The Yakima Indian Treaty:
1855-1955

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Abstract

The Yakima Treaty of June 9,1855, has for one hundred years been the focus of Yakima resistance to acculturation by American Society. These Indians, by their own definition, and by that of white people surrounding them, are still not absorbed into our culture. In so far as the Yakimas remain, after a century, a cultural enclave, the Indian policy of the United States has been a failure, or at least has not fulfilled the expectations of those responsible for its development. The treaty itself has not only served as a focus of resistance, but has consistently, in different ways at different periods, been a major cause of the failure of the government's attempt to make these Indians exchange their own way of life for that of the whiteman. In the course of this century the Yakimas have fought against their treaty; they have grudgingly obeyed it; they have sought protection for their old ways under it; and finally they have enshrined it as a guardian and symbol of their cultural identity. In each of these stages the Yakimas have seen their relationship to the whiteman largely in terms of the treaty.

"...Our treaty entered into with General Stevens many, many years ago seems to have been buried in the dust and lost in the darkness of the past. But you [Garrect] have come to our assistance and you have dug up this treaty from where it was buried and shaken off the dust that has accumulated upon it and held it up high so that all the white people have come to know what the treaty was and what the Indians claim as their rights..

.....

No people can fight against the Americans. Only the great God himself can punish them when they do wrong. We have followed the treaty. We think it is the highest law. We think it was made before the state law and you should decide our rights."

Chief Meninock during 1921 fishing rights case, quoted in Garrect, Francis "An Indian Chief" in The Washington Historical Quarterly, Vol 19, 1928, pp. 174

Chapter I

The Yakima Indian treaty was signed one hundred years ago on June 9, 1855 by Isaac I. Stevens of Washington Territory for the United States Government, and "head chief" Kamiakin for the "confederated Yakima nation." It was ratified by the Senate, March 8,1859. The interpretation, observation and enforcement of this treaty, from the time of its signing to the present, have created problems and conflicts, which are the subject matter of this thesis. The first chapter describe those aspects of the culture of the Indians especially affected by the treaty.[1]

Identification of the Indians with which this thesis deals is necessary because some of the names used in the treaty are not those now used for the same bands of Indians, and because the treaty writers list large, important groups of Indians and small insignificant villages and bands alike, as if all were tribes. Moreover , someof thegroups named in the treaty do not fall within the scope of this thesis, because they never went to the Yakima Reservation or had any subsequent relations with the problems of the treaty.[2]

The modern names of the tribes or bands with which

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1 See Appendix No. 1 for full text of the Yakima treaty.

2 See Appendix No. 2 for full identification of the treaty bands.

we will deal are: The Yakima, those Indians formerly inhabiting the valley of the Yakima River including the Kittitas and the Yakima proper of the lower valley, the bands living on streams tributary to the Yakima River, and the Yakima villages on the Columbia near the mouth of the Yakima; the Wanapam, living at Priest Rapids; those Indians from the mouth of the Yakima downstream to the Dalles, along the north bank of the Columbia, who have since removed to the Yakima reservation; the Klickitat, a people closely related to the Yakima, living southwest of them; and the Wishram, a chinookan speaking tribe(the only non-sahaptin[3] group on the reservation) who lived on the north bank of the Columbia at the Dalles, and a few miles up and downstream.

Although the treaty list includesbands of varying habits, speaking each of three major languages found along the length of the Columbia Valley, the "confederated Yakima Nation" of the treaty was not merely the arbitrary creation of the treaty-makers. Among the fourteen bands named, certainly among those which have historical con-

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3 See map P. 252. A line drawn east and west from the Idaho border to the Cascades along the 47th parallel will divide the linguistic groupings of the interior into salishan north of the line and sahaptin south of it. From the Dalles down to the mouth of the Columbia the Chinookan tongue predominated. The natives who lived below the Cascades are often referred to as Chinooks. See Ray, Verne, Cultural Relations in the Plateau of Northwestern America p. 2 map 1.

stituted the legal entity, the "Yakima Nation" on the reservation, there was much contact and community of interest prior to the treaty signing. Although combining chinookan, salishan, and sahaptin speaking bands might appear to be haphazard, the treaty makers were following a distinct policy of putting peoples with similar interests together on the same reservation. If the resulting unit was in any sense an artificial , legal creation, it was by omission of groups which were part of the community from which the treaty bands were drawn.

There are four communities considered here, each contained within the next larger. The core group of these concentric communities, the Yakima, is comprised of the Yakima proper and the Kittitas. The characteristic differentiating this group from the Indians around it is intense, cohesive identification.[4] The Yakima proper and Kittitas are among those bands and groups which eventually came to the Yakima reservation, after signing the treaty, or were involved in disputes concerning the Yakima treaty. All these bands concerned with the treaty settlement made up the second of the four communities. These are the Indians with whom this thesis deals. The next larger community "the confederated Yakima nation" consists of the fourteen

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[4] Infra p. 17, footnote 27.

tribes or bands named in the treaty. Among these fourteen bands are those of the second community, which had further contact with the problems of the Yakima treaty. Also named are groups which did not have further relations with the treaty, but drifted off in other directions. The largest, and most numerous of these communities was that of the Columbia basin Indians. It was well represented at the Walla Walla Council, which created the Yakima and Warm Springs reservations for confederated bands, and the Umatilla, Walla Walla and Nez Perce reservations for those particular groups, Peripheral to the Columbia basin community where the salishan speaking bands of north eastern Washington and northern territory, for whom the Coeur d'Alene, Spokane, Colville and Okanogan Indian reservations were created. More important for this discussion were the groups connected to this community through the Dalles, which was the great trading center of the area. downriver Chinooks traded here, as did Oregon Indians as far south as the Klamaths.[5]

The reasons for the make up of the treaty community are apparent after considering the larger basin community. The trading and fishing connection of the Yakimas with the Dalles would explain how the Yakima and Wishram were included on the same reservation. But this does not explain

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[5] Infra pp. 31-33

why the Wishram were on the Yakima reservation rather than combined with their closely related Chinookan speaking cousins at the Cascades, or with the Indians of the John Day in central Oregon, or particularly with their virtually identical counterparts living on the south bank of the River directly opposite them, the Wascos.[6]

The reason for allocating the Wishram to the Yakima reservation may be found in a process of demographic elimination, and in the political arrangements of territorial boundaries. The Wishram could not be joined to other Chinooks because, to all effects and purposes, there were no longer any other Chinooks. Even as early as 1855 the Wishram were the last remaining sizable band of Columbia River Chinooks.[7] In 1855 Washington Territory (including the present Idaho and western Montana) was separated from Oregon Territory. Since the creation of reservations overlapping political boundaries would cause many administrative difficulties, Indian bands which were close neighbors were in some cases allotted by treaty to reservations some distance apart, because they were on different sides of a territorial boundary. Furthermore, the tribes in eastern

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6 Kelly, "Themes in Wasco Culture," p. 18
Ray, Cultural Relations p. 41

7 See appendix No. 3 for depopulation details.

Washington Territory were provided for on the other reservations mentioned above. Thus truncated on the west by depopulation, on the south by a political boundary, on the east by considerations of reservation placement and size, what was left of the economic commun ty which had centered around the Dalles was incorporated into the "confederated Yakima Nation."

The inclusion of Klickitat and Kittitas in with the Yakima treaty com un ty needs no explanation, nor does the inclusion of the scattered sahaptin speaking bands along the Columbia.[8] The Palouse were on relative friendly terms w th the Yakimas, as indicated by the fact that Kamiakin's father was a Palouse, but their inclusion in the Yakima treaty appears somewhat arbitrary, as they were also close to the Spokane and Walla Wallas. The inclusion of the salishan speaking Wenatchi (Pisquose) and the Sinkiuse of the 'big bend' country was even more strained. The border between the Kittitas and Wenatchi country was a very friendly one, even containing joinly occupied villages,[9] but the Wenatchi had their own fishing grounds, and were

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[8] Jacobs, Melville, A Sketch of Northern Sahaptin Grammar p. 93. See also, as a cultural subdivision, Ray et al. "Native Villages and Tribal Distribution in the Columbia" in the Pacific Northwest Quarterly Vol. 27 No. 2, April 1936, p. 108. Hereafter cited as Ray, "Native Villages" PNQ 27:2 Apr. 1936

[9] Curtis, Edward S., The North American Indian VII: 9. Guie, H. Dean, Tribal Days of the Yakimas, pp. 6-8. Ray, Cultural Relations p. 9.

not dependent on the Dalles for their staple food. They traded there only for less vitally needed commodities.

The least closely connected bands had few later relations with the Yakima reservation.[10] The Paloue stayed on the Palouse and Snake Rivers.[11] The Wenatchi remained at the forks of the Wenatchee River, and were eventually allotted land there.[12] The Sinkiuse joined the Chelans and Methows on a reservation created later for the Sinkiuse chief Moses, and then went to the Colville Reservation.

The ands remaining of the original fourteen named, together with the Wanapam, constitute thesecond of the four communities, the treaty-problem Indians, who are the subject

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10 Curtis, North American Indian VII:34
Mooney, James, The Ghost Dance Religion and the Sioux Outbreak of 1890 p. 736

11-Erwin, L.T. "Agent's Report, Fort Simcoe Washington, 1887 in House Documents 2d session 55th Congress, 1897-98 Report of the Secretary of the Interior, Indian Affairs p. 299. Hereafter cited as Erwin, Agent's Re ort Ft. Simcoe , Wash 1897. All government documents cited are in the Report of the Secretary of the Interior for the year mentioned in the citation, with the exceptions noted as such

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28 stat. 320 Article III Agreement with Yakima Indians on Winatshapam Fishery, passed as section 13 of Indian Appropria ion Act of August 15, 1894 (Pub.No. 197. p 38) in H Docs. 3d sess. 53d Cong. 94-95 pp. 90, 450-51

Jones, W.A. Commissioner's Report, 1903 in H Docs. 2d sess 58th Cong 1903-04 Indian Affairs, Part 1 p. 110

Lynch, Jay Agent's Report Ft. Simcoe Wash 1898 in H Docs. 3d sess 55th Cong. '98-99, I. A. Part 1, p. 305

of this thesis. The Wanapam at Priest Rapids stayed in contact with the Yakima, but stoutly resisted white influence, became the center of the nativiatistic Smohalla cult, and still today retain more of their old way of life than any other band in the northwest. Perhaps forty or fifty of the Wishram still live the year around at the Dalles, but the majority live on the Yakima reservation, and come down only for the summer fishing, as do some of the Yakima.[13]

Thus the fourteen tribes named in the treaty constituted the central part of a general community of Columbia Indians. The other parts of this basin community were eliminated or placed elsewhere as the result of white action and policy The remaining community of treaty bands was still centered around fishing and trading at the Dalles, but an ever increasing number of white traders and settlers moved into the interior and altered the situation. As the economic basis for the existence of this community was destroyed, the marginal members became independent, or made closer contacts elsewhere, disregarding the wishes of the whitemen responsible for the settlement of basin Indians. The bands now represented on the Yakima reservation, although showing a certain amount of rivalry and competition towards each other, have a long standing tradition of cohesion, and make up the core of what was once a widespread

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Author's personal observation.

community.[14] In discussing the Indian participants in the Yakima treaty settlement we are discussing a group which had, and has, a feeling of identity other than that of their common legal designation.

Since this thesis is concerned only with those tribes which eventually came under the jurisdiction of the Yakima agency, the territory with which it deals is limited to that originally occupied by them. The territory ceded includes the Wenatchee Valley and the 'Big Bend' country, but the inhabitants of these areas did not come to the Yakima reservation, so the thesis does not deal with these areas. The areas with which we are concerned are: The Yakima and Kittitas Valleys and their environs; the north or west bank of the Columbia from Rock Island near Priest Rapids to the White Salmon River; and the White Salmon and Klickitat Valleys.

Certain factors of geography and climate affected the life and activities of the Indians. Prairie land in general was suitable for horses, but those prairies with rich grass were better. Edible roots and berries grew on

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[14] Ray, Cultural Relations p. 9

Splawn, A.J. Ka-mi-akin, Last Hero of the Yakimas, pp 419-23.

watered mountain slopes and hillsides. The rivers carried the salmon up to their spawing grounds at different seasons of the year. At places where rivers were narrow, broken or falling rapidly, fish had to fight the current, and jump, thus becoming vulnerable to net and spear-fishing. The prairies and open hills in the eastern portion of Yakima country was easily traversed by horse, and the rivers, where navigable, afforded transport by canoe. The permanent villages of the native population were usually at the forks or mouths of small streams, or at good fishing sites on larger rivers.

From the mouth of Lake Keechelus, just south of Snoqualmie pass, to the confluence of the Yakima and Columbia Rivers at Richland is a distance of about one hundred and eighty miles as the river runs.

There are gorges and rapids along the Yakima but no falls. A number of streams flow into the Yakima, and are important in determining the location, number and activities of the native population. After leaving Lake Keechelus, the river flows through the Cle-elum Valley, and about twenty miles southeast enters the Kittitas valley, a fertile lake bed. The river then flows through the Yakima Canyon cut through the Umptanum range, crosses the narrow plain by Selah, and enters the Moxee Valley site of the present city of Yakima, through the 'upper gap' in the Yakima Range. Ten miles further on the Yakima River passes through 'Union

Gap' (which separates the Ahtanum Ridge on the west, from Rattlesnake Ridge on the east) and enters the Yakima Valley proper, which is twenty miles wide and extends ninety miles south east to the mouth of the Yakima at Richland. The major tributaries , all from the west, are: The Naches River(the largest) entering just north of Yakima; the Ahtanum Creek, entering just north of 'Union Gap'; and the Toppenish River draining the western extension of the Yakima Valley, and joining the main stream fivemiles below Union Gap.

In this distance,the climatic extremes are considerable[15]. At Cle-elum, not far below Lake Keechelus, the altitude is 1909 ft. The mean temperature for July is 65 degrees F and for January 26 degrees F. The normal annual precipitation is 25.5 inches which makes possible some continuation of the mountai forests. The river fall to 366 feet. at the point where it joins the Columbia. Here the climate is nearly desert. The temperature figures do not show as great a variation from those of the upper Yakima as do the precipitation figures. Precipitation is 7.5 inches. Even as far upstream as the Kittitas Valley precipitation is below ten inches. Except for river and stream banks, the country

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15 Ray, Native Villages, PNQ 27:2 Apr. 1936 pp. 104-5

Smith, Harlan I,, The Archaeology of the Yakima Valley pp. 9-11.

through which the river passes is dry and treeless(irrigation has since changed this). The tributaries from the west, however, flow from higher plains and valleys where there is a heavy growth of grass. When irrigated, the soil is productive.

Three sections of the Columbia Valley are connected with treaty problems. They are:The Priest Rapids area; the twenty mile stretch where the Yakima, Snake and Walla Walla Rivers flow into the Columbia; and the Dalles area between Celilo Falls and the mouth of the White Salmon River. These three areas lie east, southeast, and south of the Yakima countryy. At Priest Rapids, the Columbia, passing between high hills and the Saddle Mountains, is broken for ten miles or more by rapids. At the mouth of the Yakima it flows quietly in a broad stream between low banks,with open rolling country to the north and east, and passes between the rounded hills of the Horse Heaven range to the south.

From Celilo Falls, where the River drops between fifteen and sixty feet, depending on thestage of the water, to the White Salmon River, the Columbia flows in a narrow valley between highrounded hills. Just above Celilo Falls the Des Chutes River enters the Columbia from the south. Here there are a number of islands, of which Miller's is the largest. The most noticeable feature of this area is the Dalles. The "ten-mile rapids" extend from Celilo Falls

to the opening of the "short Dalles," or "five-mile rapids". Both required portaging in the days of canoe travel. The latter constricts the River to an extremely narrow channel between basalt outcroppings, leaving a width at low water of no more than fifty yards, and a depth of over three hundred feet. This was the best fishing site on the Columbia basin. The countryside changes remarkably at the western end of this stretch of river. It is arid at Celilo, and wooded at White Salmon. Below the Dalles there is another important island, Memaloose[16] Below this, the Hood River enters the Columbia from the south, and the Klickitat and White Salmon Rivers from the north.

The country drained by the Klickitat and White Salmon Rivers, is a continuation of the western uplants whence come the tributaries of the Yakima. It is higher, wetter, more heavily forested, and noted for its rich plains and meadows, and the heavy growth of underbrush. Here there were very good berry patches and root fields on the hills and mountain slopes, below Mt. Adams.

The outstanding characteristic of political organi-

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16 Memaloose" is chinookan for 'burial'. This is one of several such islands of the same designation on the lower Columbia, but this one is probably the best known.

zation among the Indians of the Pacific Northwest was extreme localism.[17] Village bands of identical ethnic stock, intermarrying, speaking the same dialect, and perhaps on permanently friendly terms, still treated each other as separate and sovereign nations.

> The tribe in any literal sense is absent from a great part of the basin... political affiliation of any kind between one and another village of many social and geographic entitities here treated was entirely lacking. In other words the political unit was the village itself, any political entity of greater embrace being unknown.[18]

The concept of a group larger than the village was present in some parts of the Plateau,[19] but the existence of such "tribes" or "nations" was in most instances limited to temporary unification for military purposes.[20]

The major land unit of the Columbia basin Indians was an area used by a number of villages together. A good example might be found in the behavior of the Klickitat bands, which left their separate fishing villages during the root gathering and berry picking seasons. They moved to

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17 Kroeber, A.L. The Tribes of the Pacific Coast of North America, pp. 385-410 cited by Ray, Cultural Relations p 4

18 Ray, "Native Villages" PNQ 27:2 Apr. 1936 pp. 111-22

19 Spier, Leslie, A Klamath Ethnography p. 309 cited in Ray "Native Villages PNQ 27:2 Apr. 1936 p. 113

20 Ray, Cultural Relations p. 13

large summervillages on the lower slopes of Mt. Adams, where though politically independent, the various bands lived and worked together and shared the use of the territory for hunting and gathering.[21] There were no definite boundaries to this type of area and only veryloose restrictions on its use by outsiders.[22] The other type of land unit was the more specific 'fishing station'. These were particular rocks or locations desirable for catching fish. The rights to the use of a particular fishing station were owned and inherited by individuals or families, often jointly , within a certain village.[23] Alongthe banks of rivers it was possible to determine where the last fishing station belonging to residents in one village was, and where the first location owned by members of the next band was. Here there was a much sharper definitionthan that which divided one hunting and gathering area from the next, but even this could not be called a real 'boundary'. Different stations were used for summer dip-netting and fall spearing, sothat the extent of a village's w rk area along

21- The large summer villages of pa.'s x, ntcita'x, and ca'x caxunmi, population 400 to 700, in Ray"Native Villages" PNQ 27:2 Apr. 1936 p. 149

22 Ray Cultural Relations pp. 15-16.

23 Curtis, North American Indian VIII:95.

Spier, and Edward Sapir, "ishram Ethnography in University of Washington Publications in Anthropology 1930 III p. 175 Hereafter cited as Spier and Sapir Wishram Ethnography U. W. Anthro 1930, III.

the river bank might change from one season to another.[24]

More important than the northwest Indian attitude on area demarcation was their concept of land use. They did not conceive of land itself as being owned by anyone. This attitude was the opposite of that implied in the white man's word "real-estate". The Indian believed that it was the right of use which was owned, not the land itself.[25] Even in a case fo concrete as a good fishing station, it was the fishing rights which were owned by the individuals, and protected by the village, not the rock itself. When an Indian spoke of his property he had in mind his smaller chattels, his horses, his slaves, and his spiritual powers)certain of which were transferable as charms or amulets). These were his to sell, to gamble away , to give or receive, and to accumulate, for wealth brought prestige. His inherited rights, either to the use of a fishing station as an individual, or to the use of hunting or gathering area as a member of a larger group, were in a somewhat different category. These rights of use were to a certain degree attached to the ground on which they were exercised. They could not be permanently alienated, but could in effect, be rented or leased. But clearly the land associated with the

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24 Spier, and Sapir, "Wishram Ethnography" U.W. Anthro. 1930 III p. 175

25 Ray, Cultural Relations, p. 16.

exercise of rights of use was not the users to sell. When asked tosell the lands of the Walla Walas, Peu Peu Moxmox said,

> ...here ismy heart. Suppose you show me goods, shall I run up and take them? Goodsand earth are not equal. Goods are for using on the earth I do not know where they [whites] have given lands for goods...[26]

The Yakimas, that is the Indians living in the Yakima drai age area, designaed the yakima proper and the Kittitas, hold important modifications of the above attitudes. They have already been differentiated from surrounding Indians by their 'intense, cohesive identification'.[27] This was characteristic of them to a much greater degree than of the larger community of treaty-settlement bands, of which they were a part; although it is true that the 'treaty problem' commun ty did have a less pronounced but similar attitude. The term "tribe" in its normal sense, is probably still too strong for applic tion to the Yakima , but certainly they approach this state closer than do the people surrounding them. Accompanying this cohesion there is a jealous and reclusive attutide , and what can best be described as a tradition of leadership.

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[26] Stevens, Hazard, Life of Isaac I. Stevens II: pp. 45-46 cited in Curtis, North American Indian VII:18 footnote quoting "a sp ech made by Pio'piomaksmaks at "alla "alla in 1856."

[27] Supra p. 3, footnote 4.

Yakima legends tell of past conquest and defensive unification,[28] elements absent from traditions of other basin Indians. This leadership tradition was reinforced by the domination of the Yakima Valley in the 1849's and 50's by a number of strong chiefs: Teias, Owhi, Ais, Skloom and particularly Kamiakin. The latter three were brothers, sons of a Palouse warrior and a Kittitas chief's daughter. They took advantage of the leadership possibilities existing among the Yakimas, and successfully ursurped power from the chiefs of the Moxee, Ahtanum and Yakima Valley areas

> The three brothers became very wealthy in horses and cattle, and as a survivor of that period expresses the situation,"after a while it seemed as if they owned this country, and the people here were their servants. 29

Each of these leaders dominated the villages and bands living along one of the tributary streams or a stretch of the main river. Any one of these leaders andhis bands probably constituted a political unit not unknown elsewhere in the Plateau, e.g. the Umatilla or the Walla Walla. What made the Yakima unusual was that here a number of these strong leaders existed, each controlling a number of villages, and yet their respective villages and bands all felt them-

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28 Splawn, Kamiakin, pp 419-23.

29 Curtis, North American Indian VII:15

selves to be part of a larger unit. They were all Yakimas, not separate groups with separate leaders. Kamiakin was preeminent, but could not be said to have 'controlled the Yakimas'[30] There was considerable rivalry among these leaders which influenced their behavior during the war.[31] It is true that the Yakima leaders were struggling for a prestige position which depended on the continued existence of all the competitors and , in fact, upon the continuation of the struggle itself, No single manm could have 'won' in the struggle , and exalted himself to supreme control at the expense of the others. Even this rivalry is unique to the Yakima. Except for the Nez Perce such a competitive situation could not have occurred elsewhere in the basin.[32]

The jealous and reclusive attitude of the Yakimas is, like their cohesiveness and their leadership, an exaggeration of an attitude scarcely noticeable elsewhere in the basin. The Yakima share the attitude of other north-

30 Curtis, North American Indian VII: pp. 15, 22. Splawn, Kamiakin, pp. 1-130.

Winthrop, Theodore, The Canoe and The Saddle, p. 234.

31- Infra p. 450.

32 Except perhaps the Walla Walla and Nez Perce. Curtis, North American Indian VII:9

Stevens, Isaac I., Superintendent's Report, Washington Territory, 1854 in S Ex. Docs. 2d Sess 33d Cong. '54-55 pp. 426 , 29,31, 33, 56 Hereafter cited as Stevens Supt's Report W.T. 1854."

west Indians, that man may own goods, and the right to use an area but not ground itself. The Yakima were not bellicose; however, in contrast with other groups of the Plateau, they guarded their rights to the exclusive use of the whole Yakima drainage area as jealously as any good fishing station was guarded during the season by its proprietors.

> freedom of use was the rule among many of the salish groups. But among the Yakima, for example, outsiders were required to obtain permission from a chief before hunting grounds might be used, and even then, the length of time was definitely limited. [33]

The Yakimas not only kept tract of a stranger within their sphere of influence, but felt responsible for his safety, and would give him convoy to the edge of the territory for which they felt responsible.[34] Besides watching over strangers, they made an effort to make their already isolated valley even safer and to be warned of danger

> Of interest here is the further Yakima practice of stationing scouts at strategic points along the boundary, in the interests of the group as a whole [35]

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33 Ray, "Native Villages" PNQ 27:2 Apr. 1936 p. 119.

34 Ray, Cultural Relations p. 17
Native Villages PNQ 27:2 Apr. 1936 p. 115.

35 Ray Cultural Relations p. 17. See also Splawn, Kamiakin p. 139.

Such an attitude made the Yakimas suspicious of white explorers and traders from the outset. As early as 1812 Ross Cox reported that Yakima scouts on horseback inspected the Pacific Fur Company expedition going up the Columbia while the party was portaging at the Dalles.

> The latter remained on horseback most part of the time making observations on our party, by which they apparently intended to regulate their further proceedings: They made no show of friendship, were rather cold and distant in their manners, and appeared to be a reconnoitring party sent out by the main body to watch our progress.[36]

This unfriendliness towards the white man seems to have been typical of the yakima, although they were receptive to the Oblate mission established in 1847 at Ahtanum[37]. The mission, and Kamiakin's successful trading of horses for cattle at Ft. Vancouver, may have influenced the Yakima to tolerate white man occasionally passing through their territory, but never made them friendly, like the Nez Perce, eager to learn like the Walla Walla, or to profit, like the Wishram. In 1814 Alexander Ross, on an expedition to buy horses for Ft. Okanogan, was held prisoner by the Yakima for four days, and subjected to a constant display of animosity.[38] This dislike of white ways is most pronounced

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[36] Cox, Ross, Adventures on the Columbia River p. 54 Vol 1.

[37] Stevens, I.I. Narrative and Final Report of Exploration for a route for a Pacific Railroad near the Forty Seventh and Forty Ninth Parallels of North Latitude from St. Paul to Puget Sound Vol XII, Pt. 1 p. 139

[38] Guie, Tribal Days, pp. 23-24.

in the closely related Wamapam of Priest Rapids, who are still today less influenced by the white man than any other Indians in the Northwest. Their temper towards whites may not have been helped by a generation of voyageurs who burned grave palisades for lack of firewood when stopping overnight along the banks of the middle Columbia.[39] The Priest Rapids site, later the home of the zealously nativiatic Smohalla Cult, has a long history for prophets and reclusiveness[40].

The concepts relating to the use, but not the abuse, of land and natural resources were basic religious beliefs common to all the Indians of the Columbia Plateau. These beliefs were largely implicit at the time of the treaty signing, but were eloquently stated by Smohalla, two decades after the treaty had been signed.

> My young men shall never work, for men who work cannot dream, and wisdom comes from dreams. We will not plow the ground, for we cannot tear up our Mother's breast. We will cut no hay[41] for we dare not cut off our Mother's hair.

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[39] Mark, Frederick, Fur Trade and Empire, George Simpson's Journal, p. 53.

[40] Curtis, North American Indian VII: 14
Ray, "Native Villages" PNQ 27:2 Apr. 1936 p. 151 the village of ca'pt Ø lØk.
Splawn, Kamiakin, p. 392

[41] Splawn, Kamiakin, p. 353

The essential point of the Earth-Mother belief was that the gifts of Nature may be used, but Nature herself must not be disturbed.[42] Certain chiefs on the headwaters had the ritual responsibility of assuring the downstr am flow of water, while those at the mouth of the River would magically assure that the salmon went upstream.[43]

When, therefore the government tried to deal with the tribes of the northwest it did so in a scheme of unified political organization and leade ship , which was not applicable. The extent to which the Yakima had more political cohesionand leadership than the surrounding tribes was not such as to make the white scheme applicable to them, but only enough to give some unification and direction to their resistance. The white treaty makers thought in terms of "ownership" of land, a concept unknown to the Indians, Yakimas included. The Indians owned their personal possessions but they only used land. Therefore the Indians felt that they didnot have the right to "sell" the land, nor did the whites have the right to buy it. This increased their dissatisfaction with the treaties. The possessive feeling of the Yakimas for the restricted use of their territory, again, did not make their view more compatible

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[42] Spier, The Prophet Dance of the Northwest and its Derivatives: The Source of the Ghost Dance p. 41

[43] Splawn, Kamiakin, p. 13

with the whites'. It only aggravated the differences, and made the Yakimas more suspicious than ever. In religious matters, the Yakimas had the same belief in the sacredness of the earth, and the fitness of reaping nature's bounty without disturbing Nature, as did the surrounding Indians. The political organization, land use and ownership concepts, and religious feelings of the Indians of the Columbia basin were incompatible with the whites' "concepts" as expressed in the treaties. Those senses in which the Yakimas had a possessive land concept and a political organization stronger than that of surrounding groups made them more incompatible with the whitemen than the other Indians were. They became the most intransigent , and capableas well as desirous of pesisting white encroachment and treaty enforcement.

The economy of the Indians of the Yakima Nation has been a point of conflict and friction since the Treaty signing. The three most important aspects of it were: Fish, the staple item of food; horses, a means of transportation and an important measure of personal and group wealth; and the great inter-tribal trading market, at the Dalles, the exchange center for the entire Columbia Plateau. While all three aspects were important to the Indians of the Yakima treaty, different bands or groups might emphasize one more

than another. Geographical location was the most important factor in determining relative importance. Those bands living at rapids or river constructions depended more on fishing; those whose villages bordered plains could better use horses; and those living at trail crossings, or who were themselves highly nomadic, traded.[44] The differences, however, while in some cases rather marked, were complementary, and existed within the framework of a system in which all three elements were closely knit together, and essential to the continuity of an inter-tribal community and a way of life.

Indian food came from three sources: hunting, root and berry gathering, and fishing.[45] (The eating of dogs mentioned by Lewis and Clark's journels (sic) was a practice resorted to only when there was a shortage of fish.) With the exception of the Klickitat, and possibly the Kittitas, the tribes of the Yakima reservation did not place any primary importance on hunting. During the berry picking season, when they had moved up into the foothills, the men might hunt while the women were out picking and digging up roots.[46] As often as not the men gambled and raced horses.

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[44] Splawn, Kamiakin, p. 406

[45] Curtis, North American Indian VII:5
Splawn, Kamiakin pp. 406, 483-84

[46] Splawn, Kamiakin p. 407.

Berry cakes, and particularly baked or dried patties of pounded roots paste represent the starch and vegetable portions of the Indian diet.

> The Yakima enjoyed an unusual variety of vegetable food. No fewer than twenty three kinds of roots and eighteen berries, to say nothing of stalks ad nuts were in common use as food.[47]

Salmon was the staple food of the Yakima and affiliated bands, as it was of all the Indians of the northwest. The catching and preservation of the fish was the most important occupation.[48] The Indians ate river shellfish, eels, sturgeon, steelhead trout, and silver, dog, and sockeye salmon, but depended mainly on the fat chinook salmon. The best fishing season was in mid and late-summer. There was an early spring season, a summer and fall season, and a winter slack.[49]

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47 Curtis, North American Indian, VIII:5

48 Curtis, North American Indian VIII:pp. 4-3
Guie, Tribal Days, pp. 36-38.
Spier, and Sapir, Wishram Ethnography, U.W. Anthro., 1930 III p. 174.
Splawn, Kamiakin pp. 406, 7, 81.

49 Cobb, Pacific Salmon Fisheries, pp. 8-11.
Franchere, Narrative pp. 322-23
Hosmer, History of the Expedition of Cap ains Lewis and Clark, 1804-5-6, II:261 All cited in Spier and Sapir, Wishram Ethnography, U.W. Anthro, 1930, III pp. 174-75.
Stevens, I.I., narrative and Final Report, Vol XII, Part II, pp. 307-15
Thwaite, R.G. Original Journals of the Lewis and Clark Expedition, III : 23IV p . 223-28,31, 60-62, 69,70, 72,90, 300,302,17,18,54,56 V:pp 26,33,35,47,48,54,100, 102.

The fish were caught from wooden platforms (known as fishing stations) projecting over the water in some place where a large rock was next to a riffle, which would cause fish to jump or be near the surface. In the spring and summer, the fish were caught with hoop nets, made of root fibre or gut, about three feet across, and fastened to the end of a twenty foot pole. This was swept downstream faster than the current, and the fish brought up and dumped out to the women waiting behind the station. In the fall, the fish were speared, with a barbed two pronged harpoon with a line attached. In shallower, gentler streams, a fish trap might be constructed of sticks and matting.[50] The fish were rarely eaten when freshly caught, but were preserved and eaten later. preserved fish was the chief medium of exchange, as well as diet. "The staple of barter was itkilak (pounded salmon" 51

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Guie, Tribal Days, p. 37
Rollins, Phlip A, The Discovery of the Oregon Trail quoting "The Diary of W.P. Hunt" p. 305
Spier and Sapir, Wishram Ethnography, U.W. Anthro. 1930 III pp. 93, 175.
Splawn, Kamiakin, p. 407
Thwaite, Original Journals, III: pp. 9,242,350 IV:pp 45-47, 294 V; 22,
The author's personal observation.

51
"In preparation of this article of food the salmon was beheaded and gutted, and with a sharp knife the two halves were separated from the backbone and skin. The clear strips thus obtained were laid on a pltform in the hot sun for a day. The next morning the flesh was soft, and the women squeezed it through (continued on next page)

Baskets of dried salmon were piled in twelves, and wrapped with matting. They were then used during the year, by mixing the salmon meal with water and dried roots, and boiling or baking the paste. Surplus packs of salmon were traded for other items. Those bands not suitably located for fishing would trade roots, meats, horses, or slaves to get the needed fish packs, or the right to fish at a good station during the season. The cycle of Indian life was largely dependent upon the cycle of salmon life, and the rituals observed in connection with the salmon seasons were common to all the Indians who depended on this foodstuff.[52]

The treaty recognized the importance of fishing, and made specific provisions for the maintenance of Indian fishing rights at "all usual and accustomed places" off the reservation. (Article 3) It is over these fishing rights

51(continued) their hands into shreds, placing the mass in large dishes or in a pit lined with grass or matting and mixing with it large quantities of roe taken from the fish. It was then thoroughly worked over with the hands and spread on a piece of matting; after a thorough drying for two days, or more, if the sun was not hot, it was pounded fine in a maple mortar with a stone pestle, and then rammed tightly into a basket of split cattails lined with fish skins Such a basket weighed one hundred to one hundred and fifty pounds, and was the product of about one hundred salmon. No salt was used, and to the white man's palate it was rather insipid." Curtis, North American Indian VIII:90 See also Splawn, Kamiakin, pp. 407,81,84 and Thwaites Original Journals III pp 143-48

52 Curtis, North American Indian, VII:4 VIII:90.
Guie, Tribal Days p. 38
Rollins, Discovery of the Oregon Trail quoting "The Diary of W.P. Hunt" p. 305.
Splawn, Kamiakin, pp. 407, 84.

that the most recent treaty controversy has occurred.

Horses were the major means of overland transportation.[53] Dugout canoes were used on navigable rivers of the area; but only among the Indians living permanently on the Columbia could the canoe be considered the major conveyance. These same Indians were those who had least use for horses, and owned fewest of them. The Indians of the Columbia Plateau first obtained horses from the Shoshone south of them, who in turn had received them from the tribes of the southwest. The horse reached the Plateau about 1730.[54] By increasing the distance a man could travel in one day from a maximum of thirty miles to a maximum of one hundred miles, the horse changed the types and amounts of foodstuff which could be obtained, the style of warfare, and the whole scope of trade and cultural contact.

Indians from the Plateau were able to travel to the Great Plains and hunt buffalo, whose mean was highly prized by coastal Indians and could be traded advantageously.[55] They were also able to carry more food back from hunting

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[53] Stevens, I.I., Narrative and Final Report I:405.

[54] Haines, Francis, the Northward Spread of Horses Among the Plains Indians p. 536
Ray, Cultural Relations pp. 13-14.
Splawn, Kamiakin pp. 363-69

[55] Curtis, North American Indian VIII:pp 87,93-94.
Guie, Tribal Days pp. 19,20.

expeditions, or from digging and gathering. Warfare was based on the mounted raiding party and horse theft. Trade was carried on by means of horses both by those travelling to the market at the Dalles, and the Klickitat, the western-most horse owners who ranged to the west of the Cascades down the Willamette Valley past Eugene, and northas far as Seattle and Everett[57] The most wealthy and powerful men, Kamiakin, Owhi, Ais, and Skloom, built up very large herds of horses.[58] Numerous horses also increased the wealth of a tribe. The Yakimas were noted forhaving large herds of horses. (Alexander Ross saw an estimated nine thousand horses in the Kittitas Valley in 1814.)[59] Near white Swan, therewas a Yakima village (Nikas) which was occupied only by horse guards. It was adjacent to rich grazing meadows in which bands of individuals wishing to turn loose their

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56 Curtis, North American Indian VII: pp 7-8, 14,37.
Mooney, Ghost Dance p. 738.
Palmer, Joel, Supt's. Report O.T. 1855" in S.Ex. Docs 1st Sess. 34th Cong. '55-56 pp. 514-515.
Spier, Tribal Distribution in Washington pp. 25-26.

57 Guie, Tribal Days, pp. 19,20.
Splawn, Kamiakin p. 412.

58 Curtis, North American Indian VIII:15.
Guie, Tribal Days, p. 25

59 Guie, Tribal Days p. 23.

horses in a place safe from rading parties could leave their stock in the charge of the guards, subject to the permission of the chief.[60] The name of the range bounding the Yakima Valley on the south, the Horse Heaven Hills, is further suggestive of this suitability of the Yakima country for horse raising. The isolation of the large, well protected Yakima area permitted the development of large herds. In the conomy of the Columbia Basin the Yakimas found raising horses an extremely profitable occupation; and one which assured their military as well as economic power. This activity was one which most distinguished the Yakimas from their neighbors and which was most vital to their existence as a distinct group in this large community. The white occupation of a large part of the grazing territory necessary for raising large herds, after the treaty settlement, evidently diminished the size of herds the Yakimas could keep.

Both the salmon -pack and the horse have been related to a trade system. This system, tying up the whole Columbia Plateau, was centered around the Dalles.[61] Here there

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[60] Ray, Native Villages, PNQ 27:2 Apr. 1936 p. 147.

[61] Mandlebaum, David, The Indian Tribes of North America p. 59

Spier and Sapir, Wishram Ethnography U.W. Anthro. 1930, III p. 224.

Splawn, Kamiakin p. 411.

lived on the north bank, along the "Little Dalles", or five-mile rapids, the Wishram, the farthest up river of any Chinookan speaking people. Situated at the best fishing spot on the river at the point where canoes going in either direction had to stop to portage, and where many trails converged at the river, the Wishram were in an admirable location, not only for catching a great surplus of fish, but also for trading it for other items. From this they developed a market for items from all parts of the Plateau in which they acted as traders.

> The role of the Wishram as traders was evidently stay at homes; there is no evidence that they ever went aboard to trade. They were wholly middlemen... Trade at the Dalles was in skins, fur, fish, oil, roots, pemmican, feathers, robes clothing, shells, slaves and horses. On the whole products of the lower Columbia, the coast, and the Southern or Oregon Country were exchanged for products of the interior, east and north. 62

This trade supported a substantial village,[63] which was swelled to heavy population in scattered summer camps nearby during the fishing season. Ross estimated the winter village at about two hundred, and summer population at over three thousand.[64] As horse raising was an important

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62 Spier, and Sapir, "Wishram Ethnography" U.W.Anthro. 1930, III p. 224. For a more detailed account see Curtis, North American Indian.

63 Thwaite, Original Journals, V: pp. 156,56.

64 Spier and Sapir, Wishram Ethnography, U.W. Anthro. 1930, III p. 227.

Rollins, Discovery of the Oregon Trail, quoting "The Diary of W.P. Hunt" p. 305.

economic activity for the Yakima, so fishing and trading were the most important activities of the Wishram.

> If there was any one outstanding aspect of Wishram life it was trading. They were famous as the possessors of a trade market among the tribes for a vast distance around, and were inordinately proud. 65

This pride was based on wealth and importance, and a dependence upon the continuation of the inter-tribal market, combined to make the Wishram very jealous of the fur traders.

> The Wishram and Dalles people generally, and the Kalapuya, were always more or less hostile to the white traders. They resented the direct trade with the neighboring tribes, considering that they should by rights act as middlemen. 65

The early reports of Columbia river travelers abound with vilification of the Indians of the Dalles and Celilo-Falls, and with reports of attacks or threatened attacks on their parties by these Indians. 67

65 Spier, and Sapir, Wishram Ethnography U.W. Anthro 1930 III, p. 224 see also Hulbert, A.B. The Call of the Columbia, Townsend's Original Journals p. 216.

66 Teit, James, The Middle Columbia Salish cited in Spier and Sapir, Wishram Ethnography U.W. Anthro 1930, III p. 224.

67 Cox, Adventures on the Columbia I:133.
Hulbert, Call of the Columbia, citing Nathaniel Wyeth p. 153
Irving, Washington, Astoria, pp. 80, 309.

The Yakima treaty represented the white man's interests, in political and economic matters, and his viewpoint, in matters of land use and religion. Not only did the Government want land for the settlers, it wanted the Indians to farm, and become settlers themselves.

The trouble with these treaties as well as with others negotiated by Governor Stevens, was that they arbitrarily imposed upon the Indians the demand that they should give up their homes, to which they were attached not only by the associated memories of generations past, but by a deep seated religious conception that the soil was their sacred mother, and that they should concentrate themselves, irrespective of their wishes within an area too small for their subsistence, except by agriculture. And tearing up the soil was abhorrent to them not only because it was a direct reversal of their habits but because it was contrary to their earth-mother religion.68

In social, religious, and economic matters, the treaty imposed upon the Yakimas conditions which conflicted with the bases of their way of life. The Yakimas reacted by fighting the treaty, tacticly, before its signing, and actively afterwards. The conflicts remained, and so the history of the continuous difficulty between the Yakimas and white-men, centers around the implementation of the treaty.

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Curtis, North American Indian, VII: 16

Chapter II

At the request of the Yakimas, two Oblate Fathers established a mission on the Ahtanum Creek in 1847.[1] This mission, periodic trading contacts with the Hudson Bay Company (at Nisqually house, Fort Vancouver, and The Dalles, all outside Yakima territory), and an awareness that pioneers were moving down the Columbia to the Willamette area, constituted the whole Yakima experience with white-men previous to the Railroad Survey of 1853.[2] Thus the presence of the army party in Yakima country during the summer of 1855 may be considered as the first time the Yakimas were really exposed to the white man's culture. The most outstanding feature of this first contact was discussion of the forthcoming treaty. All relations between the Yakimas and the whites for the next six years involved the making or the keeping of the treaty. This was the period of the Yakimas' overt resistance to the advance of white civilization.

The rapidly growing pioneer population exerted a

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1 Pandosy, Charles M., O.M.I. A Grammar of the Yakima language p. 1.

2 Desmond, Gerald R. O.S.B. Gambling Among the Yakima p. 5

Guie, H.D.Tribal Days of the Yakimas p. 25.

Splawn, A. J. Kamiakin, Last Hero of the Yakimas p. 18.

number of different pressures upon the Government (to say nothing of the Indians(which resulted in the formulation of the treaty and reservation policy. Even more pressing than the need for land w as the need for government, law, and order. The white communities needed to control their own desirable elements, and they wanted protection from Indian attack. After law and order, the thing needed most was land. With the exception of some hunting in the Willamette Valley, the fishing livelihood of the coastal Indians west of the Cascades did not require the use of an extensive area. This, and the decimination and degeneration of the coastal Indians due to early contact with white traders meant that there was very little resistance to the rapid spread of settlers. By the mid-fifties the best farm lands west of the Cascades were rapidly filling up, and population pressure was felt. The settlers now wanted the good river valley lands in the interior, they wanted title to it, and they wanted protection when they got there. One more pressure which the government felt w as moral. The settlers in direct contact and conflict with the Indians as often as not wished the complete elimination of the "Indian problem", and the Indian[3]. Worse than this were the outlaws, renegades,

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3 Thompson, J.D. Agent's Report The Dalles, Oregon Territory 1856 in Senate Executive Documents 3d Session, 34th Congress '56-57 Report of the Secretary of the Interior p. 726. Hereafter cited as Thompson, Agent's Report, The Dalles, O.T. 1856 All government documents cited are in The Report of the Secretary of Interior for the year mentioned in the citation.

and profiteers who dealt in liquor, firearms, and debauchery, and increased the likelihood of open warfare. Back east, however, where government policy was made, there were influential religious and humanitarian movements which believed that the Indians should at least not be wiped out, and at best could be "saved, and their complete civilization effected."[4] Thus the government had not only to protect the white man from the Indian, but, increasingly the Indian from the white man. In this two-way responsibility lay the cause for the contradictory government policy which was developed.

The United States Government had made treaties with Indian tribes since the Revolutionary War, but the policy of concentrating the Indians upon a reduced part of their original territory, reserved for them in the treaty, and treating them as governmentwards, was new at the time of Palmer's and Stevens' treaty-making activities in Oregon and Washington (1853-8).[5] Worked out in response to the pressures upon the government, the treaty and reservation

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4 Manypenny, "Report of the Commissioner of Indian Affairs in 1854" in S. Ex. Docs 2d sess. 33d Cong., '54-'55 p. 218. Hereafter cited as Manypenny, "Commissioner's report 1854.

5 Haines, Francis, "Problems of Indian Policy, Pacific Nobthwest Quarterly, 41:206, 1950. Hereafter cited as Haines, Problems of Indian Policy, PNQ 41:206, 1950.
Manypenny, Commissioner's Report, 1854, p. 219.

policy was designed to open land for white settlement, establish law, and "civilize' the Indians as rapidly as possible. Although the Superintendents of Indian Affairs for the two territories had to carry out this policy, the pressures within the territories tended more towards the first two of these three aims.[6] Stevens' position was further complicated by his dual role as Superintendent of Indian Affairs and, Governor of Washington Territory.

After the Rogue River Indian War of 1853, it was decided to establish definite U.S. sovereignty over the entire Oregon Country as rapidly as practical.

Instructions, in the month of August, 1854, were given to Joel Palmer, Superintendent in Oregon and Isaac I. Stevens Governor of Washington to enter at once upon negotiations commencing with those tribes in the vicinity of the settlements of the whites, and having for a principal aim the estinguishment of the Indian claims to lands, and the concentration of all tribes and fragments of tribes on a few reserves of limited extent, naturally suited to the requirements of the Indians and located, so far as practicable, so as not to interfere with the settlement of the Territories respectively.[7]

The establishment of an economical system of control was hampered by the absence of any permanent political

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6 Stevens, Isaac I Superintendent's Report, Washington Territory, 1854, pp. 544-56, Hereafter cited as Stevens Supt's Report W.T. 1854.

7 Manypenny, Commissioner's Report 1855, in S. Ex. Docum 1st Sess, 34th Cong. '55-56, p. 332.

units larger than the village among the Indians of the Pacific Northwest, excepting the Yakimas and Nez Perce. Consequently, the government agents tried to unify scattered groups where possible,[8] even going so far as to attempt to influence the election of chiefs, where contests existed, in favor of the candidate who might best hold the groups together.[9] The field officials emphasized the need for impressing the omnipotence of white man's justice on the Indians, and asked for emulation of the Hudson's Bay Company policy of swift and inescapable punishment for an infraction of their rules.[10] To impress the Indians further, it was suggested that "a few of the chiefs of the principal tribes...visit the states forthe purpose of witnessing the extent and power of the American people."[11]

Designed to control the Indians, but more to protect them, was the practice of isolating neutral or friendly Indians from the hostiles, bymoving them, establishing a military post near them, or even when they were considered

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[8] Stevens, Supt's Report, W.T. 1854, p. 446.

[9] Stevens, Supt's Report, W.T. 1854, pp. 444-45.

[10] Nesmith, J.W. Letter to Gen. Clark, Comdg. Dept. of the Pacific (Clarke) July 15,1857, in S. Ex Docs. 1st sess. 35th Cong. '57-58 p. 672

[11] Nesmith, Supt's Report (W.Ts. 1857" p. 613

dependable, arming them for self defense.[12] The Indians were much more in need of protection from the white man than from each other, and the policy statements of the day show that the government was aware of this.[13] The continual presence in official reports of similar statements, for seventy years or more following this, would indicate that no effective way to solve the problem was found. The Indians had to be protected from the everpresent bootlegger and unscrupulous trader,[14] and also, under the strained conditions of the times, from the more respectable elements of the white communities, the settlers themselves.

It is hoped that these [treaties] will result in satisfactory arrangements for the permanent settlement of the Indians, and the establishment of such relations between them and the whites as will prevent the recurrence of such inhumane scenes and atrocities as have taken place in Oregon during the past year; and in which it is due to truth to state that the latter have, in some cases, been the agressors, and shown themselves to be as barbarous and cruel as the Indians. Indeed the usual order of things has been to some extent reversed, the department having had to invoke the aid of

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[12] Logan, Agency Report, Warm Springs, Oregon, 1864 in Reports of Secretary Interior and P.M. General 2d sess, 38th Cong. 1864-65 p. 241
Townsend, Agent's Report, White Salmon, W.T. 1857, p. 630.

[13] Manypenny, Commissioner's Report, 1854, pp. 218-19.

[14] Manypenny, Commissioner's Report, 1855, pp. 339-40.

> the military for the protection of the weak and helpless Indians from the persecutions and cruelties of the Whites. 15

The ultimate aim of the government policy, for which controlling and protecting the Indians were only temporary and preliminary measures, was educating the Indian to the white man's way of living, as a farmer.[16] To encourage this, an attempt was made to make the Indian feel that a certain restricted area was his "home; a fixed, settled, and permanent home."[17]

The government Indian policies, and the treaties which implemented them, contained certain contradictions which caused the wars in which the Indians violently opposed being absorbed by the white man's civilization. These contradictions subsequently made it possible for the Yakimas to turn their treaty, originally the keystone of the plan for acculturating them, into a weapon of resistance. These contradictions were: the contradiction between the binding force felt by the government once it had pledged its word and had assumed obligations, and the pressure felt by the government for a flexible policy under the needs of a changed situation; the contradiction of attempting to meet the needs

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15 Manypenny, "Commissioner's report, 1854 p. 223.

16 Manypenny, "Commissioner's Report 1855" p. 333.

17 Manypenny, "Commissioner's Report 1855 p. 338.

of the Indians for susbistence in a way they understood, and of attempting to grant the desire of the settlers for all the good land available and a permanent end to any annoyance caused by the presence of Indians; finally, the contradiction between a policy of expensive paternalism and the emphasis placed on government economy and individual self-reliance by American society at that time.

The first contradiction, between pledged word and changed needs, caused delay in treaty ratification and often resulted in the government's neglecting or being unable to fulfill treaty obligations. These two factors were important in confirming the suspicions of the Indians that the treaties were worthless, and that the white man had no intention of honoring them. This decided the Indians upon war, as they no longer felt themselves under any obligation to observe agreements.[18]

The contradiction between the settlers' desires and the Indians' needs was probably the critical one, and in fact constituted the "changed situation" of the first conflict as a concrete case. Stevens' double-role as Governor and Indian Affairs Superintendent placed him in the

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18 Dennison,"Agent's Report, The Dalles, O.T. 1857" p. 660.

Manypenny,"Commissioner's Report, 1854 p. 218

Nesmith , Supt's Report O & W Ts 1857 p. 605

Attitude of the Indians
toward the Treaty

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Let's improve the situation.

center of this policy conflict.[19] The Bureau of Indian Affairs was conscious that this was an unsatisfactory arrangement.

> The New Mexico , Utah, Washington, and Minnesota the supervision of our Indian affairs is given to the territorial executive who by law is made the superintendent; and in Oregon Kansas and Nebraska, the same is confdded to an independent officer,dominated the superintendent of Indian affairs. I am satisfied that the harmony and efficienty of the Indian service would be promoted by placing our Indian affairs in the first, on the same footing in this respect that they now occupy in the last-named territories . [20]

Pressure from settlers for as much land as possible, as soon as possible, often resulted in the Indians' being concentrated in an area too small to support them.[21] In the case of the treaties signed at Walla Walla in June,1855, the cry for land resulted in the immediate opening of the Indian's country to white settlers. Once again, the Indians' suspicions were confirmed, as the government failed to live up to another of its promises, and the movement of whites into the interior set off conflict.[22]

The existence of the treaties themselves indicates

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19 Manypenny, "Commissioner's Report, 1854" pp 218-19, Stevens, "Supt's Report W.T. 1854" pp. 445-46.

20 Manypenny,"Supt's Report ~~W.T.~~ 1854" p. 225

21 Nesmith , Supt's Report O & W Ts 1857 p. 609

22 Nesmith, Supt's Report O & W Ts 1857" p. 605

that the government was forced to come to terms with the Indians under conditions which consistently thereafter hampered the government's policy. Ideally, the government would not have dealt with the Indians until it had enough power in the area so that it could immediately and unquestionably establish the relationship as that of guardian and ward, and it would have prevented any white settlers from moving into Indian country until them. As it was, the clamor of settlers for more land forced the government to deal with the Indians while its power in the area was so slight that the Indians could more or less equal it, and had to be recognized as equals. Because the government, in granting certain rights to the settlers, acted as if it had more power than had been in evidence when it made treaties with the Indians, as between equal sovereign states, these Indians now exerted what they felt (under the treaty situation of equal power) to be their rights. When the government was finally stirred to action and demonstrated its power, the Indians were forced to accept the position of wards. However, various parts of the government have ever since, in varying degrees, felt morally constrained to observe the rights which the Indians, being treated as equals in their native state, reserved to themselves. To the extent that these reserved rights have been observed, the government has not been free to 'civilize' the Indians.

The final contradiction, between costly paternalism and a belief in individual initiative, resulted in a widespread desire to civilize the Indians as soon as possible. It was hoped that they could be self supporting in a short time. Most of the treaties made by Stevens and Palmer had provision for subsistence annuities which were to be continued for twenty years after the signing. This desire for speedy acculturation led to a practice among the agents of encouraging the Indians to accept such outward features of white culture as clothing, utensils, fenced land (even if the land was not cultivated but only used for grazing), and frame house structure. It further led them to measure the degree to which the Indians were 'civilized' in terms of these same superficialties. It prevented them from influencing the less obvious elements of the Indians' culture, and in fact sealed off this deeper portion under a veneer of white traits, giving the Indians techniques necessary to survive in our culture without having to accept it. Laws were passed forbidding gambling and the sun dance could only hamper this restraint core of Indian culture; they could not supplant it.

Had the makers of policy, and particularly the ever optimistic (or occasionally disillusioned, and overly pessimistic) agents, realized that the "beneficience and pa-

ternal care of the governmentx[23] would have to be continued for an indefinite period, whether they liked it or not, a much more gradual, and, eventually, more thorough alteration could have been made in the Indians' way of life.

Besides the mis-application of the value we place on individual economic initiative to the generally communal village and band organization of the Indians of the Northwest, the desire to be able to report lower costs in the operation of the Indian Service led to a number of misdirected economies which severely hampered the effectiveness of the service.[24] Among these was the joining of the Washington and Oregon superintendencies under one man during the Buchanan administration from 1857 to 1861. The one man was of course unable to cover an area which could have kept three men busy.[25]

In 1853 the army survey crew previously referred to under the command of Capt. George B.McClellan, later of Civil War fame, worked its way north from Klickitat country, through the Yakima Valley and its western tributaries, and

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23 Stevens, "Supt's Report W.T. 1854" p. 456 concl.

24 Dole, Wm. P. "Commissioner's Report 1864" p. 150
Nesmith, Supt s eport O & W Ts 1857, p. 609

25 Mullan, John, letter to Commissioner Mix, September 5, 1858 in H Ex. Docs. 2d sess. 35th Cong. '58-'59 Interior report p. 634.

through the Kittitas and Cle Elum valleys, to the Wenatchee. The survey crew was looking for feasible railroad passes through the Cascades, but was also charged with making a report on the flora, fauna, geology, weather and natives of the area through which it passed. The Yakimas were not hostile to the survey crew, but they were highly suspicious of its purposes.[26] The major chiefs visited the party at several different camps and kept tract of its activities and movements.[27] The chiefs asked McClellan what the government intended to do, and who was qualified to treat with them:

> Kamaiyakan made a suitable reply, in which he referred to the subject previously mentioned by Skloo--the negotiations of white-men pretending to be chiefs who were not, particularily in regard to the purchase of their lands. He had heard that they would give a few presents, and then pretend they had purchased the land. Captain McClellan informed him who were the persons having the power to make these purchases, or to treat with them, with which he expressed himself satisfied. [28]

Kamiakin was satisfied, not to know with whom he might deal, but rather that his suspicions were confirmed. The government did intend to get possession of Yakima land.[29]

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[26] Guie, Tribal Days pp. 26-27.
Splawn, Kamiakin p. 21
Winthrop, Theodore, The Canoe and the Saddle, pp 215-16, 239.

[27] Splawn, Kamiakin p. 21
Stevens, Supt's Report W.T. 1854 pp. 442-45.

[28] Stevens, Supt's Report W.T. 1854, p. 442.

[29] Guie, Tribal Days, p. 27
Splawn Kamiakin p. 21

Meanwhile, as McClellan was 'preparing' the Yakimas for the treaty conference, Governor Stevens spent most of 1854 visiting one tribe after another on the coast, and making treaties with them.[30] He sent out word that in the early summer of the next year he wanted to have a great conference with all the tribes of the interior. The sudden imminence of the government's attempt to purchase their land stirred the Indians to action, and crystallized their opposition to the proposed treaties. They knew what had happened to the natives living in the Willamette and lower Columbia Valleys.[21]

In understanding the feeling of the Yakimas towards the treaty, both before and immediately after the Walla Walla Council, it is important to have some idea of the relationships existing among the important leaders of the Yakimas, who determined the course of action, and the spirit in which it was taken. Most writers recognize two divisions among the Yakimas before 1855; the lower Yakima, and the upper Yakima, to whom I have previously referred as the Kittitas. The writers then emphasize the essential similarity between the groups, saying they were differentiatedmore by good-

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30 Manypenny, "Commissioner, Report 1855 p. 333.

31 Guie, Tribal Days p. 26.

nat ed rivalry than any recognizable features.[32] Those whom I shall call the Yakimaproper had three major chiefs, Kamiakin and his brothers Skloom and Ais.[33] The three were all usurpers, or considered so by many, including the chiefs of the Kittitas.[34] They were sons of a Palouse Indian. The c iefs of the Kittitas were Teias and his younger brother, Owhi.[35] All of them, as also the Klickitat, and the Sahaptin speaking groups along the Columbia, recognized the authority of Kamiakin, usurper, or not.[36] His influence was felt in an even broader area. The position of chief,

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32
Curtis The North American Indian VII:15
Desmond, ambling Among the Yakimapp. 4-6,
Haller, Major G.O. "Kamiarken -in History" ms. 1
Splawn, Kamiakin pp. 13-14
Stevens, Supt's Report W.T. 1854, pp 438-39

33
Curtis North American Indian VII:15
Haller, "Kamiarken-In History" mss. 1-2
McWhorter, Lucullus Virgil, The Tragedy of the Wahk-shum pp 6-8.

34
Curtis, North American Indian VII:15
Splawn, Kamiakin pp. 13-14
Stevens, Supt's Report W.T. 1854, p. 438

35
Curtis, North American Indian VII:15
Haller, "Kamiarken-In History" ms 1.
Splawn, Kamiakin pp. 13-14, 39.

36
Curtis, North merican Indian VII:15
Haller, Kamiarken-In History mss. 1-2
McWhorter, Tragedy of Wahk-shum p. 3.
Splawn, Kamiakin p. 17.
Stevens, Supt's Report W.T. 1854, pp. 433, 438-39.

bearing more authority among the Yakima than in the surrounding tribes,[37] was not secure, particularly for those who, like the three brothers, had built up their own power; there was always competition.[38] Kamiakin was influenced by the fathers at the Catholic Mission.[39] Owhi was technically war chief of the Kittitas, but Teias was so old that for all practical purposes Owhi was head chief.[40] Not a chief, but the foremost warrior of the period was Qual-chan, eldest son of Owhi.[41] Yakima influence was even felt among some of the Puget sound tribes among whom they were "generally called Klickitats."[42] These were the men who went to Walla Walla in June, 1855, already convinced of the evil intentions of the white man. Kamiakin had already isited or sent word to the other tribes in the Plateau with a defensive confed-

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37 Supra p. 18

38 Curtis, North American Indian VII:15.
Splawn, Kamiakin p. 49
Withrop, Canoe and Saddle p. 239

39 Splawn, Kamiakin p. 17.
Stevens Supt's Report W.T. 1854 p. 438.
winthrop, Canoe and Saddle p. 237.

40 Curtis, North American Indian, VII:15.
Haller, Kamiakin-In History ms. 2
Splawn, Kamiakin p. 22

41 Splawn, Kamiakin p. 22

42 Stevens, "Supt's Report W.T. 1854 p. 438
see also Winthrop, Canoe and Saddle pp. 55-79.

eration in mind.[43]

A study of the meaning of the treaty to the Yakimas does not require detailed knowledge of the events of the Treaty Council. The talks tended to be very repetitious, Governor Stevens making the same promises with each appeal, invoking the permanence of various natural phenomena.[44] Governor Stevens had to make other treaties to the north and east, and had been ordered to complete these treaties as soon as possible, so he could not grant the request of the Indians to let them think it over for a few months or a year, and kept urging them to decide.[45] The friendship of the Nez Perces for the whites, and their overwhelming number at the council, were instrumental in persuading the other chiefs to sign. Even so, Stevens and Palmer had to create one more reservation than they had planned on (the Umatilla as a final compromise.[46]

The attitude of the Indians with the possible exception of the Nez Perce chief, Lawyer, was one of extreme sus-

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43 Infra p. 57
Splawn, Kamiakin, pp. 21-27

44 Kip, Reports of Walla Walla Treaty Council quoted in Splawn, Kamiakin pp. 31-34.
McWhorter, Hear Me, My Chiefs, pp. 91-92

45 Kip, quoted in Splawn, Kamiakin p. 33

46 Splawn, Kamiakin, p. 34.

picion.[47] The Yakima chiefs had already decided upon opposition,[48] and although addressed a number of times during the councils, Kamiakin never answered more than a noncommittal or disapproving sentence.[49] As the purpose of the Council was not for the whites and Indians to reach an agreement about location, size , and number of reservations, but to procure Indian assent to a land division previously decided upon by the whites, the Indians naturally felt that they were not really consulted. Subsequent to the Walla Walla Council, a Spokane Indiantold Governor Stevens:

"When I heard, Governor , what you said at Walla Walla, I thought you had done well . But one thing you said was not right. You alone arranged the Indians' land. The Indians did not speak. Then you struck the Indians to the heart. You thought they were only Indians. That is why you did it...That is the r ason, Governor; it is all your fault the Indians are at war. It is your fault because you have said that the Cayuses and Walla Wallas will be moved to the yakima land. They who owned the land did not speak, and yet you divided the land." 50

On June , 1855, the names andmarks of the Yakima chiefs were affixed to the Yakima Treaty. Kamiakin was known to be opposed to the treaty, and never indicated that

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47 Kip, quoted in Splawn, Kamiakin pp. 33-34

48 McWhorter, Tragedy of Wahk-shum p. 3
Splawn, Kamiakin p. 22

49 Kip quoted in Splawn, Kamiakin p. 32

50 Spokane Council 1855, Records quoted in Curtis, North American Indian VII: 20.

he had changed his mind. What his attitude was when he signed is a matter for conjecture, but it would seem he held personal reservations. He later stoutly claimed that he never agreed to the treaty.[51] In other treaties of the period, the names of Leschi and other coastal chiefs were written in against their will.[52] The journal of the council proceedings would indicate that the names of the minor Columbia River chiefs appearing in the Yakima treaty were written in their absence, after Kamiakin had said they would sign it if necessary.[53] It is hard to believe that Kamiakin, Owhi and Skloom did not realize they were signing the treaty when "finally so the story goes, in a pledge of friendship only, as they understood, each in turn touched a little stick as it made a little mark."[54] Apparently Kamiakin and Peu-Peu Mox Mox, intransigent chief of the Walla Wallas, held long conferences on the evenings of June 7 and 8.[55]

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51 McWhorter, Hear Me, My Chiefs p. 91

53 Meeker, Pioneer Reminiscences of Puget Sound pp. 236, 242, 253.

McWhorter, Hear Me, My Chiefs, p. 91. Washington State Historical Society, Building a State, p. 493.

53 McWhorter, Hear Me My Chiefs, p. 91.

54 McWhorter, Hear Me My Chiefs, p. 91

55 Splawn, Kamiakin p. 35.

Perhaps the domineering insistance of Stevens finally had its effect, in the long run, a negative one,[56]

> [Stevens] gave them no rest, and at length wearying of their futile attempts to make the uncomprehending white man see why they felt it impossible to sell their land, they signed, some in good faith but most in a spirit of sudden reckless desire to have the business over at any cost, and get rid of this persistent annoying commissioner. There was, say the Indians, no premediated plan as to what the future course should be. It was only felt that for the present the easiest way was to acquiesce. They were convinced that the commissioners were not "speaking straight", that they were bent on obtaining possession of the country by some subterfuge...It seemed evident to many of the Indians that the white men intended to have their land, and to have it without recompense to its owners. And so, it may be imagined, there were in the minds of some, thoughts of proven faithlessness of white men, and determination to meet it with equal deceit. [57]

The treaty had been made, and the Indians particularly the Yakimas, were unhappy about it. Only a spark was needed to touch off the increasingly angry sentiment of the Indians. They were extremely dissatisfied with the conditions of the treaty. They strongly suspected that the whites had no intention of honoring those few stipulations which promised the Indians something to exchange for their land. The events subsequent to the treaty council had convinced the Indians of the correctness of their suspicions, and

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56 Splan, Kamiakin, p. 82

57 Curtis, North American Indian VII:16-17.

finally, to spread the tinder wide, a loose alliance, directed against the whites was built up around the Yakimas.

The Yakimas' dissatisfaction needs little explanation. They objected to selling their land in the first place,[58] and felt they weren't paid enough for it, in the second.[59] Their objections remained even after the wars, and the government had been quite aware of them from the beginning.[60]

> My own observation in relation to the treaties ...leads me to the conclusion that in most instances the Indians have not received a fair compensation for the rights which they have relinquished to the government..The Indians, receiving so little for the great surrender (all their means of obtaining a living) which they havemade, begin to conclude that they have been defrauded; they become dissatisfied, and finally resort to arms, in the vain hope of regaining their lost rights... [61]

Aded to these causes for dissatisfaction were the alarm felt by traditionally separate groups now threatened

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58
Curtis, North American Indian VII:16,20
Desmond, Gambling Among the Yakima p. 6.
Splawn, Kamiakin p. 36

59
Nesmith, Supt's Report O & W Ts, 1857, p. 609.

60
Lansdale, Agent's report, White Salmon W.T. 1858, p. 628
-------Agent's report Ft. Simcoe W.T. 1859 in S Ex. Docs. 1st sess. 36th Cong. '59-60, Interior Report p. 780.
Mullan, letter to Commissioner Mix, Sept. 5,1858 p. 631

61
Nesmith, Supt's Report O & W Ts 1857 p. 609.

fusion, on alien ground, and the particular bitterness of those Klickitat "recently returned from the Umpqua and Willamette valleys,"[62] now dumped on the Yakima country.

Having signed the treaty with reservations, because they believed the white men intended to trick them, the Yakimas were suspicious of every event, and were constantly looking for confirmation of their suspicions.[63] They found their prime confirmation in the opening of their lands to white settlers a month after the treaties were signed, two years before they were supposed to go into effect, four years before they were ratified, and five years before the Indians received any of the goods promised them in the treaties.

The Puget Sound Courier of July 12, 1855, carried an official notice that the lands of the interior were open to settlement.[64] While not understanding the difficulties of communication with the east, the Indians did however realize that the treaties were not ratified, and yet the white men were immediately acting as if the Indians were bound by them.

> ...the whites have gone on to occupy their country without regard to their rights, which had led

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62 Palmer, Joel, Letter to Commissioner Manypenny, 1855, p. 514.

63 Splawn, Kamiakin pp. 36-37.

64 Curtis, North American Indian VII:21
McWhorter, Tragedy of Wahkshum p. 5
Snowden, Clinton A, History of Washington III:328-29.

the Indians to believe that they were to be dispossessed of it without compensation or any provision being made for them. This state of things has naturally had a tendency to exasperate them; and, in the opinion of well informed persons has been the cause of the recent acts of hostility. The belief is confidently entertained, that, had the treaties referred to , been ratified and put in course of execution, the difficulties that have occurred would not have taken place;...65

Faced with proven perfidy and threatened dispossession, the Indians prepared to defend themselves. Kamiakin again sent word to the various tribes and bands of the Columbia basin, and organized, by persuasion, inducement, and threats, a confederation designed to drive the white men completely from the interior.[65]

With the situation as tense and restless as it was in the summer of 1855, any rumor of conflict might have set off warfare. It would be too arbitrary to pick some one incident in a chain of related events and say thatthis started the war. It was the treaty signing, and the Indians' conviction that it was unilateral to the benefit of the white

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65 Mix, Charles E., "Commissioner's Report, 1858" pp. 355-56 see also
Curtis, North American Indian, VIII:31
Mullan, Letter to Commissioner Mix, Sept. 5, 1858, p. 631.

65 Cain, Capt J. acting supt's Report, W.T. 1855, pp. 512-13.
Haller, "Kamiarken -in History" ms 7.
Splawn, Kamiakin pp. 23, 25-26, 38.

men, which made it possible for an incident, suchas the Bolon murder, to occur and start the Yakima war. It would be stretching a point too far to blame the act of murder, or even the chain of events surrounding it, directly upon the treaty, but this in no way alters the fact that the Indians' attitude towards the treaty caused them to go to war.

In early july,1855, the coast communities heard that gold had been discovered in the Colville district.[67] Miners passed through Yakima country on their way to the Colville. The Yakimas posted men on the passes, warning the miners to turn back, as they would not be permitted to pass.[68] The miners continued to pass through, and sometime in July, Qual-chan and some other braves killed a party of miners. It does not matter whether this was done at Kamiakin's institgation as a warning,[69] in retribution for the violation of Teias' daughter, as some Indians claimed,[70] or simply because therewas a rumor that Stevens party

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67
Curtis, North American Indian VII:21.
McWhorter, Tragedy of Wahk-shum p. 5.

68
McWhorter, Tragedy of Wahk-shum p. 4
Splawn, Kamiakin pp. 38-40.

69
Curtis, North American Indian VII:22, 24, quoting Lo-kout, Qual-chan's younger brother.
Splawn, Kamiakin pp. 40-42.

70
Haller, "Kamiarken-in History" ms. 2

had been massacred by the Blackfeet, Haller's punitive expedition from the Dalles defeated by the Snakes, and Kamiakin, "believing that the whites were about to be overthrown in every direction, and having for some time been disaffected toward them.... deemed that the proper moment had arrived..."[71]

A.J. Bolon, agent at the Dalles, had been in the Colville country, but immediately upon hearing of the murders entered Yakima territory to see Kamiakin and Owhi. Bolon's friend , Ais (Ice, Show-away) Kamiakin's youngest brother, warned him to return to the Dalles. While on his way there, Bolon fell in with a group of Indians led by Ais' son, with whom he traveled a distance, following which all stopped to eat, and the Indians jumped and killed Bolon, and disposed of his body, horse , and possessions.[72] The best account indicates that Bolon accidentally met a hunting party,[73] rather than that he was caught up by a band of conspirators who deliberately set out to kill him.[74] If the former is true, it indicates that "the in-

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71 Cain,"Acting Supt's Report, W.T., 1855, p. 513.

72 McWhorter, Tragedy of Wahk-shum pp 9-16.
Splawn, Kamiakin, pp. 42-44.

73 McWhorter,Tragedy of Wahk-shum pp. 9-11.

74 Haller, "Kamiarken-In History" ms. 2
Splawn, Kamiakin p. 43.

judicious and intemperate threats"[75] Bolon had used, and the impression he had deliberately made on the Yakimas, that he was the most important man in the area and could order the army out to chastise them,[76] were well known to all Yakimas. By making it seem as if all punitive action depended upon him, Bolon made himself a vulnerable target for any Yakima. In spite of the fact that Qual-chan was suspected of this murder, there is no evidence that he, Kamiakin, or Owhi had ordered it or knew anything about it. They did not have to.

When Bolon did not reappear, Major Haller [Granville] put one hundred soldiers from Ft. Dalles (mostly recruits) into the field, and, after receiving no definite orders, marched into the territory of the Yakima. The government in Washington field this was a minor disturbance which Haller could easily quell, and made no move to ratify the treaties or otherwise alleviate the trouble.[77] The Superintendents of Washington and Oregon Territories on the other hand were very pessimistic. They doubted if Haller could win, and felt an

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75 Wright, Colonel George, Report to Gen. Jones, Comdg. Dept. Pacific, May 30, 1856, quoted in Splawn, Kamiakin p. 76

76 Haller, Kamiarken-In History, ms. 3.

77 Manypenny, "Commissioner's Report 1855, p. 335.

Indian victory would make an outbreak general.[78]

Once the fighting had started, the attitudes of the men and groups involved toward the treaty are not important, nor do they come to the fore again until a peace is established. Haller's command wasmet on October 5, by a force of about three hundred Yakimas, who were, at a crucial point in the battle, reinforced by several hundred more.[79] Haller later estimated there were 2,200 Indians, but neglected to discount three quarters of that number for women, children and aged.[80] Major Haller held the field the first day, was surrounded, and on the defensive the second day, retreated after dark, lost the rear guard in the dark (they straggled in next day) and retreated to the Dalles under fire most of the way.[81] The army lost 5 killed and 17 wounded and the howitzer;[82] the Indians lost 2 killed and 4 wounded.[83]

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78 Cain, "Acting Supt's Report, W.T. 1855, pp. 512-13.
Palmer, "Supt's Report, O.T., 1855, pp. 514-15.

79 Cain, "Acting Supt.'s Report, W.T. 1855, p. 513
Splawn, Kamiakin p. 48

80- Haller, "Biography" ms. 5

81 Haller, "Biography " mss, 4-5.

82 Haller, "Biography" ms. 5

83 Splawn, Kamiakin p. 49.

force of fifty soldiers coming over the mountains from Ft. Steilacoom to meet Haller, retreated after hearing the news. On October 30, Major Rains, from Vancouver, left the Dalles with 350 soldiers and about 400 Oregon and Washington Mounted Volunteers.[84] On November 7 they fought the Yakimas (who had sent half their force to help the Walla Wallas), not numbering more than 300 warriors at Union Gap[85]. One Indian was killed, and the rest were dislodged from their position. The Indians retreated east, where their families and livestock had already been sent.[86] The volunteers burned the Catholic Mission, having found there a hidden half-keg of gunpowder,[87] and the 'victorious' army returned home.

In midwinter (January, February, and early March), 1856, a number of Yakimas, under Qual-Shan's direction, fought

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84 Haller "Biography ms. 5

Splawn, Kamiakin pp. 51-52

85 Splawn, Kamiakin p. 51

86 Splawn, Kamiakin p. 51

87 Bischoff says this was unjustified vandalism on the part of the whites. "It is now clear that the missionaries distributed only an average of twenty-five pounds of powder in each of the three years preceding the outbreak of hostilities," Wm. N. Bischoff, S.J."The Yakima Indian War, a Problem in Research,"Pacific Northwest Quarterly,41:169, 1950

Burns, on the other hand, says the mission was plundered first by anti-white Indians, from whom Kamiakin protected the priests. Robert Ignatius Burns, S.J."Pere Joset's Account of the Indian War of 1858" Pacific North-West Quarterly, 38:296 1947.

always on the other bank and always in disagreement. Generally, it would seem that Teias had been for peace from the beginning, Owhi backed by Sinkiuse chiefs, was for peace now, and Kamiakin, who wished to keep fighting, was outvoted.[91] No battle was fought nor agreement signed.

On the19th of September, 1856, Governor Stevens' party attended by some seventy militia, was attacked by Walla Wallas, Cayuse, Palouse and Yakimas just as he left a council in the Walla Walla valley, where he had endeavored to re-establish peace in that area. The Indians attacked without any fear of Colonel Steptoe and over 200 soldiers camped only five miles away, and only lifted their seige of the governor's party when thetroops actually arrived.[92] The army commander, General Wool,and Governor Stevens were personally at odds,[93] and the regular army men and territorial militia did not operate well together. Kamiakin believed the army would not even save Stevens' life.[94] Wool's orders that all whites were to ve moved from the in

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91 Bischoff,"The Yakima Campaign of 1856" Mid-American (new series) Vol 20 No. 3).

Splawn, Kamiakin pp. 58-60.
Stevens,Supt's Report, W.T. 1856," in S. Ex. Docs 3rd Sess. 34th Cong. '56-57, Interior Report p. 740.

92 Glisan,Journal of Army Life, pp. 373-74.

93 Glisan , Journal of Army Life, pp 326-28

94 Splawn, Kamiakin p. 80.

terior, and Wright's ineffectual campaign in the Yakima valley,[95] implanted in the Yakima a belief which they held for many years, that everything would be all right if they could talk with the army officers.[96] The tactics imposed on Wright also avoided defeating the Indians and destroying their power to make war, which, as long as they were dissatisfied, they would continue to do.[97] Stevens and most local historians[98] defended the volunteers, while the professionally jealous regular army men, and the friends of the Indians, generally complained about the outrages and undisciplined behavior of the volunteers, which they felt, with some justification, incited the Indians to further violence.[99]

The major results of the events of 1856 were that Fort Simcoe was established by the army in the Yakima valley.[100]

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95 Curtis, North American Indian VII:30.

96 Curtis, North American Indian VII:30.

97 Stevens, "Supt's Report W.T. 1856 p. 741.

98 Splawn, Kamiakin p. 74.
Stevens, Supt's Report W.T. 1856, pp. 737,740.

99 Chirouse, E.C. O.M.I. letter to Palmer, 1856 p.742.
Haller, "Biography" ms. 6.
Palmer, Letter to Gen. Wool, Comd. Dept. Pacific 1856 p.744
Supt's Report O.T.1856, O.T.1856 p.751

100 Splawn, Kamiakin pp. 64-67.

The Yakimaa leaders went east of the Columbia, but a number of the Yakimas and Klickitats were gathered around Fort Simcoe.[101]

From the autumn of 1856 until the spring of 1858 an uneasy truce prevailed over the northwest. The Yakimas had suffered heavily in the war, having given away many horses to induce warriors of other tribes to join them; they had been unable to collect food supplies and were fed by the government.[102] The Klickitat, most of whom did not want war, were temporarily kept on a separate reserve at White Salmon.[103] Soldiers stayed at Ft. Simcoe and in the Kittitas Valley to preserve peace.[104] The Yakimas were no more reconciled to their treaty,[105] and found no satisfaction in its application, which was nil, as it had not yet been ratified.

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101 Splawn, Kamiakin pp. 61-63.
Thompson, Agent at Dalles O.T. letter to Palmer, 1856 pp 756-57.
Wright report to Gen. Wool, 1856, quoted in Splawn, Kamiakin p. 79.

102 Robie, A.H. Agent's Report, the Dalles, W.T. , 1856, p. 638.

103 Townsend, Agent's Report White Salmon W.T. 1857, p.637.

104 Haller, "Biography" ms 6.
Splawn, Kamiakin p. 82

105 Lansdale, "Agent's Report, White Salmon W.T. 1858, p.628.

"The treaties negotiated in 1855 with the Nez Perces, Walla Wallas, Cayuses, Umatillas, and Yakimas, I regard as of great importance with reference to the policy to be adopted by the Government in relation to those great interior tribes...the treaties which have been made remain with but few exceptions, unratified, and have been fulfilled." 106

In 1858, the second outbreak occurred, first with a running fight between a party of miners and Okanogan, Chelan and Sinkiuse Indians (instigated by Qual-Chan) in the Okanogan valley. About 150 miners were on their way to the Frasier gold fields. They lost 6 killed and a number wounded, but got through.[107] With the defeat of Colonel Steptoe, the skirmisking became a war.

"The outbreak had long been anticipated, and resulted from a combination of causes, promi-nent among which is the non-ratification of the treaties negotiated by late Governor and Superintendent Stevens and Superintendent Palmer; this together with a feeling of hostility which has existed with many of the Indians since the war of 1855..."[108]

The traditional ascription of responsibility to Kamiakin for stirring up the Palouse, Spokanes, and Coeur d'Alenes to this act is somewhat overdrawn.[109] Steptoe marched north from Ft. Walla Walla on May 6 with 136

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106 Nesmith, "Supt's Report O& W.Ts., 1857" pp 605-611.

107 Curtis, North American Indian VII:31. Splawn, Kamiakin pp 105-15.

108 Nesmith, Supt's Report O& WTs. 1858" p. 571, see also p. 608

109 Splawn, Kamiakin p. 89.

soldiers.
"The object of the expedition is not precisely known, but seems to have been more to give the troops some experience in campaigning than anything else. It is certain however, that they had no idea that there would be any resistance offered them." 110

Whatever the object, it could have been foretold that he would have met opposition, regardless of any Yakima action.

All the chiefs agreed in one point: they begged that the troops should not come across Lewis [Snake] River."The territory between Le is and Spokane Rivers is our garden" they said;"It is where our women dig the roots on which we live; if the soldiers come into these parts, the women will not dare to go, and we will be famined;" of course the Governor could promise no such thing; he evaded the question 111.

To make matters worse, when Steptoe was asked by Vincent, a Coeur d'Alene chief,"what he meant by coming that way upon us? he told me:'nothing with you: I am simply going to Colville'." 112 Steptoe probably believed he was taking the shortest route to Colville 113 but "this was not believed by the Indians, who knew that nobody travelled that way from "alla Walla to Colville." 114 Pere Joset, who was then

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110
Glisen,Journal of Army Life p. 402
111
Joset, Joseph S.J. in Burns,"Pere Joset's Account" PNQ 38:291 1947.
112
Joset, in Burns "Pere Joset's Account PNQ 38 295 1947.
113
Burns,"Pere Joset's Account"PNQ 38:294 1947.
114
Joset, Footnote in Burns ,"Pere Joset's Account" PNQ 38:295 1947.

at the Coeur d'Alene mission, and who knew the country, said: "The Steptoe route was as absurd as traveling from Paris through Berlin to Turin."[115] According to Coeur d'Alene tradition, Timothy, a Nez Perce chief with Steptoe, goaded Telxawey, a Coeur d'Alene chief, to action with threats; "Telxawey, very soon they wives, they horses, they goods shall be ours,"[116] In view of all this, it would seem that any presence of Kamiakin , or any other Yakima chief, was hardly needed to start a fight.

After Steptoe's defeat (he lost 2 officers, 5 men, 3 Indian allies, and had 10 wounded),[117] and retreat, Kamiakin Qual-chan, Owhi's second son, Lo-kout, and perhaps Skloom did take part in the two battles fought during Colonel Wright's campaign.[118] Wright, with 700 men, fought the Spokanes, Coeur d'Alenes, Sinkiuse and some Yakimas and Palouse, on September 1 and again on September 5,1858. In this campaign he wasted no words. With carefully drilled troops, new army rifles, and effectively used

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115 Joset, "History of the Coeur d'Alenes" quoted in Burns, "Pere Joset's Account" PNQ 38:295 1947 Footnote 29.

116 Joset in Burns etc. 294.

117 Nesmith, Supt's Report O & WTs 1858" pp 624-26

118 Splawn, Kamiakin p. 98.

howitzers,(a branch knocked off a tree by a shell wounded Kamiakin on the head)[119] he smashed the enemy twice, killed four chiefs and an unknown number of warriors. The only loss to the army was one man wounded. Four days later he captured about 800 horses belonging to the Spokanes, and being unable to use them, had them shot. This did not completely unhorse the Indians, but it shocked and impressed them, especially as horses were the measure of wealth.

More important even than the unconditional surrender which Wright demanded and got from the beaten Indians, ending the wars permanently, were his punitive measures. Owhi said:"I am going over there just to see him again. We were good friends with Colonel Wright."[120] Wright thought differently and took Owhi prisoner. When Qual-chan came to save his father, Wright hanged him immediately, and later Owhi was shot while trying to escape.[121] Kamiakin and Skloom fled north, and Lo-kout fled to the Flathead country.[122]

At the same time Wright was winning in the east, Major Garnett marched out of Ft. Simcoe on a 'mop-up' campaign. The chief effects of this campaign were to drive

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119 Splawn, Kamiakin p. 98

120 Curtis, North American Indian VII:32 , quoting Lo-kout, see also Splawn, Kamiakin p. 117

121 Splawn, Kamiakin pp. 100,120

122 Garnett, Maj. R.S. report to Maj. Mackall, quoted ~~ka~~ in Splawn, Kamiakin p. 105
Splawn, Kamiakin p. 119.

all hostilities out of Yakima country permanently, and to concentrate most of the Indians near Ft. Simcoe, or in the Kittitas Valley.[123] Kamiakin fled to Canada after deserting both the Coeur d'Alene peace conference and one at Vancouver which Father Desmet tried to persuade him to attend.[124] He finally settled and farmed in the Palouse country, where he died in the 1870's.[125]

The phase of overt resistance to the Yakima treaty was ended. The Indians were just as opposed as they had been in the summer of 1856, or of 1858.[126] Their half of the treaty conditions were enforced ~~xxxxxxx~~ on them against their will. They were pleased to hear that the treaties were finally ratified (March 8,1858)

"The most salutary effects in quieting the apprehensions of the Indians have been manifested on the announcement of the ratification of the treaties..."[127]

The Army abandoned Fort Simcoe(built at a cost of $60,000)

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123 Splawn, Kamiakin pp 102-6.

124 Burns, "Pere Joset's Account" PNQ 38:pp 304-5 1947 footnote.

125 Milroy, R.H."Supt's Report W.T. 1872" in Report of the Secretary of the Interior, Vol 1,1872 p. 727.
Splawn,Kamiakin pp 120-23

126 Lansdale,"Agent's Report, White Salmon W.T. 1858" p. 628.
Agent's Report Ft. Simcoe W.T. 1859 p. 780.

127 [E.R.]
Geary, W.T. Supt's Report O & WTs 1859" p.751.

in May,1859, and handed it over to the Indian service, which made it the headquarters of the Yakima Reservation.[128]

The Yakimas were beaten, and more important , leaderless which had much effect on the one tribe in the Columbia basin which orientated towards strong leadership.

...the two divisions had lost their leaders, and since no other individuals gained sufficient influence to replace them, the effective political control fell to the headmen of the villages which, even under the old regime, tended to be autonomous.[129]

Within a few years, the Indian agency was to partially fill this vacuum. There was no likelihood of further violence. Major Garnett's expedition had executed twenty hostiles, and seized many horses.[130] But there was no trust in the treaty, even ratified.

"So suspicious are they that they are to be at once removed from their old camping and fishing grounds, that I was not able to get an answer from those assembled[to a request as tohow they wanted their annuity money spent"[131]

"The Indians interested in the Yakima treaty know that it is now ratified and made strong. They are well aware, also, that a large sum

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128 Geary, Supt's Report O.& W.Ts, 1859, p. 758. Splawn, Kamiakin p. 67.

129 Desmond, Gambling Among the Yakima, p. 6.

130 Lansdale, "Agent's Report , Ft. Simcoe W.T., 1859" P. 777.

131 Lansdale,"Agent' Report, Ft. Simcoe, W.T. 1859" p. 780.

of money, to them an indefinite sum, is due them for their lands sold. They are naturally desirous to have all that is coming to them, and it is only by paying them what the treaty provides that they can be induced to remove upon the reservation." 132

There were in 1859 no settlers in the Yakima Valley, and no other pressures on the Indians. The situation was not yet such that the Yakimas could see any advantages of refuge granted them by their treaty.

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132 Lansdale, "Agent's Report, Ft. Simcoe, W.T. 1859" p.780.

Chapter III

This chapter desfribes a period of transition in the history of Yakima resistance to acculturation. The previous chapter described the Indian policyof the government, its initial application to the Yakimas in the form of the treaty, and the Yakima War, in which the Indians actively but unsuccessfully resisted the enforcement of the treaty. In the period covered by this chapter the treaty is an accomplished fact, and problems concerning the treaty do not pertain as much to its enforcement upon the Indians, as to the observation of it by the government.

The treaty itself, and the attitudes of the Idians towards it, are not central issues during the transition period. Before this the treaty was the target of Yakima resistance. Afterwards it was to become the major defense of the Yakimas. During this period howver, the treaty remains in the background. The major pressures felt by the Id Indians were from government reservation policyand white settlers. The treaty was neither the major threat to the Indian's way of life which it had been, nor the mechanism for preserving it in an altered form which it was to become.

The attitude of the Indians toward the treaty underwent a change during these three decades because of a transition which was occurring in the lives of the Yakimas.

This was brought about more by a rapidly increasing popula - tion in the off-reservation areas previously used by the Indians, than by the success of any conscious government policy.

....] 75-79 omitted]

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1860-1870

The substantial buildings of the army post and the desirable climate made the Yakima agency the most pleasant west of the Rockies. The chances of making this a successful agency were enhanced by the large expanse of fertile (but dry) land, and particularly by the isolated location

of the reservation.[1] The nearest white community was at the Dalles. A few settlers lived in the Goldendale area south of the reservation, but none in the Yakima County.[2] The only other whitemen near were some miners passing through the mountains.[3] The now subdued Yakima offered no resistance.

In spite of these advantages, the local officials were dubious of success in civilizing the Yakima. In contrast to the glowing pictures of Yakima" progress" fifteen years later, the Indian Service official responsible for the reservation at the beginning of its history reported that: "The Indians in their physical and mental developments, and in their habits generally.[are] greatly inferior to other tribes."[4]

The Yakima agency suffered under other handicaps.

1- Geary, E.R. Superintendent's Report, Oregon and Washington Territory, 1860, in Senate Documents 2d session, 36th Congress, '60-61, Report of the Secretary of the Interior p. 403. Hereafter cited as Geary, Supt's Report O& WT 1860.

2- Statistics of the Population of the United States at the Tenth Census, June 1, 1880, p. 413 .In 1860 the white population in Klickitat County was 230. There were no whites in Yakima County. The Indian Bureau Census, which included white employees, was taken separately.

3 Lansdale, "Agent's Report Ft. Simcoe W.T. 1860, p.429.

4 Geary, Supt's Report O & W T 1860, p. 404.

Late in1860 the agent, Lansdale was removed by order of E.R. Geary, Superintendent of Washington and Oregon Territories.[5] This removal was because Lansdale would not turn over the records, which were finally seized by order of the superintendent. There were "irregularities" in the books. Geary appointed W.B. Gosnell to fill the vacancy. Not all changes of agent, of which there were many, were due to insubbordination; in fact the majority were political removals and appointments. One of these occurred the following year. The Superintendency of Washington Territory was separated from that of Oregon and stiff economy measures were enforced on the agents, who had been paying their bills by vouchers or drafts on the depleted account of the Indian Services.[6] B.F. Kendall, superintendent in 1862[7] replaced Gosnell with A.A. Bancroft, brother of the historian. He also fired the man who had been superintendent of the school at Fort Simcoe since 1860, the Reverand James H. Wilbur a

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[5] Gosnell, W.B. Agent's Report Ft. Simcoe W.T. 1861 in S. Docs 2d sess, 37th Cong. '61-62, Interior p. 794.

[6] Miller, W.W. Supt's Report W.T. 1861, pp 782-86.

[7] Between 1861 and 1863 there were three superintendants for Washington Territory. See Appendix 4 for a list of agents at Yakima, Superintendents of Washington Territory, Commissioners of Indian Affairs, Secretaries of the Interior and Presidential Administrations.

minister of the Methodist Episcopal Church. Wilbur had not cooperated with further retrenchments in the budget of "extravagantly furnished Fort Simcoe,[8] and had interfered with the agents.

He had on former occasion taken sides with Agent Lansdale in defying the authority of the superintendent when attempting to discharge his duty.

He usurped the authority of the agent, and seemed determined that no employe should be allowed to continue on the reservation who entertained religious sentiments differingfrom those professed by himself. He had induced theagent,without consulting the superintendent, to discharge some of the more worthy of the employesand to fill their places with his wife and nephew...
He made it his frequent business to write to officials and citizens having no connection with the service, inviting their interference to further his own selfish schemes,some of which communications had come into my hands.. [9]

Bancroft retained the agency until the summer of 1864. During this time there was no superintendent at the reduced school.[10] One of the greatest troubles of the Indian Service during the Civil War, besides the few troops avail -

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8 Kendall, B.F. "Supt's Report, W.T. 1862," in Message and Docs, 1862-'63 p. 444.

9 Ibid. p 445.

10 Bancroft, A.A. "Agent's Report Ft. Simcoe W.T., 1863 in Message and Docs 1st Sess 38th Cong 1863-64 p. 593.
-----Agent's Report Ft. Simcoe W.T. 1864 in Reports of the Sec'y of Interior and P.M. General 2d Sess, 38th Cong. 1864-65 p. 217.

able in case of an outbreak, was a severe reduction in funds, aggravated by the crippling debasement of currency in 1864.[11] Indians who worked for the agency during this period were paid either in greenbacks or in Indian Service vouchers, bothequally ansatisfactory to them.[12] The cleavage between agency Indians, who farmed, and "wild blanket " Indáans who fished, was already in evidence. Also in evidence was one particularly intransigent band of Yakimas.[13] This band shows remarkable continuity throughout a period of fifty years or more, strongly resisting all efforts of the agency on its behalf, and serving as a core to general Yakima resistance.

In June 1864 Wilbur was reappointed to Fort Simcoe, this time as agent. He did not take over until the autumn. The next five years were uneventful in so far as this thesis is concerned. Wilbur's reports indicates that he was a man of very strong religious conviction. He made every effort to

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11 Bancroft, Agent's Report, Ft. Simcoe, W.T. 1864," p 216.

12 Wilbur, James H. Agent's Report, Ft. Simcoe W.T. 1865, In Message of the President and Documents, 1st sess,39th Cong. 1865-66 p. 251.

13 Bancroft, Agent's Report Ft. Simcoe W.T. 1863 p. 592.

employ only men of "good moral character"[14] During this period he estimated that there were 3,400 Indians on or dealing with the reservation.[15] W.H. Waterman, superintendent for Washington Territory in 1865 and 66 was impressed with Wilbur's determined will and hard work, as were many others since his time.

> ...I believe that if this spirit continues to animate and actuate those who serve there, that it will never be said of the Yakima nation that they are doomed to extermination, or that efforts for their elevation to the immunities of Christian civilization are unavailing. 16

Wilbur's reports would seem to justify the confidence he inspired. More houses were erected, more acreage fenced and more Indians became Methodists. This last, however, proved to be a cause of difficulty as there were still many Catholics among the Indians. Throughout his period as agent Wilbur followed a policy of giving the most

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14 Wilbur, "Agent's Report, Ft. Simcoe, W.T. 1865" p.253.
------Agent's Report Ft. Simcoe, W.T. 1867 in report of the Secretary of the Interior 2d Sess 40th Cong. 67-68, p. 45.

15 Wilbur, Agent's Report Ft. Simcoe W.T. 1867, pp. 45 350. This is an extremely rough estimate, andshould be accepted very cautiously as should all statistics found in the reports of agents. Generally, the agents tended to depreciate conditions when they first arrived at the agency, and overrated them later, in order to magnify their own achievements.

16 Waterman, W.H. Supt's Report W.T. 1865 p. 240.

help to these Indiand who could profit from it.

It has been my policy to so use the means entrusted to me , by issues of cattle, wagon and farming implements, that each year a number of the most industrious and worthy should be placed in a position where, with occasional advice, they would care for themselves and no longer require assistance, rather than by a general distribution to so scatter mymeans that while each should receive something, no one should receive sufficient to be of permanent benefit. 17

Wilbur's policy was now fully developed, but its application had not covered more than a few years in 1869. However, he had been acquainted with the problems for a much longer time.

....In conclusion permit me to say, after a residence of more than twenty years in this country and eight upon this reservation, I am better qualified to judge of Indian character and what is needed to secure and perpetuate peace with the Indian tribes than in former years.
Give them stability and uprightness in their 18
treaty stipulation, put men among them who respect law ...

Whatever else may be said of the Grant administration which came to power in 1869, itmade a greater effort to solve the Indian problem thanany administration between Franklin Pierce's and Theodore Roosevelt's . J.D. Cox, the

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17 Wilbur, Agent's Report Ft. Simcoe W.T. 1881. in H. Ex Docs. 1st sess 47th Cong. 81-82 Interior p. 233.

18 Wilbur, Agent's Report Ft. Simcoe W.T. 1868 in Report of the Secretary of the Interior 3d Sess, 40th Cong. 1868-69 p. 562.

new Secretary of the Interior, and E.S. Parker, the man whom he had appointed as Commissioner of Indian Affairs, were faced with widespread dissatisfaction and complaint about the Indian service. Most of the agents were political appointees who had received their jobs under the spoils system, and had little interest in the Indians. The system was riddled with graft.

For several years there had been agitation to turn the entire conduct of Indian affairs over to the army. The officials of the Indian Service, from the Commissioner down, had vigorously opposed this. In 1868 then Commissioner Taylor devoted a large proportion of his report to an elaborate argument proving the unfitness of the military.[19] Two

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19 Taylor, N.G. Commissioner's Report 1868, pp 467-74. His eleven points were as follows: (1) The war Department already has enough to do to keep it busy. (2) the transfer would necessitate a large standing army. (3) The Transfer would imply that the government was in a state of war with the Indians, Whereas peace is the true policy. (4) military management, where undertaken, has been a runious failure. In the Seminole and Sioux campaigns then being carried on or just finished the army had succeeded in killing one Indian per month with a loss of twenty-five white lives, in campaigning costing the United States $1,000,000 for each Indian killed. Obvioysly it would ruin and exhaust the entire the United States to apply this policy to 300,000 Indians (5) The military are un-Christian and immoral. They would corrupt the Indians. (6) The object of military operations is not that of the Indian service. (7) Military force would alarm and offend Indians who were now peaceable, thus endangering all neighboring whites. (8) The Peace Commission unanimously recommended against it. (9) The military cannot deal as a guardian should with a ward. (10) Army methods are always expensive. (11) in a democracy it is not desirable to have a large permanent armed force on the 'marches'. (continued on next page)

of his points are particuly accurate. His sixth argument was that the object of military operations, the very function of the army was completely opposite to that of the Bureau of Indian Affairs. His eleventh point:"The methods of military management are utterly irreconcilable with the relation of guardian and ward."

In hopes of cleaning up the Bureau of Indian Affairs, Parker in1869 , replaced Indian Superintendents and agents with army officers, but kept the Indian service in the Department of the Interior. This policy also helped the Grant administration by employing some former army offieers to whom the administration felt indebted.[20]

When the army officers were placed in Superintendencies and agencies, Taylor's two arguments were proven true. The army was essentially interested in pacifying the Indians. If the Indians were more contented as they were, the army was not going to cause trouble by reducing their reservations and forcing them to become whitemen. The army did not feel compelled to civilize the Indian.

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19 (Continued) Ideally, Taylor said, the Indian Service should be a separate department. It should be left in the Department of the Interior only as an alternative to being placed under the War Department.

20 Haines, Francis,"Problems of Indian Policy" in The Pacific Northwest Quarterly, Vol rl, 1950, p. 208. Hereafter cited as Haines,"Problems of Policy"PNQ , 41, 1950.

In the autumn of 1869 Colonel Samuel Ross arrived in Washington Territory to relieve Superintendent T.J. McKenny and to remove all the agents in the territory. McKenny called particular attention to the injustice of removing Wilbur, the best agent on the coast, at the same time that all unsatisfactory agents were being removed. This was the "calamity" of the "indiscriminate" policy.[21] Ross made a preliminary survey of the situation and turned in a policy report at the same time McKenny's annual report went in. Ross showed clear insight into the inadequacy of the Indian policy of the day.[22] The major difficulty, he said, was the assumption that the Indian, as he was, was miserable and immoral, and only needed to be shown the advantages of civilization in order to strive after them. With this asamption it was impossible to explain the "headstrong obstinance" of "wild" Indians, who would not accept the white man's civilization, even when it was made available. Once the Indian was dependent on the white man, he was, and would be, treated as an inferior being. Independent, he was outside of white society, and no matter what the white man thought of him, the Indian could maintain his self

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21 McKenny, T.J. "Supt's Report W.T. 1869" in Report of the Interior Department 2d Sess. 41st Cong. 1869 p. 574.

22 Ross, Colonel Sam'l, "Preliminary Supt's Report W.T. 1869 p. 579.

respect and judge his adequacy by his own standards. If, however, the Indian was gradually and painfully introduced into white society, he must lose his self respect. The more he accepted the whiteman's way of life and outlook, the more he will realize that he was considered an inferior being. If the Indian were to become completely "civilized" he would find himself at the bottom level of society. Naturally, under these circumstances, no percentage of economic improvement would induce the Indian to give up his old ways.

Thus far Colonel Ross had analyzed the problem well, but in looking for solutions the military approach was one of direct, drastic and over-simplified action. The Colonel said that if "civilizing" the Indians was the desired end, his suggestion was to take away all Indianchildren under fix or six,school them in vocational institutions in some "isolated place" such as Texas" marry them off, allot them farms and subsidize them until they could support themselves as farmers. They would no longer be Indians in anything save color. The old people and their ways would die out together, and the Indian problem would be permanently solved!

Wilbur turned over a prospering reserving to Lieutenant J.M. Smith, Ross' appointee for Yakima. According to Wilburis report the Indians had over 4,000 acres fenced,

over 12,000 horses and 1,600 cattle.[23] Of particular interest is his emphasis on the still great importance of fishing."Their fisheries supply them with an abundance of salmon, and enable them not only to lay up a store for themselves for the winter, but to supply the whites, and receive a liberal compensation."[24]

The army officers worked dutifully and hard,and labored to produce honest reports, but their interests were not in permanently running Indian affairs. It was one thing to see the faults in the system, and quite another to develop and apply a successful replacement.

Ross reported that the physical plant at the Yakima agency was in good condition,but that Superintendent McKenny had taken Wilbur's word for conditions and had never investigated them.[23] Religious differences presented a difficult problem at Yakima. Nearly three fourths of the Christian Indians were Roman Catholic. Wilbur would not permit the reestablishment of the Catholics Yakima (Ahtanum) Mission on the reservation, and he fought its re-location nearby. The army's attitude towards religion was

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23 Wilbur,Agen'ts Report , Ft. Simcoe W.T. 1869 p.580

24 Ibid, p. 582.

25 Ross, Supt's Report W.T. 1870, in Report of the Secretary of the Interior 3d Sess, 41st Cong. 1870 p. 485.

one of tolerance, which led Ross to ab or religious strife. He stated that:"This restraint of their religious liberty was always the occasion of great discontent among the Indians, and a direct violation of one of the most cherifhed ideas of the American people."[26] Furthermore, Wilbur still interfered with affairs in the agency,which he obviously considered his own. Ross reported that:"Lt. Smith has labored under many embarrassments, caused by the underhanded actions of the late agent and his employes."[27]

Lt. Smith, at Yakima, found that conditions were good, but not as outstanding so as "ilbur's reports indicated."In one word, these glowing reports have been far from the truth," and must have been purposely and systematically exaggerated.[28] These exaggerated reports were combined with sectarianism in the case of the "industrious and worthy" whom Wilbur helped to independence.[29] "As a general fact I have observed that those pertaining to the Methodist Church are well supplied with much material, andI may say, well to do in most respects; whereas those ad-

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26 Ibid.

27 Ibid

28 Smith, Lieutenant J.M. Agent's Report, Ft. Simcoe, W.T. 1870' p. 497

29 Supra, p. 86,footnote 17.

hering to the Catholic faith have little or nothing."[30] In an attempt to reselve the religious differences, Smith let the Catholics build a church on the reservation. Wilbur was so incensed by this that he traveled to Washington, D.C., and appealed to President Grant.[21] He procured his reinstatement as agent, and a monopoly on the "spiritual welfare" of the Yakima Indians.

Wilbur's reinstatement was part of another general policy change. The army officers had swept the service clean, but there had been an unfavorable public reaction. In 1871 C. Delano became Secretary of the Interior, and for an interim period replaced Parker as Commissioner of Indian Affairs with H.R. Clum. The army officers were relieved, and in Washington Territory, not only Wilbur but also McKenny received his old position again. Since the churches had been one of the major sources of criticism to the conduct of Indian affairs in the past, the new policy was to assign a certain number of reservations to each demonination. Other major changes made in Indian policy during the Grant administration were the inauguration of the Board of

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30 Smith, "Agent's Report, Ft. Simcoe, W.T. 1870" p.496

31 Bischoff, Wm. N. S.J. The Jesuits in Old Oregon, p. 182

Splawn, A.J.-Ka-Mi-a-Kin, Last Hero of the Yakimas, p. 332.

Commissioners, an independent body of inspectors who were to make a separate report on the Indian service each year, and the termination of the treaty system.[32] From this time on Indians were dealt with in "agreements" ratified by both houses of Congress, and subject to congressional alteration.

1871-1882

The year after the army officers were removed saw a return to the former policy of the Indian Service. McKenny once again Superintendent for Washington Territory, said that the policy of the Bureau had always been to civilize the Indians, and that now there was more to do than ever before, as there had been a "marked retrogress" while the military were in control.[33]

Wilbur, back again with the Yakima, was even more exercised having specific examples of retrogressionx before him. It is impossible to determine whether Wilbur's charges of army mismanagement are correct, since he and his pre-

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32 Maines, "Problems of Policy" PNQ, 41,1950 p. 208

Schmeckebier, Laurence F,"The Office of Indian Affairs, p. 78

33 McKenny, Supt's Report W.T. 1871 in Report of the Secretary of the Interior 2d sess 42d Cong. Vol 1, 1871-72 p. 691.

decessor give different statistics, as for example in regard to the holding of livestock.[34] It is fairly clear however what happened in the case of religion. Smith, in order to satisfy the Catholic Indians, had permitted a mission to be established just off the reservation. Wilbur said that this was a contravention of the order which he had brought back giving him spiritual control over the Yakima. In general Wilbur felt that his policies had been justified, for he foound that:"There was auniversal dissatisfaction with the better class of Indians under the administration of Lt. J.M. Smith"[35] This justification is somewhat circular , as Wilbur's "better class of Indians" are identical with the small group described in Lt. Smith's analysis as "thosepertaining to the Methodist Church [who]

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[34] Wilbur, Agent's Report, Ft. Simcoe, W.T. 1871 p. 699.

Smith, Agent's Report, Ft. Simcoe, W.T. 1870p 497 Wilbur claimed he had left 1600 head of cattle on the reservation and returned to find only 350, the army having sold the rest for a few thousand dollars. He estimated that this had cost the Indians $31,250. Lt. Smith however as an example of Wilbur's exaggerated reports quoted Wilbur's claim of 1600 cattle, and thensaid he found less than half that number, 300 of which he sold because prices were high and he could benefit the Indians by so doing.

The agents generally give completely conflicting statistics casting doubt on all reported figures. CF. Supra p. 92, footnote 28

[35] Wilbur, Agent's Report Ft. Simcoe W.T. 1871, p. 699.

are well supplied."[36] It is little wonder that Wilbur's favored few had been dissatisfied when Smith failed to favor them.

It is of interest that in 1871, twenty-two years before the suggestion was acted upon, Superintendent McKenny advised that the Yakima Reservation should be surveyed, and individual allotments given the Indians.[37] This would indicate that the reservation was considered a very advanced one, if the Indians were thought to be ready for allotment. In 1872 Commissioner of Indian Affairs Francis A. Walker referred to Ft. Simcoe as "the model agency on the Pacific Slope."[38] R.H. Milroy, who had succeeded McKenny as Superintendent for Washington Territory, praised Wilbur in detail,[39] and said that Wilbur, now over sixty years old, seemed to have adopted three thousand yakimas, having no children of his own. He characterized Wilbur as the "loved father and governor of the reservation." Wilbur went out on jobs with the Indians, and ~~xxx~~ worked with them, to show them a good example. He made no per capita money distributions

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[36] Cf supra p. 93, footnote 30.

[37] McKenny, Supt's Report W.T. 1871, p. 691.

[38] Walker, Francis A. Commissioner's Report, 1872 in Report of the Secretary of the Interior Vol. I, 1872 p. 449

[39] Milroy, R.H. Supt's Report W.T. 1872, p.722.

of treaty annuities, as this encouraged indulgence. Milroy concluded by saying that Wilbur should be given all the cooperation the department could manage, and his requests given a special hearing.

In 1872 the balance of treaty annuities due the Yakimas was $36,000, scheduled to be doled out until 1880. Wilbur reported that he and the head men of the Yakimas agreed that the remaining money should be put into building up the tribal herd of cattle.[40]

The following year the Indians of the northwest were stirred up by the repeated embarassment of over one thousand United States Regulars at the hands of less than sixty braves in the Modoc War. Wilbur rode to Priest Rapids to investigate a rumor that Smohalla was massing a force and stirring up war. He was not only able to report that the Wanapam were notgathering disaffecteds , and that there wasno danger of war, but that thit was "...the Yakimas friendliest year..." towards the whiteman.[41]

Wilbur made a particularly strong appeal for religious conformity. "There is more danger of difficulty between the ~~xxxxx~~ whites and Indians from this quarter than from all

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[40] Wilbur, Agent's Report, Ft. Simcoe W.T. 1872, p. 740.

[41] Willem, J.H.(Sic) Agent's Report, Ft. Simcoe, W.T. 1873 inMessages and Documents, 1st sess, 43rd Cong. 1873, pt. 1 pg. 681.

others put together."[42] He sent two reports to the Bureau urging the removal of the Catholics,[43] and Superintendent Milroy devoted a large part of his report to urging the Secretary of the Interior to withdraw the permission granted in 1870 for the Catholics to locate near the reservation.[44] The Indian Service was not entirely favorable to these appeals. In 1874 Commissioner E.P.Smith said of Ft. Simcoe:"The greatest drawback here seems to be strife between Religious societies."[45]

Despite epidemics of measles and whooping cough which killed ~~xxxxxxxxx~~ about a hundred Yakimas in 1874, the mid-seventies was a period of general well being.[46] During these years Wilbur reported success in his employment of Indians in as many agency positions as he could,[47] and said the Indians were becoming more attached to their land.[48] More impor-

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42 Wilbur, Agent's Report Ft. Simcoe WT, 1871, p. 699

43 Willem[sic] Agent's Report, Ft. Simcoe, W.T. 1873,p.681.

44-Milroy, Supt's Report W.T. 1873, p. 666
45-Smith, E.P. Commissioner's report 1874 in H Ex Docs 2d Sess. 43d ~~ddddddd~~ Cong. 1874-75, Interior, p.387.
46-Wilbur, Agent's Report Ft. Simcoe W.T. 1874,p.648.
47-Ibid, p, 647.
48-Wilbur~~x~~ Agent's Report Ft. Simcoe W.T. 1875 in Report of the Secretary of the Interior 1st sess. 44th Cong. Vol I 1875-76 p. 869.

tant, they were becoming self sufficient. "The Yakimas will be an independent race. They will never be in debt,"[49] The Indians were showing other outstanding evidences of civilization--the men for example, now helped the women to carry bardens.[50]

However, the prosperity of the Yakima was not due to working the soil. It was activities which were natural to the native way of life which yielded a profit at this time, In 1876 there wese about 4,000 cattle on thereservation worth $60,000.[51] Horse raising, the traditional Yakima activity, was even more important. The Yakimas had 16,000 horses, which at the roing rate of $15 a head, were worth $240,000.[52] "As it was with their fathers, so it is with the sons--a large band of horses make a big Indian."[53] The Indians who lived part of the year on the reservation caught a surplus of salmon, beyond their own needs, worth

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49 Wilbur, Agent's Report, Ft. Simcoe W.T. 1876 in H. Ex. Docs. 2d sess 44th Cong 76-77, Interior p. 550.

50 Wilbur Agent's Report Ft. Simcoe W.T. 1877 in Annual Report of the Secretary of the Interior, 1877, p. 598

51 Wilbur, Agent's Report Ft. Simcoe W.T. 1876, p. 548.

52 Ibid.

53 Wilbur, Agent's Report, Ft. Simcoe, W.T. 1875, p. 870.

at least $5,000 in 1875. Those Indians who lived year round on the River must have caught even more.[54] Thus the isolation of the Yakimas from white pressure, certain features of Yakima economy, and the guidance of a strong agent combined to make the Yakimas generally satisfied for a few years. Unfortunately the conditions were not permanent.

While the rest of the interior was seething during the Nez Perce and Bannack outbreaks, Wilbur reported that he had no need for soldiers on the Yakima reservation, but that he would like an additional appropriation to hire some Indian police to arrest white whiskey sellers.[55] The Yakima reservation felt the effects of the Northwest Indian wars of the '70's in the winter of 1878-'79, when as a result of the Bannack War a band of 543 Bannacks and Piutes were transferred from the Lake Malheur reservation to the Yakima.[56]

Wilbur was not informed that the Bannacks were coming, and was hard put to subsist five hundred destitute Indians in the middle of winter. Moreover, he was not told what final settlement was to be made for them, so that when the Bannacks and Piutes asked if they could go home, Wilbur

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54 Ibid.

55 Wilbur, Agent's Report, Ft. Simcoe , W.T. 1877, p.597.

56 Wilbur, Agent's Report, Ft. Simcoe, W.T. 1879 in H. Ex. Docs 2d Sess, 46th Cong. '79-'80 Interior p. 264.

could tell them what their fate was to be.[57]

The intrusion of alien Indians from southern Oregon only helped to complicate a situation of friction and fragmentation within the reservation which was brought to a head by the ruinous winter of 1880-81. Several feet of heavy drift snow, interspersed by three thick ice crusts, made it impossible for livestock to graze, and often impossible for them to move. Eighty per cent of the 150,000 cattle and 15 per cent of the horses died in the heavily over-stocked lower Yakima Valley.[58] Wilbur reported that on the reservation 80 per cent of the cattle ad 90 per cent of the horses died.[59]

This winter destroyed the Yakimas' livestock economy upon which "civilized" farmers and "wild" fishers alike depended for most of their income.

> Many families in comparatively good circumstances were reduced to poverty, and the means of all seriously impaired. The effect has been that some have been stimulated to greater effort, and now look to the cultivation of the soil for support, instead of depending as formerly, on the sale of ponies, while others, of a wilder and more intractable sort, seem to consider all ties that bound them to the agency severed, and have taken up their

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57 Wilbur, Agent's Report Ft. Simcoe, W.T. 1880 in H Ex Docs. 3d Sess 46th Cong. 1880-81, Interior p. 291.

58 Kuhler, Joyce Benjamin, "A History of Agriculture in the Yakima Valley from 1880 to 1900,

59 Wilbur, Agent's Report Ft. Simcoe W.T. 1881, p. 231

abode at the fisheries, depending on fish for subsistence...

The provisions of the treaty give these Indians a practically unlimited privilege of residence off the reservation.[60]

The Indians had not yet recovered from the loss of their stock when the annuities from their treaty, and the support of the agency and school, expired.[61]

The differing interests and origins of the reservation inhabitants caused Wilbur difficulty:

> The Yakima Nation is composed of ten or fifteen different tribes and bands, who confederated under the name of the Yakima Nation to make the treaty with the United States. Though now so mingled by intermarriage and the accessions from outside tribes that it is difficult to distinguish them, tribal jealousies exist, and sometimes cause embarrassment in dealing with them.[62]

According to Wilbur's report[63] the groups of Indians with which the Yakima agency was concerned fell into six classifications, as follows: Class (1) those who farm or make their living entirely from civilized pursuits--647. Class 2, those who farm but go to the fishing grounds during the fishing season--1,057. Class (3) Destitute Piutes 472.

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60 Ibid.

61 Price, Hiram, "Commissioner's Report 1881, p. 53.

62 Wilbur, Agent's Report, Ft. Simcoe W.T. 1882 in H. Ex. Docs. 2d Sess. 47th Cong. 82-83 Interior. p 229.

63 Wilbur, Agent's Report Ft. Simcoe W.T. 1881 p. 232.

Class (4) Indians who live habitually off the reservation, subsisting on fish, etc. but who come on during the winter-598. Class(5) Disaffected Indians[probably including the Wanapam] who never come on the reservation --276. Class 6 Palouses, and other Indians in southeastern Washington territory who have settled and farm where they are--50. These classes represented different interests, needs, and problems, all intensified by the hardships and losses of the winter. The Piutes wanted very much to return to Oregon, and were told by white men in Yakima City that theywould be permitted to go. Wilbur, acting upon the disadvantage of having no instructions, forced as many Piutes as he could to stay 64. The disaffected Yakimas presented a deeper, if not so immediate problem.

> As a general thing it may be said that the fourth and fifth classes reject all proffers of assistance. They do not desire to cast off their old customs and learn the ways of the whites, and only ask to be left alone to follow the traditions of their fathers.65

At the critical point ~~where~~ when they had lost their wealth, the Yakimas also lost their strong and sympathetic leadership. In 1882 Wilbur retired, partly as a result of an exhausting trip to close down the Lake Malheur agency the previous summer.[66] His last report mentions the difficulties which were

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64 Ibid.

65 Ibid.

66 Ibid.

soon to crowd in upon the Yakimas, but he was still able to conclude it optimistically by summing up twenty years of achievements.

> ...I feel that my work here is now done, and other hands must take up the burden I have borne so long. They will not find it so heavy as I found it. If the foundations I have fixed with so much anxiety and labor shall remain, if the seed which I have sown through all these years shall continue to grow and spread and bear fruit, I shall feel that my labor has not been in vain.
>
> Very Respectfully submitted
> J.H. Wilbur
> 67

1883-1893

With the departure of Wilbur, strong sectarian influence left the Yakima reservation. The policy of giving certain reservations to certain churches had been abandoned. The agent who succeeded Wilbur was R.H. Milroy, who had been Superintendent for Washington Territory in 1872 and '73, immediately before that office was abolished, and then had been agent at Puyallup for several years. Milroy did not fail the Yakimas because he was a weak man; in fact, he was too strong. He did not give the Yakimas leadership; rather he used force to exert his will over them. While Wilbur had

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67 Wilbur, "Agent's Report, Ft. Simcoe W.T. 1882" p. 231.

usually decided what was best for the Yakimas, and had brooked no opposition in putting his decisions into effect, he had nevertheless taken care to persuade the Indians of the benefits they would obtain from his actions, even if the persuasion was often after the fact.

Milroy summarized well his whole approach to the Indian problem:

> It surely is the interest as well as the duty of the Government to run all her Indians through the civilization mill that they may be civilized and citizenzied, and the Indian Bureau ended as soon as possible. The best and most speedy means to the accomplishment of this important end having been determined on, the whims and wishes of ignorant Indians should not be consulted or permitted to interfere with its attainment. [66]

Agent Milroy made strong efforts to force the Indians to adopt the white man's form of government. He set up what amounted to a working model judicial system, to take minor civil cases off the agent's hands.

> At the general council, convened a few weeks after I took charge, I made known to the Indians that they must have tribunals among themselves for the settlement of their troubles; that it was time they commenced throwing off their old Indian ways, and taking on those of the whites, into whose great tribe they soon must be merged; that to this end I desired them to cease having chiefs, and instead thereof to have justices of the

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68 Milroy, Agent's Report, Ft. Simcoe, W.T. 1883 in H. Ex Docs. 1st sess. 48th Cong. '83-84 Interior p. 210.

peace, judges, and reservation (in lieu of county) commissioners. [69]

Milroy's policy was a harsh one, as indicated by the institution of such new regulations as the whipping post for wife beating.[70]

More disturbing than Milroy's harshness, from the Indian point of view, was his arrogant disregard of the rights which the Indians had legally reserved by their treaty. "This large body of land," he maintained, "should not be withheld from settlement and use (God's land title," Gen 1-28) merely because a rude agreement thirty years ago, called a treaty, placed it within a boundary of a described reservation."[71]

Milroy was capable of accurately assessing such problems as that of the displaced Piutes and Bannocks.

" As the Yakimax Indians regard and treat the Piutes as inferiors, and as the language of the Piutes and Yakimas is totally dissimilar, there never has been, and probably never will be, any social intercourse between them, and as the Piutes, since being brought here, have always been dissatisfied and regard themselves as aliens and having made absolutely no progress incivilization, or towards self support, I suggest that their condition would be greatly improved if placed on a reservation among kindred people." 72

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69 Ibid., p. 211

70 Milroy, "Agent's Report, Ft. Simcoe, W.T. 1885" in H Ex Docs., 1st sess., 49th Cong. 85-86, Interior p. 429.

71 Ibid.

72 Milroy, Agent's Report, 1883, p. 210.

The policy he advised was not followed, but the Indians took care of the problem themselves. Each year a number of the Piutes who went to the Columbia slipped away to southern Oregon, rather than return to the Yakima reservation. In 1883 there were only one hundred Piutes left under Milroy's authority[73] and the following year the last twenty were planning to leave after the hop-picking season was over.[74] The departure of the Piutes actually simplified matters, and it is probable that Milroy never made any great effort to keep them at Yakima.

It was otherwise, however, with the roaming Indians who should have been on the Yakima reservation. Milroy complained that about one half of the Indians remained habitually off the reservation, and were an irritation to white settlers.[75]

> As before remarked , the greater portion of the Indians belonging to this agency who are non-residents of this reservation are wild anti-civilization Indians. They nearly all are known as drummers, dreamers or pumpummers, who have a wild superstitious belief, in which they are very fanatical, that renders them unalterably opposed to the white man's ways...76

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73 Ibid

74 Milroy, Agent's Report, Ft. Simcoe, W.T. 1884 in H. Ex Docs. 2d sess. 48th Cong. '84-85, Interior p. 218.

75 Milroy, Agent's Report, Ft. Simcoe, W.T. 1883, p. 211

76 Milroy, Agent's Report Ft. Simcoe, W.T. 1884, p. 217.

He sent the Indian police off the reservation to force these wandering bands to conform to the treaty, as the military would not aid him. Milroy said that the government should force these Indians to stay on the reservation to remove them from the neighborhood of the corrupting views of white communities.[77] He had difficulty enforcing this policy because:

> ...some lawyers and other white men in different localities had got the idea the clause in the third article of the Yakima treaty giving the Indians "the right of taking fish at all usual andaccustomed places in common with citizens of the Territory , of hunting, gathering roots and berries, and of pasturing their horses and cattle on open and unclaimed landx" gave the Indians the right to remain off the reservation as they pleased...78.

The Indians who took advantage of this escape from the overbearing rule of the agent found that life ~~kmmk~~ off the reservation was much harder than it had been.

> ...They mostly encamp in the vicinity of the Columbia River, whose abundant supply of Salmon has always afforded them an unfailing source of subsistence. But this supply is being rapidly diminished by the avaricious hordes of white fishermen on the lower Columbia, with their improved methods of catching fish. 79

Overshadowing the reduced supply of salmon, there first appeared at this time what has since become the prin-

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77 Milroy , "Agent's Report, Ft. Simcoe, W.T. 1883", p. 211.

78 Ibid

79 Milroy, "Agent's Report, Ft. Simcoe, W.T. 1884," p. 216.

cipal point of contention between the Yakimas and ~~the~~ white men. In 1884 the access to Yakima fishing sites at the Dalles was blocked.

Even though Milroy did not approve of the extent to which the Yakimas left the reservation, he could not deny the vital importance of fishing rights to them.

> The last-named right was invaded by a white man on the Columbia River above the Dalles, a few miles , in this Territory, who fenced up and excluded the Indians from access to two of their oldest and most important fisheries. After trying in vain by reason to obtain for the Indians free access to said fisheries, I had to resort to law, and applied through the United States Attorney for this district for, and obtained a temporary injunction till the next term of court, when it will be tried and the injunction made permanent if the treaty is regarded as the highest law in the land. 80

At the time however, although his interference with fishing rights was a serious blow to theYakima, a greater threat was the occupation by white homesteaders of the open land over which the Yakima had been accustomed to range. In 1884 Milroy wrote that:"The disposition of these Indians is uniformly peaceable. Surrounded as they see themselves by whitemen with their railroads andtelegraphs andrapidly increasing numbers they will never again attempt war."[81] This did not mean that the condition of the Yakimas

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80 Ibid.p. 219

81 Ibid., p. 216

was otherwise good. Milroy reported that the Christian Indians were comfortable, but thatthe "lazy, squalid and untrustworthy" uncivilized Indians "adhere to the vile superstitions of their ancestors."[82] The most advanced tenth of the Indians were up to "a level of the lower class of the civilized among the whites."[83] It was the uncivilized half who were under the most pressure at this time.

The worst pressure was the settlement and fencing of the land on which the Indians had grazed orses and gathered roots and berries. In the mid-eighties most of the villages off thereservation, which had largely remained undisturbed up to that time, were displaced by white population.[84] The pressure forced the Indians to rely more on whatever their reservation had to offer.

Through the efforts of the Indian agency, stock raising and agriculture , begun by the Yakima before any white man lived in their territory, was expanded on the Reservation. Still, the old hunting-fishing -gathering economy was far more important for the people as a whole and broke down more gradually. The effects of Christian religious instruction, begun in 1847 , or school-ing and individual family housing, introduced during the period beginning in 1860, and of

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82 Milroy,"Agent's Report, Ft. Simcoe, W.T. 1883", p. 211

83 Milroy,"Agent's Report, Ft. Simcoe, W.T. 1884," p. 216.

84 Ray, Verne E."Native Villages and Groupings of the Columbia Basin" in Pacific Northwest Quarterly, Vol. 27 No. 2 April , 1936, pp. 99-100, 100-101.

currency which had a much longer history, became important elements in the breakdown of Yakima native culture only after about 1880 when the occupation of land outside the Reservation by white settlers began to seriously curtail the activities of the Yakima. 85

Threatened by the loss of their range off the reservation, the Indians were quick to take advantage of the right to homestead (the Homestead Act of May 20,1862 had been extended to Indians living off reservations and having no tribal connections by an act of March 3,1875) and looked at the land agent who gave them their plots as a deliverer. Congress had appropriated a special sum to pay the filing fees and commissions of penniless Indians who wanted to homestead but could not meet the initial payments, and had declared that the Indian homesteads should be inalienable for twenty five years.[86] In 1884 Major MacMurray, a government allotting agent from Ft. ~~Simcoe~~ Vancouver, traveled around south-eastern Washington persuading Indians to settle where they were, and surveying and allotting 160 acres to each of them who accepted his offer.[87] MacMurray also listened to the complaints of the Indians, and persuaded Smohalla to visit the reservation (for the first time in fifteen years) for a council.

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85 Desmond, Gerald R. O.S.B. Gambling Among the Yakima, p.8

86 Price, Commissioner's Report 1882, p. 35

87 Milroy, Agent's Report, Ft. Simcoe, W.T. 1884, p. 217.

Milroy registered strong objection to this undermining of his authority, and said that either the army or the Indian Bureau, but not both, should handle such matters.[88] He also stated that the wrong Indians were being allotted, as at his agency it was the Indians who stayed on the reservation who were industrious, while those off were wild."[89] "These off-reservation Indians will never use the land. Further, he objected to the whole policy, since he felt that the Indians would not use thelands, and would prevent the profitable use by whitemen for which he expressed a preference.

Congress in last session, made provisions for giving Indians homesteads free of any charge, and inalienable for twenty-five years. In other words the Government, after purchasing and paying the Indians for the public lands, now donate back to them all of these lands they choose to take. 90

In 1885 Milroy wrote his last report while under suspension and waiting for relief. The entire report was a bitter condemnation of government efficiency on one hand and Indian ignorance and laziness on the other. Milroy harped on the hopelessness of trying to educate to citizenship: "...ignorant, lazy, worthless, but costly savages to furnish material for occasional Indian wars, or rather

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88 Ibid.

89 Ibid

90 Ibid

hunts for the amusement of our army..."91. He then turned on the reservation system, which he claimed had outlives its (sic) usefulness.[92] Milroy saved his special bitterness to describe the difficulties he had enforcing attendance at the reservation school. His major problem came from the recurrently appearing band of intransigent Yakimas. Cotiahan," ...chief of the refractory band , would not send his ten year old son to the school."[93] Milroy imprisoned Cotiehan for two weeks, and forced him to work by threats of whipping. Finally Cotiahan sent for his son, but the next autumn the son did not return to school. Milroy's police took Cotiahan prisoner in a surprise night raid on his camp, but after working for two months in Milroy's "fool's school" Cotiahan, having been released to bring back his son, instead went to Ft. Vancouver tosee "his military tyhee."[94] Cotiahan was advised at Ft. Vancouver to take his band off the reservation, out of Milroy's jurisdiction . At the same time Milroy received strict orders from Washington D.C. not to send his police off the reservation, which meant he could enforce no authority over the Indians whom he felt

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91 Milroy, Agent's Report, Ft. Simcoe, W.T. 1885 p.426.

92 Ibid.

93 Ibid.

94 Ibid.

belonged under the agency. "This being known, and Cotiahan's triumph have encouraged other intransigents." [95]

Before Milroy left the reservation, the ground work was laid for future troubles. A survey was made of the south and west boundary and for preliminary subdividing and eventual allotment.[96] In 1885 the Northern Pacific Railroad arrived in the Yakima Valley. The line was laid through the reservation and three stations and one telegraph office were established there.[97]

During the next five years all the major problems of subsequent Yakima acculturation grew in importance. Each of these problems, some old and some new, will be traced through separately. Briefly, they were: Pressure from a growing white population forcing "off-reservation" Indians onto the reservation; the agitating influence of a small but influential nativiate group; the fisheries; irrigation water rights; the allotment of land in severalty; the unratified agreement with the railroad; the disputed western

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95 Ibid.

96 Lamar, L.Q.C. "Secretary of the Interior's Report, 1885, p. 28.

97 Milroy, Agent's Report, Ft. Simcoe, W.T. 1885, p. 429.

quarter of the reservation; government policy changes; and finally a chronic turnover of agents.

Treatment of the last of these problems first will enable us to outline the sequence of events up to the appointment of Jay Lynch. We can then follow the development of each problem without interruption, as the chronological framework will already be sketched in. All thetrends will be brought together again in discussing the first period of administration of Jay Lynch.

Milroy was apparently fired for political reasons, although his repeated letters asking for an explanation received no explanation. In 1886 Mr. Herbert Welsh, Corresponding Secretary of the Indian Rights Association used thegroundless firing of Milroy as an example proving the need for civil service, instead of the spoils system, in the Indian service.

> Constant changes have taken place at the Yakima agency since the removal of General Milroy; from September 1885 to September 1886, no less than five different men have been appointed to take charge of this agency. A condition of affairs little, if any, short of demoralization has occurred there, with agents, teachers, and other subordinates all inefficient. 98

This was the worst period, but, with few outstanding exceptions, this rapid turnover of agents was typical of the

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98 Welsh, Herbert, address given at Lake Mohonk Conference on the evening of October 13,1886, in H. Ex. Docs. 2d Sess. 49th Cong. Interior, pp. 973, 74.

Yakima agency from its inception.

In 1886 Charles H. Dickson, who made the agency report for that year, credited the Indian police force (one captain and eight privates) and particularly Tom Simpson, captain for the past eight years, for preserving order and keeping the Yakimas law abiding during these discontinuous and disturbed administrations." He is widely known for his courage and common sense. To him more than any other person is due the credit of preserving peace and good order upon this large reservation."[99] One of the minor results of the changing agents was that affairs at the agency became run down. The Yakimas complained that the sawmill which was guaranteed them in the treaty and which had burned down eighteen months before, was not yet replaced.[100]

Thomas Priestly became agent in 1887 andstayed in the position until his retirement, because of sickness, in 1889. In many ways he found the Yakimas on the reservation in fairly good shape. "Drunkenness on the reservation is almost unknown; but two cases have come under my observation, and they were not of an aggravating character."[101]

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[99] Dickson, Chas. H. "Agent's Report, Ft. Simcoe, W.T. 1886" p. 465.

[100] Ibid, p. 466

[101] Priestly, Thomas, Agent's Report, Ft. Simcoe, W.T., 1887, in H. Ex. Docs. 1st Sess. 50th Cong '87-88, Interior, p. 303.

He described the Indians as falling into one of three classes in regard to the allotment of land. The first class were those who farmed, and lived in houses. They favored allotments. The second class was comprised of "well to-do Indians" who used large tracts of land (more than they would get under an equitable allotment system) and sold hay or timber. These Indians were opposed to allotment in severalty for selfish ~~purposes~~. reasons. The third class consisted of the wild Indians who were not concerned with the problem, or also opposed allotments on principle, because they hurt the earth. They tore up survey stakes and otherwise did things to hamper the allotments.[102]

In 1886 Priestly discussed the degree to which the Yakimas were civilized. A number of the Indians took newspapers and kept the rest of the reservation informed about "the general news [and] policy concerning Indian affairs."[103] But the Yakimas did not take to civilization willingly: "They have become civilized by force of circumstances, by compulsion,"[104] As one fairly successful Indian farmer told Priestly:"White man's ways are not my ways. I am not accustomed to labor."[106] In this grudging tone the

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102 Ibid

103 Priestly,"Agent's Report Ft. Simcoe, W.T. 1888," in H. Ex. Docs. 2d sess 50th Cong '88-89 , Interior p. 233

104 Ibid

105 Ibid

Indians accepted the economic activities and law which were forced on them. They did not accept many of the white man's beliefs.

> The Indians on this reserve, as a rule, are law abiding and well behaved, yet...The old, young, educated add ignorant , with but few exceptions, adhere to the belief and superstitious ideas that Indian doctors possess the power to rule the destinies of men... 106

When Priestly arrested and imprisoned the murderers of two Indian doctors, the Yakimas were upset as they did not know that this was a crime, like other murders.[107] Even one of the Indian justices of the peace wanted to kill a doctor who was making his children sick. The justice went to see priestley to get a special dispensation to kill the doctor, and no amount of arguing on Priestly's part could persuade the Indian that the doctor wasn't really making his children ill. The Indian said: "White men know what they see and hear, so does Indian, just as well."[108]

In spite of the resistance on some other levels, the Yakimas were adjusting economically to a white environment. Priestly reported that the Yakimas were self sustaining: $1000 would more than pay for all the subsistence issued at this agency since January 1,1888."[109] In order to improve

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106 Ibid., pp. 232, 33.

107 Ibid .,p. 230.

108 Ibid., p. 233

109 Ibid., p. 230.

their lot he issued to the Indians 1,717 head of cattle from the government herd. In doing this he encountered the reclusive "Co-ti-a-kin" and his band. They declined the offer of the free cattle, saying they meant no disrespect to the government or agent, but that they "... did not want to be obligated to the Government in any way."[110]

One year later Priestly reported that the issue of cattle to the Indians had been a success because the Yakimas took naturally to stock-raising.[111] Crops did not do well that year as it became very hot, and there was a shortage of irrigation water. The Yakimas went to the hopfields of Puyallup, because the British Columbia Indians upon whom the hop-growers usually depended were kept in Canada by a small-pox scare. A goodpicker could make between "$1.50 and $2.50 per day."[112]

Bearing this wage in mind, one is not too surprised to find that all but three of the Indian police resigned, complaining that the pay was too low for what had become a fulltime job. Priestly " ... dit not think their request unreasonable... Good men cannow always be obtained for police when the compensation is but eight dollars per month."[113] One of the most time-consuming

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110 Ibid., p. 231

111 Priestly, "Agent's Report Ft. Simcoe, W.T. 1899 in H. Ex. Docs. 1st sess. 51st Cong. 89-90 Interior p. 290.

112 Ibid

113 Ibid p. 292

activities of the Indian police had been patrolling the borders of the reservation to keep off stray stock. Priestly urged that while the survey crew then working on the south border was still in the vicinity, all the boundaries should be more clearly marked.[114]

On May 13, 1890, Walter L. Stabley took over the agency.[115] Stabler repeated Priestly's appeal for better marked boundaries. He would not permit the Indians to go to Puyallup for the hop season, as the conditions were demoralizing and degenerate.[116] At about this time the hop growers in the Yakima Valley began to hire pickers, and tried to keep them from going across the mountains.[117]

The major pressures of this period deserve separate treatment, as they existed during the administrations of all the many agents. The foremost of these pressures at this time was from white men who were filling up the original Yakima country outside the reservation.

In 1860 the population, exclusive of Indians or Indian service employees of Yakima county was zero and of Klick-

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114 Ibid. p 293

115 Stabler, Walter L. Agent's Report, Ft. Simcoe, Wash. 1890, in H.R. Ex Docs 2d sess. 51st Cong. '90-91 Interior p. 231.

116 Ibid.

117 Kuhler, "History of Agriculture in Yakima Valley," p.

that County, 230. In 1870 the population was 428 in Yakima County and 326 in Klickitat. Between 1870 and 1880 enough settlers arrived so make the white population preponderant over the Indian. Yakima County had 2,567 whitemen in 1880 In the same sensus the population of Klickitat County was 5,854.[118] A large number of the people in Klickitat County lived on the Columbia in the White Salmon area, and did not affect the roaming Indians as much as those occupying and fencing land around Goldendale.[119] In 1890 there were 4,429 people in Yakima County, of whom 1,538 lived in North Yakima. This was the town which had grown up on the present site of Yakima when the Northern Pacific Railroad located its station there. The population of Klickitat County was 5,167 and of Goldendale, 702.

This growth of the white population was the direct pressure which physically pushed the seasonally nomadic "wild" Indians onto the reservation. Most of the other problems were also the result of white population growth and farming, although not directly.

The fishing problem, however, was not related to

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118 All preceding figures from Statistics of Population, U.S. 1880 p. 412. In 1880 the population of Yakima County also included 32 Chinese and 212 Indians who came under the census i.e. had no official tribal ties, and were homesteading land off the reservation.

119 All subsequent figures from Census of the U.S. 1900, Population Part I, pp. 408, 404.

agriculture. Milroy had reported the fencing of the routes of access to fisheries at the Dalles, and had instituted court action. The sites fenced were known as the Tum-water salmon fishery, and were the most important of the Yakima's fishing sites:"Indeed it was the principal fishery resorted to by the Indians at the date of the treaty, and from it, it is alleged, they have, for untold generations, obtained almost their entire subsistence."[120] The land was sold to settlers in 1864 and '66 under the pre-emption law. In 1882 O.D. Taylor, then owner, leased the land to white fishermen. In order to test the rights of the Indians he built fences blocking the routes of access. The Department of the Interior considered buying fishing lands for the Indians but first consulted the Department of Justice, which advised that the Indians "already possessed, under their treaty, any rights they would acquire by purchase."[121] The Department of Justice said that the right of free ingress and egress is inseparable from the right to fish.

In this connection, the Yakima agents requested the aid of the District Attorney for Washington Territory in May, 1882, June, 1884, and May, 1885.[122] A temporary in-

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120 Atkins, John D.C. "Commissioner's Report, 1886 p 129.

121 Ibid.

122 Ibid.

junction was taken before the District Court in Yakima, which dismissed it. The case was then appealed to the Territorial Supreme Court in 1887, which rendered its decision in the case of the United States vs Taylor. The court decided for the Indians and ordered the removal of the fence. "Under this decision the rights of the Yakimas in these fisheries can no longer be denied or disputed."[123]

Perhaps the rights could not be denied or disputed, but they could be ignored. Law enforcement officers were not sympathetic to the Indians, as the latter found out at the fishing grounds. "While at these places they are off the reservation and unprotected, and their appeals to local officers for assistance are, as I am informed, unheeded.[124] Not only the local officers, but also the local courts were unsympathetic. The Territorial Supreme Court's decision had merely reversed the District Court's decision and sent the case back to the District Court for implementation. The subsequent action of the district court was not satisfactory to the Indians since they were not permitted to commence fishing until June 1.[125] This was after

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123 Atkins, "Commissioner's Report, 1887," p. 81

124 Priestly, "Agent's Report, Ft. Simcoe W.T. 1887, p.303.

125 Priestly, "Agent's Report, Ft. Simcoe, W.T. 1888," p 231.

the heavy spring run,[126] and the Indians did not feel they had received justice. They said:"God made the water, God made the fish. Indians had the country; gave it up with the exception of the right to fish; now white man can fish in May and fill his belly ~~xxix~~ and mouth full of fish, while Indians can only look on and wait until June before they can get any."[127]

In the height of the fishing season in 1889 Special Agent Thomas S. Lang submitted a report on the problem. Lang went over the route with the U.S. Attorney, the Justice for Klickitat County and ten leading Indians. They identified the route and cut all obstructing wire. The next day the hired men working for Taylor and his partner, N.Whelden, replaced the wire and threatened the Indians. The Department of Justice sent out a special agent who cut the wire again, and once more Taylor replaced it, taking the Justice agent along and cooperatively suggesting a changed route, which incidentally led to inferior fishing sites upstream.[128] Lang concluded his report by describing the difficulties under which the Indians were suffering.

> There is no doubt that these land-jobbers intended to weary the Indians out of all rights.

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126 Supra p. 26 footnote.

127 Priestly,"Agent's Report, Ft. Simcoe W.T., 1888, p 231.

128 Lang, Thos. S."Report of Deputy Special Indian Agent on Tumwater Fisheries, Aug. 15, 1889, p. 295.

they have in the fisheries; and to my certain knowledge have annoyed and molested their free enjoyment of their treaty rights under the decree of the Court of Washington Territory in their favor, and intend to drive them off from the enjoyment of this great privilege.

There are about 480 Indians at the fishing villages today, and they get a few fish by creeping under the wires and catching here and there one by stealth.

I can but urge that O.D. Taylor and his employed men be dealt with firmly for contempt. 129

While the processes of Justice were failing to satisfy the Yakimas south of the reservation, a new problem appeared on the north side, in the strip of land between the Ahtanum Ridge and the creek of the same name which marked the northern boundary of the reservation. This area, where the mission had been located and where Kamiakin had lived, had been the site of the first irrigation in the Yakima area. Both Kamiakin and the fathers had used small ditches. 130

Priestly reported in 1889 that white farmers living on the north side of the creek had dug ditches which completely drained it, and that "... in consequence, the Indians residing on the south bank of said river within the reservation are deprived of water for their stock and other purposes." 131 The following year, while the Ahtanum problem

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129 Ibid p. 296

130 Kuhler, "History of Agriculture in Yakima Valley" p. 59 "The Historic Gardens of Chief Kamiakin."

131 Priestly, "Agent's Reports, Ft. Simcoe, W.T., 1889" p.

was still unsettled, Congress passed an act granting to the Northern Pacific and Yakima Irrigation Company a right of way through the Yakima Indian Reservation.[132] After obtaining Indian consent and paying damages, the irrigation company was to have 150 feet of right of way through the reservation, and finish the canal in two years. The effect of this, although providing some employment for the Indians, was to intensify their feeling that the whiteman intended to get all the water and leave them none.[133]

There has been scattered allotments of land to Indians since the 1860's but in the'80's the process became quite widespread. In 1882 Commissioner Price was urged that there be one uniform allotment act,[134] and in 1885 Congress passed an act allotting the neighboring Umatilla Reservation.[135] This act required the prior consent of the Indians before it went into effect;"...which consent shall be expressed in writing and signed by a majority of the male adults upon said reservation, and by a majority of their chiefs in council assembled for that purpose..."[136] The

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132 26 Stats. p. 666. Oct. 1,1890, in H. Ex. Docs. 2d Sess 51st Cong. '90-91 Interior p. 414.

133 Ibid.

134 Price,"Commissioner's Report 1882" p. 34

135 Act of Congress, March 3,1885, Chapter 319, in Lamar,"Commissioner's Report, 1885," pp. 495-98

136 Ibid. Section 5.

department found this condition a difficult one, as the Uma - tillas would not agree to the allotment, even after months of persusasion by special representatives who were influential with the Indians.[137]

On February 8,1884, Congress passed the Dawes Act which permitted the allotment of tribal land to the individuals of the tribe; 80 acres to the head of each family and 40 acres to all others. The off reservation Indians were offered public lands, all fees were to be paid by the government, and the titles were to be held in trust for twenty five years.[138] The act contained no reference to obtaining the consent of the allottees, since unwillingness to accept it,as in the Umatilla case, could hold up the operation. However, as Lamar noted;"The President has wisely ordered that allotments be made only on reservations where the Indians are known to be generally favorable..."[139] In Oregon at this time allotment was started on the Siletz , Grande Ronde and Warm Springs Reservations. In Washington Territory only the Muckleshoot reservation was deemed ready.[140]

Those concerned with Indian policy welcomed the allot-

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137 Lamar,"Commissioner's Report, 1885," p. 70.

138 Lamar,"Commissioner's Report,1887," p. 356

139 Ibid, p. 4

140 Ibid.

ment. The Board of Commissioners had been urging this for years, and enthusiastically approved the act, calling it a "great step in advance in our Indian policy." The day it was approved by the President was considered by the Board "Indian Emancipation Day,"[141]

The Yakimas were not enthusiastic. Agent Stabler approached them with the proposal in 1890, and reported that:"As a body they were almost unanimous in their opposition to the apportionment of their land in severalty."[142] It is, however, significant that Stabler reports that the argument used by the Yakima leaders to persuade the other Indians was that allotment in severalty would mean the loss of government protection.

The Northern Pacific Railroad had reached the reservation from the east, coming up the Yakima Valley , in 1885. At that time it had made an agreement with the Indians to pay certain overall damages for its right of way, and to pay damages to individual Indians whose improvements the ritats of way took in. The Northern Pacific Railroad had on previous occasions dealt very fairly with Indians[143] and now made a liberal settlement with the Yakimas, for $5,309

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141 Board of Commissioners' Report 1887, " p. 914

142 Stabler,"Agent's Report, Ft. Simcoe, Wash., 1890, p, 231.

143 Price, "Commissioner's Report, 1883, p. 58.

collectively at $5 an acre, and $2,968 in individual damages.[144] It was not due to any attempted dishonesty or highhandedness by the Railroad that the Yakima did not get paid the money stipulated by agreement. The Railroad could not pay until Congress had approved the agreement. In 1886 and '87 a bill granting the right of way to the Northern Pacific Railroad Company through the Yakima Reservation[145] twice failed to pass the House Committee on Indian Affairs, although sent there by the Senate Committee. In 1888 Commissioner John H. Oberly reported that "The Railroad has long since been constructed through the reservation, and the Indians, particularly individual claimants for damages, are continually inquiring why they have not been paid the compensation awarded them under the agreement."[146] No action was taken in 1889 and 1890[147], while the Yakimas became increasingly suspicious.

Various changes in Government policy took place during this time, some of which affected the Yakimas immediately, and some later. The biggest change, the Dawes Act,

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144 Priestly, "Agent's Report, Ft. Simcoe, W.T. 1889" p.293

145 Lamar, "Commissioner's Report, 1886" p. 111
"Commissioner's Report, 1887, p.41.

146 Oberly, John H., "Commissioner's Report, 1888," p LI. (Sic)

147 Morgan, Thomas J. Commissioner's Report, 1889," p. 41
"Commissioner's Report, 1890" p LXXI.

was really only the standardization of a widespread practice.[148] It has already been discussed separately. The Government gradually ceased putting reservations under the control of religious organizations, which were then forced to support their own missionary activity. Under these conditions[149], religious influence declined.

In 1890 the government operated 162 reservations, which existed under different types of authorization, vis: by Executive Order, 56, by Executive Order under Authority from an Act of Congress, 6, by Act of Congress, 28, by treaty, withboundaries defined by Executive Order 15, by treaty agreement, and Act of Congress, 5, by Unratified treaty, 1[The Mission Indian treaty, made in 1870] and by treaty or agreement 51.[150] The Yakima reservation came into the last category which meant that it had been created while the Indians were still recognized as independent, and had been created with their permission, and with such rights reserved as they had agreed to. Thus the Yakima situation was made by no means the least favorable in which a tribe might find itself.

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148 Haines, "Problems of Policy" PNQ 41,1950, p. 211

Schmeckebier,"Office of Indian Affairs," p 78

149 Report of the Missionary Society of the Methodist Episcopal Church , The Columbia River Conference, 1889, p 832

150 Morgan,"Commissioner's Report, 1890" p XXXII.

There was an important court decision in 1888 in the case of the United States vs Kagama. The Supreme Court ruled that:

> Section 9, of the Indian Appropriation Act of March 3, 1885, in both its branches, is valid and constitutional; that while the Government of the United States has heretofore recognized in the Indian tribes a state of semi-independence and pupilage, it has the right and authority, instead of controlling them by treaties, to govern them by Acts of Congress; that the states have no power over them, so long as they maintain their tribal relations; and that the Indians owe no allegiance to a state within which their reservation may be established, and the state gives them no protection. 151

This meant that the treaties of the Indian tribes were not immutable, but could be altered by by a unilateral act of Congress, regardless of the Indian's wishes. With this act and decision "rights" granted in treaties took on the somewhat less absolute quality of "privileges."

Jay Lynch was appointed agent at Ft. Simcoe in 1891. His first report sums up the problems which were disturbing the Yakimas at that time, and their reactions. "The Indians complain...that they have been and are being treated unjustly by the Government in regard to their fishing grounds...and very bitter if not hostile feeling exist among all

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151 Oberly, "Commissioner's Report, 1888" p. XXXI

the Indians in regard to this matter."[152] The drying up of the Ahtanum Creek"... in times past an excellent stream for catching fish in..." by white irrigation caused more ill feeling. "The Ahtanum Creek [has] not now enough water left in [it] for the use of stock, even..."[153] This interfered not only with Indian farming, but also with the older and preferred activities of fishing and stock raising within the reservation. Further trouble resulted from a survey made in the previous year, 1890, which deprived the Indians of what they claimed was the western quarter of their reservation "The Indians are unwilling to recognize this new boundary line as the boundary line established by the treaty, and unless this matter is settled soon I fear there will be serious trouble between the stockmen and the Indian Police."[154] Apparently the Indian Police followed tribal directives in this matter, rather than the directives of the Agency. Stock belonging to whitemen ranged on the reservation, causing complaint.

The total effect of these difficulties had been to embitter the Yakimas toward the government and the whites' courts.

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152 Lynch, Jay,"Agents Report, Ft. Simcoe, Wash., 1891" in H. Ex. Docs. 1st Sess 52d sess. 52 Cong. '91-92 Interior p. 462

153 Ibid

154 Ibid

As these questions must be settled by the courts, and the Indians seem to have lost all confidence in the courts doing anything to assist them, it is very difficult for the agent to prosecute a case successfully, depending as he does and must altogether upon the Indians for witnesses, as the Indians say " white man's court no good for Indian." 155

The Yakimas had already shown their distrust of the plan fora alloting their land, fearing they would lose the protection of the reservation. Lynch hoped that it would be only a matter of a short time when the Indians will be willing to accept the situation and do what seems evident is best for themselves."[156]

The following year Lynch reported more difficulties. The Indians' ponies were no longer in demand, and brought only $4 to $8 ie.one fourth to one half their price of fifteen years before. Therefore the large herds of horses which the Yakimas had built up again were becoming constantly less valuable , yet cost as much to raise as an equal number of cattle, and used up the range.[157] The railroad bill had not yet been paid, and the liquor traffic had become very bad with the coming of the railroad and the growth of

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155 Ibid

156 Ibid

157 Lynch,"Agent's Report, Ft. Simcoe, Wash, 1892" in H. Ex Docs. 2d sess 52d Cong. '92-92(sic) interior p~. 508

Board of Commissioner's Report, 1892, p. 1293.

the white towns. There was a serious shortage of water that year, and a consequent crop failure which reduced many Indians to near starvation.[158] Of the chronic difficulties brought out the previous year, the boundary dispute in the west was unsettled, and no progress made on the fisheries. The Board of Commissioners remarked that the favorable conditions by which the Yakima reservation had been marked for thirty years, were ended.[159]

More important, however, than the continuous pressures, was the changed attitude of the Yakimas toward the government at this time. This was caused by government action which indicated that it intended to honor those treaty stipulations which benefitted the Indians. A positive proof of this, for the Indians, was the survey of the Winatshapam Fishery, ordered on Nov. 28,1892.[160]

The "Winatshapam Fishery" was authorized by Article 10 of the original treaty of 1855. Nothing had ever been done to secure this stretch of property at the forks of the Wenatchee River for the Indians. On July 12,1892, Lynch wrote urging the government to uphold its treaty obliga-

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158 Lynch,"Agent's Report, Ft. Simcoe, Wash. 1892", p.511.
Board of Commissioners' Report,1892 p.1293.

159 Board of Commissioners' Report 1892, p. 1292.

160 Morgan,"Commissioner's Report, 1892" pp. 876-78

tions, and the Department of the Interior promptly moved in that direction and ordered the survey.[161]

The whites residing near the fishery site then petitioned the Department. They said there were no fish there, and practically no Indians. The six square mile tract would separate the white settlements and discourage the railroad from running a line to the area.[162] The commissioner recommended that negotiations be had with the Indians for the sale of the fishery. Lynch felt that this would be agreeable to the Indians. "I am led to believe that if the matter were properly presented to the Indians they would be willing to dispose of this tract of land, containing about 2,300 acres, at a fair and reasonable price.[163] Thus, even if the Yakimas did not actually get the Winatshapam Fishery, they were credited with having it, and were paid for it. They did not really want the site anyway, but in this case it was the government's gesture which counted toward convincing the Yakimas of its good intentions.

In the Indian appropriation act of 1893 (27 Stat. 361) Congress approved the agreement between the Northern

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161 Browning, Daniel M. "Commissioner's Report 1893" in H. Ex. Docs 2d sess 53d Cong. '93-94, Interior, p.100

162-Ibid p. 101

163 -Lynch, Agent's Report, Ft. Simcoe, Wash 1893" p.240 .

Pacific Railroad and the Yakimas, thus ending this difficulty.[164] At the same time it appropriated about three thousand dollars for irrigation work on the Yakima Reservation.[165] ~~Twxxxxxxxxx~~ Among various orders, one prohibiting the sending of Indian children to boarding schools off the reservation without parental permission was welcome to the Yakimas.[166] Two opinions rendered by the Attorney General at this time are also pertinent; that tribes may lease their unallotted lands, as well as individual Indians their allotments, and that lands, even off reservations, allotted to Indians were exempt from State or Territorial taxation for the twenty-five year period that they were held in trust.[167]

An improvement in reservation policy was effected by placing agency physicians, teachers, school superintendents; in fact everyone except agents, under civil service.[168] To clean up the positions of agents themselves, the Bureau of Indian Affairs reverted to the practice of appointing Army officers to replace them. By the end of 1893 twenty seven out of fifty seven agencies were run by officers.[169]

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164 Ibid.

165 Browning, "Commissioner's Report, 1893" p. 50.

166 Ibid, p. 10

167 Ibid, pp 25, 51-53

168 Ibid, p. 19

169 Ibid, p. 5

unfortunately, one of the agents who lost his jobin this shift (although not to an officer) was Lynch. This ended his first period of administration.[170]

Lynch's last report indiatates that the Indians felt the changed atmosphere of government policy. The pressure off the reservation was no less, but the reservation now seem dto offer a place of refuge. The best proof of this concerns the allotments, which had been started in 1892.[171]

Once the Indians had become convinced that owning individual plots on the reservation was to their advantage, and would not mean the loss of government protection, they all asked for allotments. The partially civilized ~~p0x0x0t0ox~~ ~~thxyxxkxxxxkxxfxxxxlxtxxxxxxxxTxxxpxxtxxkxyxxixxtxxxxxx~~ reservation Indians were not the only ones who wanted land, as over one hundred of those who habitually lived off the reservation moved on, in order to share in the distribution.[172] The demand for land in severalty was so great that all the irrigable land was soon distributed. The Indians who did not have land still wanted it, and now placed such value on the allotments that they were willing to accept poor land located far away from any extant or prospective irrigation, rather than have no place of security on the reservation.

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170 Lynch, "Agent's Report, Ft. Simcoe, Wash. 1893," p.340.

171 Lynch, "Agent's Report, Ft. Simcoe, Wash 1892" p.309

172 Lynch, "Agent's Report, Ft. Simcoe, Wash. 1893" p.338.

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However, the small band of nativistic Yakimas characteristically refused to accept anything from the whiteman.

Most accepted allotments without hesitancy, but not seven or eight families, who have always maintained their old Indian customs and are still under the control of a chief or Indian doctors. They are opposed to everything that has any appearance of a change, or that will take ~~them~~ from them their influence over the few remaining wild Indians.174

With the exception of this group, the Yakimas had now come to see a hope of protection in their treaty and reservation. The following is the text of a letter drafted by the Tribal Council at this time.

To Mr. Jay Lynch, U.S. I.A. July 6,1893
Sir: We the undersigned of the head men of the Yakima Reservation agree that our own full-blood Indians will come into this reservation and take land, all different tribes. We will let our own Indian friends come in, too. This reservation we open for our own red friends.

175
The Indian Council

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173 Ibid, p. 339

174 Ibid p. 338

175 Ibid.

CHAPTER IV

In 1893 , the Yakimas had come to hope that their treaty xkis rights would protect them from the increased white pressures they felt. Their hopes have been justified, but the realization of them ha been slow and interrupted. This chapter takes up the three major problems which have plagued the Yakimas from the time the got heir individual allotments until 1955.

It is in connection with these problems that the value of the treaty as a defense for the Indians as a people, and for their way of life, became apparent to them. Irrigation water rights, tribal and reservation solidarity and integrity and fishing rights were directly related, although in different ways, to the political and economic features of Yakima culture before the treaty signing.

The desire for irriga ion water rights demonstrates the degree to which the Yakimas have become acculturated. Working irrigated farm land or leasing them to whitemen has replaced the traditional horse raising and, to some extent, Wishram trading as the major source of wealth. The treaty has been of only secondary importance in the struggle for irrigation water, and insofar as it has been used, it has not been to defend the old way of life. For this reason development of irrigation will be discussed only enough to show the general situation in which the Yakimas found them-

selves and the way they used their treaty in fighting for irrigation water.

Tribal solidarity and reservation integrity were Yakima goals because of the political cohesiveness and territorial jealousy which characterized them before the treaty was imposed on them. The desire of the Yakimas to avoid being absorbed by the white population and to remain separate and independent represents the extent to which they have not adjusted to the white man's ways as the replacement of horse raising by irrigated farming represents the extent to which the Yakimas have adjusted. In many ways the experience of the Yaki as since they retired onto their reservation has reinforced the tribal aspects of their culture, rather than broken them down. The yakimas have made use of their treaty to defend the unity of their group existence and particularly to keep their reservation intact in spite of constant pressure fromland hungry white men. Consequently this problem area is more important to this thesis than the preceding one.

The last and most important problem is that of fishing rights. This concerns the one activity of the yakimas which has undergone the least change in one hundred years. Although salmon is no longer the major item of food supply of the Indians it is still very important, and the profit from selling most of their catch makes a sizable

portion of their total income. Besides this the social gatherings at the fishing grounds during the salmon runs serve a number of functions in the Yakima way of life. Until the present time the Yakima Indians have fished in almost the same way and at the same places as their ancestors. Participation in the activity of food fishing is an important measure of the degree to which an individual is a member of Yakima society, and the preservation of the fishing rights guaranteed in the treaty has been the object of constant effort on the part of the Yakimas. As the government gradually indicated that it intended to honor its treaty promise of fishing privileges for the Indians, they turned more and more to the treaty to protect their culture. Thus the details and directions of the treaty fishing rights problem are the chief example of the way in which the Yakima treaty has come to be a weapon for the defense of Indian culture.

Before describing these problems and their relations to the treaty, this chapter will briefly summarize the changes in Indian policy during the period from 1893 to the present. This will not only provide a framework within which to place the loosely related events of the different problem areas, but will show the policy of the government towards the Yakimas. Indian Bureau policy was a most important factor in determining Indian attitudes and reactions throughout this entire period.

From the 1830's on to the time of the allotments,

the government's policy had been directed toward establishing federal sovereignty over the Indians, extinguishing the Indian land titles,[1] and to teaching the Indians how to become members of white society, usually as farmers. The allotments of reservation land in severalty and the disposal of the community owned "surplus" or tribal lands were lodgical steps in thatpolicy. However, since the time sixty years ago, when the yakima reservation was allotted, that policy had been reversed, and then modified again.

The government rested its program for civilizing the Indian upon a relationship of guarddianship and ward, created when the Indian title was extinguished. In order to carry out this program, the government had to ensure that control of the Indians remained exclusively in its hands, rather than falling into the hands of regional or local interests. The result of this was that in order to uphold its own supremacy, the government had to defend the Indians' interests at any time that federal guarantees confllicted with the interests of a State or territory, or smaller political unit.

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[1] Morgan, Thomas J., "Commissioner's Report, 1890", in House Executive Documents, 2d Session, 51st Congress, 90-91 Report of the Secretary of the Interior. pp. XX-XXII. Hereafter cited as Morgan,"Commissioner's Report, 1890/".

Government supremacy was based upon a series of court decisions. Those which were rendered before the allotment of land to the Yakimas are important because they supported the government policies which followed. The cases since that time in which the federal government hasdefended the guaranteed rights of the Indian because it must guard its own sphere of authority, will be mentioned in the discussion of fishing rights. It is because the authority of the United States was bound up in the Yakima treaty that the Indians eventually found they could depend on it for defense.

The first important case had been decided by Chief Justice Marshall who said that the exclusive power to extinguish therecognized Indian right of offupancy was vested in the federal government (Johnson v M'Intosh 8 Wheat 543) Other important cases during the nineteenth century were The Cherokee Nation v the State of Georgia (5 Peters 1) Holden v Joy (17 Wall 211) and Beecher v Weatherly (95 U.S. 517), all upholding federal supremacy.[2] In the United States v Kagama, which was decided in 1888, and mentioned in the preceding chapter, the Supreme Court ruled that so long as they retained their tribal relations, Indians owed no allegiance to the State or ~~tribal~~ Territory their reservation happened to be in, but were subject only to the United States throughtheir treaty or agreement, and such modifi-

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2 Ibid, p XXIII.

cations in Congress might make in it.[3]

Besides defending its own supremacy the United States government has shown one other consistent attitude towards the Indian problem. The ultimate goal of policy has always been towards a solution which would eliminate , rather than perpetuate , the Indians as a different ~~xxxxxx~~ people.

In 1894 the President of the Board of Commissioners gave a speech entitled "A Vanishing Policy in What We Want for the Indian Question" in which he said:"We do not want to perpetuate a distinctive Indian policy of any kind. We want to see the beginning of the end of special legislation and special administration for Indians."[4] He advocated the breaking up of the reservations, regardless of treaty stipulations, on the grounds that it was:"really in the best interest of the Indians, and that we might safely modify the treaties if we did so in the spirit of just and kind regard for their interests. All now see that the reservation is an unmitigated evil. It must go. It is going."[5]

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[3] Oberly, John H."Commissioner's Report 1888" in Ex Docs. 2d Sess 50th Cong. '88-89, Interior, p. XXXI. See also Lone Wolf vs Hitchcock, Supreme Court decision of Oct. 2,1902(187 US 566-568) for Congressional Power to overrule treaties.

[4] Gates, Honorable Merril E. "President's Address, Board of Commissioners Conference at Lake Mohonk, Oct. 10, 1894, in H. Ex. Docs. 3d Sess. 53d Cong. '94-95, Interior p. 1091

[5] Ibid., p. 1090.

The reservation did not go quite as fast as the Board of Commissioners hoped. In 1917 Commissioner Lane restated the policy, and emphasized the eventual withdrawal of the federal government from its situation of guardianship over the Indians. His policy was more liberal towards Indians who wished to sell their lands.[6] He encouraged this trend because: "It means the ultimate absorption of the Indian race into the body politic of the Nation. It means, in short, the beginning of the end of the Indian problem."[7] Despite Commissioner Lane's optimism the reservation persisted, and as late as 1931 Ray L. Wilbur, then Secretary of the Interior, said: "The reservation develops a sense of retreat and defeat in the mind of the Indian."[8]

The Bureau of Indian Affairs throughout the period up to 1933 took steps to put this policy into effect. An effort was made to substitute the state systems of public education for the government supported Indian schools.[9] In 1896 all Indian Bureau Field employees below the rank of

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6 Lane, Franklin Knight, "Commissioner's Report, 1917" in the Annual Report of the Department of the Interior, 1917 Indian Affairs p. 3

7 Ibid, p. 4

8 Wilbur, Ray L. The Annual Report of the Secretary of the Interior, 1931, p. 9

9 Leupp, Francis E. Commissioner's Report, 1908 in the Annual Report of the Department of the Interior, 1908, I.A. p. 134

Wilbur, the Annual Report of the Secretary of the Interior, 1931, p. 9.

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6 Lane, Franklin Knight, "Commissioner's Report, 1917", in The Annual Report of the Department of the Interior, 1917" Indian Affairs p. 3.

7 Ibid.p. 4

8 Wilbur, Ray L. The Annual Report of the Secretary of the Interior, 1931, p. 9.

9 Leupp, Francis E. Commissioner's Report, 1908," in the Annual Report of the Department of the Interior, 1908, I.A. p.134
Wilbur, The Annual Report of the Secretary of the Interior, 1931, p. 9.

Agent were placed under Civil Service.[10] In 1902 the position of Agent at Yakima was discontinued and Jay Lynch was made Superintendent of the School, although his duties were unchanged[11]. In 1907 Commissioner Leupp explained that this personal policy was undertaken not only to reduce the number of employees but also to adjust for the disappearance of the old system of a tribe under the authority of a particular agency. This step was to put the "affairs of a small groups of Indians in charge of a bonded day-school teacher or farmer, who reports direct to this office without the intervention of his former superior, the agent."[12]

The process of trying to incorporate the Indian went on during the twenties. John Collier, Commissioner of Indian Affairs from 1933 to 1944, characterized the policy before his time as working: "towards extinguishing the Indianhood of all Indians."[13] In 1919 citizenship (prev--

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10 Browning, David M. Commissioner's Report, 1896", in H.Docs. 2d Sess. 54th Cong. '96-97, I.A. p.3.

11 Lynch , Jay,"Agent's Report, Ft. Simcoe, Wash., 1902" in H. Docs. 2d sess. 57th cong. 1902-03 I.A. Part I P. 367. Lynch had been reappointed agent in 1898 and stayed on as superintendent unil his removal in 1908 during the irrigation difficulties.

12 Leupp,"Commissioner's Report , 1907" in The annual Report of the Department of the Interior,1907, I.A. pp.

13 Collier, John,"Commissioner's Report 1940" in The Annual Report of the Secretary of the Interior,1940, p. 357.

ously restricted to those Indians who had received patents in fee simple for their allotments[14] was granted to all Indians who had served in World War I.[15] This was extended in 1924, to all Indians.[16]

At the beginning of the 1930's there was general official dissatisfaction with the situation. One of the major causes for this and for the policy change which followed was the failure of the allotment program tomake farmers out of the Indians.

In the case of theYakimas some of the causes for difficulty were apparent soon after the allotments were made. In 1900 Agent Lynch reported that the plan to give the Indians a fixed home by alloting them a plot of farm land had backfired.

> ...quite a number have allotments that are worthless, as there is no chance for them to secure water. The question may be asked why were they allotted worthless land? The answer is, they wanted allotments, and they were allotted the best there was for them.[17]

Three years later, he wrote that the disappointed Indians

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14 Schmeckebier, Laurence F., The Office of Indian Affairs, p. 87

15 Sells, Cato, "Commissioner's Report, 1920" in The Annual Report of the department of the Interior, 1920, I.A. p.58.

16 Collier, "Commissioner's Report, 1940" p. 358.
Schmeckebier, Office of Indian Affairs, p. 90.

17 Lynch, "Agent's Report, Ft. Simcoe, Wash. 1900", in H. Docs. 2d Sess, 56th Cong. 1900 I.A. Part 1, p. 401.

had drifted from the reservation.[18] The Bureau of Indian Affairs continued to allot land, or bring allotments up to date until around 1910. The other face of this policy was the opening to public sale or settlement of the surplus lands left over after allotment.[19] This was done until the mid-twenties.[20]

The allotments caused many complications. The Bureau achieved one of its most desired goals in 1897 when Congress passed a law making it a federal offense to take liquor into Indian country.[21] However in 1906 a District Court decision in Yakima County ruled that allotted land, even though held in trust by the government, was no longer Indian country.[22] The effect of this decision was to remove all restrictions on allotted portions of the reservation where all the Indians lived. Agent Lynch said:"The bars have

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18 Lynch,"Agent's Report, Ft. Simcoe, Wash. 1903" in H. Docs. 2d sess. 58th Cong. '03-04 I.A. Part I. p. 342.

19 Cleveland, Grover, Presidential Proclamations in Browning, "Commissioner's Report, 1896" p. 436.

20 Collier,"Commissioner's Report 1940" p. 358.

21 Act of January 30, 1897, Volume 29, p. 506, Chapter 109 in Jones, William A. "Commissioner's Report 1897" In H. Docs2d Sess. 55th Cong. '97-98 I.A. pp. 392-93.

22 Leupp,"Commissioner's Report 1906" in The Annual Report of the Department of the Interior, 1906, p. 39.

been let down and hell turned loose in the clearest way to describe conditions at this time."[23] This condition remained relatively unchanged until prohibition was established in Washington in 1917.[24]

Inheritance of allotments created another difficulty. In 1904 Lynch reported that of some twenty-five hundred Indians given allotments about seven hundred had died. In many cases it was practically impossible to determine who were the heirs of the persons named on the government rolls, as the Indians had arbitrarily adopted or been assigned christianized names for the purpose of allotments. Of those Indians who were still alive, many had forgotten what names they had originally used. Lynch said it took all his time to determine ownership questions.[25]

The Indian Bureau became increasingly aware of these problems at the same time that it gradually decreased emphasis upon the mission of converting the red man into a white man. in 1928 an investigation of Indian conditions, known as the Merriam Survey was made. The recommendations of this report emphasized cultural autonomy of the Indians.

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23 Lynch, "Agent's Report, Ft. Simcoe, Wash. 1906", p.387.

24 Lane, "Commissioner's Report, 1917" p. 21

25 Lynch, "Agent's Report, Ft. Simcoe, Wash. 1904" in H. Docs 3d sess. 58th Cong '04-05 IA Part 1, p. 366.

and were reflected in hearings and petitions during the next four years. Thus theway was prepared for a far-reaching change when the "New Deal" administration took office.[25]

Major criticism was turned on the allotment system. Commissioner Collier said:"It is clear that the allotment system has not changed the Indians into responsible, self supporting citizens."[27] The previous year a perition on the Indians' behalf indicated that "The shibboleth of the allotment plan of the Government may be said to be that of the [illegible] Government reserves in trust sufficient land for the untutored allottee to meet his need after he has adopted our civilization at the termination of the twenty-five year trust rather than at its beginning."[28] In 1941 Collier complained of the slow progress in realigning the now fragmentary allotments so that the Indians could use their own land rather than contracting it to multiple lease holders.

The allotment of reservations not only resulted in the loss of two thirds of the Indian land,

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[26] Collier,"Commissioner's Report, 1940", p. 359

[27] Collier,"Commissioner's Report 1933" in The Annual Report of the Secretary of the Interior,1933, p. 108

[28] Brosius, S.M. Agent of the Indian Rights Association hearing Committee of Indian Affairs U.S. Senate Seventy second Congress, First session S 3988: A Bill approving and confirming Contract for the Apportionment of Waters of Ahtanum Creek, Wash. Between the Yakima Indian Reservation and Lands North thereof, dated May 9, 1908. April 20,1932 p. 47 Hereafter cited as Hearings S 3988, Waters of Ahtanum, April 20,1932.

but left the remainder in such a status that much of it cannot be used by the Indians. Original allottees have died, their allotments have descended to their heirs, and then to a second or third generation of heirs. Small tracts have been divided and subdivided, and the number of owners has multiplied. There grew up in the Service as the only way to use these lands the practice of leasing them to large scale white operators. The Service is attempting to consolidate the e small tracts and divided intests into larger and usable units and to devise ways of placing them in Indian use. 29

Besides criticizing the allotment system, the Collier administration deprecated past Indian policy as "... totalitarian concept of a super-race domination, absorbing and reducing tbx serfdom the small minority groups of a different culture."[30] The American Indian Federation said that the Indian's traditional position as a political ward of the government was synonymous with being a "political prisoner."[31]

To reform the situation Commissioner Collier put into operation his policy emphasizing cultural autonomy."As a starting point for a national policy we can cate-

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29 Collier,"Commissioner's Report 1941" in the Annual Report of the Secretary of the Interior,1941 p. 451.

30 Ibid p. 408

31 American Indian Federation,"Memorial to President Roosevelt and Congress, Dec. 21,1934" In Hearings Before the Sub-committee on General Bills of the Committee on Indian Affairs, House of Representatives. Seventy fourth Congress First Session on H.R. 7781, and other matters. February 11,1935, p. 19. Hereafter cited as Hearings Subcommittee HR 7781 and other, February 11,1935.

gorically say that the immediate problem is not that of absorbing the Indians into the white population, but first of all of lifting them out of material and spiritual dependency and hopelessness."[32] An assistant of Collier's reported that:"The new Indian policy of the 'new deal' is to encourage the native arts, crafts, poetry, self-government, culture and even religion of the Indian, and to allow him to live his own life in his own way, at the same time giving him modern sanitation and other beneficial features of white civilization."[33] Criticized by those who had interests in keeping the Indian a ward, by those Indians who had adopted so much of white culture that they did not want to return to being an Indian, and by a good many people who felt that the new policy was being ruthlessly applied, even where it was not needed,[34] Collier later modified his statements somewhat. "In recognition of the rights of Indians to cultural independence, present day policy has not lost sight of the fact that this right must be reconciled with the demands for adjustment of modern technologies."[35]

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32 Collier,"Commissioner's Report, 1933" p. 109.

33 "This was the outline presented by Ward Shepard, of the Bureau of Indian Affairs to Leading Scientists of Washington in a lecture at the Cosmos Club," from the New York Herald Tribune, Nov. 9,1934 in "Hearings, Subcommittee H.R. 7781 and other, February 11,1935.

34 Ibid., p. 18

35 Collier,"Commissioner's Report, 1941" p. 408.

The essentials of Collier's progress may be summarized as organizing the Indians into strong units and reconstituting with legal recognition of corporation status, the tribal organizations which Indian policy for seventy years had tried to break up, and the recovering of Indian land losses. This progress was embodied in the Wheeler-Howard Bill, later known as the Indian Reorganization Act, approved by Congress on June 18,1934.[36]

The Indian Bureau's new program had the courts' backing. In 1933 Secretary of the Interior Ickes won the right to restrict the use of funds with which Indians had previously been given free play.[37] In 1939, Senator Thomas

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36 Collier,"Commissioner's Report , 1934" in The Annual Report of the Secretary of the Interior,1934, p. 79. The structural features of the Indian Reorganization Act were as follows:(1) There was to be no further allotment of land now owned, or to be acquired, by Tribes.(2) Lands opened to the public from 'surplus" Indianlands, but never occupied were to be withdrawn from the public domain and returned to tribal use.(3)Two million dollars were to be appropriated annaally to purchase lands for the Indians.(Even with this money Collier estimated it would take twenty years for the Indians to recover the ninety million acres that they had lost , out of one hundred and forty million they owned before the Dawes Act went into effect in 1887). (4)Conservation practices were to be applied on Indian lands.(5)A revolving credit fund was to be established to make loans totribes and individuals.(6) The organization and incorporation of the tribes for self-government and self-management was to be encouraged.(7) A scholarship fund was to be enlarged. (8)Indians were to be given preference under Civil Service rules, for employment in the Indian Service. See Collier Commissioner's Report 1940."

37 Ickes, Harold L ., The Annual Report of the Secretary of the Interior 1933, p. 1. See also-Collier, Editorial on the death of Oliver Wendell Holmes" in Hearings Subcommittee HR 7781 and other, February 11,1935, p. 695.

of Oklahoma, sympathetic Chairman of the Committee on Indian Affairs, said:

> It is my understanding that the Supreme Court held that the Congress is not limited in any way in its dealings with the wards of the Government. We are not limited by treaties, for example; we are not limited by law. If the Indians have a just, equitable or moral claim, they have the right to assert that claim... it is the policy of the Congress, when these cases are brought to its attention, to treat the Indians in the way that they should have been treated, and they are not limited to mistakes that have been made in the past, or even court decisions. Congress can go beyond them if it wants to. 38

This crusade for the Indians' rights was somewhat dampened during World War II when the Bureau of Indian Affairs was charged with administering War Relocation Centers for Enemy Aliens, and further by the retirement of Commissioner Collier in 1944(4) The attitude was still reflected,however, as late as 1947."....the government has certain moral obligations to the Indians stemming from failure during the past to protect their legal rights and from dispossession of lands reserved for them by treaty."[39]

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38 Hearings before the Committee on Indian Affairs, United States Senate, Seventy sixth Congress, First session, S. 773, A bill conferring jurisdiction upon the United States Court of Claims to hear, examine, adjudicate and render final judgment on any and all claims which the Yakima Indian tribes may have against the United States and for other purposes, May 2,1939.

39 United States Bureau of Reclamation, Columbia River Basin Water Resource Development,1947,"Substantiating Materials," p. 10.

In 1950 there again appeared indication that the government desired to withdraw from the administration of Indianaffairs.[40] The Collier administration had claimed that this was the ultimate aim of building Indian self management but it had made no move in the direction of withdrawing from any area of jurisdiction. In 1952 the Bureau of Indian Affairs actively started the process of turning over some of its functions to appropriate state and local agencies,as it had long since done with education.[41] Legislation was introduced to give jurisdiction to various states for offenses by Indianscommitted within those states thus disbanding the government approved Indian courts.[42]

The new policy was first stated in 1953, after the Republican administration had taken office. Acting Commissioner Greenwood wrote:

> Federal responsibility for administering the affairs of individual Indian tribes should be terminated as rapidly as the circumstances of each tribe will permit. This should be accomplished by arrangements with the proper public

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40 Brophy, William A. "Commissioner's Report 1947", in the annual Report of the Secretary of the Interior,1947, p. 342.

41 Meyer,Dillon S."Commissioner's Report 1952," in the Annual Report of the Secretary of the Interior 1952, p.389

42 Ibid., p. 419 Among these bills was S. 1077, "to confer jurisdiction on the State of Washington with respect to offenses committed on Indian reservations within that State." The bill was not passed.

bodies of the political subdivision to assume responsibility for the services customarily enjoyed by non-Indian residents of such political subdivisions and by distribution of tribal assets to the tribes as a unit, or by division of the tribal assets among the individual members, whichever may appear to be the better plan in such case. In addition, responsibility for trust properties should be transferred to the Indians themselves either as groups or individuals, as soon as feasible. 43

The new policy reversed the moratorium on allotment sales which had prevailed from 1934 to 1940 , and permitted the Indians to sell their land, although it particularly encouraged transactions which consolidated individual holdings now scattered, or the acquiring of land in economic farm and grazing units.[44] By 1954 the government had discharged its trust holdings over 3 per cent of the tracts it had administered before the latest change in policy, and had a backlog of six or seven times that number of transfers or sales proposed by Indians.[45]

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43 Greenwood, W. Barton, "Acting Commissioner's Report, 1953," Letter to the Chairman of the Subbommittee on Indian Affairs of the Senate, March 13,1953 in The Annual Report of the Secretary of the Interior,1953,p. 23.

44 Greenwood,"Acting Commissioner's Report, 1953," p.32 The breakup of allotments into fractional units had become even more aggravated. In 1952, of the 115,130 allotments still in Indian ownership, only 47,537 were owned by the original allottees. Of the tracts in heirship status, 54,438 were held by from two to five heirs, and 23,462 tracts were held by six or more heirs.

45 Emmons, Glen L., "Commissioner's report 1954," in The annual Report of the Secretary of the Interior, 1954, p. 245.

The current policy of the Bureau is to continue to contract its field of interests and commence withdrawal proceedings when and if any particular Indian group is ready. There is no haste, but the policy is definite. At present there is no change of status contemplated for the Yakima reservation.[46]

The United States government allotted 80 acres toeach Indian in order to make a farmer of him. In a climate as dry as that of the Yakima, farming is impossible without irrigation. Therefore the allotments were useless unless they were provided with water. If the government policy were to have any purpose, water rights would have to be reserved just as the land from which the allotments were made. Treaties made with Indians often delineated boundaries with streams and rivers, later treaties specifying a line in the stream, but did not specifically refer to the use of the water for irrigation.

After allotments became general a conflict for irrigation water occurred on many arid western reservations. The Bureau of Indian Affairs held that the reservation of riparian rights, i.e. the use of all streams flowing through

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46 Ibid., p. 227, and interview with members of the Indian Service.

a property and half of any bordering streams for irrigation, insofar as there was no prior claim, was implied in treaties, because of the manifest intent of the government to civilize the Indians, meaning make farmers of them which would be impossible without water for irrigating. The general proposition that Indian reservations had a prior unchallenged right to enough water to irrigate was first upheld in the case of the United States v. S.W. Morrison et al. in Wyoming 1901.[47] In 1905 a special act of Congress was considered necessary to permit citizens of a state to acquire water rights next to a reservation.[48] The text case, which firmly established the implied reservation of water rights, concerned the waters of the Milk River in Montana. On January 6,1908, the Supreme Court rendered a decision favorable to the Bureau of Indian Affairs in the case of Henry Winters v. the United States (52 Led 340).[49] The Bureau could apply this principle on most reservations where irrigation was needed, and obtain sufficient water for the In-

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47 Opinion of Judge Moses Hallett, U.S. Circuit Court, District of Colorado, rendered September 11,1901 in H. Docs. 1st sess. 57th Cong. '01-02 I.A. Part I p. 623.

48 Chapter 1440 Vol 33 p. 1006 approved March 3, 1905, an act permitting the Washington Water Power Company to build Long Lake Dam abutting on the Spokane Reservation. H. Docs 1st sess 59th Cong. '05-06, IA, Part 1. p. 453.

49 See also Sells, "Commissioner's Report 1913" in The Annual Report of the Department of the Interior, 1913, I.A. p. 19.

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The Yakima reservation was an exception because by the xhm time the allotments had been made and large scale irrigation was needed on the reservation, the Yakima Valley outside the reservation had been filled with white farmers, and a series of canals dug by various concerns, all contracting to supply the farms serviced by their ditches or canals with a fixed amount of water. The Yakim Valley had the first extensive system of irrigation in the Northwest. Thus, whn the Indian Service began to irrigate the reservation, most of the low-water flow of the Yakima River was already used up. The history of irrigation on the Yakima reservation went through the following phases:(1) the allotment of the land and the leasing of it for improvement,(2) the competition with various white companies, and then the Reclamation Service , for water from the Yakima river, while the Bureau of Indian Affairs did not defend Yakima rights,(3) the construction of an extensive irrigation system on the reservation between 1910 and 1950, watered from various reclamation service reserv irs and (4) , the persistent and still unsettled problem of water for allotments along the south bank of the Ahtanum,northern boundary of the reservation.

When the first allotments were made to Yakima Indians in 1892, the law permitted them, with agency and Bureau permission, to lease their land for three

years.[50] Lynch wrote, then and later, that since almost any farmer leasing a trust on the Yakima reservation would find it unimproved, e would have to clear, plow, fence and ditch it himself, shere was little demand to lease the land. It took one or two years to get the ground producing, so that a three year lease was a losing propositi on for the farmer. Lynch said that if the land was not leased to whites it would never be improved,as the Indians would not do it and would get no value for their tracts. He proposed t hat leases should be for ten years, to make them attractive to farmers and to get the ground broken and irrigated so that the Indians could use it.[51] The Bureau was reluctant to extend the leases, perhaps seeing the danger that such long leases might be perpetuated by regular renewal, and the Indians never use their land but only live on the rent.[52] This is what happened in many cases.

The majority of Yakima allotments were made between

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50 Jones,"Commissioner's Report 1898" in H. Docs. 3d sess 55th Cong '98-99- I.A. p. 61.

51 Lynch, Agent's Report, Ft. Simcoe, Wash. 1893," H. Ex. Docs. 2d Sess , 53rd Cong. '93-94 Interior, p.339.
"Agent's Report, Ft. Simcoe, Wash 1900"p.401.
"Agent's Report Ft. Simcoe, Wash.,1905" p.369

52 Jones,"Commissioner's Report, 1901" p. 75.
Lynch, "Agent's Report, Ft. Simcoe, Wash. 1901" p.394.

1892 and 1894.[53] More were made in 1900,[54] and the final group in 1905, by which time there were 3,154 allotted tracts.[55] The lease period for the Yakimas was extended to five years in 1899[56] and ten in 1900.[57] The first leases were let in 1898[58] but it was not until 1904 that any ten year leases were permitted.[59] By this time the Yakimas were already self supporting again (which they had not been since their ponies ceased to have any market value) but were often living on rent paid them by white farmers, not on their own products.[6] Because each Indian received an allotment a family of Indians owned a number of allotments, usually in different parts of the reservation. It was

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53 Browning, "Commissioner's Report, 1894," p.20.

54 Lynch, "Agent's Report, Ft. Simcoe, Wash. 1900," p.401.

55 Leupp, "Commissioner's Report, 1906," p. 153
Lynch, "Agent's Report, Ft. Simcoe, Wash. 1905" p.369.

56 "Indian Appropriation Bill" March 1, 1899, Vol 30, p. 294, Chap. 324 in H Docs 1st sess 56th Cong. 1899-1900 I.A. Part 1 p.503

57 "Indian Appropriation Act," May 31, 1900, Vol. 31, p. 246, Chap. 598 in H. Docs 2d sess 56th Cong. 1900-01, I.A. Part I p. 531.

58 Jones, "Commissioner's Report 1898," p. 61.

59 Lynch, "Agent's Report Ft. Simcoe, Wash. 1904," in H. Docs. 3d sess. 58th Cong. I.A. Part I p. 365.

60 An Illustrated History of Klickitat, Yakima, and Kittitas Counties, 1904 p.362.
Valentine, Robert G. "COmmissioner's Report, 1912" in The Annual Report of the Department of the Interior, 1912, I.A. p. 138.

common practice to live on one, rent those which could be irrigated, and do nothing with those which were worthless.[61] Many Indians, who had been allotted after all the desirable tracts were taken, lived off the reservation at fishing sites, or elsewhere, and leased their land if they could.[62] The Indian who was allotted a tract would not sell it, unless the Bureau decided he was competent to be issued a patent in fee simple, but his heirs could. The first allotments freed by death were sold by the heirs of the original allottees in 1904[63] Since by this time over 700 of the original allottees had died, it is significant that only 8 sales were made,[64] and 12 the next year.[65] The Yakimas preferred to lease their land, and retain ownership.[66] Eight years later the total number of tracts sold was only 43.[67]

In 1905 the half waymark in this history of the

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61 Lynch, "Letter to Board of Commissioners, 1898," p.1108

62 Lynch, "Agent's Report Ft. Simcoe, Wash, 1902, p.367

63 Lyhch, Agent's Report, Ft. Simcoe, Wash, 1904" p.366.

64 Ibid, p 367

65 Lynch, Agent's Report, Ft. Simcoe, Wash, 1905," p .370.

66 Lynch "Agent's Report, Ft. Simcoe, Wash, 1903" p.342.

67 Valentine, "Commissioner's Report, 1912, p. 238.

Yakimas, and the time at which irrigation difficulties came to a head, there were 393 allotments leased. Indians lived on about 500 more, farming them in some fashion, and the remaining 2100 stood empty.[68] About two thirds of the income of the Yakimas, above the value of the crops they raised, mostly for themselves, was in rents. In this year the first clear title to a tract of land was given on the Yakima reservation.[69]

Before the treaty signing the Yakimas practiced rudimentary irrigation along certain streams, but there was no organized system of irrigation until 1894.[70] Then a permit to pass through the reservation was granted to a canal designed to service farms further down the Valley.[71] Many of the Indians were initially opposed to it, but were won over because the company's permit promised allotments adjacent to its right of way free irrigation,[72] and because the labor on the ditch was largely done by Indians.[73] This

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68 Leupp, "Commissioner's Report, 1905" p. 16.

69 "Indian Appropriation Act" March 3, 1905, Vol. 33, p. 1063 Chap. 1478 in 1905 p. 463.

70 United States Bureau of Reclamation, Columbia River Basin Water Resource Development 1947, "Substantiating Materials," p. 10.

71 "An Act Granting the Columbia Irrigation Company the Right of Way Through the Yakima Reservation," July 23, 1894 28 Stat. p. 118 in H. Ex. Docs 3d sess. 53rd Cong. '94-95 Interior, p. 434.

72 Ibid. Section 7.

73 Irwin, Agent's Report, Ft. Simcoe, Wash. 1896, p. 318.

source of wage income was insured by the slow progress of the ditch and the extension of the permits.[74]

This canal was dug by the Columbia Irrigation Company, but was essentially a reservation canal as long as it was still within reservation boundaries. The government decided that it was desirable to buy this canal, and started to do so on a partial cost basis in 1897.[75] It also tried, unsuccessfully to persuade the Yakimas to put the $20,000.00 they had received for ceding the Winatshapam Fishery into this project, for the second largest canal in the country.[76] Unfortunately, the canal turned out to have been poorly designed and was inadequate during the dry season, which necessitated extensive alterations.[77] In 1905 , to increase the flood flow into this canal, the Indian service constructed a partial diversion dam across the Yakima River.[78]

Long Before this time the portions of the Yakima

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74 Indian Appropriation Act," June 10,1896, Vol. 29, p.321 Chap 398...20 ;342 & 28:118 in 1895, p.448.

75 Jones,"Commissioner's Report 1897,"p.33.

76 Irwin, "Agent's Report, Ft. Simcoe Wash 1896," pp. 317-18.
Agent's Report, Ft. Simcoe, Wash 1897,p.298.

77 Lynch,"Agent's Report, Ft. Simcoe Wash 1899," in H Docs. 1st sess. 56th Cong 1899-1900, I.A. Part 1, p.363.

78 Lynch,Agent's Report, Ft. Simcoe, Wash 1905, p.369.

Valley settled by white farmers was extensively irrigated. The first canal company incorporated in 1879[79] and by 1900 about 150,000 acres were irrigated by a number of canals, some fairly large, but all independently owned and all depending on the Yakima River for their water.[80] There was not enough water in the Yakima during the dry season to supply allthe acreage for which these various companies had legally contracted, and the result was an intense competition for water which was only aggravated by the beginning of large scale irrigation on the reservation itself.[81]

Feelings during the dry summer of 1905 ran so high that employees of a large Yakima company dynamited the dam which a small Cle Elum company had built at Lake Keechelus.[82]

The water shortage had been chronic for some time, and the need was felt for a unified system extending from the headwaters of the Yakima to its mouth. As the state legislature would not permit any one company to monopolize the area, the farming and business interests of the valley

79 Barrett, H.P. in The Yakima Morning Herald, February 16, 1930.

80 Kohler, Joyce Benjamin,"A History of Agriculture in the Yakima Valley, Washington, from 1880 to 1900 p.59.

81 Barrett, in the Yakima Morning Herald, February 23,March 2 and 9,1930.

82 Barrett, in the Yakima Morning Herald, March 16,1930.

turned to the newly formed Bureau of Reclamation.[83] The Bureau surveyed the valley and announced that it was definitely interested in purchasing all the canals and building reservoirs at strategic locations. Itwas in fact exactly thesort of project on which the new bureau wanted to spend its money.[84] However, the Reclamation Service engineers recommended that the Bureau not step into the problem until the threat of expensive litigation which would follow the prospective loss of water to the reservation had passed.[85] They said that:"...to leave the rights of the Indian Reservation undefinited cannot be regarded as providing a safe basis from which to proceed with reclamation work."[86]

This merely gave the whites an additional reason for resenting the reservation. They had long desired to open the apparently unusued sections of the reservation to settlement, and in 1895 the Commercial Club of North Yakima petetioned Congress to that effect. The plan was dropped because of Indian opposition. Senator Wesley L. Jones of

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83 Barrett, in the Yakima Morning Herald, March 9,16,23,1930.

84 United States Bureau of Reclamation, Project Feasibilities and Authorization, "Cumulative Supplement,1952," p.126

85 Davis, A.P. and others, letter to Chief Engineer, October 15,1905, in United States Bureau of Reclama ion Project Feasibilities and Authorizations, April 1949, pp. 569-70.

86 Davis, and others, letter to Chief Engineer, October 31, 1905, Ibid., pp. 572-75.

Washington, regular champion of the agricultural interests of the Yakima Valley, introduced a bill for the same purpose in 1904.[87]

All this animosity came to a climax in 1905. The Indians occupied valuable land, their claims to water threatened thedevelopment of the whole area, and now they actually diverted water from the Yakima River, just above the important Sunnyside Canal intake, into a canal on their own reservat on.

The manager of the Sunnyside canal, which was half financed by the Northern Pacific Railroad, ordered his men to tear down the Indian Service Diversion dam, while he filed suit against further diversion.[88] Senator Jones wrote to the Yakima papers that the quarrels over water rights must be settled before the government could enter upon development work.[89] On March 6,1906, Congress passed the Jones Act, which expressed all the resentment felt by the whites. It contained provisions for permanently settling

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87 McWhorter, Lucullus Virgil The Crime Against the Yakimas, p.6.

88-Barrett, in the Yakima Morning Herald, March 9 1930.

Lynch, "Agent's Report, Ft. Simcoe, Wash. 1905," p.369.
McWhorter, Crime, p. 12.

89 Barrett, in The Yakima Morning Herald, March 23,1930

the Indian problem , in the way most injurious to the Indians. The plan was that the Indians were to be "allowed" to sell three fourths of their 80 acre allotments. The Reclamation Service would then incorporate the reservation irrigation canals into a unified system for the whole valley, providing sufficient water for all irrigable land now on the reservation. Each Indian was to have a perpetual water right for his remaining 20 acres, paid for from the proceeds of sale of the 60 acres, and such profit above that amount as the Bureau of Indian Affairs saw fit to dole out from individual trust funds established for the Indians.[90]

Under the interpretation of treaties used elsewhere, the Yakimas were entitled to as much water as they needed, without having to pay for it in any way, and they knew it. In 1909 at a council called to persuade the Yakimas to agree to the sales, an Indian answered Superintendent Young: "This country is ours. The water is ours. The law knows this, Who gave you the right to take from us our water which is life and then offer it back to us in exchange for our land? Why should we pay for that which has always belonged to us?

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90 Barrett, in the Yakima Morning Herald, March 23,1930.
Leupp, Commissioner's Report,1906 p.89.
Lynch,"Agent's Report, Ft. Simcoe, Wash,1906." p.388
McWhorter, Crime, pp. 6-7.
United States Bureau of Reclamation Project Feasibilities and Authorizations, April 1949, pp. 581-82.

You white people want to eat us up like hogs. Do not talk to us like fools."[91] In fact,"...the terms of the Yakima treaty are more favorable to their tribe than the treaties to which the decisions quoted refer. (Winters v U.S. etc.)"[92]

But the Yakimas were not given the benefit of a favorable interpretation. Because large scale white irrigation was so well established the Bureau of Indian Affairs permitted itself to be swept along in the progressive optimism which characterized the pre-war decade, and in the Yakima area was largely focused on hopes for the Reclamation Service. Commissioner Leupp recommended the passage of the Jones Bill, saying: "After careful consideration of the bill I am convinced that if it is enacted the 'Indian Factor' in the Yakima Valley Project will be eliminated and the Reclamation Service can carry that project out."[93] After the passage of the act Senator Jones wrote the North Yakima Commercial Club that:"The Indian claims to rights in the Yakima River based on the appropriation of water implied in the 1855 treaty would have impaired, and if sustained would have destroyed, every water right in the Yakima

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91 Klah-toosh, at a council at Ft. Simcoe , September 1909 in McWhorter, Crime, p.19.

92 Brosius, Letter of Oct. 23,1912 in Hearings, S 3988, Waters of Ahtanum, April 20,1932, p.45.

93 Leupp, in McWhorter, Crime,, p. 7.

valley."[94] It was argued that the act benefited the Indians as:

> In this way the land will be reclaimed and settled and the Indian will have a good and perpetual water right for his remaining 20 acres of land, which is more than he is apt to cultivate and is worth more than 80 acres of unirrigated land..It is a good thing to allow the Indians to dispose of a portion of their allotments and thereby surround themselves with energetic and industrious farmers... If anything will promote their civilization, this will do it. The bill is for the benefit of the Indians and will not cost the government a dollar. 95

Basically, however, all pretense of helping the Indian was ignored, even by the Indian officer, which approved the act

> ...on the ground,first, that Indians should not be permitted to defeat any plan of importance to the public interests at large unless it were plainly unjust to themselve or in violation of good faith, and second, that the outlook for dilatory litigation initiated in quarters hostile to the rights on which these Indians were depending was too serious not tobe reckoned with. 96

The Yakimas felt wronged, and refused to sign the agreements to sell their allotments for water.[97] The

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94 Barrett, in the Yakima Morning Herald, March 30, 1930.

95 Report of the Committee on Indian Affairs of the Senate in McWhorter, Crime p. 7

96 Leupp,"Commissioner's Report, 1906" p.89, approving the Act of March 6,1906 (34 Stat L.53).

97 Lynch,"Agent's Report, Ft. Simcoe, Wash, 1906," p.388,

_____,letter of June 20,1908, to Commissioner Leupp in McWhorter, Crime, p.14.

McWhorter, Crime, p.14, on Roblin's difficulties.

feeling on this matter was universal, crossing the many lines of rivalry which split the Yakimas on minof issues.[98] "These creeks flowing through our reservation are ours. They belong to us; also the Yakima River. I claim half of it under our treaty rights, It is ours."[99]

Because Lynch failed to get enough Indians to sign, he was replaced in 1909 by S.A.M. Young. The sponsors of the "elimination of the Indian Factor" now went even further in attempting to remove this road block in the future of the Yakima Valley. H.M. Gilbert, land agent of the Columbia Irrigation Company wrote Senator Jones:

> I presume you are busy with the tariff, but there is a matter of serious importance which has arisen here... The Indian Dept. has not reported any progress in securing consent of the Indians.
>
> As you know, the Yakima Reservation presents an ideal situation for getting water on the land quickly and cheaply. Not a flume or syphon and scarcely a cut or fill on the entire project. Most of the land is reasonably nearrailroad, and would immediately be used for making homes.... I suggested to [Mr Roblin, Special Agent of the Indian Service] a plan. It was as follows: Attorney Williamson represented that the Reclamation Service did not like to have the Indians hold twenty acres out of each allotment as, in their opinion, it would greatly injure the project, that is, white people would not want to buy sixty acres out of an eighty acre tract, leaving the Indian family in possession of the

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98 McWhorter, Crime, p. 28

99 Judge Simpson, Yakima Indian, in 1909, ibid p. 27.

other twenty acres, and he thought it would be a very much better plan if the Indians could be segregated on some other section of the reservation and allow them to sell the full eighty acres of each allotment...

His idea was that new allotments might be made to the Indians, either in the mountains or upper valleys or on the Satus where the Indians could go and raise stock together ....100.

Superintendent Young tried various methods to get affirmative signatures representing 75 per cent of the allotted land, as the Jones' Act required. A number of councils were held, but the Yakimas would not be persuaded "When Governor Stevens made treaty with our fathers in 1855, he said 'so long as the water flows down to the ocean will this reservation be ~~xxxx~~ yours.' Now like Governor Stevens you come with sugar in your mouth and talk two ways. We want no lies.[101] Louis Mann, one of the better educated Yakimas, wrote to the Office in Washington that Young had denied him permission to lease one of his family's allotments. C.F. Hanke, the second Assistant Commissioner answered him:

The Superintendent of the Yakima Agency submitted a list of Indians deemed competent to manage or lease their allotments without Departmental

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100 Gilbert, H.M. Letter of May 27,1909, ibid., p. 23. McWhorter said:"...none knew better than the Reclamation people and Mr. Gilbert that the lands in the mountains or upper valleys are unfit for farming purposes."

101 Lumni, at a council at Ft. Simcoe in September, 1909, ibid. p.19.

supervision and your name was included within
He was informed,however, that this privilege
would not be given to anyone who had not signed a petition
for a water right under the Wapato project. It appears
you have not signed such an agreement. 102

Most of the Indians would not sign the agreement, even under such coercion. By 1911 Young had been able to get signed agreements for less than 50 per cent of the land, and that was by persuading 160 white lessees,who would probably benefit, frightening 132 competent adult Indians into signing and using his guardianship powers to sign 532 agreements himself, for minors, incompetent adults, and deceased Indians. 103. Lynch had predicted that the Yakimas would not agree."... They naturally feel pretty sore about this matter and on account of the feeling existing on this account it makes it pretty hard to talk with them about getting their consent on any question." 104 Young, using stronger methods, had no better luck, and was likewise removed.

The Indians demanded justice in a petition sent to Congress in 1913. "This Reservation we were permitted to hold when the Government took all our other land. Water is life and belongs to the earth. Our land is poor without

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102 Letter of May 11,1912, ibid p. 33.

103 Ibid, p. 34.

104 Lynch, Letter of June 20,1908, to Commissioner Leupp, ibid, p.13.

water. The Government has set still and let our water be stolen and now the Reclamation Service cinch us tight if Jones Bill 6693 becomes law."[105] Finally, matters became so disturbed that a small number of desperate Yakima Indians apparently part of the nativistic band which existed throughout the period preceding this,, seriously considered going on the warpath, in order to let the nation know how bad their plight was.[106]

The government , in spite of continued effort to secure Indian approval, gradually took cognizance of the strength of Yakima resistance.

> The plan, which has been before the Indians for several years, is that if they do not have the means otherwise they should sell a part of their allotments in order that the remainder might be greatly enhanced in value by having water applied to it. For various causes, which are now under investigation, the Indians have not taken at all kindly to the plan. Any other plan would involve the appropriation by Congress of many millions of dollars to construct a project. 107

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105 Memorial of the Yakima Tribe of Indians protesting against S. Bill 6693 Doc No. 1304, Committee on Indian Affairs of the House of Representatives, presented by Mr. Stephens of Texas, January 25,1913 ibid. p.46. Hereafter cited as "Yakima Memorial Against S. Bill 6693" 1913.

106 Ibid, p. 28. McWhorter, Tragedy of the Wahk-shum, p. 20. Their Chief was Yoom-tee-bee, whose death on March 10,1910 averted the outbreak.

107 Valentine,"Commissioner's Report, 1911" in The Annual Report of the Department of the Interior,'1911 I.A. p. 39.

The Department of the Interior finally came around to honoring the promise Secretary Bellinger had given a Yakima Indian at a Council in 1909. "Tell him that they do not have to sell their land. I will water it and let them keep it all."[108] Finally in 1912, Commissioner Valentine contended that Congress should appropriate "...many millions of dollars" which it would cost to give the Indians free irrigation.[109] This financed the Wapato project, which had been initiated under the auspices of the Jones' Act in 1908.[110] Since the Indians never gave the approval necessary to put the Jones' Act into effect, a separate appropriation was made for this work, and an agreement was worked out with the Reclamation Service whereby the Indians were granted free water rights for half of their allotments, in perpetuity, and no sales were required.[111] As early as 1906 , some officials of the Indian Bureau had felt this was

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108 McWhorter, Crime p.19

109 Ibid., p. 45.

110 Valentine,"Commissioner's Report, 1909" in The Annual Report of the Department of the Interior,1909, p.51.

111 Barrett, in The Yakima Morning Herald, March 30,1930
Sells, Commissioner's Report,1914" in The Annual Report of the Department of the Interior, 1914 p.75.
Straus, Michael W. Commissioner of the Bureau of Reclamation, Reclamation Project Data, 1948, p. 564.

the solution,[112] but the agreement was not made until 1915.[113]

Appropriations were slight up until that time, except for a drainage project necessitated by seepage in 1910-12.[114] By 1916 the Wapato Project appropriation was $200,000 and for the next two years it was $500,000 annually.[115] In 1919 the Commissioner Sells said:"The largest expenditures and likewise greatest returns have been on the Yakima Reservation, Washington."[116] The heavy annual expenditures have been kept up until the present time.[117]

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Barrett, in the Yakima Morning Herald, March 30, 1930.
Larrabee, C.F., letter of September 28,1906, to Louis Mann, in McMahorter, crime, p. 48.

113

Sells, "Commissioner's Report,1916" in The Annual Report of the Department of the Interior,1916, p.43.

114

Valentine,"Commissioner's Report,1910" in Interior Department, Annual Report,1910, Additional Reports, Vol.2, p.24.
_____,"Commissioner's Report ,1911," p.16.
_____,"Commissioner's Report,1912,p .54

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Sells,"Commissioner's Report,1916",p.35.
_____"Commissioner's Report,1917",p. in The Annual Report of the Department of the Interior,1918,p.40.

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Sells,"Commissioner's Report,1919" in The Annual Report of the Department of the Interior,1919,"p.38.

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Sells,"Commissioner's Report,1920,pp.23,24,58.
Burke, Charles H."Commissioner's Report,1921" in The Annual Report of the Secretary of the Interior for the Fiscal Year ending June 30,1921, p.53.
Eliot, Samuel A.-Fifty-third annual Report of

(continued on next page)

In 1954, the reservation contained the Ahtanum and Wapato Projects, the former being a small one on the north boundary. The Wapato Project includes three units in the Satus subdivision and one in the Toppenish-Simcoe. The crops produced on the Wapato Project were worth over seventeen million dollars in 1954,[118] on an irrigated area of over 140,000 acres.[119]

Irrigation water rights are still one of the matters

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117 (continued) The Board of Indian Commissioners to the Secretary of the Interior, for the fiscal...etc. 1922, p.24
Burke,"...1923" p.8;"...1924", pp. 18,50; "1925 p.23.
Rhoades,"...1929" p.16;"...1930" p.23.
Barrett, in The Yakima Morning Herald,April 6,1930, p.21.
Rhoades,"...1931",p. 9; "...1932" pp.17,18.
Hearings before the Committee on Indian Affairs of the United State Senate Seventy Sixth Congress, First session S 1065, A Bill to Authorize an Appropriation for Payment for the cost of providing Additional Water for the Wapato Indian Irrigation Project, Wash. July 17,1939, pp 3,5.
United States Bureau of Reclamation, Columbia River Basin Water Resource Development, Report of the Regional Director,1947,"p 286.
Nichols, John R.,"...1949,p.350.
Meyer,"...1950",p 360;"...1951, p.373.
"...1952,"p.411.
Greenwood,"...1953,p.49.
Emmons,"...1952",p.252.

118 Emmons,"Commissionor's Report,1954,"p.252.

119 United States Bureau of Reclamation,Columbia River Basin Water Resources Development,"Report of the Regional Director," 1947," p.286.
Nichols,"Commissioner's Report,,1949" p.350.
Meyer,"...1950" p.360,"...1951",p.373.
"...1952,p. 411 (continued on next page)

of most concern to the Yakima tribes, but it is not on the body of the reservation, watered by the Wapato project. As the above development shows, after an initial period in which Yakima interests were abandoned in the face of various local and intra-departmental interests, the government more than made good Secretary Ballinger's promise. The Yakimas achieved this victory by a bitter and determined resistance, based largely on an appeal to implied treatyrights, although in this case the government did not bring matters before the courts. The treaty was important in winning the water rights, and the Yakimas' faith in it was not weakened, as they believed it would have won had litigation commenced.

The present difficulties with water rights involve the relatively small area along the south bank of Ahtanum Creek, and a distribution of water made by Secretary of the Interior Garfield in 1908, whereby the white farmers north of the stream could use up to 75 per cent of the water, and the Indian farms could use only 25 per cent.[120] The Indians complained about this at the time but there was enough water for all

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119 (Continued)
Greenwood, "...1953, p.49.
Emmons, "...1964, p.252.

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Mann, Louis in McWhorter, Crime, p.34.
"Yakima Memorial Against S. Bill 6693," 1913, ibid., p.46.
McWhorter, crime, p.47.
Olney, Nealy N, Chairman of the Ahtanum Creek Indian Water Users Association, 1932, in Hearings S 3988, Waters of Ahtanum, April 20, 1932, p.52.

and it was not enforced.[121] They brought it to a Congressional hearing in 1932, when several dry seasons had forced the watermaster to restrict the Indians to their 25 per cent again, but no action resulted.[122] Although the Ahtanum Project has been enlarged, the need has grown faster, and in 1949 the Yakimas filed a series of suits[123] which are still before the courts.[124]

In these cases the Yakimas are claiming the treaty rights observed in the Winters v U.S. decision. However, in all their irrigation difficulties, they have not used their treaty to the extent they have in preserving their community or their fishing rights. One of the reasons for this is that the irrigation problem arose out of the partial success of the government's program to make farmers out of the Indians.

The market for Indian ponies had completely disap-

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121 Burke, "Commissioner's Report, 1926" in The Annual Report of the Secretary of the Interior, 1926, p.24. Hearings, S. 3988, Waters of Ahtanum, April 20, 1932, p. 1.

122 Hearings, S 3988, Waters of Antanum, April 20, 1932, p.6

123 The Oregon Journal datelined Yakima, August 16, 1949. United States Bureau of Reclamation, Columbia River Basin Water Resource Development, "Report of the Regional Director, 1947" p.348.

124 From interviews with members of the Indian service.

peared in 1894,[125] and the Yakimas gradually disposed of the bulk of their herds, and turned to farming.[126] In 1912 they owned scarcely over a thousand horses.[127] and this traditional source of wealth and, during their prosperity under Wilbur, income was replaced by sale of farm produce and revenue from leased allotments, both of which necessitated irrigation.

The Yakimas' need for water, then, was not distinctively an Indian need. Their treaty, no mater how effectively thkey used it here, was not playing a vital role in protecting their native way of life; it was only a convenient asset with which to claim the water they needed because they had adopted one of the whiteman's activities. The Yakimas' treaty is useful to them, to the extent that they have adjusted to the whiteman's culture, but vital, to those aspects of their culture which preserve the old ways.

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125 Irwin,"Agent' Report, Ft. Simcoe Wash.,1893 p.326.

126 Irwin,"Agent's Report, Ft. Simcoe, Wash. 1896," p.317.
Lynch , "Agent's Report Ft. Simcoe, Wash 1899," p.363.
_____"Agent's Report, Ft. Simcoe, Wash., 1900"p.401.

An Illustrated History of Klickitat,Yakima, and Kittitas Counties,1904, p. 359.

Leupp,"Commissioner's Report, 1908,"p.134.

125 Valentine,"Commissioner's Report,1912,p.254.

The Jones Act of 1906 raised another problem which agitated the Yakimas more than the injustices they felt had been done them regarding their water rights. This was the clause allowing them to sell three-fourths of their allotment. This has already been mentioned, as has their reluctance to part with their land, but these matters deserve greater emphasis.

In answer to complaints that the Yakimas did not want to sell their allotments, or any part of them,[128] Jones wrote:

> The Indian does not have to sell any of his allotment if he does not want to do so, and knowing as much about the Indian and irrigation as you do, I am satisfied you will agree with me that 20 acres of irrigated land is about all any Indian would be able to properly manage, and if he could sell the 60 acres and out of the proceeds get water rights for the remaining 20 acres and still have a surplus remaining to help him along, it seems to me he ought to be in pretty good shape.[129]

The Indians doubted the Senator's concern in their behalf. "I hear that Jones made a speech in Congress and told 'we will make Christians ddd of the Yakimas; and must do heap

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128 McWhorter, quoted in McWhorter, Crime p. 14.

129 Jones, Wesley L. ibid.

praying, and twenty acres is all they will have time to work..."[130]

The Yakimas strongly opposed any land sales. Chief Meninock said in 1908 that the Yakimas had tried to live up to the treaty of which his father was a signer, and that the government should do likewise, as the Indians did not want to sell any of their land.[131] Chief Saluskin said:"If we sell our land,we will have no place to go. We cannot live among the whites."[132] Louis Shuster, a Yakima at the Council said:"We want only our ownand theright to live,"[133] Some of the Indians were even more definite, like Louis Mann who had experienced particular difficulty over the Ahtanum waters. He said;"If Indians are squeezed to sell they will never give no consent to their allotments be sold as the Jones bill is. There is no feeling among any nation of Yakima Indians."[134] Chief Yoom-tee-bee expressed an even more reclusive attitude, in which he shows the resentment felt by the proudly nativistic band for the Indians who adopted the worse ways of whitemen and hung around the white

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130 Chief Saluskin We-owikt, ibid p.8

131 Ibid p.18

132 Saluskin, ibid. p 27

133 Shuster, Louis, at Tribal Council of July 1,1910 ibid p. 27

134 Mann,Louis, ibid, p. 18.

towns on the reservation.

Long time ago this Government and Governor Stevens made treaty and took all our land but this reservation. This, Governor Stevens said, should be ours as long as the sun shines and the water flows; and no white man would be allowed to live on our reservation--You see there the houses of the white men. They are built on the land of my people. The Government has lied; if the white man is fast owning our lands. If the Government must have my reservation, I will sell all under the ditch and keep all on this side. No white man must come here. The good Indians will move up here, and we will keep out all saloons. By and by the drunk Indians will all die, and there will be no more trouble. 135

On June 9,1909, Yoom-tee-bee called a council which sent apetition to the Indian Affairs Committee of the Senate listing all their complains,[136] and finally, shortly before his death,as mentioned above, he planned an uprising to dramatize the plight of the Yakimas.[137]

The government eventually recognized the determination of Yakima resistance, and ceased pressuring the Indians to sell.[138] Superintendent Young said,"Let it be known for once and for all that the Indians can keep all their lands if they want to do so.[139] The Yakimas

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135 Yoom-tee-bee, in 1908, ibid, pp. 25-26.

136 Complaint(6) ibid, p. 14.

137 McWhorter, Tragedy of the Wahk-shum p. 20.

138 Valentine,"Commissioner's Report, 1909," p.51.
_____,"Commissioner's Report,1911, p.39.

139 McWhorter, Crime p.19.

aided at this time by the efforts of certain white men who advocated their rights. The most outstanding of these was L.V. McWhorter.[140] Although the government stopped its efforts to sell the lands of individual Indians to whitemen, the people of the area, for years afterwards, felt that it would be desirable for the Indians to sell their allotments. In 1930, an article in a series on the history of Yakima Valley Irrigation said:

> Indian reservation lands have made rapid growth in irrigation during the past twenty-fiveyears under management of the Indian Irrigation Service, and promoted by a system of leasing Indian lands to white farmers...some sections have proved to be superior fruit producers, but horticulture is not expected to develop on a large scale until the Indian lands have to a greater extent passed into white ownership...141

The Yakimas were as possessive of their tribal land as of their tribal rights, or theirpersonal allotments. They strongly resisted a plan to sell their tribal land, although some of them might have sold some of it for a equitably high price before they were embittered by the irrigation difficulty and by the loss,though a faultysurvey in 1890, of the western fourth of the reservation promised them in the treaty.

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140 Johnson, William E. Former Chief Special Officer, U.S. Indian Service, Foreword, January 13,1913, Ibid., pp 3-4.

141 Barrett, in The Yakima Morning Herald, April 6, 1930, p. 21.

The proposed sale of tribal lands first appeared in 1896 when the Flathead Commission was instructed to treat with the Yakimas"... for the surrender of a portion of their reservation lands..."[142] At the time, Agent Erwin reported that the Yakimas seemed eager to deal with the Commission, [143], but two years later the Commission expired without being able to report any success.[144] In 1901 the tribal territorywas still closed[145] and in 1904 Lynch said it would be difficult to settle with the Yakimas on this question, as they wanted more money than the government was willing to pay.[146] He felt it might be better for all if certain grazing areas, etc. were reserved, and the rest of the tribal land thrown open for sale. He thought the Indians might get more money, and so recommended the passage of H.R. 14468.[147]

The Bill Lynch supported was another one drawn up

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142 "Indian Appropriation Act," June 10 ,1896, Vol. 29,342 (Public No. 195), in Browning,"Commissioner's Report, 1896,"p. 446.

143 Irwin,"Agent's Report, Ft. Simcoe, Wash. 1896," p.319.

144 Jones,"Commissioner's Report, 1896" p.34.

145 Lynch,"Agent's Report, Ft. Simcoe, Wash. 1901," p. 394 .

146 Lynch,"Agent's Report, Ft. Simcoe, Wash. 1904," p.367.

147 Ibid.

by Senator Jones for the benefit of the white citizens of the Yakima area. This Jones Act of 1904 reserved certain tracts for the agency, the school, churches, irrigation reservations, and such grazing and timber lands," ...as may be deemed expedient for the benefit of the Indians..." provided that these lands too might be sold at a later date. The rest of the area was to be thrown open for buyers, and the United States was to act as trustee of the Indians for the sale of the land. First the act stipulated that allotments were to be brought up to date (i.e. made to children born since the last allotment) and the Yakimas' claim on the western boundary of their reservation recognized for purposes of sale except such portions as white settlers had occupied.[148]

The new allotments were completed in a year, and the appraisal and surveying of tribal land commenced.[149] This process was finished in 1910,[150] when a new law again provided for bringing allotments up to date, which meant that four hundred new tracts had to be found on the reservation, where almost all valuable lands were already

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148 "An Act to Authorize the Sale and Distribution of Surplus on Unallotted Lands of the Yakima Indian Reservation, in the State of "ash.," Chap. 27, Vol 33 , p.595. Approved Dec. 21, 1904; ibid., pp. 441-42.
Leupp,"Commissioner's Report, 1907,"p. 156.

149 Leupp, "Commissioner's Report, 1907" p. 156.

150 Valentine,"Commissioner's Report, 1910," p.32.

allotted.[151] In 1913 these allotments were made, but the remaining land had not yet been opened.

Yakima resistance on all issues of land and irrigation was closely inter-related. Yoom-tee-bee answered Land Agent Gilbert saying:"Thereare some points not yet settled... The Wenatchee money belongs to us. It has not been paid... The Cedar Valley was taken from us and never paid for. When all is clear, I will sign."[152] The Cedar Valley of which he spoke was part of a tract of land at the western end of the Yakima Reservation which a survey of 1890 had cut off. Agent Irwin reported that in the survey the Yakimas lost over 200,000 acres.[153] Agent Lynch investigated the matter more thoroughly and discovered that the names of the rivers whose watersheds determined part of the western boundary had been changed in sucha way that the treaty description could no longer be made to fit. He estimated the loss at nearly 400,000 acres.[154] A resurvey was ordered, but was held up by weather conditions.[155] Finally, the surveyor, Mr. Barnard, reported to the Office that:

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151 Ibid., p. 33.

152 Yoom-tee-bee, in McWhorter , Crime, pp. 19-21.

153 Irwin ,"Agent's Report, Ft. Simcoe, Wash. 1895," in H. Docs. ., 1st sess. 54, Cong. '95-'96, I.A. p.322.

154 Lynch, "Agent's Report, Ft. Simcoe, Wash 1898," p. 305.

155 Lynch,"Agent's Report, Ft. Simcoe, Wash. 1899," p. 363.

"...the wording of the treaty cannot be made to conform to the topography of the country;" but that in his opinion the Indians had been deprived of 357,878 acres, which was some sixtyfour thousand acres more than the Indians claimed.[156] The Department of the Interior advised that the Yakimas should be reimbursed, and in 1900 a new commission was instructed tosettle with the Indians.[157]

This large area, over three hundred and fifty thousand acres, represented one quarter of the original reservation. The first offer presented the Indians was for only $75,000 The Yakimas asked for more,but Lynch reported that:"The Indians are disposed to relinquish their claim to this tract at what theybelieve to be a fair price."[158] The Indians' idea of a "fair price" grew rapidly. The Commission said it was useless to deal any further at that time, and gave up.[159]

The offers made in desperation by various government officials ranging from $300,000 to $1,400,000 had greatly inflated the value of the land to the Yakimas, and so they scoffed at a serious proposition for $125,000 put forby by

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156 Jones,"Commissioner's Report, 1900," p. 180.

157 Ibid., p. 181.

158 Lynch,"Agent's Report, Ft. Simcoe, Wash., 1900," p. 401

150 Jones,"Commissioner's Report, 1901, p. 49.

Railroad in the tract.[165] When the suit came to a hearing in 1907 the government made a hasty straight line survey, which of course followed no natural boundary at all. The Yakimas protested that under resurvey contract No. 632 thay had lost 70,000 acres.[166] Finally, in 1909, the exasperated Yakimas sent a strong note to the government, as follows:

> ...We do hereby demand an indemnity for all moneys paid the United States in money for land entered by settlers in the Cedar valley country and as it seems there is no prospect of the country being vacated by such settlers by the United States.
> We also demand the absolute right to control our own reservation and as we are aware of the fact that our reservation is an Indian country, set aside by our forefathers by virtue of their own right of choice before they ceded the country around it to the United States as an everlasting inheritance, our Reservation is not to be rated as Government Reservation.
> We also by unanimous vote set aside all right of the Government to set aside a small strip of our own country for grazing commons or pasture. We have an asbolute right to set aside any area of country for such purpose the tract conaning two townships for grazing land as set aside forus is not recognized as we have stock which cannot subsist on same. We, therefore, take this means to inform your office of thr position in the matter and until this matter is settled satisfactorily we cannot enter the question now pending. 167

This outburst of animosity was coincident with the other difficulties in the first decade of this century.

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165 Leupp,"Commissioner's Report, 1907," p. 128

166 Ibid., p. 129

167 McWhorter, Crime, in footnote, pp 21-22.

When the other problems were quieted, the western boundary dispute disappeared for twenty years. A Bill was introduced in 1932 to turn the Yakima's (sic) timber lands into a National Forest,[168] and in June of the same year the residents of Goldendale were told that the reservation might be given 200,000acres of Klickitat County.[169] In 1939 hearings were conducted on the western boundary question, in which new evidence consisted of surveys in 1913 and 1926, and the discovery, in 1930, of the original map of the reservation, drawn by Governor Stevens at the Walla Walla Countil.[170] The hearings resulted in the introduction of bills to satisfy Yakima claims in both houses of Congress, but the Klickitat County Board of Commissioners and other white interests succeeded in postponing the action.[171] The Yakimas put to good use that portion of their lands which they did get back. in 1948 the Indian Bureau received bids for 163 million board feet of the "scattered timber" on the tract, to be logged over a twenty year period on a sustained yield basis. The top bid was over $20,000,000.[172]

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168 The Oregon Journal, January 5,1932.

169 The Oregon Journal, June 27,1932.

170 Hearings, S. 773, Yakima Claims, May 2, 1939, entire.

171 The Oregon Journal, June 1,1939 and June 19, 1939.

172 The Oregon Journal, November 5,1948.

During the pre-War era there were other pressures on the Yakimas which were as serious to them as the threats to their water, lands, and tribe. However, these were such matters as the uncontrolled consumption of liquor[173] and the herds of livestock, belonging to white men, which came into the reservation despite boundary patrols.[174] These matters are not directly connected with the Indian treaty rights.

The citizenship issue is more pertinent, and was graphically illustrated by their attitude towards Selective Service. Early in 1917 Chief Meninock spoke on the probability of the draft being extended to include Indian youth. He said this would be a violation of their treaty rights.[175] The feeling was not universal, as some Yakimas did volunteer. Between thewars the Indianfeeling was reinforced that , in spite of their being granted citizenship in name, they were being treated as foreigners. Six Yakima Indians were arrested on December 23, 1936 at the instigation of the white men on the reservation. These Yakimas had violated a state land law byleasing their allotments to Japanese and Filipinos. "Grangers declared

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173 McWhorter, "Crime" in Footnote, p. 25.
~~xxx~~ Valentine, Commissioner s Report, 1912, p. 95.

174 McWhorter, Crime, p . 25

175 Chief Meninock, who later figured in an important fishing case , in McWhorter, Tragedy of the Wahk-shum, pp 43-44.

that aliens have ignored moral and economic conditions to standards of their countries. At that time reservation farmers predicted that either Orientals or white men would have to leave in the near future."[176]

On February 25,1941, Chief Frank Totus and seventy one young men of the Yakima nation appeared in Federal Court in Spokane, claiming exemption from the peacetime Selective Service Act on the grounds;"t..that the Yakimas are a separate nation within the boundaries of the United States under a treaty signed in 1855." They claimed they were" ... not citizens... but aliens resident within theunited States who have not declared their intent to become citizens thereof."[177] They argued that they were wards, not citizens, and that the grant of citizenship in 1924 only applied to those Indians who accepted it. To prove they did not have tofight, the Yakimas cited their treaty:"Nor will they, the Yakima Nation of Indians,made (sic) war upon any other tribe,except in self defense..."[178] That May, district Judge Schwellenbach dismissed the suit, ruling that the treaty was suspended by the Selective Service Act.[179]

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176 The Oregon Journal, December 23,1936.

177 The Oregon Journal, February 25,1941

178 Ibid.

179 The Oregon Journal, May 31,1941.

The Tribal Council had announced its disapproval of the suit by theyoung men, which is an indication of an attitude which has become clear. Thetribe felt that their treaty should not be weakened by being subjected to trials where the courts might rule against it. It had already become something to protect as well as upon which to depend.

The Yakimas' claim that they were government wards was important, as it was on this basis that they rejected both Collier's Indian Reorganization Act and the efforts of the present Administration to withdraw from the role of guardianship. In 1922 , the Board of Commissioners reported of the Yakimas that there were three thousand allotted Indians on the reservation and 750 were living elsewhere and of these:

> About 700 have received their patents in fee but retained their rights in the unallotted lands and timber. As a rule, the Indians are reluctant to receive their patents in fee. They say they do not want to assume responsibility of citizenship and they strenuously object to paying taxes. Almost without exception they appear to prefer to remain wards of the Government and to have their leases and 180 other business affairs transacted through the agency.

In 1934, the Yakima Council sent a delegate to Washington, D.C. to argue against the passage of the Wheeler-Howard Bill.[181] and in 1935 they sent a petition to

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180 Eliot, Fifty Third Annual Report of the Board of Commissioners to the Secretary of the Interior, 1922, p. 23

181 Hearings, subcommittee H.R. 7781 and other, February 11,1935, p. 28.

Washington State Congressmen signed by nearly seven hundred adult Yakimas.

We the undersigned chiefs, people, and friends of the Yakima Indian Tribes, respectfully represent that the Wheeler-Howard Bill same being Senate Bill 3645, enacted into law on the 18th day of June, 1934, is inimical to the interests of the Yakima Indian Tribes in that it has foisted upon us a system of local self government that has never been a success when enacted into law by white people and cannot be a success with us.

We feel that the best interests of the Indians can be presented by the continuance of laws in operation before the passage of this bill, and carried out in conformity with the treaty of 1855 entered into between the fathers of some of the undersigned chiefs and Governor Stevens of the Territory of Washington.

We are against Senate bill no. 3645 and protest its continuance on the statue books of the United States for the reason specifically that we feel that it will result in the placing of the government of the Yakima Indian Tribes into the hands of irresponsible Indians too much authority and power.

Wherefore, we respectfully urge that you use your influence to bring about the repeal of said bill insofar as it applies in any manner of the Yakima Indian Tribes and placing back on the statue books the treaty hereinabove referred to[182]
And we will ever pray

The Yakimas wanted Congress to repeal the act because they felt that its passage weakened their treaty.[183] Failing to have the bill withdrawn, the Yakimas voted against

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183 Ibid. pp. 855-56.
Sam, Thomas, ibid., p. 855

accepting it.[184]

The basis objection of the Yakimas was their fear that the Reorganization Act would withdraw government protection. Their attitude has not changed much since Inspector Eliot wrote in 1922: "The day is far distant when the Government can withdraw from all responsibility for the Yakima people, and itwill be a long time before it will be possible to make a division of the considerable amount of grazing and timber which is still a tribal asset."[185] Another inspector, in 1930, said of the Yakimas: "Many would perhaps be responsible to handle their own affairs, but these are the very ones who are anxious to stay under Federal guardianship and thus avoid personal responsibility and the payment of taxes."[186]

In that year the Yakimas succes fully objected to a state attempt to tax their trust lands for the support of the schools used by their children and their tenants: they claimed that the government had promised them that their

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184 Collier, "Com issioner's Report, 1935," in The Annual Report of the Secretary of the Interior, p.115. Between August, 1934, and June 1935, elections were held on 263 reservations. Women voted everywhere, and the turnout w s 62 per cent. 172 tribes representing 132,424 Indians accepted the act. 73 tribes representing 63,467 Indians turned it down.

185 Eliot, Fifty third Annual Report of the Board of Commissioners to the Secretary of the Interior, 1922, p.24.

186 Seymour, Flora Warren in the Annual Report of the Board of Indian Commissioners to the Secretary of the Interior, 1930, p. 31.

land would never be burdened with taxes, and argued that a tax on the tenants would soon become one of them. Their spokesman said:"We must remember that the Indians at no time invited or urged the white persons to come on the reservation."[187]

The Yakima Council asked for special legislation in 1946, when they first considered selling their timber, to the effect that only those of one quarter Yakima blood, or more, be members of the tribe.[188] Before that time those with less than one thirty-second blood could claim shares of tribal assets. The law was passed in August, 1946.[189]

Throughout the earlier part of this period there is a fractional disturbance affecting the reactions of the Yakimas to deprivation of their rights. It is difficult to assess what influence this factor, the existence of the "wild Yakimas", had no events. Irwin described them in 1894:

> At present this portion of the reservation [next to the Yakima River] is the home of the wild Yakimas." They refuse to take their land by allotments, but have marked off a line which theyclaim as their reservation in common. Of 14 tribes originally assigned

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187 Olney, Nealy N., Secretary of the Yakima Indian Commercial Club, in The Yakima Morning Herald, March 30,1930, p. 19.

188 The Oregon Journal, April 7,1946.

189 The Oregon Journal, August 12,1946.

to this reservation, 13 have lost their identity by intermarriage and have ceased to keep up their separate tribal relations; but the tribe known as the Yakimas, proper, have never given up these relations and keep separate and apart from the other Indians, having their own chief and head men. They have never accepted blankets, rations or any help from the Government, refusing to send their children to school or recognize the agent in any way, claiming that their "Tyee" is a military officer at Vancouver. They live by doing the smallest possible amount of wild farming, selling wild hay to the townspeople , and fishing in the streams. These Indians hold to their ancient customs and forms of religion. They are called "Sun-worshippers," and have great religious festivals in an immense tepee. They decorate with paint and feathers in a manner sufficient to justify any terrors that have been associated with thoughts of the red man, and loftily ignore all ~~rights~~ efforts to better their condition or to educate their children. 190

Estimates of the size of the band ranged between one and two hundred Indians.[191] The turbulence arising from the demands of this band[192] and other difficult matters in Yakima internal affairs increased the troubles of the Yakimas. When Irwin retired in 1897 , he wrote that one of the reasons for the rapid turnover in agents at Ft.Simcoe.

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190 Irwin,"Agent's Report, Ft. Simcoe, Wash, 1894," p. 325.

191 Irwin, "Agent's Report, Ft. Simcoe, Wash. 1894," p. 327.

_____,"Agent's Report Ft. Simcoe, Wash., 1895" p. 320.

_____,"Agent's Report Ft. Simcoe, Wash., 1896,"p.319.

192 Irwin, "Agent's Report, Ft. Simcoe, Wash. 1894," p. 326.

since 1860 had been that:"The Yakima Nation has been hard to hold down, for the reason that they are not all of the same family."[193] Under these conditions distribution of assistance supplies and land caused jealousies. Seven years later, Lynch advised that the government administer the tribal lands:"As there are no recognized head chiefs or headmen on this reservation, and practically no leaders that the Indians will recognize as leaders or head men, and there are so many different tribes and factions, that there seems to be no way that the Indians of this reservation can get together and agree upon any proposition."[194] Fifty years later the Yakimas finally appointed a management body, which rules by sufferance. It can administer, but only the tribe as a whole may make policy decisions. Up until a few years ago they had no governmental organization other than the tribal council, consisting of all the adult members of the tribe meeting together.[195]

At the present there are about four thousand Yakimas.[196] Of their presently recognized reservation of

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193 Irwin,"Agent's Report, Ft. Simcoe, Wash. 1897," p. 298.

194 Lynch,"Agent's Report, Ft. Simcoe, Wash. 1904," p.367.

195 The Author's recollection of a statement by Mr. Moore, of the Portland office, United StatesBureau of Indian Affairs.

196 The Oregonian, May 8,1955.

1,266,559 acres, about 114,000 acres have been sold to white-men and about 80,000 acres more are leased.[197] They have passed through a period when their loose tribal community and the integrity of their reservation were seriously threatened. They have kept both community and propertyintact by appealing to their treatyrights. Their feelings throughout this period are graphically summarized in a statement made by the Yakima leader, Judge Simpson, in 1900:

> I will tell you in a few words what I know. The agent seems to look upon us as ignorant children. He is telling us that our lands will be bought and is asking us to sell. We are ignorant and do not know but he is always telling us this. I corroborate what Chief Waters says concerning the reserve. We do not want to sell any of it. Our older people reserved this for us and we want to reside here. We want to keep it for our children. The government in a treaty with our fathers made witnesses of the sun, the mountains and the rivers that so long as these remain should this reservation be for them and their children.
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> The sun has not grown dim; the mountains have not moved; the rivers still flow; but our reservation has changed and is slipping from us. 198

Fishing has always been a most important activity for the Yakimas. The Yakima treaty has been intimately

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197 Collier, "Commissioner's Report, 1933," p. 90. The Oregon Journal, August 8,1935.

198 Judge Simpson, in McWhorter, Crime, p. 27.

involved with fishing problems from the time of its signing. The treaty council of 1855 at Walla Walla lasted through the best part of the May fishing season, and many of the bands named in the treaty had left the council long before the signing on June 9th in order to fish. Kamiakin himself wanted to leave for his fishing grounds, and Stevens persuaded him to stay only by hastening the conclusion of the Council.[199]

Forty years later the Agent at Yakima wrote: "The Indians have used the fisheries in question as their chief means of subsistence from time immemorial. Should they be deprived of their rights their main source of support would be gone."[200]

At present, fishing is still extremely important to the Yakimas. It is estimated that the Indians take at least 60 per cent of Chinook Salmon passing Celilo Falls each autumn,[201] and the total amount of fish taken annually by them in the Columbia basin is between two and three million pounds,

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199 Proceedings of the Walla Walla Council of 1855, a transcript in the "Defendants' Exhibits" the United States v Earnest F. Cramer and E.R. Cramer, decided April 8,1948. No. Civil 3557, U.S. Court House, Portland, Oregon, 25973,pp 4-5.

200 Browning, "Commissioner's Report, 1895," p.109.

201 Lundy, Herbert," Comments on Presenting the First Report of the Fisheries Steering Committee to the Columbia Basin inter-agency committee," Walla Walla, January 19, 1955, pp. 8-9. Hereafter cited as Lundy,"Fisheries Steering Committee,"1955. In 1951 it was estimated that the Indians at Celilo took as much as 87 per cent of the fall run of chinook salmon.

with the approximate value of $350,000.[202] Due to various causes the number of salmon in the Columbia is far less than it once was. White men started catching salmon in large quantities for canning in 1867, and in 1883 thirty nine canneries on the Columbia absorbed a catch of 43,000,000 pounds.[203] Over-fishing losses were aggravated by the rapid development of irrigation on some tributaries of the Columbia.[204] In more recent years the construction of large dams, which in only a few cases permitted the continuation of fish runs, has further reduced the number of salmon.[205] The commercial catch in the Columbia is now only about half of that in the peak year,1883.[206]

This decline has not seriously affected the runs in the Dalles-Celilo stretch of river where the most important

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202 United States Bureau of Reclamation, Columbia River Basin Water Resources Development, "Report of the Regional Director, 1947," p.9.

203 Lundy, "Fisheries Steering Committee," 1955, p.6.

204 Ibid., p.12. Before screens were placed over the entrances to irrigation canals, fish going downstream could be swept out into ditches and stranded. Extensive irrigation often lowers the level of a stream so much that it cannot support fish life, and warms the water too much for young fish to survive.

205 Ibid p.13- There are now over 300 dams of varying sizes in the Pacific Northwest. Fish runs stop below Grand Coulee Dam.

206 United States Bureau of Reclamation, Columbia River Basin Water Resource Development, Report of the Regional Director, 1947," p.9.

Yakima fisheries are located. Other Indians use the sites here, but the majority of them belong to the tribes of the Yakima Reservation.[207] In 1939 the Indian superintendent at Yakima wasgiven jurisdiction over all Indian fishing in the Dalles-Celilo area, on both sides of the River.[208] The recent history of Indian fishing in this area revolves largely around a series of legal cases, and the most important element in all of them is the Yakima treaty.

These cases may be divided into three classes: those in which the Yakima treaty fishing rights have been opposed to the interests of individual citizens; those in which the fishing rights have been op osed to the interests of the state in which they were exercised; and finally those in which the rights have conflicted with the interests of the Federal Government. Some of these cases are related directly to the Yakima treaty, others in which the Yakima treaty was not a factor established important precedents. There are also cases in which decisions pertain to the Yakimas' rights only a most general sense.[209]

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207 The Oregon Journal, datelined Toppenish, December 13,1953.

208 The Oregon Journal, datelined, Toppenish January 26,1939.

209 See Appendix No. 5 for a table showing the cases relating to Yakima treatyfishing rights and the direction of the decisions. This is a condensation of the discussion which follows.

The first case involving the Yakima treaty fishing rights, United States vs Frank Taylor, was decided in favor of the Indians by the Supreme Court of Washington Territory on January 25,1887.[210] Although it was ruled that the third article of the treaty gave the Yakimas the right of ingress to and egress from their fishing sites over privately owned property[211] the decision was never enforced.[212] Local officers and courts were not sympathetic to the Indians, as appeals to county officers had proved in 1882,1884, and 1885.[213]

Lengthy litigation grew out of the failure of the courts to give protection. When the Indians were fenced out of their fishing grounds the agents at Ft. Simcoe asked for government aid in enforcing the decision of 1887, but did not at first apply to the law. A special agent attempted some adjustments in 1889 and again in 1894.[214] The Bureau

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210 Atkins, J.D.C. "Commissioner's Report 1887," in H.Ex. Docs. 1st sess 50th Cong. '87-88 Interior p. 81.
Browning,"Commissioner's Report 1896," p. 98 See also Pacific Recorder, Vol 13,p. 333.

211 Ibid

212 Atkins,"Commissioner's Report 1886" in H. Ex. Docs..2d sess 49th Cong. '86-87 pp.129-30.

213 Atkins,"Commissioner's Report 1886," p. 131.

214 Lang, Thomas S. "Report of the Deputy Special Indian Agent on Tumwater Fisheries, August 15,1889" in H Ex. Docs 1st sess. 51st Cong. '89-90, Interior pp 295-96.
Irwin ,Agent's Report, Ft. Simcoe, Wash 1894," pl 326.

finally on February 23,1895 gave a full report to the Department of Justice.[215] The Department recommended action and abill of equity was filed on July 11 against the Winans Brothers Company, commercial fishers on the Columbia, and the greatest offenders.[216] The Winans and the Seufert Brothers companies operated a number of fishwheels in the Dalles-Celilo area, and were the parties most interested in obstructing the Indians' rights,[217] The Seuferts have engaged in periodic litigation with the Yakimas up to the present.[218]

Thecase against Winans Brothers stalled for a time in the United States Circuit court for the Southern Division of Washington when the defendants filed a demurrer.[219] The Court overruled the demurrer,but held that the Indians had no right to enter the fenced property of the Winans Bros. "The result is" reported Agent Irwin,"Wynans Bros. have

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215 Browning,"Commissioner's Report, 1895," p.108.

216 Irwin,"Agent's Report, Ft. Simcoe, Wash. 1895," p.522

217 Browning,"Commissioner's Report,1896,"p.99. The first fish wheel on the Columbia was erected at Celilo bya white named Taffe in 1883. U.S. v Brookfield Fisheries, August 23,1938, (24 F Supp. 712), letter from Philip Olney, Secretary of the Tribal Council.

218 In 1911, 1916, 1919, 1941 and 1952. See Appendix No. 5

219 Browning,"Commissioner's Report 1896" p. 99.

fenced up the fishery, and the Indians are now wild with rage, claiming they have no place to fish."[220] The District Attorney filed an appeal on behalf of the Indians.[221]

In the meantime, a case of similar content arose on the coast. William H. Brinker, the District Attorney for Washington, filed a suit on behalf of the Lummi Indians in the United States v. Alaska Packers Association, et. al claiming that the Association's fishtraps interfered with Indians' rights. On March 13,1897, Judge Hanford of the U.S. District Court found that the charges were not sustained. On appeal it was argued that the treaty provision must grant the Indians privileges not granted other citizens of the territory with whom they were to "fish in common," otherwise the treated granted them nothing. The provision was:"...intended to secure to them in all events the right to fish at their usual and accustomed fishing places. Otherwise the provisions of the treaty would be meaningless, add the consideration stated therein for the cession of their claim and the right to the country then occupied by them would be no consideration at all."[222]

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220 Irwin,"Agent's Report, Ft. Simcoe, Wash.,1896," p.319.

221 Browning,"Commissioner's Report, 1894," p.23

222 ———,"Commissioner's Report, 1896" p. 99.
Jones,"Commissioner's Report,1897," pp. 93-94.

The appeal went through the Department of Justice for one yenr, and in 1899 reached the Supreme Court.[222] The Department of the Interior wanted a favorable test case as the Winans case was pending, but the attorney General advised that in the Alaska Packers case the particular facts did not indicate a clear-cut interferxrence with fish rights,and advised that the case be withdrawn withstipulation. The stipulation was drawn up by the counsel for both parties in such a way that: "...as far as it was possible to do so such rights as the Indians may have were not waived by the dismissal of the case."[224]

The way was now cleared forthe Winans Brothers case to be the test case of Indian treaty fishing rights, and in 1903 the Department of Justice informed the Bureau of Indian Affairs that it had brought the case before the Supreme Court.[225] On May 15,1905, in the United States v Lineas Winans and Audubon Winans, the Supreme Court rendered a decision favorable to the Yakimas (198 U.S. 381). The Lower Court said: "The Indians acquired no rights but what an inhabitant of the Territory or State would have. Indeed, acquired no rights but such as they

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223 Jones,"Commissioner's Report,1898," p.105

224 Jones,"Commissioner's Report, 1899,"p. 140.

225 Jones, "Commissioner's Report, 1903,"p.111.

would have without the treaty."[226] The Supreme Court answered:

> This certainly is an important outcome to negotiations and a convention which seemed to promise more and give the word of the nation for more. And we have said we will construe a treaty with the Indians as "that unlettered people understand it, and "as justice and reason demand; in all cases where power is exerted by the strong "over those to whom they owe care" and protection" and counterpoise the inequality by the superior justice which looks only to substance of the right without regard to technical rules."(119 U.S.1) (175 U.S.1)...
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> The right to resort to the fishing places in controversy was part of the larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment and which were not much less necessary to the existence of the Indians than the atmosphere they breathe.
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> New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended,not a taking away. In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from the--a reservation of those not granted..as a mere right, it was not exclusive to the Indians. Citizens might share it, but the Indians were secured in its exercise...In other words, the Indians were given a right to the land; the right of crossing it to a river; the right to occupy it to the extent and for the purpose mentioned. No other conclusion could give effect to the treaty. And the right was intended to be continuing against the United States and its grantees,as well as against the state and its grantees... [227]

Agent Lynch distributed copies of the decision to all

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[226] Leupp,"Commissioner's Report, 1905," p. 150.

[227] Ibid., pp. 150-51. Emphasis supplied by the author. [underlines not included in the typescript, beginning in last graph the treaty was not etc. for two more lines.]

interested parties, and marked Indian fishing sites by driving iron stakes into the rocks. However , he said the decree which the District Court had issued on January 12, 1906, implementing the Supreme Court decision, would be hard to enforce because the fishing grounds were distant from the agency, and:"...the Indians are timid and are not inclined to assert their rights. They greatly fear the courts and the threats of the white people who like to have a monopoly and exclude the Indians altogether if they could."[228] The Yakimas had learned to expect no help from local law enforcement officers, and the local courts with which they had direct experience usually ruled against Indians. They did not yet understand the power of the Supreme Court, or the meaning of this decision rendered thousands of miles away.

Following the clear language of the Supreme Court in the Winans case, there have been a succession of minor cases involving individuals who denied Indian rights. In 1911 , in the case of Seufert v Olney (193 F .200) the Circuit Court limited the rights won in the Winans case to "the usual and accustomed places." The location of places therefore became a court issue, and in 1941 the government surveyed and reported, withlegal descriptions, maps and photographs, the "usual and accustomed" (U and A.")

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228 Lynch,"Agent's Report, Ft. Simcoe, Wash. 1906," p.387.

sites of the various tribes.[229]

In U.S. ex rel. Williams v. Seufert Bros. (233 F. 539) decided in the District Court for Oregon in 1916, it was held that Yakimas could fish outside of the territory which they had ceded (i.e. on the Oregon side of the River) because they had "U. and A." fishing sites there. This case was taken to the Supreme Court, as Seufert Bros. Co. v U.S. Trustee et al (39 S. ct. 203), where the Yakima treaty was again upheld in 1919.[230]

Thereafter, cases involving individuals dealt mostly with the details of determining where sites were. The case of U.S. v Brookfield Fisheries (24 F. Supp. 712) in 1938 reaffirmed the right of ingress and egress. The District Court of Oregon ruled that:"...a fishery in gross was attached to all real property in the area and was reserved by the United States' grants of such land as if written therein." In 1941 a Federal Court action was filed against Seufert Bros. and the acting Master Fish Warden for Oregon M.T. Hoy, charging them with "conversion to their own use" of fish taken from Indians at Celilo under a misuse of a state game law. Necessary concessions were made by Seufert Bros. and the case was dropped.[231]

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229 Collier, "Commissioner's Report, 1941," p. 408

230 Sells, "Commissioner's Report, 1919," p.64.

231 The Oregon Journal, July 23, 1941.

By the end of the Second World War the attitude of the Yakimas towards their fishing rights was more aggressive than that described by Lynch in 1906. On August 26,1946, a white man named Earnest Crammer, who had a fishing site near the Indians' at Wishram, was thought to be catching fish after the beginning of a two week closed season imposed by the states of Washington and Oregon. Eight or nine Wishrams attacked him, and tore down his platform.[232] In April,1947 the Circuit Court at The Dalles ruled that Al Cowdy, one of the Indians was not guilty of malicious destruction of property.[233] Later in the month suit was brought against Cramer for having a fishing station there at all, as it made it impossible for the Indians to use one of their sites.[234] In September Cramer claimed that he had first occupied the site in 1935,[235] and that Indians had not used it for at least eight years before that. On April 8,1948, in U.S. v. Earnest F. Cramer and E.R. Cramer[236] the Court held that he was interfering with the rights of the Indians because the treaty granted a right

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232 The Oregon Journal, August 27,1946.

233 The Oregon Journal, April 25,1947.

234 The Oregon Journal, April 16,1947.

235 The Oregon Journal, September 4,5,30,1947.

236 U.S. Court House, Portland No. Civil 3557, call no. J.R. 25975, Hearings on January 2,1948.

which did not lapse with disuse.[237]

On April 29,1949, Indians attempted to use a site which belonged to James Marsh, on Wasco Island. The feelings of white fishermen in The Dalles area were still outraged over the manhandling of Cramer and the subsequent Indian legal victory, so the Regional Director of Indian Affairs in Portland advised that the Yakimas not press suit against Marsh.[238] However, the Yakimas now felt that the law was on their side. On June 15,1950, suit was filed against Marsh on the basis of the Cramer decision that disuse did not amount to abandonment. The Bureau then took up the case,[239] which lasted until November 26,1951, when the government asked Judge Lee to "dismiss the case without prejudice," as the issues had become academic. The Corps of Army Engineers started to lay the foundation for one end of The Dalles Dam on Wasco Island.[240]

On September 21 ,1950, Circuir Court Judge Green ruled in favor of the defendant, a Yakima Indian, in

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237 Ibid,"Conclusions of Law," see also Zimmerman, William Jr., "Acting Commissioner s Report 1948" in The Annual Report of the Secretary of the Interior,1948, p. 391

238 U.S. Court House,Portland, No. Civil 5660, call No. J.R. 27848

239 Meyer,"Commissioner's Report, 1950," p.364. The Oregon Journal,May 17 and June 16, 1950.

240 U.S. Court House, Portland No. Civil 5660,call no.J.R. 27848.

Seufert Bros. Co. v Ray Hoptowit.[241] Seufert Brothers had contended that Hoptowit, a commercial fish buyer, did not have the right to purchase competitively on their property just because he was an Indian. They claimed that the treaty did not convey any commercial rights. Judge Green held that "the treaty should be broadly interpreted."[242] The Seuferts appealed the decision to the Supreme Court of the State of Oregon, where the Attorney General entered the case on the Seuferts' side as a friend of the court. "If the Yakimas are permitted to engage in commercial fish transactions," it was argued, "Oregon's control and regulation of the commerdial fish industry will be impaired..."[243]

In November the State Supreme Court ruled that Hoptowit, as a Yakima Indian, had a right to fish at any place provided under the 1856 treaty, but he did not have the right, as an individual fish buyer, to trespass on private property.[244] Hoptowits' lawyer appealed to the Supreme Court, which on April 26, 1952, denied a writ of certiorari and thus upheld the decision of the Oregon

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241 The Oregon Journal, September 21, 1950.

242 Ibid.

243 The Oregon Journal, August 5, 1951

244 The Oregon Journal, January 17, 1952.

Court.[245] This defeat is not considered a permanent setback to the Indians' position. It is contended that trading was one of the traditional accompaniments of fishing and just as vital to the livelihood of the Indians who fished, since they could not live on fish alone, and it is anticipated that a case involving the same principle under more favorable circumstances[246] will be pressed on the Indians' behalf.

Thus the Yakimas have seen their treaty rights become a defense of their traditional activity through the development of a legal interpretation on a series of court decisions. Rather than fearing the law, as they once did, they have come to aggressively demand their rights. This attitude is not solely the result of favorable decisions rendered in cases against individuals. A similar, though slower, development has taken place in their struggle against state regulations.

The first case involving Indian rights and state interests was a Supreme Court decision in 1896 in the case of Ward v Racehorse (16 S.Ct. 1076). Here a hunting right clause similar to the third clause of the Yakima treaty was

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245 The Oregon Journal, January 26, 1952

246 The author's record of a statement by Mr. Cohen solicitor for the Bureau of Indian Affairs, Northwest District.

construed favorably to Wyoming Indians.

However, three cases following brought adverse decisions. The first of these in the United States Supreme Court was rendered by Justice Hughes in 1916 in The People of New York ex rel. Kennedy v Baker (36 S Ct. 705);

> It is not to be doubted that the power to preserve fish and game within its borders is inherent in the sovereignty of the state... This was clearly recognized in the United States v. Winans 198 U.S. 371,384 , where the court in sustaining the fishing rights of the Indians on the Columbia River , under the provisions of the treaty between the United States and the Yakima Indians ratified in 1859, said (referring to the authority of the state of Washington);'nor does it'(that is, the right of 'taking fish at all usual and accustomed places') 'restrain the state unreasonably, if at all, in the regulation of the right. It only fixes in the land such easements as enable the right to be exercised.' ...In other words the only right reserved to the Indian was that of hunting and fishing in common with other citizens of the state, and subject to the same provisions, limitations, and regulations as are imposed on whites by the laws of the state. 247

At the same time that the United States Supreme Court was reaching this decision, the Washington State Supreme Court reached a similar one in The State of Washington v. Alex Towessnute (154 Pac. 805). It held by a five to two decision that theintent of the treaty provision was not to: "...give the Indian an advantage but to save him from a disadvantage and to permit the States Laws to

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247 Quoted in (115 Wash. 528-531,533) and Sells, "Commissioner's Report, 1916." p. 64.

operate on both races alike in respect to the right to fish outside the reservation."[248] Following the intent of these two decisions , and citing them, the same state court in 1921 ruled, four to three, that an Indian could not fish closer to a d m than s ate laws permitted. In the State v. George Meminock et al (115 Wash. 528) state game laws were upheld as superior to the treaty. How ver, Justice Mackintosh, dissenting said:

> No argument based upon the theory that the state has a right, in exercising the protection of its game and fish, to violate a solemn treaty made with Indian tribes, can rec ive the sanction of my conscience or my reason. I am unalterably of the opinion that the decision of this court in the Towessnute case is i correct, and that the majority opinion in the instant case, following that decision, is wrong.
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> I have no patience with the violation of plain treaty provisions based on fact upon the strength of the violator and the weakness of the violated, but supported in theory by ingenious reasons and excuses. Such conduct is more fittingly engaged in by the Hun than by the civilized. [249]

The next wase was a victory for the Indians, although not a major one. In 1925 a District Court in Washington rule d, in Mason v. Sams (5 F 2d 255) that Indians have exclusive rights to fish within their r eservation. A more substantial step in the same direction was made in the Idaho

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[248] Sells, "Commissioner's Report, 1916," pp. 65-66.

[249] (115 Wash 528,-534).

District Court in 1941 , U.S. v Cutler (37 F Supp. 724). It was held, in effect, that Indians on their reservation could kill birds at any time, regardless of state game laws setting up closed seasons. In the same year, in the Makah Indian Tribe v McCauley (39 F. Supp. 75) a Washington District Court stated that Indians could fish at any time, within their reservation. The court held that the treaty provision:"... merely reserved and preserved inviolate to the Indians the fishing rights whhh from time immemorial they had enjoyed, and granted nothing to them."[250]

The way was now prepared for the Supreme Court decision in 1942 in the case of the State of Washington v Sampson Tulee (62 S. Ct. 862) which was to stand in the same relation to the conflict between Yakima and State Interests as U.S. v Winans did with regards to individualinterests. On May 6, 1939, a deputy sheriff of Klickitat County arrested Sampson Tulee for catching fish i a:"...dip net bag , and selling the same commercially, without having first obtained a license to do so, as required by Section 5703 Remington's Revised Statues of the State of Washington."[251] Tulee was arraigned on May 16,1939, and

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250 Quoted in (33-A F.D. 349)

251 The State of Washington, appellant and respondent, v Sampson Tulee, defendant and appellant. Brief of Appellant."p. 2

lost his case before the Superior Court of Klickitat County.[252] On an appeal to the U.S. Circuit Court of Appeals for the Ninth District, in San Francisco, on February 22, 1940, three Yakima Chiefs appared in full plains-Indian attire to reinforce their claims. There the state contended that it must enforce its laws to protect an annual salmon dndus try worth ten million dollars, as: "...many of the Indian tribes now make a business of fishing commercially."[253] On April 3, 1940, the Circuit Court of Appeals dismissed a petition for Habeaus Corpus, which was then appealed to the Supreme Court.[254] There the government argued on behalf of the Yakima as follows:

> ...the fact that the United States has been spoken of as the dominant party and the Indians as the inferior dependant party to treaties of this nature in no way impairs or limits the power or force of the agreement reached and expressed in writing in the treaty. Until Congress acts in modification of abrogation the treaty stands. There is a formal definite procedure insisted upon by the courts, for the United States or encoracing civilization generally to assert its position of dominance by abrogating or changing an Indian treaty, and that is by clear and expres Act of Congress, or by implication from an Act of Congress in cases where the treaty provision and the Act cannot in any reasonable view stand together...
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> We respectfully submit that the Yakima

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252 Ibid, title page.

253 The Oregon Journal, February 22, 1940

254 The Oregon Journal, April 3, 1940.

tribe of Indians had a vested right to take salmon at the usual and accustomed places in the Columbia River before the Yakima treaty of June 9,1855, and that this right existed at the time of the treaty, and after the treaty, and is still possessed by the Yakima Indians subject to regulation and control only by the Federal Government, and that Congress had never impaired this right in any manner. For that and other foreg ing reasons it is submitted that the judgment of the Trial Court should be reversed and...the appellant released and discharged from custody. 255

On March30,1942, the Supreme Court upheld the case for the Yakimas,[256] to the satisfaction of Secretary Ickes and Commissioner Collier.[257] According to the latter:

The Supreme Court decision upholds the right of the Yakimas to fish in such areas without having to pay the state licenses. The decision however, makes it clear that the states to have a right to regulate the taking of game and fish but holds that the imposition of license fees is not indispensable to the effectiveness of a state conservative program. 258

As a consequence of this decision and a growing concern for diminishing fish runs both the states and the Indians cooperated. There is a noticeable difference between

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255 "The State of Washington, appellant and respondent, v. Sampson Tulee, defendant and appellant. Brief of Appellant." PP. 26-27, 69. Emphasis su plied by author.

256 2Collier,"Commissioner's Report, 1942," in The Annual Report of the secretary of the Interior,1942,p. 249. The Oregon Journal , March 30,1942.

257 Collier, "Com issioner's Report, 1942," p. 249 The Oregon Journal, April 8,1942

258 Collier,"Commissioner's Report,1942," p. 249.

state game rulings before.[259] and immediately after the decision.[260] More liberal state game policies[261] were matched by Yakima cooperation in fish conservation programs.[262] After several meetings with state and Federal officials, the Yakima Fish Committee expressed its desire for regulation with teeth in them to protect fish and fishing rights.[263] "We are willing under tribal laws," they stated, "to enforce proper conservation practices if the states will offer no further interference."[264]

The jurisdiction of state game laws was further impaired in the 1951 decision of the Court of Appeal at San Francisco in the Makah Indian Tribe v Robert J. Schoettler, Director of the Department of Fisheries, State of Washington(192 Fed. 2nd 224) where it was held that the

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259 The Oregon Journal, May 3,1942. The first Washington State restrictions on net ishing were enacted in 1897.(Agent's Report, Tulalip, Wash. 1897," p.297.)

260 The Oregon Journal, May 3,1942

261 The Oregon Journal, November 8,1949.
Pacific Marine Fisheries Commission, Bulletin I, 1948,p. 21.
Lundy,"Fisheries Steering Committee,1955," p. 17:"...the Columbia River is now closed to commercial fishing in January, March, April, late May until late June, the last half of July, late August and early September, and December."

262 The Oregon Journal, August 27,1946, and February 16,1950.

263 The Oregon Journal, December 31,1947.

264 The Oregon Journal, February 15,1947.

state:"...has not sustained its burden of proof that the instant regulations preventing the Makah from thetaking of fish in the Hoko are necessary for the conservation of fish in the fall run of salmon in that river."

Thus, at present, the Yakimas are not subject to any fishing restrictions on the reservation, save those drawn up by the Tribal Council. Off the reservation at their "U and A" fishing sites they are subject only to such restrictions as the game com issions can prove are neces ary for the preservation of the resource.

In the area where their interests conflicted with those of the state, the Yakimas' treaty has become not only a defense, but a positive advantage, as it has in cases of conflict with individuals's interests. In the history of these cases, it is not surprising to find the state courts, for local reasons, ruling against the Indians and the federalcourts, on constitutional grounds, ruling for them, as Federal authority was involved in the treaty. There has also been a certain moral position behind this. As Commissioner Collier said, in speaking of Oliver Wendell Holmes:"...but in later years the Supreme Court found ways , and more than once, tomake itself a bulwark of Indian rights. For a long time the Supreme Court has received doubts in favor of the Indians."[265]

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[265] Collier, Editorial on the Death of Oliver Wendell Holmes, in Hearings 3, 773, Yakima Claims, February 11,1935,p. 695.

The Yakimas came to have an almost arrogant assurance that their treaty rights would be upheld, in which they were supported by a long development of legal opinion. There was one condition to all their victories, though, and that was that the federal government had always been on their side. They were aware that by the decision in U.S. v Kagama, 1888, an Act of Congress could overrule an Indian treaty. There was no conflict of Yakimas' treaty rights and Congressional Act until the building of Bonneville Dam flooded out some of their fishing sites on the lower river.[266]

The Yakimas:"...voted to protest the alleged violation of their hunting and fishing privileges, guaranteed under the treaty with Governor Isaac I. Stevens at Walla Walla, and to seek some compensation for the flooding of their ancient fishing grounds by construction of Bonneville Dam."[267] They were considerately treated by the government which appropriated $125,000 to buy them new fishing sites,[268] and moved bones and artifacts taken from Bradford Island before it was flooded to be carefully reinterred on Memaloose Island,[269] which was recognized as Yakima

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266 The Oregon Journal, November 16,1938.

267 The Oregon Journal, August 10,1937.

268 The Oregon Journal, December 14,1943, February 15,1947.

269 The Oregon Journal Journal, April 3,1936.

property in 1926.[270] But their treaty rights were not observed. In 1947 the Yakimas opposed the creation of a Columbia Valley Authority, on the grounds that it:"... would extinguish all rights the tribe now holds under the 1855 treaty."[271]

The Yakimas were becoming more cautious in legal appeals based on their treaty, as they became aware that it was not binding on the United States Government. However, in 1948 Yakima, Nez Perce, and Umalla Indians brought suit against the government to stop the construction of McNary Dam. Federal Judge Sam Driver permitted the filing of the suit because:"This is a different situation from cases where property is flooded, for instance. These fishing rights are by their very nature irreplaceable, and the Indians cannot be fully compensated in money for these rights."[272] Government agencies connected with Columbia River Development plans were aware that if the Indians won this case, they would have rights superior to all others on the river, and might even be able to stop non-Indian commercial fishing.[273]

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270 Burke,"Commissioner's Report, 1926," p.9.

271 The Oregon Journal, February 15,1947.

272 The Oregon Journal, January 22,1948.

273 The Oregon Journal, February 28,1948.

The case was dropped. The Indians were told that their :"...fishing treaty rights were no different from anybody elses, in that they hold remarkable property. They would have no standing in courts against a United States claim of "eminent domain.[274] The government upheld Yakima treaty rights against all other parties, but it would not limitx its constitutional authority. In 1854, before the Yakima treaty was signed , Governor Stevens foresaw the difficulties which might arise as a result of the fishing-right clause.

> The subject of the right of fisheries is one upon which legislation is demanded. It never could have been the intention of Congress that the Indians should be excluded from their ancient fisheries; but,as no condition to this effect was inserted in the donation act, the question has been raised whether persons taking claims, including such fisheries, do not possess the right to monopolize them. It is therefore desirable that the question should be set at rest by law..." [275]

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[274] The author's record of a statement by Mr. Cohen, Solicitor for the Bureau of Indian Affairs, Northwest District.

[275] Stevens, Isaac Ingalls, "Report of the Superintendent, W.T. 1854" in Exec. Docs. 2d Sess., 33d Cong 54-55, p.456.

CHAPTER V

The Yakimas have enshrined their treaty. It has become the guardian and symbol of their cultural identity, and the referent of their contract with the Federal Government, which represents absolute power to them.

Their feelings about the government and the law have developed slowly, but much of what has happened to them has served to reinforce an attitude which they formed as the first white farms and towns began to occupy their habitual range. Reverand Wilbur reported that the Yakimas were at the mercy of the law and feared and respected it.

> Another, and at this agency, perhaps, equally important matter, is the extension of the United States law over the reservation. Possibly the situation here has brought this matter more forcibly to my attention than to most agents. Just off the reservation, on one side, is Yakima City, and on the other, Goldendale, and our Indians are often there for purposes of trade. When there they find themselves subject to a law different from that on the reservation: a law prompt and swift to punish, but powerless to protect them. They witness its administration, and place a far higher value on it than on the decisions of their councils, and cases have occurred where Indians, thinking themselves aggrieved by the adverse decisions of their councils, have watched their opportunity, and when their adversary happened in town, have procured a retrial of the case before the justice of the peace. It does not affect the case that the original decision was affirmed. The fact illustrates the higher value placed on the United States law, and the desire of the Indians to be judged by it. 1

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1 Wilbur, Reverand James H., quoted in Price, Hiram, "Commissioner's Report, 1882," in H. Ex. Docs. 2d sess., 47th Cong., '82-83, Interior, p. 14.

In this can be seen the beginning of the process which the Yakimas have carried to fulfillment at the present. The law of the United States has come to represent ultimate power of the Yakimas, and their efforts have correspondingly been to have the law on their side.

Because the Yakimas value their treaty so highly they have been unwilling to do anything which might weaken it. If they used the treaty against the supreme power of the government, the treaty would lose, and perhaps be abrogated or changed in the process. Therefore, even though the Yakimas feel that they are in the right in some particular case where their interests conflict with those of the whites, they will use their treaty only if they can win.

This enshrinement of the treaty means that the Yakimas will not subject it to a dangerous legal test, but it does not stop them from appealing to it on a moral basis. An ideal case in point to conclude the argument of this thesis is provided in the recent Dalles Dam settlement. The Dalles Dam is going to flood the fishing sites in the Dalles-Celilo stretch of the Columbia River, thereby destroying the best and most-used Indian fishing site. The government is building relocation fishing villages below the dam, but, aside from emotional loss, the fishery which will be covered is the best one for the native manner of fishing.[2] From its actions in providing a settlement for

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[2] The Oregon Journal, July 4, 1947.

Bonneville Dam the Indians knew that the government felt certain moral obligations to them.[3]

Therefore, when the proposed construction of the Dalles Dam was announced, the Indians appealed to their treaty rights though they did not do so through the Courts. In the summer of 1951 representatives were sent to Washington, D.C. where they appeared before the House Appropriations Committee. The Yakimas said that construction of the Dam"... would keep them from earning a living as fishermen and take away fishing rights guaranteed them in an 1855 treaty with the United States."[4] They set the value of the loss at thirty million dollars, but said much of the loss was in religious and other matters for which monetary compensation could not make amends. They succeeded in stopping the appropriation for the dam in the House, but it was pushed through the Senate.[5]

At this time there occurred an incident which provides an interesting illumination of the importance of the treaty to the Yakimas as a foundation of their rights. In the first chapter there has been mentioned the essential unity of the Wasco and Wishram people, despite their being

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3 United States Bureau of Reclamation, Columbia River Basin Water Resource Development, "Report of the Regional Director, 1947," p. 10

4 The Oregon Journal, June 7, 1951.

5 The Oregon Journal, July 11, 1951.

split by a state boundary and sent to two different agencies.[6] Both these people still spend much of their time living near each other at their fishing grounds and are on very close terms socially.

The Wasco and Warm Springs Indians made a treaty in 1855 with Joel Palmer, which contained an article identical to the third article in the Yakima treaty. In 1863 the officials of the Bureau of Indian affairs felt that the wholesale annual migration to Celilo made the Warm Springs Indians hard to control, and subjected them to corrupting influences,[7] and in 1865 an agreement was made with the Indians of the Warm Springs reservation whereby they relinquished their fishing right article and promised not to leave the reservation, in return for which the tribe received a total of $3,500 and some farm implements.[8] By 1886 the Commissioner reported that: "These Indians have incessantly protested against the ratification or observance of this treaty of 1865, and there is sufficient testimony before this office to satisfy this Department that the Government should not be too exacting in its

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6 Supra, Chapter I, p. 5, footnote 6.

7 Dale, William P, "Commissioner's Report, 1863," in Message and Docs., 1st sess. 38th Cong. '63, p. 131. See also pp. 168, 192.

8 Kappler, Laws and Treaties, Vol II pp. 908-09, "Warm Springs Relinquishment."

enforcement." In 1888 Congress appropriated, at the request of the Commissioner[10] $3,000 with which to purchase a tract of land for the Warm Springs to use for fishing.[11] However, such rights as the Warm Springs had after this were granted to them at the pleasure of the government, and were not protected by a treaty. The Warm Springs have carried on the same activities as the Yakimas, and have not been barred from any legal privileges because of this, so they felt that:"The sale was only of a small area(sic) andlong ago."[12]

Thus, in 1951, when the Dalles Dam threatened the fishing of all Indians in the area, the Warm Springs drew up a petition, and sent it to their fishing companions, the Yakimas, with a delegate saying:"LLet's all us Indians fight this dam together.' The Yakimas said,'no, you have no rights,' and tore up the petition."[13]

9 Atkins, John D.C."Commissioner's Report,1886," in H. Ex. Docs 2d sess, 49th Cong. '86-87, Interior , pp 130-131.

10 Atkins,"Commissioner's Report, 1887, " in H. Ex Docs 1st sess., 50th Cong 87-88, Interior p. 80

11 Morgan, Thomas J."Commissioner's Report 1888," in H. Ex. Docs 2d sess 50th Cong '88-89, Interior p. 334.

12 The Author's record of a statement by Mrs. Alice Florendo, a Wasco on the Warm Springs Reservation, at Warm Springs on April 10,1955. The sale was of rights, not an "area."

13 The author's record of a statement by Mr. Thomas Wolf, a Warm Springs on the Warm Springs reservation, from Simnasho, on April 10,1955.

Rebuffed by the Yakimas' adamant construction of treaty rights, the "arm Springs and also the Umatilla Indians accepted the settlement money which was offered them, amounting to about $3,750 for each Indian registered at their agencies.[14] The Yakimas still held out, hoping that they could stop the construction of the dam. On March 26, 1952, they sent telegrams to all Congressmen involved, claiming that drowning out their fishing grounds was:"...violating the treaty of 1855"[15] In this last minute appeal they said thatthere was only "token construction" at the dam site so far, and no great loss would be suffered by halting it."We believe that the people of the United States who have so gallantly defended the liberty of the smaller nations of the world will defend the Yakima Indian nation in its desire to preserve its treaty rights and customs."[16]

In May the Yakimas again asked Congress to cut off all funds for the dam, even though the "arm Springs and Umatillas had by now come to terms with the government for about four million dollars per tribe.[17] Their agreements were ratified in September,1953, by which time the

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14 The Oregon Journal, May 15,1953

15 The Oregon Journal, March 26,1952

16 Ibid

17 The Oregon Journal, April 24,and May 15,1953.

Yakimas had been offered $13,600,000 but were still holding out.[18] At the end of 1953 the Yakimas claimed that 95 per cent of the Dalles-Celilo sites belonged to them, and the other tribes had no right to sell the rights they did not own.[19] In September of 1954 the U.S. Circuit Court of Appeal for the Ninth District, in San Francisco in Tommy Thompson v U.S.(215 F 2d 744) ruled that the Tucker Act (the right of eminent domain' does not authorize suitagainst the United States for anticipated damages, but that Thompson, head of the Celilo band, would have so sue; "... when, and if , the Dalles Dam is finished."[20]

The Yakimas finally realized that they could not stop the dam, and that they would have to settle now, for the best amount they could get, before it was too late.[21] On December 11,1954, the Tribal Council at Toppenish voted 226 to 18 to accept the government offer of $15,019,640.00 ~~226xxxxx~~ damages for thex loss of their fishing sites.[22] The agree-

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18 The Oregon Journal, July 25, and September 30,1953.

19 The Oregon Journal, December 13,1953.

30 Tommy Thompson v. The United States and eight related cases, Nos. 13790-13798, September 22,1954: Tucker Act (28 USCA sec. 1346a).

~~21~~ The Oregon Journal, Sept. 22,1954

21 The author's record of a statement by Mr. Thomas Wolf, a Warm Springs on the Warm Springs reservation, from Simnasho, on April 10,1955.

22 The Oregonian, December 12,1954.
The Oregon Journal, December 12,1954.

ment was ratified on April 8,1955, when the Yakimas finally signed away the use of the fishing sites which brought them an estimated income of $700,000 annually.[23]

The Umatillas and Warm Springs received their first istallments in January and March of 1955,[24] and in May both houses of Congress appropriated $135,000 more for acquisition of new sites to replace those flooded. Unfortunately they were one dam behind, as the sites they were considering were those flooded by Bonneville.[25] On May 7,1955, the Yakima Indians received their first payment of $600,000[26] in white man's money for their way of life.

Those Yakima treaty Indians who live most of the time at the River sites , and are therefore losing more than the others, feel that the tribe did not stand up for its treaty rights, and that it was "...those half breeds..." the Indians who no longer cherish the old ways, who did not push the treaty rights as far as they would go.[27] However, I think that the reason the Yakimas finally gave in, rather than start the long and expensive litigation which they

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23 The Oregon Journal, April 7,1955.

24 The Oregon Journal, January 2, March 8,1955.

25 The Oregon Journal, March 31, May 23,1955

26 The Oregonian, May 7,1955
The Oregon Journal, May 7,1955

27 The author's record of a statement by Mrs. Susie Albert, a Yakima at Celilo, on May 21,1955.

felt they were not likely to win, was because they would rather give up their fishing sites, important as these were to them, than expose their sacred treaty to damage.

There were certain factors in Yakima culture before contact with white men which made these bands of Indians uniquely intractable, and capable of resistance. These factors led to the Yakima's (sic) being the most important element in the North-West Indian Wars of 1855-58, which marked the first phase of resistanceto acculturation. The treaties signed with the Yakimas and other tribes were the most important immediate cause of the Wars, and the objects of resistance.

Some of these factors of Yakima life led to the apparent initial success of the policy of the Yakima Indian Agency long the model agency of the Pacific Coast, in the period 1860-1893. This phase of partial acceptance of white culture was characterized by suspicion of the Government's intent to honor the Treaty(sic), and by insistence upon the strictest fulfillment of its terms.

The partial adoption of the white man's way of life caused the conflict over irrigation which was one of the most outstanding feature of the period 1883-1955. In this phase of resistance, largely to the alternatives of physical

exclusion of complete loss of identity, the Indians used their legal rights under the Treaty,as they understood them, for protection against otherwise unrestricted white encroachment.

The characteristic sympton of the failure of the Government's original and basic policy of cultural absorption in the most recent period has been controversy over fishing rights, one of the most important elements of the old way of life. In this controversy the Indians have again depended on their treaty -granted rights, but have used these more aggressively than in the past. They have been helped in this by a change in the emphasis of government Indian policy, towards aiding Indians in making their own adjustment.

Despite certain popular feeling to the contrary, the 'Yakima Nation' is not simply a group within our society distinguished chiefly by the special privileges and immunities granted them by treaty. They are a separate people among us, to whose cohesion and continued existence their treaty is of paramount importance.. It is significant that in the current issue of the destruction of their entire fishing activity by the Dalles Dam, the Yakimas were eventually willing to sacrifice this major part of their culture, rather than endanger their treaty by subjecting it to the supreme test of legal opposition to the supposed interests of the United States Government.

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Appendix I

pp 242- 247 inclusive, Treaty text

Appendix 2

A more thorough identificationthan that given on page 1 of the bands named in the treaty is desirable, if for no other reason than to show that none have been omitted from consideration/

Yakima; The Yakimas: comprised of tho two major groups on the Yakima river. These are the Pewanwapam(sic) or Kittitas above the Yakima canyon, and the Yakima proper below it, They had many recognized bands and villages. 1

Palouse:The Palouse Indians; a small group, speaking Sahaptin and living near the confluence of the Palouse River with the Snake. They did not go on the reservation. 2

Pisquose: the Pisquose were Salishan speaking bands living on the Wenatchee River, and on the Columbia near the mouth of the Wenatchee. They also did not go to the Yakimareservation, although a few later went to the Colville reservations. 3

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Curtis, North American Indian VII; pp 3-4; VIII:180.
Guie, Tribal Days, pp 6-7, 15-17.
Mooney , Ghost Dance, pp 737-39.
Ray,Native Villages PNQ 27:2 Apr. 1936 pp 143-48
Spier-Tribal Distribution pp 16-17.
Splawn, Kamiakin p. 13.

2
Erwin , Agent's Report, Ft. Simcoe, Wash 1897 p. 299.
Mooney, Ghost Dance, pp 737-38.

3
Curtis, North American Indian VII; 69.
Jones, Commissioner's Report 1903 p.110.
Lynch'Agent's Report, Ft. Simcoe, Wash 1898, p.305.
Mooney, Ghost Dance p. 745.
Spier, Tribal Distribution, p. 17.
Splawn, Kamiakin p. 13.

Wenatsahapam: The Wenatchi Indians; another name for the Pisquoxse.[4]

Klickitat: The Klickitat; the westernmost Sahaptin speaking group living mainly in the area south of Mt. Adams, but often crossing the Cascades to range far to the north, and south down the Willamette Valley on hunting, trading and rading expeditions. 5

KLINQUIT: This is one of the three groups named in the treaty whom no one has successfully identified. They were probably small, unimportant bands of Sahaptin speaking Indians residing along the Columbia who were dignified with separate recognition because they were not part of any larger grouping. Several identified examples of this sort of inclusion support this contention. 6

KOW WAS SAY ES: One of the small bands living on the Columbia; these being a band of the skin or Wyampam, living on the north bank of the River between points opposite Umatilla and the mouth of the Deschutes river.

LIAY WAS: Not identified.

SKIN PAH- The Skin or Wayampam; Sahaptin speaking Indians living on the north bank of the Columbia betw en Umatilla and the Dalles. They were very scattered;

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4 Curtis, North American Indian VII: 69.
Mooney, Ghost Dance pp 736, 38.
Spier, Tribal Distribution, p.17.

5 Curtis, North American Indian VII: pp. 6,37.
Jacobs, Northern Sahaptin Grammar p. 96.
Mooney, Ghost Dance pp 738-39.
Ray Native Villages PNQ 27:2 Apr. 1936 pp. 123 148-50.
Spier, Tribal Distribution, pp 25-26.

6 Mooney, Ghost Dance p 738.

7 Mooney, Ghost Dance p. 740.
Spier, Tribal Distribution p. 19.

their main village was the present Celilo.[8]

WISH-HAM:The Wishram ; the only Chinookan speaking people living in the Columbia Basin, they lived at and near the Dalles. They are important as the greatest traders of the area. The name Wishram is probably synonymous with Wasco, the name of the identical group living opposite them on the Oregon side. [9]

SKYIKS: Not identified.

OCHECHOTES: Uchichol; a band of the Skin or Wayampam.[10]

KAMILTPAH: A group living on the Columbia north of Priest Rapids, who have joined the Kittitas since the treaty signing. [11]

SEAPCAT: The Siapkat;another band living north of Priest Rapids, near the Kamiltpah. [12]

The treaty makers overlooked a separate group of the Sahaptin speakers which s still living at Priest Rapids. These are the "anapam, the most "uncivilized" Indians in the Northwest. This is where Smohalla lived.[13] "lready mentioned at the Wayampam, Skin or Uchichol. The chief

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8
Mooney, Ghost Dance p. 740.

9
Curtis, North American Indian VIII: pp. 172, 180-82
Mooney, Ghost Dance p. 740.
Spier, Tribal Distribution p. 20.
Spier, and Sapir, "Wishram Ethnography" U.W. Anthro 1930 III: pp. 164-67.

10
Mooney, Ghost Dance p. 740.

11
Mooney, Ghost Dance pp. 736-37.

12
Mooney, Ghost Dance pp. 736-37.

13
Mooney, Ghost Dance p. 735.
Ray, Native Villages, PNQ 27:2 Apr. 1936 p. 151.
Spier, Tribal Distribution p. 17.

authorities agree as tothe village locations and names, but differ as to major designation.[14] This does not appear to make much difference,and is probably caused by the vagaries of Indian habitation and locative designation dependent upon movement to season villages.

A village called Ouaiompom is situated on the river's north bank where the waterfall(Celilo)begins. The Indians have a special name for each camp that is composed of more than one hut, and they are very fond of telling it to strangers.[15]

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14 Mooney, Ghost Dance pp. 741-43.
Ray, Native Villages PNQ 27:2 Apr. 1936 p. 150.
Spier, Tribal Distribution ;p. 19.

15 Hunt, W.P., in Rollins, Discovery of th Oregon Trail p. 305

[P. 252]

Boundary of Area ceded in treaty map.. hShowing tribal boundaries after---
Ray--Native Villages
Mooney, Ghost Dance
Spier, Tribal Distribution

[P. 253]
Yakima Reservation map. Showing: General area of irrigation
Usualand accustomed fishing grounds still most used [Includes fish symbod for grounds at location of Priest Rapids[

Appendix 3

Disease and Population

The Indians suffered very heavily from the introduction of diseases to which they had little or no resistance. The smallpox epidemic of 1823 had particularly fatal effects on the Chinooks from the Cascades downriver, as did the influenza epidemic of 1830 and other diseases introduced by the crews of the trading ships(particularly vemereal diseases and measles).[1] The Indianx mortality rate was increased by the standard treatment , a bath in an icy cold river immediately after a long sweat bath. Many other Indians died as a result of heavy liquor consumption, especially by drowning."In drunken debauches, parties would attempt to aross the river above the falls, only to be drawn into the angry rapids and drowned."[2] The Yakimas, relatively isolated in the interior, escaped many of the worst effects of early contact with the whites. Even so, the smallpox spread to them, as noted by the army survey party of 1953.

The Yakimas have, like the Klikatats, during the past year suffered severely from the smallpox...From the other and no less sure destroyer of the coast tribes, the venereal,

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1 DuBois, Cora, The Feather Cult of the Middle Columbia p. 11

2 Curtis, North American Indian VIII:86.

The Yakamas, and generally the Indians east of the mountains, are yet exempt. Spirituous liquors have never been introduced into their country, at least beyond the neighborhood of the Dalles. [3]

The survey party, measuring mostly in terms of clothing, felt that the Klickitat were the most influenced by white culture [4] and the Kittitas least. [5] The survey party thought there had been enough contact with whites for the Yakima to have suffered a considerable decline in population, although not as disastrous as the depopulation of the coastal villages. The estimates of tribal population made during the first half of the nineteenth century are so conflicting [6] that the existence of this decline in population is problematic. The "vestiges of former villages, now vacant" seen along "the whole course of the Yakima" by the survey party [7] are more likely evidences of the Indian custom of deserting old campsites and starting new ones, than of a deep population much diminished by the whiteman's diseases.

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[3] Stevens, "Supt's Report, W.T. 1854" p. 434.

[4] Stevens, "Narrative and Final Report Vol XII, part 1, p.405.

[5] Stevens, "Supt's Report W.T. 1854" pp. 460-62 Stevens quotes varying population estimates.

[7] Stevens, "Supt's Report W.T. 1854," p.440.

 (Not exact copy..too crowded)

Table showing Changes in Governmental Administration Related to The Yakima Agency.

Date	Presidential Adm.	Secty. of Interior	Comm. Ind. Affairs	Agent	Agency
Nov. 1854	Pierce	Robert McClelland	George W. Manypenny	W.T. I.I.Stevens O.T. Joel Palmer	olon The
Nov. 1855	"	"	W.T.Cain(Acting) and Stevens O.T. Palmer		
Nov. 1856			W.T. Stevens O.T. Palmer	Thompson	The Dalles O.T.
Nov. 1857	Buchanan	J.Thompson	J.W.Denver	C and W.T. Nesmith J.S. Denison A.H.Roble Townsend," ite	The D. W.T. Salmon W.T
No.6 1858	Buchanan	J.Thompson	Charles E. Mix (Acting)		Lansdale "
Nov. 1859		A.B.Greenwood	E.R. Geary		Fort Simcoe and hereafter until 1927
Aug. 1860		"	"		
Aug 1861	Lincoln	Caleb B.Smith	W.T. W.W.Miller and hereafter only W.T.		W.B. Cosnell (WM P. Dole Comm.)
Jan. 2 1862	Lincoln	"	W.P. Dole	B.F. Kendall	A.A. Bancroft
Oct. 31 1863	Lincoln	J.P. Usher	"	C.H. Hale	"
Aug. 8 1864	A	"	Dole	"	"
Oct. 31 1865	Johnson	"	" D.N.Cooley	Idaho and Mont. Terrys. made Separate W.H.Waterman	Rev. James H.Wilbur
Oct.22 1866	"	O.H.Browning	"	"	"
1867	"	"	Charles E.Mix Acting	T.J.McKenny	"
Nov. 23 1868	"	"	Nathaniel G. Taylor	"	" "
Dec. 23 1869	Grant	J.D.Cox	Ely S Parker	"	" "
Oct 31 1870	"	"	Col Samuel Ross		Lt. J.M.Smith
Oct 31 1871	"	C.Delano	H.R.Clum (Acting	McKenny	Wilbur
Nov 1 1872	"	"	Francis A Walker	R.H. Milroy	"
Nov.1 1873	Grand 2d	"	E.F. Smith	"	"

Nov. 1 1874	"	"	"	Superi tendency Abolished)
Nov. 1 1875	"	"	Z. Chandler	"
Oct. 30 1876	"	"	J.Q. Smith	"
Nov. 1 1877	Hayes	Carl Schurz	E.A. Hayt	"
Nov. 1 1878	"	"	"	"
Nov. 1 1879	"	"	"	"

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Nov 1 1880	Hayes	Carl Schurz	E.M. Marble Acting	"
Nov. 1 1881	Arthur	Sam J. Kirkwood	Hiram Price	"
Oct 10 1882	"	Henry M. Teller	"	"
Oct. 10, 1883	"	"	"	R.H. Milroy
Oct. 15, 1884	"	(Act) F.T. Freylinghuysen	"	"
Oct. 5 1885	Cleveland	L.Q.C. Lamar	John D.C. Atkins	"
Sept. 28 1886	"	"	"	Charles H. Dickson and two C
Sept. 21 1887	"	"	"	Thomas Priestly
Dec. 3 1888	"	Wm. F. Vilas	John H. Oberly	Walter ". Stabler (Started Oct. '88)
Oct 1 1889	Harrison	John W. Noble	Thomas J. Morgan	"
Sept. 8 1890	"	"	"	"
Oct 1 1891	"	"	"	"
Aug. 27 1892	"	"	"	"
Sept. 16 1893	Cleveland 2d	Hoke Smith	David M. Browning	"
Sept. 14 1894	"	"	"	Lewis T. Erwin
Sept. 14 1895	"	"	"	"
1896	"	David R. Francis	"	"
Sept 1 S				

Sept. 26 1896	"	"	"	Jay Lynch	
Sept. 30 1899	"	"	Ethan A Hitchcock	"	
Oct 1 1900	"	"	"	"	
Oct 1 1900	"	"	"	"	
Oct 15 1901	Roosevelt	"	"	"	
Oct 16 1902	"	"	"	(Hereafter Superintendent)	
Oct. 15 1903	"	"	"	"	
Oct 15 1903	"	"	"	"	
Oct 17 1904	"	"	"	"	
Oct. 17 1904	"	"	"	"	
Sept. 30 1905	Roosevelt 2d	"	Francis Leupp	"	
Sept. 30 1906	"	"	"	"	"
Sept. 30 1907	"	"	James R. Garfield	"	"
Sept. 30 1908	"	"	"	"	"
Sept. 15 1909	Taft	Richard A. Ballinger	Robert G. Valentine	Sam Young	
1910	"	"	"	"	
Oct. 2 1911	"	Walter Lourie Fisher	"	"	

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Presidential Administration, Secretary of the Interior, Commissioner of Indian Affairs [In that order]
Sept 12,1913, Taft, Walter L. Fisher, Robert G. Valentine
Oct 8,1913, Wilson, Franklin Knight Lane, Cato Sells.
Sept 2,1914, Wilson, Lane, Sells.
Sept. 1,1914, Wilson, Lane, Sells
Oct. 2,1916, Wilson, Lane, Sells.
Oct 15,1917, Wilson 2d; Lane, Sells
Sept. 30,1918, Wilson Lane, Sells
Sept. 30,1919, Wilson, Lane Sells.
Sept. 30,1920, Wilson, John B. Payne, Sells.

Hereafter all reports for fiscal year ending June 30
1921 Harding, Albert B. Fall, Charles H. Burke
1922 Harding, Fall, Burke.
1923, Harding, Robert Work, Burke.
1924, Coolidge, Work, Burke
1925, Coolidge second, Work, Burke
1926, Coolidge, Work, Burke
1927, Coolidge, Work, Burke
1928, Coolidge, Roy D. West, Burke
1929, Hoover, Wilbur, Charles J. Rhoades.
1930, Hoover, Wilbur, Rhoades
1931, Hoover, Wilbur Rhoades
1932, Hoover, Wilbur, Rhoades
1932, Hoover, Wilbur, Rhoades
1933-Roosevelt, Harold L. Ickes , John Collier
1934, Roosevelt, Ickes, Collier
1935 Roosevelt, Ickes, Collier
1936, Roosevelt, Ickes, Collier
1937, Roosevlt 2d, Ickes, Collier.
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Roosevelt 2d, Ickes, Collier
1930, Roosevelt, Ickes, Collier
1940, Roosevelt, Ickes, Collier
1941, Roosevelt 3d, Ickes, Collier
1942, Roosevelt, Ickes, Collier
1943 Roosevelt, Ickes , Collier
1944, Roosevelt, Ickes, Collier
1945, Truman, Ickes, WilliamA. Brophy
1946, Truman, Julius A. Krug, Brophy
1947, Truman, Krug, Brophy
1948, Truman, Krug, Zimmerman.
1949, Truman 2d, Oscar L. Chapman, John R. Nichols.
1950, Truman, Chapman, Dillon S. Meyer
1951, Truman, Chapman, Meyer.
1952, Truman, Chapman, Meyer.
1953, Eisenhower, Douglas McKay, W. Barton Greenwood
1954, Eisenhower, McKay, Glen L. Emmons.

Appendix 5
A Table showing Court Decisions affecting Takima Treaty Fishing Rights

Legend

Cases setting important precedents, CAPITOLIZED. Others small.

Cases decided favorably for the Indians, underlined. Others not.

Cases not directly involving the Yakimatreaty (enclosed)

USSC-United States Supreme Court.

Wash S.C. Washington State Supreme Court

CAA Circuit Court of Appeals in San Francisco for the 9th District

CC-Circuit Court

DC -District Court

There are also abbreviations for the state in which cases first arose.

Individuals | States | Federal Govt.

U.S. vTaylor 1886 USSC-Wash

(WARD v. RACEHORSE) 1896 USSC -Wyo.

(U.S. v. Alaska Packers Ass'N)
1899 DC-Wash
U.S. v WINANS 1905 USSC Wash
Seufert v Olney 1911 CC-Wash
Williams v. Seufert Bros
1916 DC -Ore

State v. Towessnute 1916 Wash. SC
(KENNEDY V BECKER) 1916 USSC-N.Y.

SEUFERT BROS v. U.S.
1919 USSC Ore.

STATE v. MEMINOCK 1921 Wash. S.C.

(Mason v Sams) 1925 DC Wash.

U.S. v Brookfield Fisheries
1938 DC Ore.

Yoke v Seufert Bros. 1941
1941 DC -Ore.

(U.S. v Cutler) 1941 DC -Id.

(Makah Indians v McCauley)
1941 DC-Wash.

U.S. v Cramer 1948 DC-Ore

STATE V TULEE 1942 USSC Wash

U.S. v Marsh 1951 D.C.Ore

Seufert Bros v Hoptowit
1952 USSC-Ore

(MAKAH INDIANS V SCHOETTLER)
1951 CCA Wash.

UMATILLAS v U.S.
1948 CC-Wash

Tommy Thompson v
U.S.
1954 CCA-Wash.