97. Courts of Indian Offenses

Extract from the *Annual Report of the Secretary of the Interior*

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Secretary of the Interior Henry M. Teller instigated the establishment on Indian reservations of so-called courts of Indian offenses. His goal was to eliminate "heathenish practices" among the Indians, but the courts came to be general tribunals for handling minor offenses on the reservations. His directions to the commissioner of Indian affairs in regard to the courts were given in his annual report of 1883.

. . . . Many of the agencies are without law of any kind, and the necessity for some rule of government on the reservations grows more and more apparent each day. If it is the purpose of the Government to civilize the Indians, they must be compelled to desist from the savage and barbarous practices that are calculated to continue them in savagery, no matter what exterior influences are brought to bear on them. Very many of the progressive Indians have become fully alive to the pernicious influences of these heathenish practices indulged in by their people, and have sought to abolish them; in such efforts they have been aided by their missionaries, teachers, and agents, but this has been found impossible even with the aid thus given. The Government furnishes the teachers, and the charitable people contribute to the support of missionaries, and much time, labor, and money is yearly expended for their elevation, and yet a few non-progressive, degraded Indians are allowed to exhibit before the young and susceptible children all the debauchery, diabolism, and savagery of the worst state of the Indian race. Every man familiar with Indian life will bear witness to the pernicious influence of these savage rites and heathenish customs.

On the 2d of December last, with the view of as soon as possible putting an end to these heathenish practices, I addressed a letter to the Commissioner of Indian Affairs, which I here quote as expressive of my ideas on this subject:

I desire to call your attention to what I regard as a great hindrance to the civilization of the Indians, viz, the continuance of the old heathenish dances, such as the sun-dance, scalp-dance, &c. These dances, or feasts, as they are sometimes called, ought, in my judgment, to be discontinued, and if the Indians now supported by the Government are not willing to discontinue them, the agents should be instructed to compel such discontinuance. These feasts or dances are not social gatherings for the amusement of these people, but, on the contrary, are intended and calculated to stimulate the warlike passions of the young warriors of the tribe. At such feasts the warrior recounts his deeds of daring, boasts of his inhumanity in the destruction of his enemies, and his treatment of the female captives, in language that ought to shock even a savage ear. The audience assents approvingly to his boasts of falsehood, deceit, theft, murder, and rape, and the young listener is informed that this and this only is the road to fame and renown. The result is the demoralization of the young, who are incited to emulate the wicked conduct of their elders, without a thought that in so doing they violate any law, but, on the contrary, with the conviction that in so doing they are securing for themselves an enduring and deserved fame among their people. Active measures should be taken to discourage all feasts and dances of the character I have mentioned.

The marriage relation is also one requiring the immediate attention of the agents. While the Indians were in a state of at least semi-independence, there did not seem to be any great necessity for interference, even if such interference was practicable (which it doubtless was not). While dependent on the chase the Indian did not take many wives, and the great mass found themselves too poor to support more than one; but since the Government supports them this objection no longer exists, and the more numerous the family the greater the number of the rations allowed. I would not advise any interference with plural marriages now existing; but I would by all possible methods discourage future marriages of that character. The marriage relation, if it may be said to exist at all among the Indians, is exceedingly lax in its character, and it will be found impossible, for some time yet, to impress them with our idea of this important relation.

The marriage state, existing only by the consent of both parties, is easily and readily dissolved, the man not recognizing any obligation on his part to care for his offspring. As far as practicable, the Indian having taken to himself a wife should be compelled to continue that relation with her, unless dissolved by some recognized tribunal on the reservation or by the courts. Some system of marriage should be adopted, and the Indian compelled to conform to it. The Indian should also be instructed that he is under obligations to care for and support, not only his wife, but his children, and on his failure, without proper cause, to continue as the head of such family, he ought in some manner to be punished, which should be either by confinement in the guard-house or agency prison, or by a reduction of his rations.

Another great hindrance to the civilization of the Indians is the influence of the medicine men, who are always found with the anti-progressive party. The medicine men resort to various artifices and devices to keep the people under their influence, and are especially active in preventing the attendance of the children at the public schools, using their conjurers' arts to prevent the people from abandoning their heathenish rites and customs. While they profess to cure diseases by the administering of a few simple remedies, still they rely mainly on their art of conjuring. Their services are not required even for the administration of the few simple remedies they are competent to recommend, for the Government supplies the several agencies with skillful physicians, who practice among the Indians without charge to them. Steps should be taken to compel these impostors to abandon this deception and discontinue their practices, which are not only without benefit to the Indians but positively injurious to them.

The value of property as an agent of civilization ought not to be overlooked. When an Indian acquires property, with a disposition to retain the same free from tribal or individual interference, he has made a step forward in the road to civilization. One great obstacle to the acquirement of property by the Indian is the very general custom of destroying or distributing his property on the death of a member of his family. Frequently on the death of an important member of the family all the property accumulated by its head is destroyed or carried off by the "mourners," and his family left in desolation and want. While in their independent state but little inconvenience was felt in such a case, on account of the general community of interest and property, in their present condition not only real inconvenience is felt, but disastrous consequences follow. I am informed by reliable authority that frequently the head of a family, finding himself thus despoiled of his property, becomes discouraged, and makes no further attempt to become a property owner. Fear of being considered mean, and attachment to the dead, frequently prevents the owner from interfering to save his property while it is being destroyed in his presence and contrary to his wishes.

It will be extremely difficult to accomplish much towards the civilization of the Indians while these adverse influences are allowed to exist.

The Government having attempted to support the Indians until such time as they shall become self-supporting, the interest of the Government as well as that of the Indians demands that every possible effort should be made to induce them to become self-supporting at as early a day as possible. I therefore suggest whether it is not practicable to formulate certain rules for the government of the Indians on the reservations that shall restrict and ultimately abolish the practices I have mentioned. I am not ignorant of the difficulties that will be encountered in this effort; yet I believe in all the tribes there will be found many Indians who will aid the Government in its efforts to abolish rites and customs so injurious to the Indians and so contrary to the civilization that they earnestly desire.

In accordance with the suggestions of this letter, the Commissioner of Indian Affairs established a tribunal at all agencies, except among the civilized Indians, consisting of three Indians, to be known as the court of Indian offenses. The members of this tribunal consist of the first three officers in rank of the police force, if such selection is approved by the agent; otherwise, the agent may select from among the members of the tribe three suitable persons to constitute such tribunal.

The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, promulgated certain rules for the government of this tribunal, defining offenses of which it was to take cognizance. It is believed that such a tribunal, composed as it is of Indians, will not be objectionable to the Indians and will be a step in the direction of bringing the Indians under the civilizing influence of law. Since the creation of this tribunal the time has not been sufficient to give it a fair trial, but so far it promises to

accomplish all that was hoped for at the time of its creation. The Commissioner recommends an appropriation for the support of this tribunal, and in such recommendation I concur. . . .

[*House Executive Document* no. 1, 48th Cong., 1st sess., serial 2190, pp. x-xiii.]

98. Ex Parte Crow Dog

December 17, 1883

When the Brulé Sioux chief Crow Dog was sentenced to death by the First Judicial District Court of Dakota for the murder of Spotted Tail, he brought suit for release on the grounds that the federal courts had no jurisdiction over crimes committed in the Indian country by one Indian against another. The Supreme Court upheld his petition and released him.

. . . . The petitioner is in the custody of the marshal of the United States for the Territory of Dakota, imprisoned in the jail of Lawrence County, in the First Judicial District of that Territory, under sentence of death, adjudged against him by the district court for that district, to be carried into execution January 14th, 1884. That judgment was rendered upon a conviction for the murder of an Indian of the Brulé Sioux band of the Sioux Nation of Indians, by the name of Sin-ta-ge-le-Scka, or in English, Spotted Tail, the prisoner also being an Indian, of the same band and nation, and the homicide having occurred as alleged in the indictment, in the Indian country, within a place and district of country under the exclusive jurisdiction of the United States and within the said judicial district. The judgment was affirmed, on a writ of error, by the Supreme Court of the Territory. It is claimed on behalf of the prisoner that the crime charged against him, and of which he stands convicted, is not an offence under the laws of the United States; that the district court had no jurisdiction to try him, and that its judgment and sentence are void. He therefore prays for a writ of habeas corpus, that he may be delivered from an imprisonment which he asserts to be illegal. . . .

It must be remembered that the question before us is whether the express letter of § 2146 of the Revised Statutes, which excludes from the jurisdiction of the United States the case of a crime committed in the Indian country by one Indian against the person or property of another Indian, has been repealed. If not, it is in force and applies to the present case. The treaty of 1868 and the agreement and act of Congress of 1877, it is admitted, do not repeal it by any express words. What we have said is sufficient at least to show that they do not work a repeal by necessary implication. . . .

. . . It is a case involving the judgment of a court of special and limited jurisdiction, not to be assumed without clear warrant of law. It is a case of life and death. It is a case where, against an express exception in the law itself, that law, by argument and inference only, is sought to be extended over aliens and strangers; over the members of a community separated by race, by tradition, by the instincts of a free though savage life, from the authority and power which seeks to impose upon them the restraints of an external and unknown code, and to subject them to the responsibilities of civil conduct, according to rules and penalties of which they could have no previous warning; which judges them by a standard made by others and not for them, which takes no account of the conditions which should except them from its exactions, and makes no allowance for their inability to understand it. It tries them, not by their peers, nor by the customs of their people, nor the law of their land, but by superiors of a different race, according to the law of a social state of which they have an imperfect conception, and which is opposed to the traditions of their history, to the habits of their lives, to the strongest prejudices of their savage nature; one which measures the red man's revenge by the maxims of the white man's morality. It is a case, too, of first impression, so far as we are advised, for, if the question has been mooted heretofore in any courts of the United States, the jurisdiction has never before been practically assert-