

LIBERALISM IN THE TWENTY-FIRST CENTURY

I am not sure how liberalism is defined, or even the “liberal tradition.” As a philosophy, there seem to be many variations, which sometimes seem to conflict. In politics, however, it seems clear that the label “liberal” is historically contextual. At one juncture the liberal is almost libertarian in seeking the least government – at another, the liberal pursues government regulation and social welfare programs.

In this connection, it may make sense to muse about views on the treatment of the American Indian and the cycles through which that has passed. Initially, the image of the Indian was that of the “other,” the pagan who needed to have Christianity brought to him. But Christianizing was a job for the priests and missionaries, and the vast majority of settlers wanted only to settle and live in peace apart from the Indian. Treaties would mark out separate boundaries for the separate nations. As a member of a separate nation, there was little need to consider the Indian as an individual. Where settler and Indian came together, the settler proposed that the Indian move – the Louisiana Purchase providing the land base to exchange for eastern lands. If Jacksonian democracy had a meaning for the Indian, it was that the democratic principle was for excluding and oppressing them. But some people argued seriously with humanitarian motives that the Indian would be better served by removal from the trespasses and pollution and societal harm wreaked by the proximity of the tribe to nonIndians. As the treaty function moved from establishing peaceful relations to the making of land transfers, the United States also took on responsibility for the fate of the Indian by agreeing to ongoing support and establishing itself as the sole authority in international relations and land sales. The reservation system with Indian agents was part of the result.

“Liberals” toward the latter part of the nineteenth century saw the reservation Indian in poverty and disease and proposed to resolve the problems by pressing assimilation. The Dawes Act proposed allotment of tribal lands, dividing them to provide separate fee simple plots for each member with the U.S. government holding the unallotted lands as trustee for the tribe. As trustee, the government could sell the lands to nonIndians, keeping the funds on behalf of the tribe. Individuals could also sell the lands. The effect of the “liberal” reform was that even more land passed from tribal control and the coherence and functioning of the tribe was undercut without any corresponding gain in wealth or quality of life.

The next era of policy grew out of another report documenting the tragic consequences of the allotment policy. The enactment of the Indian Reorganization Act sought to strengthen the tribes by providing for self-determination. But the Bureau of Indian Affairs encouraged the tribes to prepare constitutions and institutions that were western in nature. Thus, self-determination was within a western rubric. Again, the “liberal” vision was to restore tribal government rather than make the individual Indian assimilate into nonIndian culture and society.

The Constitutions and laws were approved by the BIA, which gradually itself hired more Indian employees, but life on the reservation continued to be heavily dependent on federal presence. Critics claimed that dependency undermined the ability of the individual Indian on the reservation to prosper. The next round of policy was to encourage the termination of the recognition of tribes so they would not get federal benefits. If equality was the keystone of policy after *Brown*, then equality meant no special treatment for the Indian. Congress sought to extend state laws on to the lands where Indian law had controlled and to remove the federal agent. Part of the idea of concern for individual Indians was the passage of the Indian Civil

Rights Act of 1968 which guaranteed some, but not all, constitutional rights to Indians with respect to the governance of the tribe.

It took that bastion of liberal thought, Richard Nixon, to put an official end to the termination era. Policy swung once more to the support of the tribe. The late 70s saw the enactment of a series of statutes to protect the cultural property of the tribes – the 1978 law for the preservation of religious freedom, the Native American Graves Protection Act (NAGPRA) in 1990, the 1994 American Indian Religious Freedom Act. The “liberal” policy again was to support self-determination of and by the tribe. Now, universities throughout the nation have substantial programs in Indian law and new and stronger programs on tribal law.

If you look internationally to other common law countries, the same swings from separation to assimilation and back are apparent. Each move is accompanied by cries for reform to act on behalf of the indigenous people – but the action sought swings wildly from isolation to paternalism, from assimilation to self-determination. The modern swing is to what has been termed “co-management” in which national policy regarding matters, particularly natural resource issues, is determined jointly by the national government and the tribe.

What does all this have to do with the topic under discussion, if anything? Indian law, based on either numbers of people directly affected or media attention, is a sideshow to the main issues drawing our attention – terrorism, federalism, etc. But the creation of coherent policy in this area both challenges basic values and may stimulate rethinking of the meaning of liberalism. At least as portrayed by many, the values of the tribe are more communal – seeking consensus more than resolution. The individual may be valued, but individual rights in the western sense may play a smaller role. Liberal ideas of tolerance support tribal self-determination, but the tribe itself may be mandating ideas in conflict with liberal ideals. If a philosophy is formed or to be

formed, we need to think hard about how it may be consistent with treatment of the native American.