Continuity or Change by Local B.I.A Agents on the Hoopa Valley Reservation
By Danielle Carmesin

Herbie O’Neill’s mother died when he was born in 1918. His father was killed in World War I. The orphanage in Santa Rosa didn’t know what to do with Indians when it closed, so O’Neill, who is half Cherokee and half Yurok, was sent to the Hoopa Valley Reservation. Back then the reservation belonged to all Northern California Indians. The fact that O’Neill was Yurok and his stepfamily was Hoopa didn’t matter. He and his stepfather hunted and gathered and fished all over the valley, the surrounding twelve-mile, square, and the land along the Klamath River. That kind of harmony is now only a memory. Ever since Congress passed the Hoopa-Yurok Settlement Act in 1988.¹

The Hupa and Yurok peoples of Northwestern California have endured several eras of federal Indian policy change, often complicated by the local interpretations of Bureau of Indian Affairs agents that once served to unite the two tribes until the Jesse Short case in the late twentieth century which sparked an intense debate over the resources of the Hoopa Valley reservation.² On the Hoopa Valley Reservation, the Bureau of Indian Affairs, a branch of the Department of Interior, offers documentation leading to a case study evaluating the efficiency of federal Indian policies in a typical American Indian environment.³ Jurisdiction over Indian affairs became validated in Section I of Article 8 of the United States Constitution. The commerce clause, as it is commonly referred to, permitted Congress to regulate commerce with foreign nations, therefore establishing federal authority over American Indian affairs. Historically the United States federal Indian policy has fluctuated between the political ideologies of terminating American Indian status to restructuring individual tribal communities. The relationship between the D.O.I. and the Hoopa Valley community began similarly to other Indian nations throughout the United States as evidenced in the establishment of its reservation, land allotments, and organization of tribal governments. However, the D.O.I. had problems implementing federal policies at the local level in the Hoopa Valley. This is explicit among the Hupa and Yurok communities. The drastic contrast between eras of assimilation and self-determination contributed to the difficult implementation of federal Indian

² Hereafter, Indians refers to the indigenous population of North America as a whole versus peoples of a specific tribe.
³ Hereafter, Department of Interior is referred to as D.O.I., and Bureau of Indian affairs is referred to as B.I.A.
policy, which left local agents in the Hoopa Valley perplexed.

Prior to the establishment of the United States government, colonists traded with Indians similarly to other foreign nations. At its adoption the U.S. constitution it contained only one specific reference to the Indians of North America, the Commerce Clause. The Commerce Clause granted Congress control to regulate commerce among foreign nations, several states, and the pre-existing Indian tribes of the new United States.\(^4\) Commerce included intercourse of trade between whites and Indians as well as between Indians themselves.\(^5\) Indians became regarded as domestic dependant nations which is evident through Supreme Court cases such as *Worcester v. Georgia* and additional cases presided over by Chief Justice John Marshall. These cases, collectively known as, the Marshall Trilogy essentially established the first federal Indian policies. If the Supreme Court hadn’t heard or made specific decisions affecting American Indians they would not have such a distinct status within the United States. Powerless to enforce the rights of Indians against frontier settlers, Congress recognized the need to protect Indian rights as the original inhabitants of the land. Therefore in 1849 Congress created the Office of Indian Affairs. Previous to 1849, the Department of War handled jurisdiction over Indian affairs.

Political historian Laurence Schmeckebier noted “The history of the Office of Indian Affairs is practically the history of the Indian policy of the United States.”\(^6\) The Office of Indian affairs existed as a bureau under the Department of the Interior and administered the affairs of entire Indian tribes. The D.O.I. received their authority from Congress; and as long as Congress appropriated funds for Indian affairs, the D.O.I. would administer the funds. The hierarchical bureaucratic structure of the D.O.I. further complicated effective local decision-making. The Hoopa Valley Reservation serves as an excellent case study in which this concept is illustrated.

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\(^5\) United States v. Bridger, (7 Sawyer 247 (1881)).
\(^6\) Laurence Schmeckebier, *The Office of Indian Affairs*, 1.
Over the last century and a half, federal Indian policy primarily focused on the competence of Indians as wards of the state; and the problem of what to do with the resilient Indian for who termination has not been successful. Schmeckebier noted that "On the one hand the Office of Indian Affairs could represent a great bureaucracy which stifles the initiative and advancement of the Indian, and on the other hand it is claimed that if the individual Indian were given full control of his property he would soon be cheated out of it or dissipate it and become a pauper." The dilemma regarding Indian competency bedeviled a century and a half of federal Indian policy. The role of Indian competency became central to the local agent in selecting which federal policies he would implement because of how he viewed Indians role within society. During eras of assimilation, local agents discriminated against which legislation they would implement. They tended to advocate legislation that would strip Indian culture and heritage from the individual and the tribe as a unit, such as land allotments.

The assimilation era of federal Indian policy focused on assimilating the distinct culture of the American Indian into the dominant white agrarian culture of the United States. Congress felt that the reservation system would be beneficial to white settlers and Indians themselves. Reservations allowed the federal government to control more Indians at one time; and it allowed settlers access to increased land due to Indian concentration in reservations.

In 1864 Congress restructured California's Office of Indian affairs, dissolving its northern and southern districts, and in its place, provided for a single Superintendent of Indian Affairs for the entire state. The state Superintendent became responsible for appointing local reservation superintendents who had the liberty in executing congressional legislation. In the same legislation, Congress authorized the President to establish four reservations in the state of California. President Lincoln appointed Austin Wiley as the California Superintendant of Indian affairs. Previous to his appointment, Wiley, had

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7 Ibid., 148
opposed the reservation system for Indians and he advocated removing Indians through strong military
action. He supported moving all Northern California Indians from their traditional lands to Santa Catalina
Island.\textsuperscript{9} The Commissioner of Indian Affairs rejected Wiley’s proposal for the removal of Indians to
Catalina Island and recommended that the Indians of the Hoopa Valley be relocated to the Round Valley
reservation. Wiley knew that if the Hoopa Valley peoples were relocated to Round Valley “it would take
a soldier for every Indian to keep them there.”\textsuperscript{10} The Hupa Valley peoples, which prior to the reservation
were predominantly Hupa Indians, came down from the mountains and met Superintendent Wiley at Fort
Gaston. Situated at the heart of the Hoopa Valley, Fort Gaston served as a military outpost, as well as, a
place to supply government rations to reservation Indians. The Hoopa Valley Indians stated that they
would not give up their weapons until Superintendent Wiley, promised that they would not be relocated.
The treaty of “peace and friendship,” signed August 12, 1864, provided that the entire Hoopa Valley
would be set aside as a reservation for all Northwestern California Indians. The government promised to
send rations and in return the Indians had to obey the local Indian agent and remain on the reservation
unless given special permission to leave. Superintendent Wiley demanded that white settlers leave the
reservation and he appointed a temporary special agent to take charge of the new reservation.
Schmeckebier emphasizes the idea that the reservation period from 1871 to 1887 became noted for the
numerous abrogations of treaties made between the United States and Indians.\textsuperscript{11} Prior to legislation
creating reservations Congress ratified treaties with individual tribes. Once Congress decided to relocate
Indians onto reservations, the government called for an end to treaties with individual tribes. Even though
Congress called an end to the treaty period, Superintendent Wiley acknowledged that the treaty of “peace
and friendship” provided the only means for survival of the Hupa Valley peoples.

\textsuperscript{9} Austin Wiley, Superintendent of Indian Affairs, U.S. Department of the Interior, \textit{Annual Report of Commissioner of
Indian Affairs}, 1864.
\textsuperscript{10} Wiley, \textit{Annual Report of Commissioner of Indian Affairs}, 1864.
\textsuperscript{11} Schmeckebier, \textit{Office of Indian Affairs}, 27.
Political historian Lyman Tyler stated that “The president, the men in the Office of Indian Affairs, the secretaries of war and the interior, the members of Congress, and the justices in the federal court system all helped to decide the country’s policy toward Indians. But it was the agent who interpreted that policy....the way he carried out their orders, however, would depend on his personality and beliefs.”

During assimilation eras in federal Indian policy it became easier for the local agent to implement policies that were aligned with his preconceived beliefs regarding the status of Indians while, during eras of tribal self-government local agents were apprehensive.

The reservation system served as a multi-faceted institution designed to segregate Indians and issue rations all the while subjecting the Indian to the control of the local agents. After reservations were established Indians who abandoned or denied any tribal ties were eligible for land under the Homestead Act. Indians allotted land under the Homestead Act were given title to the land without their deeds being subject to alienation, “Before 1875 practically all general legislation had regarded tribes as the unit in Indian life and there was no attempt to interfere between members of the tribe or to make any general legal provisions for Indians who might separate from the tribe.”

After 1875, incentive was given for Indians to sever their tribal ties with the prospect of having clear title to their land. Indians who remained on the reservation began the long process of working within the federal Indian system in order, to receive land allotments held in trust by the D.O.I.

Officials believed that an agent would be sent to the reservation and Indians would exchange their traditional ways for the lifestyle of their white neighbors. “A few years of instruction, the policymakers thought, would transform the Indians. They would be successful farmers who brought up their children, cut their hair, dressed, and acted just like white men.... and reservations and agents would no longer be

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14 Schmeckebier, Office of Indian Affairs. 76.
needed.” The first phase of the reservation system reorganized the larger tribal unit into smaller family concentrations. This phase enabled local agents to deal directly with specific families versus the tribal majority as had been the case during the treaty era prior to the 1870s. The reservation system, along with the introduction of the General Allotment Act in 1887, provided for tribes to be split up, thereby providing small parcels of land to individual Indians. Allotments served as a tool to reaffirm federal objectives aimed at eradicating Indian culture and heritage. Allotments were prompted by the notion that efficient land production requires agricultural farming, and would produce a surplus to maintain the subsistence of the reservation. This, in turn, would lead to the civilization of the Indian. Instructions in the techniques of farming practices were thought to be the quickest way to civilize individual Indians. The most practical means to pay for the Indian agency and feed the local Indian population became through agriculture. Anthropologist John Bushnell noted that “The allotment system authorized in 1887 largely disrupted the custom of living in clusters by the river.”

In April 1887 the General Allotment Act nationally implemented land allotments to all Indians, yet locally on the Hoopa reservation land allotments were complicated. “Soon after the allotment act was passed, the commissioner of Indian affairs asked Agent William Dougherty to study the possibility of making allotments in the [Hoopa] Valley. Dougherty reported that the valley had little arable land. He could not possibly give the Hupa allotments large enough to enable each to live by agriculture alone.”

The local agents decided who would be considered for land allotments based on the criteria of degree of Indian blood and competency. Allotments were to be held in trust for twenty-five years by the D.O.I. No matter what problems agents faced they were expected to report great progress. Local agents superiors wanted to hear that the Indians were adopting the white culture rapidly...and that they had learned to

15 Nelson, Our Home Forever, 95.
Land allotments were intended to be established quickly and equally throughout the entire nation. Due to the complex relationship between the local agent and the Indian community, Congress did not recognize allotments on the Hoopa reservation until 1922. Thirty-five years passed from the time the General Allotment Act became effective and local agents allotted the Hoopa Valley reservation. Two factors that contributed to the local agent having difficulty distributing allotments were the diverse valley terrain and the complexity of determining who would be eligible to receive allotments. The complex issues that went into determining who would receive allotments are the same issues that would resurface in the twentieth century when local agents tried to decide who is eligible for benefits from the Jesse Short case and the legislation of the Hoopa-Yurok Settlement Act.

Indian competency became one requirement for land allotment. Indians had to demonstrate Indian bloodlines or be identified by the community as Indian. They were required to complete a questionnaire designed to test their competency. “When I say competent, I mean competent in the sense that he knows the value of money, and if he dissipates what he has, he is capable of making his way in the world.” Competent Indians were ordinarily allowed to select their own allotments with the head of the family making the selection for his minor children and the agent selecting allotments for orphaned children.

Land had to be surveyed before eligible Indians could receive allotments: “…a special agent had begun making allotments to the Yuroks…. In February 1893 he moved to the area between the reservations known as the extension or connecting strip. By 1894 he had completed over two hundred allotments to the Yuroks on the extension, and he was within twelve miles of Hoopa Valley.” In 1895 Agent Charles Turpin submitted a list of 362 allotments. At least 87 Hupa received no land at all. In

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18 Captain William E. Hull to Major J.C. Schmidt, 29 July 1865, Records of the U.S. Army Continental Command, Department of the Pacific, National Archives, Washington, D.C.
20 Ibid., 76.
1898 the B.I.A closed the local Hoopa Valley agency believing the temporary allotments assigned by Agent Turpin would become permanent.

Land allotments would become test cases to see if the competent Indian could transact business the same as the average white man. This would eventually lead to the termination of American Indian status. After allotments were awarded, the local agent decided whether the Indian had used his land efficiently; and if so, the agent recommended issuing a patent fee also known as a land deed. Once the D.O.I. issued a land deed, the assistance of the D.O.I. ended. Indians became free to dispose of their property and money as they saw fit. Land deeds were automatically granted after twenty-five years or the local agent could recommend a more expedited land deed for competent efficient farmers.

One example of federal legislation being regarded as accurate when in fact, later it became irrelevant, is demonstrated when President Theodore Roosevelt issued a proclamation in 1909 enlarging the Trinity National Forest to include most of the Hoopa Reservation. The enlargement of the Trinity National Forest stripped the Hoopa Valley of their reservation resources. This had a devastating impact on the Hoopa Reservation because the local agent continued to administer reservation assets as if part of the reservation was still included the Trinity National Forest. On February 17, 1912 President Taft revoked the enlargement of the Trinity National Forest and restored the Hoopa Valley Reservation to its existing boundaries. “Although the Hupa recovered their lands, many people, including at least one Superintendent, assumed that part of the area belonged to the U.S. Forest Service which administered it.”

Historically, the local agent implemented federal policies, which eradicated Indians’ relationship as autonomous nations in relation to the United States, yet local agent Jesse Mortsolf anticipated a time when there would be no Superintendent in the valley. Mortsolf advocated “That the Hupa should make a

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23 Ibid., 26-21.
start towards their own self-government." Superintendant Mortolf goal aimed at reservation self-sufficiency and not tribal autonomy. He allowed the Hupa to conduct elections to choose representatives for community services such as roads and irrigation projects. Tribal participation was contingent on the discretion of the local agent.

Policymakers took Indian culture for granted and was noted that ".... Indian groups residing on reservations will continue indefinitely as distinct social units, preserving their basic values, personality, and Indian way of life, while making continual adjustments, often superficial in nature, to the economic and political demands of the larger society." Reservations and land allotments were intended to strip away the culture and the historical identity of Indians. Yet, Indians survived in the face of cultural oppression on reservations. D'Arcy McNickle a prominent Indian activist stated, "Segregation was an act of self preservation." Ray Raphael, author of Little White Father stated, "Despite their holocaust, Indian people would begin their recovery and become once again a strong presence in the place now called Humboldt."

In 1917 proponents of the assimilation era advocated that the competent Indian should no longer be treated as half ward and half citizen. Nelson stated, "The ultimate absorption of the Indian race into the body politic of the Nation means, in short, the beginning of the end of the Indian problem." The Commissioner of Indian Affairs in April of 1917 stated, "The time has come for the discontinuing guardianship of all competent Indians and giving even closer attention to the incompetent that they may more speedily achieve competency." Not everyone in Congress believed that federal Indian policy was adequate. On January 11, 1924 Representative Clyde Kelly stated, "For three congressional terms I have

24 Jesse B. Mortolf, Superintendent of Hoopa Valley Indian School, to Commissioner of Indian Affairs, 30 June 1909, Records of Bureau of Indian Affairs, Federal Records Center, San Bruno, California.
26 Ibid., 55.
27 Ray Raphael, "Two peoples, One Place." Ch 9
28 Nelson, Our Home Forever, 151.
29 Department of the Interior, Annual Reports, Vol II 1917, 3-4.
studied the Indian problem, and every new fact revealed has confirmed my conviction that our treatment
of the American Indians is the sorriest tale that has ever been written in the history of this republic....I
refer to the present situation of the Indians, shackled by a despotic system, gagged by unjust power,
blindfolded by enforced ignorance, while over them stands a bureaucracy intent only upon its own
perpuation.” Congressional attention began to emphasis a much-needed change in federal Indian policy
and an era of Indian reorganization emerged.

“The motivation for the U.S. to move toward tribal self-govemance is to encourage Natives to
become self-sufficient and free of financial dependency. If tribes were not considered sovereign entities
and did not receive federal funding, the burden of responsibility to care for these citizens would fall back
on the federal or state government.”30 Local agents implementing federal policy often times had difficulty
understanding the special relationship between Indians and the federal government. This still mystifies
contemporaries today and during the federal Indian policy transition from ideals based on termination of
the Indian problem into the viewpoint that the Indian problem isn’t being resolved to nineteenth century
standards, therefore, legislation moved towards reorganizing federal Indian policy.

The Indian Reorganization Act of 1934 did not spontaneously win over previous proponents of
termination of the “Indian problem.”31 The I.R.A is the period from 1934-1945 and in order, for the I.R.A
to take place there had to be changes in congressional reform. The Merriam Report of 1928 set the tone
for the reform of federal Indian policies specifically, the Bureau of Indian Affairs.32 It can be said that
two cornerstones of the I.R.A were the published Merriam reports and President Franklin Roosevelt’s
appointment of John Collier as the Commissioner of Indian Affairs. Collier set himself apart as an active

31 Hereafter, the Indian Reorganization Act will be referred to as the I.R.A.
32 Richard Trudell, Indian Tribes as Sovereign Governments (Oakland, California: ARII Press, 1998.) 10, The Merriam
Report was prepared by the Bookings Institution and publicized the deplorable living conditions on reservations and
recommended that health and education funding be increased, the allotment policy be ended, and tribal self-government be
encouraged.
commissioner differently than other commissioners because he was able to put his severely modified ideas into actions. David Wilkins stated that Collier “offered an alternative answer to Indian dependency: reconstitution and strengthening of Indian tribes is some sort of autonomy, self sufficiency, semi-sovereignty, or self determination.” The I.R.A encouraged tribes to adopt constitutions and to form federally chartered corporations. A major reform was included in the hiring preference for Indians in the B.I.A. The I.R.A reverted reservation lands reverted to tribal ownership and this ownership was therefore in trust by the local agent which left many Indians opposed to legislation creating semi-independent tribal governments.

No one fully understood that the trust status of tribal lands prohibited tribal governments from complete self-government. For example when expenditures of funds were made by tribal councils but, where such decisions seemed unwise, they were subject to veto by the D.O.I. This left many Indians upset because they identified that even though Collier had visions of progressive reform, the D.O.I. could not release their grip completely on Indian affairs. In 1983, Indian author Rupert Costo stated, “John Collier was vindictive and overbearing. He tolerated no dissent, either from his staff or from the tribes...who can say but that we will succeed in vanquishing the pernicious effects of the Indian Reorganization Act, finally exposing its leader for what he really was...” Many tribes viewed the I.R.A as a method for establishing the façade of tribal governments all the while, perpetuating the paternalistic assimilation policy. The motivation behind federal reform in Indian policy is to advocate tribal self-governance for the encouragement of Indians to become self-sufficient and free of federal financial dependency. If tribes were not sovereign and didn’t receive federal financial funding the burden of

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responsibility for local Indians would fall back on the state and federal government. In the case of the Hoopa Valley Reservation in 1911 local agent Mortsof recommended the Hoopa Valley people “make a start towards their own self-government.” Hoopa reservation Indians were given experience in tribal government. Agent Mortsof wanted the agency to leave the Hoopa Valley and he knew the only way the Indians would support agency withdrawal would be that if they had land allotments and complete tribal control. Even though the Hupa people began self-government earlier than federal legislation they were not autonomous and could only enact policies that the local agent approved. “In short, the tribal governments do not have final responsibility, and most Indians have become fully aware of this fact. As a result, Indians became apathetic about their local government, and tribal council officers are frequently without influence in their communities.” The negative affects of the allotment and assimilation era motivated governmental encouragement of tribal self-government. The high cost of Indian assimilation inspired the call for Indians to control their own affairs; therefore paying for their own services. The I.R.A. although limiting, did allow for Indians to establish formalized governments, which would begin the relationship between tribal governments and federal policy, rather than individual Indians and the United States government.

The first Hoopa Valley Tribal Council formed in 1916 under local agent Jesse Mortsof’s guidance. On September 4, 1952, the Commissioner of Indian Affairs approved the Hoopa Valley Tribes constitution and by-laws, which established the Hoopa Valley Business Council. In 1934 the Hoopa Valley Council decided to not support the Indian Reorganization Act. Anthropologist John H. Bushnell stated “...chronic issues before the Tribal Council and its subsidiary committees, the sending of delegations to Sacramento and to Washington-constantly serve to underscored the Indian side of their

37 Thurman Lee Hester Jr. Political Principles and Indian Sovereignty, 1.
38 Nelson, Our Home Forever, 152.
39 E. Schusky, The Right To be Indian, 14.
Indian American status." The Hoopa Valley Business Council did not support the I.R.A. because of the semi-independent legislation.

One opponent to the I.R.A., Ada Deer, a Menominee Indian stated in 1973, “We want federal protection not federal discretion.” Because the D.O.I. would not relinquish complete control over Indian affairs while maintaining federal funding certain Indians advocated for the return to federal policies of termination. Indians viewed termination policy as the ultimate path to ending the relationship with the federal government. After ten years of attempting to establish and reorganize tribal governments, Congress once again altered its stance regarding Indian affairs and according to House Concurrent Resolution 108, adopted in 1953, Congress expressed its opinion regarding the special relationship with Indian tribes. The resolution called for ending such relationships with Indians as soon as possible. Congress terminated over forty California rancherias which didn’t regain federal recognition until 1987. Termination made the following changes: “Tribal ownership was altered fundamentally by sale to third parties although with compensation to tribal members, transferred to private trust and by transfer to new tribal corporations under state law. All special federal programs were discontinued. State legislative jurisdiction became imposed except for hunting and fishing rights. Exemptions from state taxing authority ended. Tribal sovereignty, as a practical matter, ended.” In 1960 President Kennedy appointed a special task force to study the Indian problem. Although brief, the reemergence of termination ideals contributed to the constant fluctuations in federal Indian policy that local agents encountered.

During the nineteenth and early twentieth centuries the Hoopa Valley Indians survived the allotment period, which the government designed to transform Indians into the farmer. The culture of the

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43 Richard Trudell, *Indian Tribes as Sovereign Governments,* 12.
44 Richard Trudell, *Indian Tribes as Sovereign Governments,* 12.
45 Schusky, *The Right to be Indian,* 14.
Hupa and Yurok withstood the bureaucratic tug-of-war between Congress, the D.O.I, and the local agents. However, this Indian community would survive yet another era or “tribal self-government” at the hands of local agents between 1960 and 2006. The Jesse Short case filed against the United States in 1963 eroded inter-tribal relationships, established tribal bureaucracies, all the while reaffirming the paternalistic nature of the D.O.I. Through the court decisions in the Short case and Congressional legislation it is, evident that federal Indian policy had difficulty transitioning from paternalism of the Indian status and declaring tribal self-determination.

“The abuses of the termination era led to the reforms of the 1960s, 1970s, and 1980s, just as the I.R.A was a reaction to the negative impact of the allotment era. This period has been characterized by expanded recognition and application of the power of tribal self-government, and by the general exclusion of reservations from state authority. But on balance it can be said that Indian tribes and individuals have benefited from more favorable legislation and judicial decisions during the 70s, and 80s than any other period.”

An illustrative way to begin examining the contemporary issues that affected the Hoopa and Yurok peoples’ relationship with federal Indian legislation is best characterized by this quote from the Times Standard: “Management of the Yurok and Hoopa by the B.I.A. has led to a full-scale tribe against tribe war, something which has never before occurred in their history....In 1864 the valley was designated as a reservation for all California Indians, but twenty-seven years later, in 1891, the Klamath strip was added on. Did this make two reservations or one? The complicated history can and has been read both ways.”

Federal policy aimed at promoting tribal self-determination became undermined by local agents interpretations of federal Indian policies. An example of federal legislation enacting one thing and local

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46 Trudell, Indian Tribes as Sovereign Governments, 14.
agents administering legislation that contradicted federal legislation is evident in the dismemberment of the Klamath River reservation. On June 17, 1892, Congress discontinued the Klamath River reservation, which had been the home of Yurok and Karuk Klamath River Indians. In order to preserve the rights of the Klamath River Indians, after their reservation became dissolved, Congress gave some rights for Indians previously located on that reservation by providing for allotments to all Indian applicants who made their selection with one year. Then all lands not selected for allotment were open to general settlement under the public land laws. Indians who were removed from the Klamath River Reservation were relocated to the connecting strip of the Hoopa Valley and elsewhere. In 1953 and 1956 George Esborne Anderson conducted interviews with Howard Dushane, district Indian agent for the Hoopa Valley along with Leonard Hill, Area Director of the B.I.A. and they both stated “The twenty mile long portion of this ‘Klamath strip’ above the former reservation remained an extension of the Hoopa Valley Reservation. Practically all the land in this extension has since been allotted in tracts of forty acres or more to Indians residing along that portion of the Klamath.” Local agents, Howard Dushane, and Leonard Hill interpreted federal Indian legislation and then implemented policies that did not consult with either the Hupa or Yurok. In 1963, in what came to be called the Short case, 3,800 non-Hoopa tribal members sued the federal government, stating all Indians had equal rights to profits generated from the joint reservation. After Congress dissolved the Klamath River reservation local B.I.A agents administered the Hoopa reservation square and the strip of land that connected the reservation to the Pacific Ocean as one reservation.

Timber has always been a valuable resource for the Hoopa Valley Reservation peoples. Prior to 1889, the cutting of timber on Indian lands continued for many years under special acts. After 1889, only dead and down timber on the reservation could be sold.\textsuperscript{51} In March 1909 the Indian Service enabled the commissioner to make investigations on Indian reservations and to take measure to preserve the living and future growth of timber whether dead of fallen. Nationally, the D.O.I. focused on reservations timber resources and allowed local agents to make decisions that would protect Indians environments.

In 1955 the commissioner of Indian Affairs authorized per-capita payments from the monies derived from the sale of timber to those Indians enrolled in the Hoopa Valley tribe.\textsuperscript{52} The Klamath-Yurok Indians rebelled against the B.I.A. and in 1958 the D.O.I. repeated the words of the B.I.A. stating, “the Klamath strip Indians were not entitled to benefits from the valley.”\textsuperscript{53} The Yuroks were still discontent with the B.I.A ruling and hired their own non-government attorneys which had to be approved by the B.I.A. and filed suit in the U.S. Court of Claims.

\footnotesize{\textsuperscript{50} Hoopa Valley Tribe website, “Maps of Hoopa Valley” accessed 4-25-07.  
\textsuperscript{51} Schmeckebier, \textit{The Office of Indian Affairs}. 185.  
\textsuperscript{52} Hostier, \textit{History of the Hoopa Tribe}, 24.  
The Short case was filed in 1963 in the United States Court of Claims on behalf of a class of individuals who consider themselves Indians of the Hoopa Valley Reservation but who are not eligible for membership in the Hoopa Valley Tribe. The plaintiffs sued the government for a money judgment on the ground that it had improperly distributed per capita shares of timber revenues, derived from certain unallotted trust lands of the Reservation, only to those Indians on the membership rolls of the Hoopa Valley Tribe.54 As soon as the D.O.I. realized that the Short case was going to trial, the B.I.A stopped all per-capita payments to Hoopa tribal members and set aside seventy percent of timber revenue for the plaintiffs incase, the courts sided with the Yurok.

On May 23, 1972, the Courts ruled that the Yurok peoples occupying the Hoopa Valley Reservation had a right to timber sale revenues from the Hoopa Valley Reservation. The Court of Claims ruled the extension and the square as one reservation and gave all qualifying Indians equal rights to the reservation. Revenue had been split seventy thirty percent since 1974 with seventy percent of the sale monies held for the Yuroks. Ten years later the courts sided with the plaintiffs, and the B.I.A. established a timber profit escrow account. No funds were paid to the 3,800 plaintiffs. Instead, the B.I.A. flouted the ruling and gave the Hoopa Valley Tribal Business Council, the governing body of the new “tribe,” sole right to manage the timber and the profits generated thereby. In summary, the Hoopa Valley Business Council was supposed to incorporate the Yurok Indians of the Hoopa Valley into all business matters. Hoopa Valley tribal members strongly opposed the inclusion of reservations Yuroks into tribal business stating, that historically, they had no claim to reservation resources.

Local agents continued to implement subjective policies toward the Hoopa Valley people. The B.I.A. had jurisdiction to interpret the Courts decision and decided under what conditions monies would be disbursed. Forrest Gerrard, assistant secretary in charge of the BIA, said that the BIA would help the Yuroks establish themselves as a means of setting up a self-governing body on the reservation.

54 Lillian Blake Puzz v. United States Department of Interior, Bureau of Indian Affairs, No. C 80-2908.
The B.I.A. action will be: setting up a membership list of the Yurok tribe the same way a tribal list was organized for the Hupa tribe, assume management of assets from the reservation (such as assets from timber sales) until the Yuroks can organize and the tribes can agree on a reservation wide management and coordination body, stop all per-capita payments from those assets as of Feb. 1, 1972 while the organization takes place, call for immediate work to begin on a Yurok voting list and the election of an interim Yurok committee to draft a tribal constitution, make trust funds available to the Yuroks once the tribe has organized, establish one single account for the entire reservation once a joint Hupa-Yurok management council has been established.55

In an appeal, District Judge Thelton Henderson of San Francisco of the Ninth District Court of Appeals ruling “stripped the Hoopas of sole control of the reservation and gave the rival Yuroks an equal hand in running it.”56 Thelton’s ruling reinforced the Courts earlier ruling in the Short case that all reservation assets be allocated and distributed equally between Hupa and Yurok peoples. After the Jesse Short case, and prior to the settlement act, dissension and uncertainty ran high between Hupa and Yurok leadership.

When speaking to a Hoopa elder they always add, “The Kenuk (Yurok) and the Kenus (Karok) have their own places, all up and down the Klamath River they have their own. None on the Trinity River, none in Hoopa belong to them.”57 The Hoopas say that because the Yuroks outnumbered them three-to-one, they will take over the council and take over their homes.58 The Hoopa tribe and the B.I.A repeatedly denied that the Klamath-Yuroks had vested rights in the reservation square, they argued that historically and geographically the Yuroks have been culturally different on the extension reservation. They also felt that the Courts decision would morally and politically destroy the existing tribal government.

In July 1980, Lillian Blake Puzz filed suit against the United States and the Department of Interior seeking declaratory and injunctive relief. Specifically, Lillian Blake Puzz sought a declaration that the Hoopa Reservation was a single political entity; that as Indians of the Reservation, the Yuroks had substantive rights equal to those of all other Indians of the Reservation with respect to its governmental and business affairs; and that the actions of the non-federal defendants (Hoopa Valley Business Council) are without legal authority. The Plaintiffs also sought to enjoin the federal defendants from recognizing the non-federal defendants as the governing council of the Reservation or any part of it, and to require the federal defendants to promulgate and implement regulations and take other necessary actions to ensure equal substantive rights for plaintiffs with all other Indians of the Reservation.59 Due to the B.I.A allowing the Hoopa Valley Tribal Business Council the sole right to manage the timber and the profits generated on the reservation Lillian Blake Puzz sued the United States and the Department of the Interior regarding the Hoopa Valley Business Council remaining to solely manage reservation resources after the courts decision stating in the Short case decision that all Indians had equal rights to profits generated from the joint reservation. In April of 1988 the Court again found that the Business Council was not exclusively entitled to manage the timber and that the B.I.A had to allow everyone on the reservation an equal opportunity to participate in the reservation management in a non-discriminatory manner. Eighteen days after the Puzz decision came down, Doug Bosco, then a Representative from Northern California and a man closely allied with timber interests, introduced the Settlement Act which reversed every previous court decision.60 While the plaintiffs and the defendants were trying to come to an agreement on how the Jesse Short case trust monies would be disbursed, Congress passed the Hoopa-Yurok Settlement Act of 1988.

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The Hoopa-Yurok settlement act undid the Courts ruling in the Short case and returned sole control of the Hoopa square over to the Hupa.\textsuperscript{61} The Yuroks received their own reservation and the connecting strip of the Hoopa Valley Reservation. September 8 1991 Judge Royce C. Lamberth’s stated “….the preface to the settlement act as well as all of the legislative history makes it clear that the whole purpose of the settlement act was a result of Short litigation.”\textsuperscript{62} Congress intended for the settlement act to alleviate inter-tribal disagreement but in actuality it did not resolve a two-decade-old conflict between the Hupa and Yurok peoples. Douglas Bosco stated, “These people really don’t like each other. Years of fighting didn’t make them good candidates for one government.”\textsuperscript{63} The settlement aimed to be a starting point for Hupa and Yuroks to settle twenty-five years of confrontation but the unequal distribution of settlement funds and tribal land led to two more decades of inter-tribal feuding. At the time of the Short case, timber profits were estimated to range from one to five million a year.

The settlement act contained an additional provision for all non-Hupa Indians. They were given the choice of either joining the new Yurok tribe and waiving all rights to sue the federal government in the future, or accepting a $15,000 lump sum payoff and renouncing all rights as Native Americans.

The trust account established in the Short case is the same escrow account that Congress distributed in the Hoopa Yurok Settlement Act. The settlement act distributed 5,000,000 dollars for the Yurok tribe’s land acquisition, and 500,000 dollars for tribal purposes each year. The Hoopa Valley Tribe received 3,500,000 dollars each year.\textsuperscript{64} The Hupa maintained the sole-control of the 90,000-acre square previously established for all northwestern California Indians. The Yurok reservation encompassed 56,000-acre strip of land leading to the Pacific Ocean. It actually consisted of approximately 4,000 tribal acres due to the fact that Simpson Timber Company owned 25,000 acres and private ownership held the

\textsuperscript{61} Hereafter the Hoopa-Yurok Settlement Act is referred to as H.Y.S.A.
\textsuperscript{63} Dan Morain, “Timber Fishing” \textit{Los Angeles Times}.
\textsuperscript{64} \textit{Hoopa-Yurok Settlement Act}, Public Law 100-580, 100\textsuperscript{th} Cong., 2d sess. (October 31, 1988), 2924.
remaining acreage. Section Nine of the act called for the recognition and organization of the Yurok Tribe. In order to receive escrow funds from the settlement act the Yurok peoples had to first draft a tribal constitution. Many Yuroks did not support a formalized tribal government and this added to the complexity along with the time it took for the Yurok Tribe to formally organize. “Most Yuroks have opposed such moves in the past, arguing that they should be part of the Hoopa Tribe and accused the Hoopa council of wrongly excluding them. If the Yuroks failed to organize they would lose their status as a federally recognized Indian tribe. “Yurok voters have overwhelmingly rejected a proposal to create a formal tribal organization. U.S. Bureau of Indian Affairs officials…. put the final unofficial tally on the referendum by mail at 65 people in favor of an interim tribal government and 1,906 against an interim tribal government.” The D.O.I. maintained that any monetary settlement had to create a formalized government.

Gary Risling, former forestry tribal chairman for the Hoopa tribe claimed the arrangement is equitable because the Square is their traditional territory, and because the Yurok now have “the opportunity to…determine their destiny and manage their resources.” He also stated that if the Hupa were getting a better deal, it’s because of opportunity and aggressiveness. Representative Douglas Bosco from Santa Rosa stated: “The sophisticated Hoopa tribe lobbied as if fighting for independence to win passage of the bill.” Senator Alan Cranston, another chief architect along with Representative Bosco, stated that “It is my hope that the settlement act will bring about an end to the bitter and costly litigation that has dominated the lives of the Hoopa and Yurok people for three decades.” Representatives Bosco and Cranston saw the settlement act as settling two decades of litigation between the tribes but the actual

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66 Hoopa-Yurok Settlement Act, 2924.
69 Ibid.
consequences of the act created another two decades of litigation. The Hupa claimed that the Extension’s commercial salmon fishery is worth as much as the Square’s timber. Through the settlement act the Hoopa Tribe did not have to revamp their tribal government. Council member Lyle Marshall stated after the settlement act passage “We’re finally free...now we can get on with taking advantage of what we’ve got.”71 The settlement act did not reverse the Courts decision in the Short case, but it did make the equal allocation of future reservation assets impossible.

Michael Greenberg an attorney in the Short case, stated that the Hupa claimed that commercial fisheries will provide revenue for the Yurok extension is not adequate. “In 1989 the commercial harvest, recorded by the Pacific Fisheries Management Council was 27, 500. In 1990 and 1991 there was no commercial harvest at all; and only about 10,000 fish were caught in each of those years for subsistence. That’s not enough to support a tribe of ten, never mind 4,000.”72 In 1992 Susan E. Davis wrote an article titled “Tribal Rights, Tribal Wrongs” which highlighted the shortcomings of the Congressional legislation, in the Hoopa-Yurok Settlement Act.73 “Ever since Congress passed the Hoopa-Yurok Settlement Act in 1988, Hoopa Valley, the largest reservation in California and site of some of the most valuable old-growth Douglas fir in the world, has belonged exclusively to the Hoopa.”74

The Hoopa Yurok Settlement Act represented legislation that divided the Hoopa Valley Reservation between two peoples. Curtis Berkey of the Indian Law Resource Center in Washington D.C stated “This is one of the most egregious examples of Congress deciding to do what it wants with Indian land and self-government, without consideration of constitutionality or fairness.”75 The Short case decision established that the Yurok peoples are an equal part of the Hoopa Valley reservation. The settlement act preserved the Short Case decisions, but it reversed the very intention of the Short decision.

72 Susan E. Davis, “Tribal Rights, Tribal Wrongs.” *The Nation*.
73 Hereafter, the Hoopa Yurok Settlement Act will be referred to as the H.Y.S.A.
74 Susan E. Davis, “Tribal Rights, Tribal Wrongs.”
75 Susan E. Davis, “Tribal Rights, Tribal Wrongs.”
“Nothing in this Act shall affect, in any manner, the entitlement established under decisions of the United States Claims Court in the Short cases or any final judgment which may be rendered in those case.” In 1993, the Yurok Tribe formally organized and brought suit against the federal government claiming that the settlement act unconstitutionally took away their property rights to the Hoopa Square.

His father-in-law, Victor Guynup, who owned a dock with Eureka Forest Products and exported considerable amounts of timber, may have influenced Representative Doug Bosco. Bosco argued that he introduced the legislation merely to settle twenty-five years of conflict and to cut out attorneys whom he said were driving the controversy and getting the profits. During the 1980s the Hoopa Tribe set up an extremely effective political machine with professional lobbyists, a toll-free number and fundraising efforts for Bosco. The Yurok community had neither the money nor the experience to develop such strategies.

Political historian, Richard Trudell stated that “Tribal lobbying in Congress and even in state legislatures has become more effective…. Fundamental powers of Indian Tribes are the power to establish a form of government, and to determine tribal membership (the right of tribes to determine tribal membership).”

After the Hoopa Yurok Settlement act the Yurok and Karuk Indians now only have rights the extension strip of the Hoopa Reservation, which is extremely impoverished.

The Hupa, Yurok and the D.O.I. had very different perspectives on the passage of the settlement act. After the Court’s opinion in the Short case in 1972, and its ruling being upheld in the appeals process, the Hoopa Tribe faced adding new Yurok peoples to their roll, incorporating Yurok representation into government, and sharing future timber revenue with other reservation peoples.

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76 Hoopa-Yurok Settlement Act, 2927.
77 Trudell, Indian Tribes as Sovereign Governments, 36-37.
In Section Fourteen of the Settlement Act, the Hoopa Valley Tribe and the newly created Yurok tribe is barred from challenging the partition of the joint reservation under the Fifth Amendment of the United States Constitution. The Fifth Amendment provided the grounds for either tribe to sue the United States due to inadequate compensation. Due to this special clause within the Settlement Act, the Hoopa and Yurok communities could not sue the United States as a collective body for unjust taking of land without adequate compensation. Any lawsuit brought against the United States regarding unjust land compensation in the settlement act had to be filed by individual community members. The Yurok community claimed that their property had been taken without just compensation and without a vote thereby violating the non-Hupa’s Fifth Amendment rights. By forcing the non-Hupa to join a tribe, the suit further charged that the act violated the Yurok’s First Amendment right to freedom of association and allowed Congress to overstep the limits of its power as expressed in the Indian Commerce clause of the Constitution. Curtis Berkey pointed out that the Settlement act became a complete reversal of the Administration’s policy of self-determination for Indians.78

In 1963 the D.O.I. again refocused their federal Indian policy from paternalism to Indian self-determination. The Settlement Act created the foundation of the Yurok tribe leadership, all the while, reaffirming the paternalist nature of the Interior department by allowing the D.O.I. to oversee the Yurok Tribe organization. The Settlement Act intended for the Yurok tribe to be created by self-determined Indian people, but the consequences of a paternalistic Interior department played a factor in the continued instability between the Hupa and Yurok peoples. The D.O.I. role in the creation of the Yurok Tribe accelerated internal conflict among the tribes because the D.O.I. had to approve those individuals that the Yurok leadership allowed to be on their membership roll. Congress did not intend for the role of the D.O.I. to have such a detrimental affect on the tribal governments, but the consequences of the D.O.I. role in the aftermath of the Settlement Act meant that the Hoopa Tribe had a specific idea of how the Yurok

roll would appear; the D.O.I. knew which individuals would comprise the Yuroks roll; the Yurok people had a different idea of their tribal membership. All of these players’ ideas were not considered during the creation of the Settlement Act. Representative Bosco acknowledged that the Hoopa Tribe lobbied as if for their independence. After another twenty years of instability between Hoopa and Yurok tribes, the D.O.I.’s new role in the settlement act became “damage control.” “This situation presents a quandary for the department and for the tribes, as we believe the act did not contemplate such a result,”79 stated Neal A. McCaleb, the department assistant secretary for Indian affairs. The consequences of the settlement act whether intended or unintended far outweigh the benefits of the act. The act did force the formalized organization of the Yurok Tribe, which may have otherwise lost federal recognition resulting in a loss of services for many Indian peoples. The act intended to establish two separate tribal entities, which it did. The act did not intend for both tribal governments to continue a generational dislike for one another. The act also did not intend for two tribal communities to continue to be impoverished and never benefit from the monies allocated in the settlement act. The settlement act did intend for the D.O.I to continue their relationship as the overseer of the Hoopa and Yurok tribes and that is where federal Indian policy stands toward the Hoopa and Yurok communities today.

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