1849 several Pueblo villagers had participated in local elections assuming that they were citizens. In 1851, the officials, fearing that their votes might be too easily manipulated, persuaded the Indians to accept federal protection under the

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17 del Castillo, *The Treaty of Guadalupe Hidalgo*, 66-68.

18 40 *Cal.* 311 (1870).

Intercourse Act of 1834 and not to participate in New Mexico politics, undermining their rights under the Treaty.[19]

Starting in the late 1860s, the New Mexico Territorial Courts decided cases confirming the citizenship rights of the Pueblo Indians. A United States Supreme Court case in 1913 found that the Pueblos were entitled to federal protection, but their citizenship status was not made clear. When New Mexico was admitted as a state in 1912, its constitution denied voting rights to « Indians not taxed » (those who were outside the control of either state or federal government), which included the Pueblo tribes. It was not until 1948 that this provision was declared unconstitutional and not until 1953 that the New Mexican Constitution was changed to allow Pueblo Indians the vote.[20]

On the citizenship status of the other Indian groups in New Mexico, there was little argument. The Apaches and Navajos, who had fought so long to escape Hispanicization, remained the traditional enemies of the whites well into the 1870s and 1880s. They were eventually defeated, placed on reservations, and treated as conquered nations. They were finally given citizenship at the same time as the Pueblo tribes.[21]

The offer of citizenship to the entire tribe generally entailed the destruction of the tribal organization and government. Treaties of 1855 and 1862 with the Wyandots and Ottawas required the Indians to relinquish their tribal organization in return for the privilege of full citizenship and individual land ownership. A series of treaties in the 1860s gave the president and the courts the power to determine when adult, male allottees had become sufficiently « intelligent and prudent » to conduct their affairs and interests. The treaty of 1867 with the Pottawatomies even permitted women who were heads of families or single adult women to become citizens in the same manner as males and authorized the Tribal Business Committee and the agent to determine the competency of Indians to manage their own affairs.[22]

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19 del Castillo, *The Treaty of Guadalupe Hidalgo*, 70-71.

20 *Ibid.*, 72.

21 *Ibid.*, 72.

22 Felix S. Cohen, *Handbook of Federal Indians Law* (Albuquerque, 1917), 153; Kettner, *American Citizenship*, 292-293.

The treaty-making period ended in 1871,[23] but even before its termination, the members of several tribes were naturalized collectively by statutes. Statutes functioned the same way as did treaties, dissolving the tribe when its land was distributed and citizenship granted to the members and setting up other requirements for citizenship such as the adoption of the habits of civilized life, becoming self-supporting, and the ability to read and speak English.[24]

This idea prevailed even after the Fourteenth Amendment to the Constitution, which was ratified in 1868. It specifically stated: « All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside ». Now that Blacks were admitted as citizens, race was no longer a criterion. Blacks were not only given the birthright citizenship but also eligible or naturalized citizenship. The Fourteenth Amendment, however, was interpreted not to confer citizenship on Indians born in the United States. Why ? The tribal system was still the persistent barrier. In fact, the Senate Judiciary Committee had filed a report by resolution in 1870, concluding that Indians did not become citizens by passage of the Fourteenth Amendment.[25] Fourteen years later, the Supreme Court held in *Elk v. Wilkins*(1884) that the Fourteenth Amendment did not automatically make the Indians born in the United States citizens because they were members of and owing immediate allegiance to one of the distinct and independent political communities, retaining the right of self-government, though subject to the protecting power of the United States.[26]

Several acts were passed after the ratification of the Amendment naturalizing Indians of certain tribes. Most of these statutes were similar to the *Act of July 15, 1870*, allowing Winnebago Indians in Minnesota to apply to the Federal District Court for citizenship. The Indians were required to prove that they were sufficiently intelligent and prudent to control their affairs and

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23 16 *U.S. Stat* 544

24 Cohen, *Handbook of Federal Indian Law*, 153.

25 Lawrence Baca, « The Legal Status of American Indians », *Handbook of North American Indians*, Vol. 4: *History of Indian-White Relations* (Washington, D.C., 1988), 232.

26 112 *U.S.* 94.

interests and that they had adopted the habits of civilized life and for the preceding five years supported themselves and their families. Then the Indians would be declared citizens and given lands and payments for their shares of tribal property. The Indians thenceforth ceased to be members of the tribe and their lands were subject to levy, taxation, and sale the same as those of other citizens.[27] The statutory formula of this act rested on the long-accepted assumption of incompatibility between tribal membership and United States citizenship.[28]

Despite many treaties and congressional acts providing the Indians with the opportunity to become citizens, it is reported that only 3,072 Indians were granted citizenship before 1887[29].

The *General Allotment Act*, usually known as the *Dawes Act*, passed in 1887, established as general policy what had taken place piecemeal for the past two decades. It set forth the national belief that Indian tribal relations must be broken up and Indian reservations destroyed and that the American Indians should become the Indian Americans by taking their land in severalty and becoming citizens of the United States.[30]

IV- 1887-1924: The Period of Reassessment

The *Dawes Act* of 1887 provided that the President at his discretion could allot reservation land to the Indians, the title to be held in trust by the United States for twenty-five years. Full citizenship for the Indians would accompany the allotment. Heads of families were to receive 160 acres with smaller amounts going to other Indians. This law conferred citizenship upon two classes of Indians born within the limits of the United States: those Indians to whom land allotments were made and those Indians who had

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27 Cohen, *Federal Indian Law*, 153-154.

28 The same idea was embodied in the *Indian Territory Naturalization Act of May 2, 1890*, which emphasized that the Indians who would become citizens of the United States would not forfeit or lose any rights or privileges they enjoyed or were entitled to as members of the tribe or nation to which they belonged. 26 *Stat.* 81, 99-100; Cohen, *Federal Indian Law*, 154.

29 Kettner, *American Citizenship*, 293.

30 William T. Hagan, *American Indians*, Third ed. (Chicago, 1993), 159; Wilcomb E. Washburn, *The Indian in America* (New York, 1975), 242.

voluntarily taken up residence separate from any Indian tribe and adopted the habits of civilized life. President Theodore Roosevelt described this law in 1901 as « a mighty pulverizing engine to break up the tribal mass » whereby « some sixty thousand Indians have already become citizens of the United States ». There were, however, about 150,000 Indians holding tribal lands not yet allotted.

Besides these two categories of Indians, the United States government made another two groups of Indians citizens during the next thirty years or so. Indian women marrying citizens became citizens under the *Act of August 9, 1888*,[31] and Indian men who enlisted to fight in World War I could become citizens under the *Act of November 6, 1919*.[32] Although they were not subject to the draft, perhaps as many as 10,000 young Indians volunteered for service in World War I. As a reward for their brave service, Congress made all Indian veterans citizens. Some of them, however, failed to gain admission to tribal warrior societies, because their elders « dismissed the fighting in Europe as just a shooting war, in which the individual had no opportunity to demonstrate his manhood by counting coups as befitted a real warrior. »[33]

The *Dawes Act* of 1887, which continued effective until 1924, did not apply to the Five Civilized Tribes and several small Indian nations, nor did the tribesmen particularly rejoice over the passage of the act. Even some whites had lingering doubts. Especially, the opposition focused on the ill-protection of the Indians accorded by the Act. Several attempts were made to protect the Indians by amending the *Dawes Act*. Congress came to believe that it had acted too hastily in granting full rights of citizenship to Indians, and passed the *Burke Act* in 1906 to withhold citizenship until the trust period expired and to give the Secretary of Interior more latitude in handling competency and heirship problems.[34]

The Indian citizenship question, which had been overshadowed by the Negro problem after the Civil War, became a live

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31 Sec. 2, 25 *Stat.* 392, 25 *U.S.C.*182.

32 41 *Stat.* 350.

33 Hagan, *American Indians*, 166.

34 Hagan, *American Indians*, 159, 163.

issue toward the end of the nineteenth century. Many scholars pointed out the absurdity of denying the Indians suffrage and citizenship and argued that the Indians in a country founded on the principle of the equality of man should be accorded « the exactly same personal, legal, and political status which is common to all other inhabitants. » The Indians, however, frequently did not welcome federal citizenship; they often chose to leave their home in order to retain their tribal membership. A 1915 report stated that « the Indians (except in rare individual cases) does not desire citizenship. » The delegates of the Five Civilized Tribes rejected the grant of federal citizenship to their people because they feared it would terminate their tribal government. Indians were often unfamiliar with the significance of federal citizenship and sometimes recanted choosing it.[35]

Some Indians, on the other hand, objecting to the continual control by the Bureau of Indian Affairs of the Indians who had already become citizens under the terms of the *Dawes Act* as allottees and beneficiaries, advocated the immediate abolition of the Bureau along with the reservation system. They asserted that Indians should be treated just like anyone else, free with the full privileges of citizenship.[36]

This anti-tribal and assimilationist movement led to the passage of the *Indian Citizenship Act* on June 2, 1924.[37]

Under this act, « all Indians born in the United States were finally declared to be citizens of the United States, though citizenship did not automatically place them on a footing of full legal equality with whites, nor was it universally welcomed by the Indians.[38] » By then, however, approximately two-thirds of the Indians had already been admitted as citizens by the earlier treaties and laws.[39]

The universal grant of citizenship by the *Act of 1924* seems to have settled the issue regarding the effects of citizenship on the people under wardship, over whom the federal government

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35 Cohen, *Federal Indian Law*, 155-156.

36 Washburn, *The Indian in America*, 251-252.

37 43 *U.S. Stat.* 253.

38 Washburn, *The Indian in America*, 252.

39 Cohen, *Federal Indian Law*, 153-154; Washburn, *Red Man's Land/White Man's Law*, 164.

exercised extensive powers. The answer was that Indian citizenship did not alter the power of Congress over Indians.[40] Congress could continue to have power and duty to pass laws for the protection of Indians and their property under the principle of wardship or trust responsibility. The Supreme Court had already held in 1916 that federal citizenship for Indians was not inconsistent with tribal existence.[41]

V- 1924-PRESENT: THE ERA OF FULL COMMITMENT

Ten years after the passage of the *Indian Citizenship Act*, which was based upon the assumption that the American citizenship and the tribal system could co-exist, another significant piece of legislation was passed, the *Indian Reorganization Act* of 1934 (*IRA*). This New Deal law was designed to encourage Indian economic development, self-determination, and the preservation of tribal organization. Among the most important provisions are those dealing with the prohibition of future allotments of Indian lands, the indefinite extension of the trust periods of Indian lands and restrictions against alienation, the restoration of tribal land previously opened for sale, the establishment of constitutional forms of government by the tribes, the formation of business corporations by the tribes, and the tribal right of refusal of the act, which has been voted against by the tribe.

Within two years, 181 tribes voted to accept the *IRA*, while 77 tribes rejected it.[42] The Navajos in 1935 opposed the *Indian Reorganization Act* by a vote of 8,198 to 7,679, thus preventing its application to the Navajo reservation. They owed much of their strength to the anti-tribal, assimilationist values championed by individuals like J.C. Morgan, who believed that Indians should live among whites, pay taxes, and assume the full responsibilities of citizenship.[43] In fact, the Navajo Nation, whose population was some 45,000 at the time of the act's passage, represented half the Indians who rejected the *IRA*, but ironically by the 1980s the

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40 Baca, « The Legal Status of American Indians », 232.

41 *United States v. Nice*, 241 U.S. 591.

42 Baca, « The Legal Status of American Indians », 234.

43 Washburn, *The Indian in America*, 256-257.

Navajo Nation was utilizing all the same powers that the *IRA* tribes were exercising.

The powers granted under the act to the tribes are largely those that the tribes as sovereigns already exercised and are powers that continued to be exercised by many tribes that did not accept the *IRA*. The basic powers of self-government are inherent powers of sovereign nations. They were neither granted nor restricted by the *IRA*. Tribal experience under the *IRA* might have varied depending upon the tribes that accepted it, but the *IRA* was a useful means of achieving an effective and organized tribal government on some reservations where there had previously not been one.[44]

By the early 1930s, the concept of the Indians having three citizenships was firmly established. During the remainder of the twentieth century, therefore, the federal courts have been dealing with this complicated, unique citizenship for the Indians, by concentrating on performing a balancing act, defining the scope of the particular parts of sovereignty to be exercised by the federal, tribal, and state governments. The issues cover the wide area of Indian life, including hunting and fishing rights, crime, welfare, elections, education, jurisdictional issues, and equality between the Indians and non-Indians.

VI- Conclusion

Early English colonists in North America were initially willing to accept the Indians in their society and hoped to make them citizens, but this hope did not materialize. Consequently, the English throughout the colonial period treated the Indians as a separate group incapable of becoming citizens, while they welcomed non-English Europeans by devising a very liberal naturalization policy for them.

The basis for the most pervasive argument for denying the Indians citizenship has been their Indianness. Although the general naturalization laws in the first half of the nineteenth century disqualified the Indians for the racial reason, some Indians

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44 *Ibid.*, 235.

were given the opportunity to become citizens but only if they gave up the tribal tie and became individuals.

This tribal Indian status became crystallized into the definite notion of a domestic dependent nation, which emphasized their separateness and difference from the standard American society. The destruction or denunciation of the tribal system thus became the major prerequisite for the Indians becoming citizens, and this policy finally culminated in the *Dawes Act* of 1887, which purported the wholesale elimination of the tribal system. The peculiar domestic dependent nation status of the tribes came also conveniently to serve the purpose of those who wished to maintain control over the Indians without fully incorporating them into the community of citizens. As if to acquiesce and even approve the government's refusal to grant them citizenship, the Indians have consistently shown no interest in acquiring American citizenship, in which they found no value.

It was only in 1924, when the *Indian Citizenship Act* made all the Indians citizens, with or without the tribal tie, that the tribal system ceased to be the insurmountable barrier for the Indians to become citizens. The birthright citizenship, which the Indians received belatedly from the federal government, has been fully utilized. Thus far, however, the Indians were passive; citizenship had been given to them or forced upon them. Since the early 1930s, the Indians have vigorously and aggressively insisted on the rights embodied in citizenship for their benefit not only as a unique group of people but an integral part of the whole population on the federal, state, and tribal levels. Indian citizenship continues to evolve into something that the United States has never envisioned before, and the Indians themselves have been playing a positive, active, and important role in the dramatic evolution of the concept of American citizenship.

Yasuhide KAWASHIMA[45]

[45] Professor of History, The University of Texas at El Paso, U.S.A.

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