

DUPLICATE

From The Reader's Digest

*Aided by an army of lawyers,
the tribes are collecting
fantastic sums for land we've
already paid for once*

Must We Buy America from the Indians All Over Again?

Condensed from The Freeman

Blake Clark

THE INDIANS are on the war-path—not for scalps but for money; in the place of tomahawks they are using law books. The white man took their lands without just compensation, they say. Now they intend to get paid for it. Indians are laying legal claim to reimbursement for 1,320,000,000 of the 1,900,000,000 acres of land that constitute the United States. Though many of these claims overlap, with two or more groups asking money for the same acres, the net is staggering.

If you live in west Tennessee or Arkansas, chances are that the Chickasaws or the Quapaws have claimed money for the land you occupy; if in Nebraska or Minnesota, the claimants are the Oto-Missouris or the Chippewas. In the West, Midwest and South, various tribes have their bows drawn on title to entire states.

Why this avalanche of claims? Almost every year since 1881, when the Choctaws were allowed to bring a land claim suit against the government, some Indian tribe has per-

The Freeman (March, '58), © 1958 by the Irvington Press, Inc.,
Irvington-on-Hudson, N. Y.

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sued Congress to pass a special bill permitting it also to sue. The political pressure behind these requests was tremendous, particularly on Senators from Western states. In 1946, hoping to end a perennial nuisance, Congress set up a three-man Indian Claims Commission to get the facts and see that justice was done. President Truman named as chief commissioner Edgar E. Witt, former lieutenant governor of Texas, and as his associates, Louis J. O'Marr, former attorney general of Wyoming, and William M. Holt, a prominent Nebraska lawyer, all of whom are still serving.

The Indians had five years, from August 13, 1946, to August 13, 1951, to file claims. Accepting this wide-open invitation, various groups who never before had made a claim of any kind discovered that they, too, were owed something by the government. Some tribes, aided and abetted by their lawyers, made fantastic representations. The Sioux asked 15 million dollars recompense for the hides of all buffalo, elk and deer slain on their land by the white man in the years between 1865 and 1880. The Quapaws, who never exceeded 600 in number, soberly demanded \$54,397,110.34, plus interest since 1818, for 43 million acres. The Miamis laid claim to seven million acres in Indiana, with the city of Indianapolis as its hub. The Scaticook or Kent Indians have filed a petition stating that their forebears did not sell Manhattan Island for \$24; they leased it for 99 years—and

the lease has expired! The Ottawas claim money for Chicago, the Creeks for Atlanta and Birmingham, the Arapahos for Denver and the Apaches for Phoenix.

By 1951 the fewer than 500,000 Indians of the United States had demanded settlement for three fourths of the continent. They filed 852 claims which may well total more than ten billion dollars—an average of above \$25,000 for every Indian man, woman, child and papoose!

Ridiculous, you think? That's what Assistant Attorney General Perry Morton thought when he took over the Department of Justice's Lands Division in 1953. Morton was shocked to find a staff of 17 Department lawyers—now 25—with as many clerical helpers spending full time on the endless task of defending the government against these claims. Their work, with that of anthropologists and other experts, was costing more than \$500,000 a year. "Let's clear the docket of these cases right away," Morton said, "and settle the matter once and for all."

A typical case was coming up. Morton's plan was to win it and use it as a precedent that would dispose of all others like it. This was the suit of the Oto and Missouri tribes demanding compensation for Kansas and Nebraska lands ceded to the government and paid for in 1833 and 1854 at a price of \$502,833. Ralph A. Barney, Chief of the Indian Claims Section, showed in court that the United States had long ago paid in full the sums then agreed

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upon. The Supreme Court had ruled that, after the coming of the white man, the Indians never really owned any land. All the land the Indians inhabited, according to the court, belonged to the federal government by "virtue of discovery." Any payment, Barney reasoned, was simply a gratuity, and it is impossible for a gratuity to be unfair. He felt he had an airtight case.

Barney was scalped. The Oto-Missouris got a net judgment of \$1,156,033 from the Commission. It was later upheld by the Court of Claims, and the Supreme Court declined to review the case. The precedent was established, but in favor of the Indians.

With this judgment on the record, other Indians' legal counsel lost no time. The Kaws, whose ancestors were paid in 1846 for land in Kansas, now said the compensation received was not one tenth enough. So the United States bought it again, paying the descendants of the tribe \$2,493,688. So far, with only a few such cases brought to trial, the government has been ordered to pay extra for 36,900,000 acres. Oto-Missouri may provide a precedent for 249 of the 416 cases now waiting on the docket.

With astronomical sums at stake, the Indians command impressive legal talent which includes a former Assistant Secretary of Interior in charge of Indian Affairs, a one-time Assistant Attorney General of the Justice Department's Lands Division, a former Senator and a univer-

sity president. Some 20 law firms, from New York to San Francisco, contributed \$21,000 each to a war chest from which expenses are paid to researchers, anthropologists and other specialists. Indian cases are the lawyers' uranium—speculative but fabulously profitable. The average barrister does not in a lifetime have a suit involving a million dollars, and few Indian claims are for less. The legal fee is usually ten percent of the judgment rendered, plus expenses. Legendary is the \$2,800,000 which a Washington counselor, Ernest Wilkinson, and his colleagues received for a \$31,938,473 settlement on behalf of the Utes.

Counsel for a number of tribes, unable to determine exactly what areas these groups had long ago inhabited, cleverly introduced the 163-year-old Treaty of Greenville negotiated by Gen. "Mad Anthony" Wayne after the Battle of Fallen Timbers in Lucas County, Ohio. Here Wayne defeated 12 tribes, all of whom had sided with the British during the Revolution and who had later continued their hostilities against Americans. In 1795 they signed the treaty agreeing to cease hostilities and stay in an area north and west of the so-called "Green-ville line," which ran from near Cleveland south and west to Indiana.

The Commission now holds that this treaty gave them "recognized Indian title" to 136 million acres. The decision means that no tribe whose "title" was "recognized" by treaty will be required to establish

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as a fact that the sweeping areas involved were actually theirs.

Indians' lawyers promptly pressed this advantage and obtained a ruling that the Treaty of Prairie du Chien of August 19, 1825, was also a "recognition of Indian title" to 55 million acres in Illinois, Iowa and Wisconsin; that the 1851 Treaty of Fort Laramie gives Indians title to 161 million acres in Montana and Wyoming. Favorable decisions of this kind already involve more than 342 million acres. The significance to taxpayers is tremendous. Potential liability is enormous.

Easily the largest case is that presented by the Indians of California, who claim every acre of the state, together with all inland waters. The land when taken was worth \$1.25 an acre, they allege, and there are 100 million acres. Anthropologists say that more different tribes—probably 500—lived there than in any other area of the same size. The California Indians' tribal identity was disrupted so they are now suing on behalf of all, as if they were a single group. U. S. liability has already been tacitly established; the issue is merely the extent to which Indians occupied the state. Anthropologists have testified that they used only areas near their permanent dwellings; the Indians' lawyers contend that their clients' ancestors inhabited much of the state and that present-day tribes are justified in recovering for all California.

The time, trouble and expense of defending these cases is staggering.

The government must hire anthropologists, historians, ethnologists, archeologists, linguists and appraisers. In nearly every case, a general accounting has to be supplied of all government dealings with the tribe throughout history. At present, some 87 claim examiners, titlists and file clerks at the General Accounting Office spend full time trying to keep up with these requests. The detail required is incredible, and each job takes months. In the Sioux case before the Court of Claims, the accounting went back 127 years to 1831 and took nine years to complete. GAO had 200 cases on hand in October 1957; 128 were being worked, 72 were still untouched.

Why is this allowed to continue? Behind it all is a sense of guilt for supposed ancient wrongs. We have the shameful feeling that the white man, by deceit and brute force, drove the Indians from their homes without compensation. Some of this feeling is justified. Much is not.

It is true that many individual white settlers dealt with the Indians pretty much as they pleased. The Massachusetts Puritans disregarded Indian claims to unimproved lands, giving rise to Mark Twain's crack that our Pilgrim forefathers "fell first upon their knees, then upon the aborigines."

But the historic fact is that, after the Declaration of Independence, practically all land obtained by the United States from the Indians was bought and paid for in probably the greatest series of real-estate transac-

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tions in history. The late Felix S. Cohen, Assistant Solicitor for the Department of the Interior and compiler of the authoritative *Handbook of Federal Indian Law*, stated before the House Subcommittee on Indian Affairs that, except for a region including Death Valley in California and an area in Louisiana and Texas where Indian rights were wiped out before we took possession, there was federal dealing for every square mile added to the United States.

After we paid Napoleon 15 million dollars for the huge areas embraced by the Louisiana Purchase, we paid Indian tribes more than 20 times that amount for the same territory! These Indians drove a better bargain than the French, and reserved to themselves sufficient land to bring them an income that annually exceeds the lump sum we paid the Emperor.

Did the Indians receive a fair price for all their lands? Except in a few instances when soldiers helped force a treaty, the sums satisfied the Indians at the time. These amounts were not niggardly. One tract obtained from the Cherokees in 1835 cost five million dollars, a substantial percentage of the annual budget then. In all, we paid the Indians nearly one billion dollars.

Some Indians do have legitimate grievances against the U. S. government, and the Indian Claims Commission is an excellent place to settle them. The Potawatomi tribe showed, for example, that in 1862

the government took tribal land for a railroad right-of-way—without adequate payment. The Commission has seen to it that present-day descendants received fair compensation *with interest for 94 years*—a total of \$359,460. Andrew Jackson was so eager to protect the Union by a buffer area against the Spaniards in Florida that in 1814 he forced the Creeks to surrender 25 million acres without payment. The Commission has held the United States liable. In some other cases the United States has been proved negligent in handling Indian affairs held in trust. The Commission is correcting these mistakes.

The trouble arises from the fact that, in parts of the Indian Claims Act, Congress confused a social problem—how best to help the Indians—with a legal one. According to the Justice Department, most of the absurdity could be eliminated by a revision of the Act. The Indian today needs sympathetic understanding of his problems, whether he is on a reservation or finding a place in our industrial society. If money is needed, Congress should appropriate it, but this endless and expensive legal farce should be examined with a critical eye.

Did Congress really intend us to repurchase most of the continent? If not, Congress should take a good look at the legal precedents they have forced on the Commission and see if, after 11 years of operation, the Act is accomplishing what was intended. Until this is done the In-

dians and their lawyers will continue to collect big wampum from the American taxpayer.