

Land and Law as Agents in Educating Indians

Merrill Gates

Introduction

The 1868 Treaty of Fort Laramie formalized the Indian Reservation system, starting with the Navajo in Arizona and the Lakota Sioux in the Dakota Territory. The treaty agreement required Indian Nations to relocate to designated reserves of land where they lived under the supervision of Bureau of Indian Affairs(BIA) agents and armed soldiers. Under President Ulysses S. Grant's "Peace Policy" of 1872, the Bureau of Indian Affairs divided the newly created Indian reservations to religious organizations as exclusive "religious domains." For example: the Methodist Church received 14 reservations; the Presbyterians nine; the Episcopal Church got eight; the Roman Catholic Church seven; Baptists five; Dutch Reform Church five; Congregationalists two; Congregationalists three; Unitarians two; and even the American Board of Commissioners for Foreign Mission got one reservation.

Missionaries from the various churches fanned out among their designated reservations where they worked closely with BIA agents. The Peace Policy also created the Board of Indian Commissioners, which sent another group of supervisors to the reservations to implement the new policies. Once the military forced Indians onto reservations, the commissioners, BIA agents, and missionaries supervised every aspect of Native Americans life – distribution of food, medicine, and other necessities, land allotment to each family, and ensuring children attended an assimilation school. Commissioners, missionaries, and other reformers believed it was their responsibility to provide Indians with training for "civilized society."

Merrill Gates was a well-known academic who served on the Board of Indian Commissioners for over a decade before becoming President of the Board in 1899. During the 1880s, he served as President of Rutgers University (formal name: The State University of New Jersey) and Amherst College in Massachusetts. All the while, he also served as an Indian Commissioner, making him one of the small group of white, male Protestants who crafted and enforced Indian policy during the late nineteenth century. The Board of Commissioners and other Indian "reformers" held an annual meeting called the "Lake Monhonk Annual Conference of the Friends of the Indian." At the 1885 meeting, Gates

gave a speech outlining what the “civilizing process” would entail. His speech is excerpted below¹.

Primary Source

Two peculiarities which mark the Indian life, if retained, will render his progress slow, uncertain and difficult. These are:

- (1) The tribal organization.
- (2) The Indian reservation.

THE TRIBAL ORGANIZATION MUST BE BROKEN UP.

I am satisfied that no man can carefully study the Indian question without the deepening conviction that these institutions must go if we would save the Indian from himself. And first, the tribe. Politically it is an anomaly an imperium in imperio². Early in our history, when whites were few and Indians were relatively numerous and were grouped in tribes with something approaching to a rude form of government, it was natural, it was inevitable, that we should treat them as tribes. It would have been hopeless for us to attempt to modify their tribal relations. But now the case is entirely different. There is hardly one tribe outside the five civilized tribes³ of the Indian Territory which can merit the name of an organized society or which discharges the simplest functions of government. Dis-integration has long been the rule. Individualism, the keynote of our socio-political ideas in this century, makes itself felt by sympathetic vibrations even in the rude society of the Indian tribes. There is little of the old loyalty to a personal chief as representing a governing authority from the Great Spirit. Perhaps there never was so much of this as some have fancied among the Indians⁴...

Indian chiefs are never law-makers, seldom even in the rudest sense law-enforcers. The councils where the chief is chosen are too often blast-furnaces of anarchy, liquefying whatever forms of order may have established themselves under a predecessor. The Indians feel the animus of the century. As personal allegiance to a chieftain and the sense of tribal unity wanes, what is taking its place! Literally, nothing. In some cases, educated but immoral and selfish leaders take advantage of the old traditions to acquire influence which they abuse. On the whole, how-

¹ [*Seventeenth Annual Report of the Board of Indian Commissioners for the Year 1885*](#). The full report is quite lengthy. A text search for “Merrill Gates” will bring you to his full speech. Source believed to be in the public domain.

² Sovereign government.

³ The “Five Civilized Tribes” was term used by white Americans, particularly political leaders, during the early nineteenth century in reference to southeastern Indian nations: Choctaw, Chickasaw, Cherokee, Creek, and Seminole. Despite their efforts to adopt American culture and politics (hence the implication that they were “civilized” Indians), these Indian nations were forcibly removed from the southern states during the 1830s by the military, per the requirements of President Andrew Johnson’s Indian Removal Act of 1830. Southeastern Indians were marched by armed soldiers to Indian Territory (now Oklahoma) throughout the 1830s. The death toll and violence of removal led Native Americans to call this phase of removal The Trail of Tears.

⁴ Gates basically says Indians don’t care – or perhaps, understand – their own system of governance or their own religious practices.

ever, a rude, savage individuality is developing itself, but not under the guidance of law, moral, civil, or religious.

Surely the intelligence of our nation should devise and enforce a remedy for this state of affairs.

THE SENTIMENTAL VIEW OF THE TRIBE.

A false sentimental view of the tribal organization commonly presents itself to those who look at this question casually. It takes form in such objections as this: The Indians have a perfect right to bring up their children in the old devotion to the tribe and their chief. To require anything else of them is unreasonable. These are their ancestral institutions. We have no right to meddle with them.

The correction for this false view seems to me to come from the study of the tribe and its actual effects upon the family and upon the manhood of the individual.

The highest right of man is the right to be a man, with all that this involves. The tendency of the tribal organization is constantly to interfere with and frustrate the attainment of this highest manhood. The question whether parents have a right to educate their children to regard the tribal organization as supreme, brings us at once to the consideration of the family.

And here I find the key to the Indian problem⁵. More than any other idea, this consideration of the family and its proper sphere in the civilizing of races and in the development of the individual, serves to unlock the difficulties which surround legislation for the Indian.

THE TRIBE DWARFS AND BLIGHTS THE FAMILY.

The family is God's unit of society. On the integrity of the family depends that of the State. There is no civilization deserving of the name where the family is not the unit in civil government. Even the extreme advocates of individualism must admit that the highest and most perfect personality is developed through those relations which the family renders possible and fosters. And from the point of view of land and law...I believe I state the inference suggested by all known legal history when I say there can be no material advance in civilization unless landed property is held by groups at least as small as families.

IT GUTS THE NERVE OF EFFORT.

The tribal organization, with its tenure of land in common, with its constant divisions of goods and rations per capita without regard to service rendered, cuts the nerve of all that manful effort which political economy teaches us proceeds from the desire for wealth. True ideas of

⁵ "The Indian Problem," was a common term used by white Americans in reference to the existence of Native Americans, or rather, the desire to eliminate the existence of Native Americans in white society. This phrasing – the "whatever" problem - was common parlance in the eighteenth and nineteenth centuries. See "the Negro problem," "the servant problem," (referring to Irish women), the "labor problem" (referring to Unions), and so on.

property with all the civilizing influences that such ideas excite are formed only as the tribal relation is outgrown.

LABOR MAKES MEN MANLY.

The fact that robbery is said to be almost unknown among Indians within the tribe is largely explained by the fact that property, too, in the true sense of the word, is almost unknown⁶. There is an utter barbarism in which property has almost no existence. The tribal organization tends to retain men in such barbarism. It is a great step gained when you awaken in an Indian the desire for the acquisition of property of his own, by his own honest labor. Every honest day's work done and paid for is a stroke of missionary work. It not only puts the Indian under silent but powerful pledges to preserve the peace and respect law, that so his own property may be safe. It does what is still more important. It cultivates in him those qualities the absence of which most sadly marks the savage. It cultivates the habit of looking to the future and of seeking to modify the future for one's self by one's own efforts. And this habit persevered in develops, along a low plane of action perhaps, but effectively develops that power which is the highest prerogative of man as it is the distinctive mark which sets off man from the animals he governs will power intelligently and voluntarily exercised in subjection to law.

The desire for the acquisition of property is not, as some writers on political economy have represented it to be, the sole motive that sways society or governs the development of mankind. But it is on the whole the mainspring that daily keeps in motion the mechanism of the world's daily routine. It is chiefly the affections and interests of family life that take out of this desire for gain its debasing element, its utter selfishness.

THE TRIBAL SYSTEM PARALYZES LABOR.

But the tribal system paralyzes at once the desire for property and the family life that ennobles that desire. Where the annuities and rations that support a tribe are distributed to the industrious and the lazy alike, while almost all property is held in common, there cannot be any true stimulus to industry. And where the property which a deceased father has called his own is at the funeral feast distributed to his adult relatives, or squandered in prolonged feasting, while no provision whatever is made for the widow or the children, how can the family be perpetuated, or the ideal of the permanence and the preciousness of this relation become clear and powerful. Yet this is the custom in by far the greater number of the Indian tribes.

IT PREVENTS ALL ACCUMULATION OF PROPERTY FOR THE BENEFIT OF CHILDREN.

Observation has shown that there is a direct proportion between the length of time during which infancy and immaturity are protected, trained and cared for by the parents, and the capacity of the race for education and advancement on the part of the individual. This law holds good among animals and among men...

⁶ This is a myth perpetuated by white Americans like Gates who saw any economic system other than unregulated capitalism as uncivilized and evil.

Apply this principle to the tribal law which enforces a division of the father's property at his decease among his adult relatives. How sadly it shortens the period of protected childhood, already too brief! Homer's picture of the unfriended, hungry, fatherless child, the sport of the rude, neglected of all, is before the eyes constantly on our reservations⁷. Children weakened, prematurely aged, taught by grim necessity to shift for themselves with fox-like craft, are even more common on the reservation than they are in the worst quarters of our great cities. That prolonged fostering care of children which is essential to civilization can be secured only as the family and the home are held sacred.

A series of questions was propounded in a circular recently issued by the Indian Rights Association⁸, for the purpose of taking soundings along a course of proposed legislation. While opinions as to many points suggested are widely divergent, even diametrically opposed to one another, the agents and missionaries who reply are almost unanimous in recommending at once legislation to secure the descent of property to children, to prevent polygamy, and to provide homesteads. You see how these points concerning which there is substantial unity, are the three points which determine the circle. The family circle should be the controlling idea of all legislation and all administrative reform in Indian affairs.

The gravest charge against the tribal organization, then, is that it tends to dwarf and blight the family. Tribal relations interfere with family grouping, and there is no sound progress in civilization until land begins to be held and property to be accumulated by groups at least as small as the family.

Character, too, is worked out in the relations of the family, first; then in the relations of the larger society, the State.

THE REIGN OF LAW.

The problem before us is, how shall we educate these men-children into that great conception of the reign of law, moral, civil, and political, to which they are now strangers! Moral convictions are theirs, of course. "A good Indian " one whom his fellow tribes-men call good "would be recognized as a good man anywhere," says one who has passed years among them. But the conception of that reign of law which constantly presides over all our thinking and doing, for the most part silent, felt only when we attempt to break with it, the growth of centuries coloring all our conceptions and conditioning our life like the atmosphere we breathe how utterly foreign is all this to the tribal and reservation life of the Indian!

We seek to give them this idea, believing that the idea of law, clearly apprehended and intelligently and voluntarily obeyed, will work a marvelous transformation in them. It is hoped that we may thus do for them in two generations what some other barbaric races have been centuries in accomplishing. How are we to accustom them to a difference as great as that

⁷ Reference to the Greek epic poem, *The Odyssey*, attributed to Homer and probably first recorded in the eighth century BCE. The first four books of *The Odyssey* follow Telemachus, son of Odysseus (King of Ithaca), as he searches for his father after the Trojan War ends.

⁸ Another group of white reformers who worked with the Commission on Indian Affairs.

between obeying the order of a chieftain, seen, known, perhaps regarded with affection, or blindly conforming to tribal customs they have never seen broken, and obedience rendered to an impersonal law, emanating from a source thousands of miles away and from an order of things unknown to them?

As the allegiance to tribe and chieftain is weakened, its place should be taken by the sanctities of family life, and an allegiance to the laws which grow naturally out of the family! Lessons in law for the Indian should begin with the developing and the preservation, by law, of those relations of property and of social intercourse which spring out of and protect the family. First of all, he must have

LAND IN SEVERALTY.

Land in severalty, on which to make a home for his family. This land the Government should, where necessary, for a few years hold in trust for him or his heirs, inalienable and unchargeable. But it shall be his. It shall be patented to him as an individual. He shall hold it by what the Indians who have been hunted from reservation to reservation pathetically call, in their requests for justice, "a paper-talk from Washington, which tells the Indian what land is his so that a white man cannot get it away from him."

There is no way of reaching the Indian so good as to show him that he is working for a home. Experience shows that there is no incentive so strong as the confidence that by long, untiring labor, a man may secure a home for himself and his family. The Indians are no exception to this rule. There is in this consciousness of a family-hearth, of land and a home in prospect as permanently their own, an educating force which at once begins to lift these savages out of barbarism and sends them up the steep toward civilization, as rapidly as easy divorce laws are sending some sections of our country down the slope toward barbaric heathenism.