

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

---

Great Plains Quarterly

Great Plains Studies, Center for

---

Winter 2003

## "The Greatest Evil" Interpretations Of Indian Prohibition Laws, 1832-1953

Jill E. Martin

Quinnipiac University, [jill.martin@quinnipiac.edu](mailto:jill.martin@quinnipiac.edu)

Follow this and additional works at: <https://digitalcommons.unl.edu/greatplainsquarterly>



Part of the [Other International and Area Studies Commons](#)

---

Martin, Jill E., "'The Greatest Evil' Interpretations Of Indian Prohibition Laws, 1832-1953" (2003). *Great Plains Quarterly*. 2432.

<https://digitalcommons.unl.edu/greatplainsquarterly/2432>

This Article is brought to you for free and open access by the Great Plains Studies, Center for at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Great Plains Quarterly by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

# “THE GREATEST EVIL”

## INTERPRETATIONS OF INDIAN PROHIBITION LAWS, 1832-1953

JILL E. MARTIN

Highway 407 in Shannon County South Dakota crosses the Pine Ridge Reservation and, like the reservation, ends at the Nebraska border. When the road turns into Nebraska Highway 87 you enter the unincorporated town of Whiteclay. What also changes, besides the highway numbers, is the legal sale of alcohol. The Ogallala Sioux prohibit alcohol on their land, but this prohibition ends in Whiteclay. Seven liquor stores in this town of 30 residents, all of whom are Anglo-American, sell more than four million cans of beer each year.

KEY WORDS: alcohol laws, Indian country, Indian drinking, Indian law, liquor law, Ogallala Sioux, Pine Ridge Reservation, prohibition laws, Trade and Intercourse Act of 1834, Whiteclay, Nebraska

*Jill E. Martin is Professor and Chair of the Legal Studies Department at Quinnipiac University in Hamden, CT. Her research interest is federal Indian law and policy, and how the government, through its courts, has interacted with Native peoples.*

The two-mile stretch of road between Pine Ridge and Whiteclay is a path of alcohol related fatalities, injuries, and arrests that continue to plague the Ogallala Sioux who live on the reservation.

The federal government of the United States has always viewed alcohol consumption by American Indians as a problem, and one that needed to be solved by government officials. The United States has regulated liquor sales and consumption among Native Americans from the beginning of the republic until 1953. The forms of regulation have included fines and imprisonment for selling alcohol in Indian country, for introducing alcohol into Indian country, and for drinking alcohol if you were an Indian. Complete prohibition was tried, and continued even after passage of the Twenty-first Amendment, repealing nationwide prohibition.

The various changes to prohibition laws reflected the government's changing Indian policy. When confinement to reservations was the dominant approach taken by the government, prohibition laws regulated liquor on and around the reservation. When allotment and assimilation became most important, the law

reflected the changing status of the allottee Indian. National prohibition actually had little effect on Indian prohibition, except that non-Indians were now in the same situation. The New Deal brought in reorganization of tribes, and reflected the continuing desire of Indians for self-government in all areas. The policy of termination finally brought about the end of Indian prohibition. Now individual Indian tribes were allowed to regulate and prohibit alcohol through their own tribal councils, rather than being regulated from afar by the federal government. Many tribes in the Great Plains, like the Ogallala Sioux at Pine Ridge, adopted prohibition policies on the reservations.

Government policies have always reflected society's changing values regarding alcohol. The values were affected by how people looked at alcohol and prohibition. Indians and Euro-American whites had different interpretations of alcohol consumption and prohibition. The myth of the "drunken Indian" could be used to support many changes in the laws. In *The Social Construction of American Indian Drinking: Perceptions of American Indians and White Officials*, Malcolm D. Holmes and Judith A. Antell compared the perceptions about alcohol abuse by Indian and white officials on the Wind River Reservation in Wyoming.<sup>1</sup> They found that while both saw the same problems, they disagreed on its causes and how to solve the problems. Whites tended to view Indian drinking as a function of a morally degenerative lifestyle:

Throughout American history, whites' interpretations of American Indians have embraced (1) overgeneralizations from single tribal societies to all Indians, (2) conceptions of Indian deficiencies by reference to white ideals, and (3) descriptions of Indians guided by moral evaluation. Such beliefs continue to underlie popular stereotypes of Indians that tend to be negative, self-serving conveniences upholding whites' supposed superiority. Alcohol abuse in particular helped form whites' stereotypical conception of the American Indian and

provides evidence of Indian degeneracy and criminality.<sup>2</sup>

According to these beliefs, prohibition laws would be framed to identify and punish criminal behavior rather than used as a means of helping Indians avoid such behaviors.

Indians tended to view alcohol abuse differently. Alcohol offered by whites created the problem:

The introduction of alcohol is said to have disrupted tribal life and traditions. An indigenous theory of alcohol use indicates that rather than simply disinhibiting Indians, alcohol ruptured the communal and spiritual fabric of Indian life. Thus, the evil is located not in the nature of the Indian but in the character of whites who introduced it to Indian societies.<sup>3</sup>

According to this view, prohibition laws would be seen as trying to inflict the dominant white culture's solution to a problem it had created in the first place. In *Historical and Cultural Roots of Drinking Problems among American Indians*, the authors say that many Indians prior to European contact had no cultural context for drinking.<sup>4</sup> There were no acceptable Indian drinking customs or mores. And the people with whom the Indians were most in contact—soldiers, trappers, traders, miners—were poor examples of drinking behavior. Antisocial behavior and heavy drinking were common among these all-male groups often far from their families and other means of social control. So Indians were introduced to drinking, but not to "responsible" drinking.

These divergent views of Indian drinking are different interpretations of the same issue. Native people have viewed the changing prohibition laws as ways of destroying their tribal structure, thereby forcing them to assimilate. Breaking the law is one way to challenge the assimilationist position. Whites traditionally view assimilation as a positive development, and the policies adopted by the government in regard to prohibition support that view.

The myth of the drunken Indian also includes the belief that alcohol affects Indians differently than whites, and that there is some type of a genetic disposition to alcohol in Indians. Philip May in *The Epidemiology of Alcohol Abuse among American Indians: The Mythical and Real Properties* states, "This myth has virtually no basis in fact."<sup>5</sup> Multiple studies have found no difference in the way Indians metabolize alcohol. May's article examines twelve myths on Indian alcohol issues and shows that they are not based on fact, or that the statistics used can be read many ways. The fact that these myths exist shows that people tend to interpret facts to fit their preconceived notions.

This essay will look at the prohibition laws and cases interpreting those laws between 1832 and 1953. These laws and cases were applied throughout the Great Plains region as settlers moved westward and interacted with Indians. The same law could be, and was, interpreted different ways, as policymakers and judges reflected the white community values around them and fit facts to their preconceived notions and myths. Indian community values and perceptions were not considered in policy-making decisions, as laws are made by the dominant group. Yet the repercussions of these laws, cases, and policies still impact Indians and tribes today. Recent events in Whiteclay and the Pine Ridge Reservation show that the problem of alcohol and prohibition is still an issue today.<sup>6</sup> Alcohol sales in border towns continue to injure Indian residents who want prohibition laws to be enforced. Activists are calling attention to this problem and demanding that the state take action. An understanding of the history of the prohibition legislation will help us understand the roots of this important social issue.

#### THE ORIGINAL LEGISLATION

Early in 1802 President Thomas Jefferson asked Congress to pass legislation prohibiting liquor from Indians. This was done, according to Jefferson, at the Indians' request:

"These people are becoming very sensible of the baneful effects produced on their morals, their health, and existence by the abuse of ardent spirits, and some of them earnestly desire a prohibition of that article from being carried among them."<sup>7</sup> Such legislation would also benefit the white citizens of the country, Jefferson thought. He said in a message to the Senate and House of Representatives, "It has been found, too, in experience that the same abuse gives frequent rise to incidents tending much to commit our peace with the Indians."<sup>8</sup>

Congress agreed with the president and passed legislation to regulate trade and intercourse with the Indian tribes in an attempt to preserve peace on the frontiers. The bill authorized the president "to take such measures, from time to time, as to him may appear expedient to prevent or restrain the vending or distributing of spirituous liquors among all or any of the said Indian tribes."<sup>9</sup> This gave the president broad authority. Everything was left to his discretion—when to prohibit, what to prohibit, how to prohibit, and to whom it should be prohibited. The act also contained a description of what would thereafter be known as Indian country. It very specifically set out the boundary line between the United States and the Indian tribes, noting exact locations where the line turned. For example, the boundary began,

At the mouth of the Cayahoga river on Lake Erie, and running thence up the same to the portage between that and the Tuscaroras branch of the Muskingum; thence, down that branch, to the crossing place above Fort Laurance; thence westwardly to a fork of that branch of the Great Miami river running into the Ohio, at or near which fork stood Laromie's store.<sup>10</sup>

This detailed description, continuing for more than a page, would later be a source of trouble in enforcing the liquor prohibition laws.

Twenty years later Congress, recognizing that more specific regulatory legislation was

needed, passed a bill allowing the president to have traders' goods searched "upon suspicion or information that ardent spirits are carried into the Indian countries."<sup>11</sup> If ardent spirits were found among the traders' goods, the law required a forfeiture of all goods, with half the goods going to the government and half the goods to the informer.<sup>12</sup> Military officers, Indian agents, and territorial governors had the authority to search the traders' goods. These were the people who had regular contact with the Indians.

The issue of what counted as Indian country was now an important one. In one legal case, a licensed trader was convicted of introducing seven kegs of whiskey into Indian country for the purpose of selling it to the Indians. The defendant appealed his conviction, arguing that the jury instructions were improper because they included in Indian country "territory purchased by the United States of the Indians, but frequented and inhabited exclusively by Indian tribes." The US Supreme Court held that the instruction was improper because the purchase of the land by the United States took it out of Indian country.<sup>13</sup> The trader's conviction was overturned. Land on which Indians lived was not necessarily Indian country if the government had title to the land. This question of what was Indian country would continue to be argued in court.

In 1832 the Office of Commissioner of Indian Affairs was created by Congress, and the commissioner was given the responsibility of alcohol prohibition. The act creating the office included a prohibition clause: "No ardent spirits shall be hereafter introduced, under any pretense, into the Indian country."<sup>14</sup> The commissioner of Indian affairs soon realized that this act was not enough. It failed to provide for any course of proceeding if ardent spirits were introduced, and it provided no penalty. The attorney general expressed doubt that a proceeding could be brought under this statute.<sup>15</sup> The commissioner therefore recommended further legislation to allow the statute to be enforced:

The proneness of the Indian to the excessive use of ardent spirits with the too great facility of indulging that fatal propensity through the cupidity of our own citizens, not only impedes the progress of civilization, but tends inevitably to the degradation, misery, and extinction of the aboriginal race. Indeed, the substantial benefits of our policy towards the Indian tribes so essentially depend upon the entire exclusion of the means of intemperance from their country.<sup>16</sup>

Congress responded by passing an "Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers" on 30 June 1834. This act superseded all the prior acts and had several components. It provided a penalty of \$500 for anyone who "shall sell, exchange, or give, barter, or dispose of, any spirituous liquor or wine to an Indian, (in Indian country)." If a person introduced or tried to introduce liquor to Indian country, he could be fined \$300. An exception was made for liquor and wine necessary for the officers and troops of the United States. If any federal government official had reason to suspect or was informed that someone was about to introduce liquor, it was lawful for the government official to search the person's stores and belongings, and if liquor was found, all the property of that person was seized and forfeited, one-half to the government and one-half to the informer. Additionally, any person employed by the government, on any Indian, could take and destroy ardent spirits or wine found in Indian country.<sup>17</sup>

Additionally, the act redefined Indian country. It went to a simpler explanation, which would still create problems in the future as settlers streamed westward:

That all that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana, or the territory of Arkansas, and, also, that part of the United States east of the Mississippi river, and not within any state to which the

Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country.<sup>18</sup>

The act of 1834 would control prohibition in Indian country for the next 120 years. Although amended many times, this act was the backbone of enforcement against Indian prohibition. It was directed against those who came into Indian country with a harmful product, usually whites preying on Indians. In 1834 the act was not directed against the Indian, except to withhold from him the legal product of alcohol. Its purpose was to help civilize the Indian. After passage of the act in 1835, Elbert Herring, the commissioner of Indian affairs, noted that "The exclusion of ardent spirits, where it could be effected, has done much good: and on this exclusion, and the substitution of other pursuits for war and the chase, must depend their gradual growth and eventual proficiency in civilization—a consummation earnestly desired by every philanthropic mind."<sup>19</sup>

#### CHANGES TO THE TRADE AND INTERCOURSE ACT

It soon became clear, however, that the act was not without problems. C. A. Harris, the commissioner of Indian affairs in 1836, noted that the legal proceedings to punish someone for violating the act were "dilatatory and expensive."<sup>20</sup> He recommended again that a court be established in Indian country to try such cases, as they currently had to go to a territorial court. This would allow for faster and more efficient justice. He also pointed out that allowing agents of the government to take and destroy alcohol was insufficient, as there was no enforcement mechanism. William A. Harris, an agent of the Choctaws, reiterated that same complaint in 1839. He wanted it made the duty of every federal official to seize the alcohol rather than just giving him the authority, which he could choose not to use.<sup>21</sup> Joseph Street, the agent for the Sac and Fox, noted that without any force behind him, he

could not act: "The laws and authority of the United States are held in derision, when they know there is no power to enforce them by the military."<sup>22</sup>

In 1847 Congress took steps to amend the Trade and Intercourse Act. Penalties now included imprisonment, up to two years for someone convicted of selling liquor and up to one year for someone convicted of introducing or attempting to introduce liquor. In an important change of policy, Indians would be considered competent witnesses in these cases. The government also prohibited the distribution of annuities or goods to Indians while under the influence of liquor, or if the agent believed that there was liquor in convenient reach of the Indians. And no annuities were to be distributed until the chiefs of the tribe "shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country."<sup>23</sup> The concern was that when the Indians received their annuities, particularly when they were in the form of cash, the payments which were to last a year would be gone in a short time, spent on drink. Additionally, traders would advance liquor to Indians on credit and then take a large portion of their annuity cash when the Indians received it.

Obviously, traders were making money from selling liquor to Indians. Of course, there were always ways around the laws. The current law was based upon the location of the sale, or locus in quo. While it was not apparently Congress's intention, the prohibition was against sales in Indian country, not sales to Indians. So Indians residing on reservations east of the Mississippi River, within a state where Indian title had been extinguished, or in the territory of Arkansas, could still legally buy alcohol in local towns, unless there was a prohibitory state law. Commissioner George W. Manypenny complained in his 1853 report that

The traffic in ardent spirits with the Indians, to whom it is so demoralizing and

ruinous, still actively and extensively prevails; less however within the confines of the Indian country, it is believed, than along its borders, where there is no law, and no power on the part of the general government to restrain it. This traffic here is carried on with impunity by a set of lawless harpies, as reckless as they are merciless in pursuit of the ill-gotten gains to be thereby acquired. Some years since a strong appeal was made by the head of this department to the authorities of several of the frontier States, for the purpose of endeavoring to procure such legislation on the part of those States as would tend to this widespread evil, but without success. Hence it still flourishes in violation of all law, human and divine; the fruitful source of crime and untold misery, and the frequent cause of serious brawls and disturbances upon the frontiers, as well as within the Indian country.<sup>24</sup>

This was still a problem in 1861, as Commissioner William P. Dole reported: "Unprincipled traders, debarred by law from going upon the reservations, gather upon their borders, and by means of this traffic which in this case is far worse than robbing, they filch from the Indian his little all, often reducing him to a state of utter want and destitution. To protect him from the cruel avarice of the whites, more effectual legislation should, if possible, be had."<sup>25</sup> This theme was reiterated by the superintendents in their individual reports. Superintendent William H. Rector of Oregon wrote about his increasing concern now that gold had been discovered and white adventurers were coming into the territory: "A great many *enterprising* individuals with limited capital have established themselves at trading posts in the vicinity of the reservations, and contend that, inasmuch as they are not *on the reserve*, that the agent cannot interfere or molest them; yet the evil consequences which result from their presence is as keenly felt as if the trader was firmly established in the agent's house, and acting under authority

of law."<sup>26</sup> The superintendent of the Northern Superintendency based in Minnesota, wrote, "The Winnebagoes [who would later be moved to the Nebraska territory] occupy an unenviable position. They are surrounded on all sides by those too willing to traffic in whiskey, and whom the law appears to be inadequate to punish; and should one be arrested, he may be proved guilty of the act of selling intoxicating liquors to the Indian; but upon some technicality, or flaw in the law or proceedings he is discharged without punishment."<sup>27</sup>

Congress listened to Commissioner Dole and proposed a bill to make it a crime to provide spirituous liquor or wine "to any Indian under the charge of any Indian superintendent or Indian agent appointed by the United States" or to introduce or attempt to introduce spirituous liquor or wine into Indian country.<sup>28</sup> Debate in the Senate focused on an amendment that would have made it a crime to introduce or attempt to introduce liquor into Indian country with the intent to dispose of it to the Indians. Some senators wanted to be sure to protect white settlers traveling through Indian country who might have alcohol with them intending to use it themselves. Mr. Wallace was concerned that without the intent amendment, "citizens who might have liquor in their houses for medicinal or other purposes would violate this law and be subject to its penalties."<sup>29</sup> Mr. Stevens spoke against the intent amendment. He understood that intent was hard to prove, and very subjective, and that it would make the law easier to get around:

I found that these traders would start to carry whisky across the Indian territory to some other place; that whenever they got about half the way through they would, unfortunately, be attacked by a set of ruffians—and they were always attacked—who seized the liquor and used it there and afterwards magnanimously paid these men for it; but inasmuch as they could show that they started with the liquor to go through

the territory, and with no intention of selling it to the Indians, no one of them could be prosecuted to conviction.<sup>30</sup>

The intent amendment failed, but it showed that Congress was as concerned about protecting the white settlers' right to have and consume alcohol as it was to prevent the Indians from having access to it.

Senators also discussed a continuing provision of the law which allowed liquor to be taken into Indian country under the direction of the Department of War, that is, "such supplies as shall be for the officers of the United States and troops of the service."<sup>31</sup> Mr. Lovejoy supported it, as the troops needed it for medicinal purposes.<sup>32</sup> Mr. Cox was opposed to allowing the War Department to have anything to do with alcohol and the Indians. The use of alcohol was a continuing problem among the United States troops. Boring, unrelieved duty in Indian country led to drinking, and some of this drinking was sanctioned by the army. Daily alcohol rations were given to troops. Mr. Cox stated, "I am very jealous of giving any power to the War Department, even as to this matter of sending liquor among the Indians. I distrust anything they do in the Indian country. And I can demonstrate at some other time the pernicious influences which result from the conduct of our Army officers in the Indian territory; and that too, in spite of the efforts of our Indian agents to produce a better state of things among the Indians."<sup>33</sup> But Congress did not want to prevent white soldiers from getting liquor. The War Department exception continued in the law. These soldiers and officers were among the people who were showing the Indians white drinking practices.

The overall bill, prohibiting the sale of alcohol to any Indian under the charge of an Indian agent, was intended to solve the problems of the border towns. It was now illegal to sell to an Indian, though it still was not illegal for an Indian to buy alcohol. It was the usually white seller who was to be controlled.

#### WESTWARD EXPANSION AND ENFORCEMENT OF THE LAW

This was the status of the law in the decades following the Civil War, during a period of westward expansion. Colorado, Nevada, Dakota, Arizona, Idaho, Montana, and Wyoming Territories were all created between 1861 and 1868. The United States made treaties with the Indian tribes until congressional legislation in 1871 ended treaty making with tribes.<sup>34</sup> The Homestead Act of 1862 allowed citizens or intended citizens to select 160 acres of unappropriated public land and acquire title to it after five years by making improvements on the land.<sup>35</sup> "Unappropriated public land" was often land ceded by the Indians in treaties with the US government. The Indians in the West were slowly being forced onto reservations. By 1891, at Wounded Knee, the last of the tribes had fully surrendered to the greater military power of the United States. During this period, as interactions between whites and Indians grew, problems with alcohol also grew. Interactions with whites meant access to alcohol, as alcohol was not prohibited to whites. And there were always whites willing to sell alcohol to Indians.

Enforcement of the laws was a problem. The Indian agents wanted to eliminate alcohol on the reservations, calling it "the greatest evil with which the Indians have to contend"<sup>36</sup> and "that infernal source of demoralization and ruin of the Indian race."<sup>37</sup> But they had no military force behind them, and requested assistance to enforce the law. Brevet Major Jno. N. Craig, the agent for the Cherokees, stationed at Fort Gibson in Indian Territory, asked for cavalry, in addition to infantry, as a way of enforcing the law:

The services of mounted troops, none of which are at present stationed within or near this Territory, are required as it is only by patrolling the roads the persons engaged in it are accustomed to traverse, that it can be even measurably interrupted. For this

service, and the pursuit and arrest of offenders against the laws generally, the presence of a troop of cavalry, in addition to the company of infantry stationed here, is urgently required at Fort Gibson.<sup>38</sup>

Infantry troops, in the broad expanse of the West, were generally not helpful. So the means to enforce the laws were not always provided even to those who wanted to enforce them.

Even when troops were present, however, they did not always assist the agents in prohibiting the sale of liquor. The troops themselves often got drunk and added to the liquor problem. Vincent Colyer, a Special Indian Commissioner on the Board of Indian Affairs, commented on problems he had found at Fort Gibson, Cherokee Territory. He had observed drunken soldiers on several occasions, both day and night. On one occasion four drunken soldiers went into a Cherokee meetinghouse during Sunday services and disrupted the services, waving guns and shouting and swearing.<sup>39</sup> Colyer wrote, "The explanation of this disorderly conduct was that the paymaster had been around a few days before. How long would our city people content themselves with such an excuse as this, if their police should conduct themselves in that way whenever they were paid?"<sup>40</sup>

Enforcement was also a problem because of the problem of evidence. It wasn't illegal for the Indian to drink, so finding an intoxicated Indian only told the marshal that someone had violated the law by selling or giving it to the Indian. Finding out who had violated the law was a problem. Agents complained repeatedly that the Indian would not testify, even though the law made Indians competent witnesses in these matters. Agent Harold J. Cole at the Colville Agency in Washington wrote, "The Indians very rarely give information which will lead to the arrest of the party or parties furnishing them these intoxicants. When questioned as to where or from whom they purchased the liquor, they will usually say they do not know who the white man was."<sup>41</sup> John Robertson, the agent at the Pueblo

and Jicarilla Agency in Santa Fe, had the same complaint: "I have used every endeavor to discover the parties engaged in this business, but hitherto have not been able to obtain evidence sufficient to secure a conviction. I will not relax my efforts towards discovering the guilty parties in this matter, though it is impossible to induce an Indian to confess from whom he obtained liquor."<sup>42</sup> Apparently some Indians did not want to reveal where they had gotten their liquor, for if their seller was convicted, they could no longer obtain liquor from him.

Getting juries to convict was also a problem. The seller of liquor was often a reputable businessman in the community. Regardless of what the law said about the competency of Indians as witnesses, prosecutors did not want to bring an action against a local businessman based on the word of an Indian. Agent George W. Harper of the Umatilla Agency in Oregon wrote, "It is the drunken Indian's word against the white man, and an Indian's word placed on the scale against the word of a respectable white saloon keeper amounts to nothing."<sup>43</sup> The agent at Fort Peck Agency in Montana was preparing to prosecute a case against a member of the state legislature of Montana, accused of introducing liquor on the reservation,<sup>44</sup> and in Choctaw County in Oklahoma it was the county attorney and a prominent businessman who were apprehended for introducing liquor.<sup>45</sup>

The punishment rendered was often not enough to make the person stop selling liquor. The list and table of crimes compiled in the commissioner's report in 1892 lists the following dispositions for selling liquor: \$1 fine and one day in jail, \$50 fine and thirty days in jail, \$25 fine and one day in jail, and two \$1 fines. The agent at Colville Indian Agency in Washington weighed in on the matter: "The law does not seem adequate to the proper punishment of these criminals. Many are sentenced to pay a small fine, which they can easily do, and then return and follow their old trade. It is quite a difficult matter to convict on Indian evidence, and it does seem that when a con-

viction is had they should receive at least a term in State's prison."<sup>46</sup> Even when prison was the punishment, it did not seem to deter the crime: "Conviction has been obtained in a number of cases, ranging from six months to two years in the State prison at Walla Walla, but it does not seem to deter others. There is a large profit in the traffic, and no matter how severe the punishment there are others, it seems, who are willing to engage in it."<sup>47</sup> As long as the business was profitable, the punishment low, and public opinion not against them, people would continue to sell liquor to Indians.

#### THE COURTS' DECISIONS

The courts of the United States also were involved with enforcing the law. Various arguments were made by defendants regarding the definition of Indian country, including whether Indians allotments were Indian country, the definition of spirituous liquor, and whether sale of liquor to an Indian who had received an allotment was prohibited. The interpretation given to the law by each judge made a difference in the defendant's guilt or innocence. The same law was interpreted many different ways.

#### WHAT IS INDIAN COUNTRY?

We have seen that the act of 1834 defined Indian country in the United States, but what of land that was not part of the United States in 1834, land in what would become the states of Utah, New Mexico, Arizona, Texas, Oregon, Washington, and Alaska? Did that land become Indian country when it became part of the United States? Was the land that the United States had received through treaties with the Indians still Indian Country? Different courts had different answers, depending on the specific facts of the case.

The District Court in *United States v. Seveloff* found that the law did not apply to land that had been acquired by the United States after 1834.<sup>48</sup> A defendant sold liquor in

Sitka, Alaska, to an Indian. He argued that Alaska was not Indian country as defined by the law, and therefore the District Court did not have jurisdiction over him. The court agreed. It found that the law on its face would not be extended to lands the United States later acquired. In fact, "it was purely a local law, and contained no provision by which it should in the future be extended in any direction—as to California or Alaska—upon the contingency of their acquisition by the United States."<sup>49</sup> The defendant was let off. The US attorney general agreed with this disposition. In an opinion issued 12 August 1873 to the Department of Justice, the attorney general noted that when Oregon Territory was added to the country, Congress assumed it was not Indian country and specifically provided that the Indian trade and intercourse act would apply to Indians in Oregon.<sup>50</sup> This same thing was done when the United States created the territories of Utah and New Mexico. The attorney general concluded,

From this legislation it would seem that, in the view of Congress, the Indian country west of the Mississippi, as defined in the act of 1834, was originally limited to the territory then belonging to the United States situated between that river and the Rocky mountains, and not within the States of Missouri and Louisiana or the Territory of Arkansas. Respecting that part of the Indian country, it was the understanding of the framers of the act of 1834 that the limits thereof could only be changed by legislative enactment.<sup>51</sup>

Congress also would include the prohibition on alcohol in treaties that applied to land the Indians ceded to the government. This was intended to protect the Indians on land adjoining the reservations. In *United States v. Forty-three Gallons of Whiskey, etc.*, a white man was arrested for bringing liquor onto land that had been ceded to the United States by the Treaty with the Red Lake and Pembina Bands of Chippewa Indians.<sup>52</sup> The

treaty contained specific provisions that the laws of the United States prohibiting the sale and introduction of spirituous liquor would continue in full force and effect throughout the country ceded. So in this case, even though the Indians had parted with their title, it was still Indian country under the treaty for this purpose. The Supreme Court found:

As long as these Indian remain a distinct people, with an existing tribal organization, recognized by the political department of the government, Congress has the power to say with whom, and on what terms, they shall deal, and what articles shall be contraband. If liquor is injurious to them inside of a reservation, it is equally so outside of it; and why cannot Congress forbid its introduction into a place near by, which they would be likely to frequent? It is easy to see that the love of liquor would tempt them to stray beyond their borders to obtain it; and that bad white men, knowing this, would carry on the traffic in adjoining localities, rather than venture upon forbidden ground.<sup>53</sup>

The court recognized that the Indians were aware of the perils of alcohol and wanted to be protected by the treaty.

The land in question in *Bates v. Clark* was in Dakota Territory.<sup>54</sup> There was no specific provision in any treaty to extend prohibition onto ceded lands. Bates, a captain in the army, was being sued by Clark, the owner of a general mercantile business in Dakota Territory. The army had seized whiskey owned by Clark, as being in Indian country, and Clark sued to recover damages. The Supreme Court found the land was not Indian country and the army officers were liable in an action for trespass:

The simple criterion is that as to all the lands thus described it was Indian country whenever the Indian title had not been extinguished, and it continued to be Indian country so long as the Indians had title to it, and no longer. As soon as they parted

with the title, it ceased to be Indian country, without any further act of Congress, unless by the treaty by which the Indians parted with their title, or by some act of Congress, a different rule was made applicable to the case.<sup>55</sup>

So whether land ceded by the Indians remained as Indian country depended upon the treaty negotiations between the government and the tribe.

#### ALLOTMENTS

The General Allotment Act, or Dawes Act, which was passed in 1887, changed the policy of the United States to one of allotments.<sup>56</sup> It had a significant impact on Indian ownership of land in Indian country. Under the General Allotment Act, each adult male Indian was allotted 160 acres of reservation land for his own. The allottee received a patent to the land for twenty-five years, which he could not sell or alienate, and he became a citizen. He received title to the land at the end of the twenty-five years. Proponents argued that allotments would move the Indians along on the path of civilization. Many people believed that the breaking up of the tribal and communal existence was the best way to advance and "civilize" the Indians. Once the Indian received his own land, and received all the benefits from working his own land, he would realize the benefits of capitalism over communalism, and would be on the road to assimilation. And once allotments were made to all tribal members, the "excess" land on the reservation was sold to white settlers, opening prime real estate to settlement.

But the question arose as to the status of the allottee Indian. Once they were citizens, were they still Indians under the control of the superintendent or agent? If not, then Indian prohibition laws should not apply. And unless there was a specific treaty provision, the unallotted lands sold to settlers would not be Indian country, meaning the Indian allottees would generally be surrounded by

non-Indian country. So an argument could be made that allotted lands were not Indian country and that Indian allottees were not under the control of the agent, and, therefore, the Indian prohibition laws did not apply.

The agent at Neah Bay Agency in Washington wrote about this problem. "It would appear that many of them in becoming citizens had no higher object in view than to gain their freedom from agency control, so as to free themselves from an objectionable wife or to gain the white man's privilege of getting beastly drunk."<sup>57</sup> Congress amended the Trade and Intercourse Act in 1897, making it illegal for anyone to sell any type of intoxicant to "any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the government" and refining the definition of Indian country, "which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States."<sup>58</sup> The Indian Service was happy. "Much good is expected to result from the passage of this law, especially to the Indian allottees of the far Northwest where the courts have held that the laws on the subject did not prohibit the sale of liquors to allottees."<sup>59</sup>

This new definition of Indian country was challenged in the courts. Farrell sold liquor to a mixed-blood Sioux Indian in South Dakota who had received an allotment before the act of 1897. Farrell argued that the act was unconstitutional, as the Sioux had become a citizen before the act passed.<sup>60</sup> The Eighth Circuit Court of Appeals found otherwise. The court agreed that the Sioux was a citizen but pointed out that the right to buy liquor is not necessarily a right of citizenship. Some states had their own prohibition laws preventing anyone from buying alcohol. Others had age limits on the use of alcohol. The government was allowed to regulate on the Indian's behalf, the court found. It stated:

The truth is that the deprivation of these Indians of the right to buy intoxicating liquors is not the taking away from them of any privilege or immunity of citizenship, but it is an attempt to confer upon them an additional immunity which some citizens do not possess,—an immunity from drunkenness and its pernicious consequences. The government then had the power to retain its control over this baneful traffic with these Indians, and its retention is not inconsistent with its grant to them of the rights, privileges and immunities of citizenship.<sup>61</sup>

The US Supreme Court did not agree. In *Matter of Heff*, the court considered a case with similar facts.<sup>62</sup> Heff was convicted of selling liquor to an Indian in Kansas who had received his allotment in severalty under the General Allotment Act. Heff appealed, arguing that the Indian buyer was a citizen of the state and the United States, so the law did not apply. The Supreme Court found that allotment made the Indian a citizen of the state and subjected him to the laws of the state. Regulating liquor is something normally done by the state under its police power. If the power was held by the state, the federal government could not regulate in that area, and the act of 1897 therefore cannot apply. The court wrote,

We are of the opinion that when the United States grants the privileges of citizenship to an Indian, gives to him the benefit of and requires him to be subject to the laws, both civil and criminal, of the State, it places him outside the reach of police regulations on the part of Congress; that the emancipation from federal control thus created cannot be set aside at the instance of the Government without the consent of the individual Indian and the state, and that this emancipation from the Federal control is not affected by the fact that the lands it has granted to the Indian are granted subject to a condition against alienation

and encumbrance, or the further fact that it guarantees to him an interest in tribal or other property.<sup>63</sup>

The court was interpreting the law as it was written and was not interested in the policy behind the prohibition. This didn't mean however, that the federal government couldn't use other ways to control liquor. Many Indian treaties had specific provisions limiting the use of alcohol on reservations, and indeed on ceded and allotted land. One such example was the Treaty with the Nez Perce, made in 1894, which included a provision that the lands ceded by, and retained and allotted to the Nez Perce, and the Nez Perce allottees, would be subject to the laws prohibiting the introduction of liquor into Indian country for the next twenty-five years.<sup>64</sup> The Supreme Court agreed that this provision took it out of the *Heff* situation. In *Dick v. United States*, Dick, an Indian allottee, purchased whiskey in a town that had been in the boundaries of the Nez Perce reservation but was now an organized village in the state of Idaho.<sup>65</sup> He argued it was not Indian country, so that law did not apply. The Supreme Court found that the provision in the treaty had been negotiated for the benefit of the Indians, to protect them from "the pernicious influences that would come from having the allotted lands used by citizens of the United States as a storehouse for intoxicants."<sup>66</sup> The treaty was negotiated before the Indians became state citizens upon receiving their allotments, so the decision was within the power of Congress, as the Indians were at that time within Congress's exclusive jurisdiction.

The 1858 treaty with the Yankton Sioux creating their reservation in South Dakota, raised in *Perrin v. United States*, contained even more prohibitory language. It stipulated that no intoxicating liquors would ever be sold or given away upon lands ceded by the Sioux to the United States.<sup>67</sup> The court found that the language continued through the allotment period and applied to lands held by whites in private ownership that had been ceded by the

tribe. This language was to continue to protect the Indian inhabitants.

The *Heff* case was officially overruled in *United States v. Nice* in 1916.<sup>68</sup> The defendant sold whiskey to an allottee Indian in South Dakota. The court discussed the power of Congress to regulate the commerce of Indian tribes as "well settled": "Its source is two fold; first the clause in the Constitution expressly investing Congress with authority 'to regulate commerce . . . with the Indian tribes,' and, second, the dependent relation of such tribes to the United States."<sup>69</sup> In overruling *Heff*, the court found, "As, therefore, these allottees remain tribal Indians and under national guardianship, the power of Congress to regulate or prohibit the sale of intoxicating liquor to them, as it does by the act of 1897, is not debatable."<sup>70</sup> The commissioner of Indian affairs referred to *Nice* as "the case of most importance," as it allowed the Bureau of Indian Affairs to enforce liquor regulations on all Indians, allotted or not.<sup>71</sup>

#### WHAT IS SPIRITUOUS LIQUOR?

The act of 1834 placed prohibitions on spirituous liquor, and amendments prohibited ardent spirits. Wine was later added to the prohibition. What exactly was being prohibited? The question came to the forefront when beer began to be distributed in Indian country. Did beer fall within the definition of "spirituous liquors"? Court opinions differed. The District Court in Montana found that beer was not a spirituous liquor, and based its decision using the definition in Webster's dictionary.<sup>72</sup> Spirituous liquors were liquors "produced by distillation" and fermented liquors were not included. The court recognized that the policy was to prevent intoxicants, but as it was a penal statute, believed it must be strictly construed: "A court has no right to interpolate words into it, or to give a different meaning to words used from what are their natural import as commonly used."<sup>73</sup> In the District Court of Arkansas, Judge Parker went into a lengthy explanation,

in his charge to the jury, why lager beer did fall within the definition of spirituous liquors.<sup>74</sup> He also used Webster's dictionary, but found "spirituous" to mean having an active power or property and found that the active power was the power of intoxication: "It is not distillation that gives it the spirituous quality. Spirituous means active; it means lively; it means something that will produce active or lively results. It does not mean, necessarily, something that has been run through the worm of a still."<sup>75</sup> The judge was more concerned about the purpose of the law and reaching the obvious end of keeping intoxicants out of Indian country. "Then, manifestly, if the object intended by this statute was to prevent the destruction of Indians by drunkenness, as well as to prevent the commission of crimes which invariably follow as the consequences of drunkenness and debauchery in a country where the police regulations are limited, it should be construed so as to give effect to the object designed, and to that end all its provisions must be examined in the light of surrounding circumstances."<sup>76</sup>

Decisions holding that beer did not fit within the definition of intoxicating beverages opened the door to Indian country. The agent at Union Agency in Muskegee, Indian Territory, found that a recent case created numerous problems, "resulting in the opening of beer saloons in every village in the agency, almost without exception. The Indian and Federal laws were openly, flagrantly, and defiantly violated, drunkenness and its train of evils held full sway, the saloon flourished, trade was paralyzed, and for at a time it seemed that the only real protection which could come to the communities thus accursed rested in the law of self-protection."<sup>77</sup> The attorney general of the United States agreed with the courts that found that beer was not a spirituous liquor.<sup>78</sup> He refused to instruct his marshals to seize the beer. The commissioner of Indian affairs asked Congress to amend the law.

Other agents complained of other types of alcoholic beverages being brought into Indian

country. One agent raised the concern about hard cider.<sup>79</sup> John Foster at the Shoshone Agency in Wyoming expressed concern about whiskey being sold as lemon extract and Jamaica ginger.<sup>80</sup> These concerns were all addressed by Congress. The House Report on the bill proposed noted that different courts had held different interpretations of whether beer was prohibited: "The dealers in beer, taking advantage of this confusion over the proper construction of the law, reintroducing beer into the Indian territory, and under the guise of vending beer are violating the law against the introduction of ardent spirits. This bill is designed to remedy this mischief, which has grown to be harmful and detrimental to the Indians."<sup>81</sup>

The bill that passed Congress addressed these concerns. It prohibited "ardent spirits, ale, beer, wine or intoxicating liquors or liquors whatsoever kind"<sup>82</sup> It increased the punishment to imprisonment for not more than two years and fines of not more than \$300 for each offense. It turned out to be a necessary amendment. Two years later the US Supreme Court had a case before it on appeal which asked the same question: Was lager beer a spirituous liquor?<sup>83</sup> The defendant had been found guilty of introducing ten gallons of lager beer into the Choctaw Nation in Indian country, before the law was amended by Congress. The Supreme Court found that before the amendment, the definition of spirituous liquor did not include beer. It looked at various dictionaries for definition and followed the common and popular definition of the words. "So far, therefore, as the popular usage goes, according to the leading authorities, 'lager beer,' as a malt liquor made by fermentation, is not included in the term 'spirituous liquor,' the result of distillation."<sup>84</sup> The court noted that the law then in effect prohibited "spirituous liquor and wine," so that the argument that spirituous liquor meant all intoxicating beverages would not work. The court pointed to the fact that Congress believed it had to change the law to include beer, and added, "At any rate, the temptation to the courts to stretch

the law to cover an acknowledged evil is now removed."<sup>85</sup>

#### NATIONAL PROHIBITION AND CHANGE

Nationally, there was a movement in the late nineteenth and early twentieth centuries to prohibit alcohol for all Americans. It culminated in the passage of the Eighteenth Amendment in 1919 prohibiting the manufacture and sale of alcoholic beverages in the United States. The national experiment lasted until 1933, when the Twenty-first Amendment was passed specifically repealing the Eighteenth Amendment. It was repealed, in part, because of the inability to effectively enforce the law, the same problem that had plagued Indian prohibition. If people wanted alcohol, bootleggers were available to sell it to them at huge profits. Prohibition laws like this encouraged illegal activity that was difficult to stop, and prevented adults from engaging in an activity that did not necessarily have to be harmful. The government was placed in the position of guardian to all its citizens who were now treated as children who did not know better than to drink to excess.

When the Twenty-first Amendment repealed national prohibition, the question was raised whether it also repealed the Indian prohibition. Indians had all become citizens by an act of Congress in 1924.<sup>86</sup> But Congress wanted the Indian prohibition laws to continue. It did recognize that the definition of Indian country needed to be changed as the lands ceded by the Indians under treaty in the 1800s were now likely to be settled almost completely by whites, who no longer needed or wanted prohibition. It recognized that title to many of the allotted lands was now held by whites, and those lands should no longer be considered Indian country. Congress wanted to allow those whites with lands outside the reservations to buy liquor. The law that passed in 1934 revoked the application of the special Indian liquor laws to "former Indian land now outside any existing Indian reservation in any case where land is no longer held by Indians

under trust patents or under any other form of deed or patent which contains restrictions against alienation without the consent of some official of the United States government."<sup>87</sup>

Secretary of the Interior Harold Ickes supported the bill, which would allow white citizens on former Indian lands to use alcohol. But Ickes thought Indians on reservations should still be treated differently: "It is believed, however, that Indian reservations and all lands within the exterior borders of the present or subsequently established Indian reservations should be subject to the Indian liquor laws as provided in this bill; also that said laws should continue to be in force with reference to restricted Indians as provided in the bill."<sup>88</sup> So the New Deal was not extended to Indian prohibition laws. Prohibition was still the government's policy for Indians on reservations in the Great Plains and throughout the nation. Government officials continued to believe that they knew what was best for adult Indian citizens.

Change came slowly. After World War II, when many Indian veterans could not legally obtain alcohol at home, complaints were made to the government. The commissioner of Indian affairs noted in his report of 1946 that "Indians feel that the prohibition, which singles them out as a racial group, is discriminating and brands them as inferior. Veterans of World War II, who were able to obtain liquor with no difficulty while in the armed forces, have made many protests against the existence of the law. Various Indian tribes passed resolutions urging that sale of liquor be permitted to Indians off the reservations."<sup>89</sup>

In 1949 Congress discussed a bill that would have repealed the Indian liquor laws in Minnesota and Wisconsin while continuing a ban on liquor on reservations. This would have allowed Indians to drink alcohol anywhere but on the reservation. Wisconsin had worked on assimilating its Indians since it became a state. The purpose of this bill was to put the Indian in the same position as whites off the reservation. The Department of the Interior had no objections to the bill but would have preferred

that it apply to the entire country.<sup>90</sup> The House Committee decided Wisconsin and Minnesota had the greatest demand that prohibition be repealed and thus could serve as a test case to see how the law works, "so that there could be no possibility of making a general mistake along this line."<sup>91</sup>

Members of Congress gave reasons why this law should be passed for Minnesota and Wisconsin. It was difficult to tell who was an Indian, as many Indians had intermarried, and technically the law considered anyone an Indian with one-sixty-fourth percentage of Indian blood.<sup>92</sup> Someone whose great-grandparent's great-grandparent was an Indian was legally an Indian. The law discriminated against Indians, particularly Indian veterans.<sup>93</sup> It was pointed out that "japs, Negroes and Chinese" could buy alcohol but Indians could not.<sup>94</sup> Mr. O'Konski of Wisconsin summed it all up: "The Indians of today are educated. They would not become demoralized from removing this restriction; they respond to their teaching and surroundings and are worthy. We want them to feel not the stigma of restriction but the inspiration of decency, and manhood, and womanhood that becomes an American citizen."<sup>95</sup> Some Plains Indians also objected to the prohibition laws. Mr. D'Ewart of Montana placed in the record a resolution of the Crow Tribe asking for the repeal of all liquor laws. The tribe gave a list of reasons to do so—that it could not be enforced, that the early reasons for the law were no longer existing, that it was expensive to try and enforce, and that bootleg liquor was easily obtained, and created an environment for bootleggers. The tribe also noted that

At the moment and due to warnings by the Federal enforcement officers, all food stores and drug stores in the United States now refuse to sell to the Indians all articles of toiletry, such as cologne or perfumes containing any alcohol, also kitchen necessities such as vanilla and lemon extracts, as also being banned by the act of June 30, 1834, and as a consequence the Indians all

over the United States and Canada are resorting to the use and drinking of all kinds of shaving and rubbing lotions, canned heat, hair tonics, and such mixtures[,] which has now and is daily endangering the health of Indian youths, both men and women to the danger point.<sup>96</sup>

This last point, that Indians still needed protection from themselves, would be a reason some congressmen would not vote for this law. Mr. Bryson of South Carolina noted, "I am sure that all of us recognize the Indians as our wards in a sense. They are probably the truer Americans in the strictest senses than we ourselves are, because they are the aborigines, they were here when Columbus set foot on this land. I am sure, as we have protected them as far as we could in the past, we would not now intentionally place a stumbling block in their paths."<sup>97</sup> Mr. Rees of Kansas felt the same way. "I could give you 40 different ways by which you could help the Indian out and give them opportunities that are given the ordinary American citizens without including this sort of legislation."<sup>98</sup> He argued against the legislation as not good for Indians, for Wisconsin or Minnesota, or for the country. The bill was defeated.

But four years later Congress did finally resolve the issue. It came in a bill to repeal Indian prohibition in Arizona only, but was amended to include all Indian country within the United States. The House Report recognized the discriminatory nature of Indian prohibition. "The Indians for many years have complained that the liquor laws are most discriminatory in nature. The Indians feel that, irrespective of the merits or demerits of prohibition, it is unfair to legislate specifically against them in this matter. Inasmuch as Indians are expected to assume the responsibilities of citizenship and serve in the Armed Forces on an equal basis with other Americans, the committee sees no reason for continuing legislation that is applicable only to Indians."<sup>99</sup> The Department of the Interior, through the assistant secretary of the interior,

agreed that "the laws which prohibit the sale of intoxicants to Indians are discriminatory" and that "these laws should be made inapplicable to transactions occurring outside of Indian country generally."<sup>100</sup> Senator Barry Goldwater of Arizona read into the record an editorial from a local Prescott newspaper: "An Indian is a voting, taxpaying American citizen who is spared none of the duties and responsibilities of this status. Along with his fellow American, he should have the right to take a drink or leave it alone."<sup>101</sup>

The bill passed. The prohibitions against the sale and use of liquor would not apply in any area that is not Indian country, nor to any acts within Indian country that followed state and tribal law. Indians could drink off the reservations, and they could drink on the reservations subject to tribal regulations. The tribes were to adopt ordinances related to Indian drinking similar to town, county, or state regulations in existence elsewhere. Most tribes adopted prohibition laws, including the Pine Ridge Sioux. But they were adopted by Indians for Indians, not imposed on them by the federal government.

## CONCLUSION

Under the powers given it under the Constitution, Congress had the power to legislate over the Indians. It used this power in many ways, one of which was to prohibit intoxicating beverages from reaching the Indians. There were many reasons put forward in attempts to justify prohibiting liquor for Indians. Government paternalism, as guardian to ward, certainly accounted for most of it. Congress believed it knew what was best for its Indian "children." Many who advocated Indian prohibition, including Indian agents who worked with the tribes on a day-to-day basis, truly believed prohibition benefited the Indian. It would advance Native people along the road to civilization. It would free Indians of what the supporters of prohibition considered to be a white man's vice. These beliefs were held by people who thought they were putting the

Indians' interest first. They believed that Indian assimilation was the best way to help the Indians. Not surprisingly, Indians thought otherwise.

Preventing Indians from drinking was also seen as a way to protect the white settlers. Prohibition was a way to control the Indian and to put him in his place. Many whites already believed that Indians were inferior, and using the myth of the drunken Indian confirmed this belief and allowed policies to develop that marginalized the Indian. In *Addictions and Native Americans*, Laurence French notes that "Ironically, the policies of the dominant US society produced a self-fulfilling prophecy of psychocultural marginality and dependency among the Native Americans under their care."<sup>102</sup> The government made all decisions on behalf of Indians without consulting the Indians.

Indian prohibition was a policy that did not work. The government had tried it as a national experiment and it had not worked there either. It is difficult to legislate social behavior. Indians viewed it a policy to take away their culture and way of life, and resisted it. Whites viewed it as a policy of assimilation, which would better the Indians. Indian tribes still do maintain a distinct culture, as well as tribal sovereignty. Holmes and Antell's study of officials on the Wind River Reservation concludes that these different viewpoints still have an affect on the treatment of Indian alcohol treatment practices today:

[P]ortrayals of Indian degeneracy, evidenced particularly by alcohol abuse, symbolically enhance whites' ostensibly more self-disciplined lifestyle and explain the impoverished conditions on Indian reservations. Moreover, Indians perceived as weak willed and recalcitrant, and thus culpable for the deviant behavior allegedly fostering the difficult conditions, remain undeserving of ameliorative intervention beyond encouragement to undergo assimilative transformation. Whites achieve great benefit from a symbolic victory that simul-

taneously venerates the dominant culture and justifies the degraded conditions surrounding the subordinate one. Indians also emerge victorious, albeit materially impoverished, insofar as their resistance nourishes a distinctive ethnic identity and political self-consciousness.<sup>103</sup>

Additionally, the alcohol prohibition policy could be manipulated, as it is being manipulated in Whiteclay, Nebraska, today. There was and is always someone willing to go against community values and make a profit from selling liquor to Indians. And there are always people willing to take the risk and buy alcohol to drink. Enforcement has and continues to be a problem. Some people just do not see drinking and alcohol abuse as a serious problem. And others do not see it as a high enforcement priority on a limited enforcement budget. It was and is difficult to obtain evidence against a seller of liquor, as the buyer does not want to reveal his source. Because legislating social behavior does not always work, there needs to be a strong community culture against alcohol for prohibition to succeed.

Different perspectives of what caused the problem and how to solve it still exist. But these different perspectives all acknowledge that alcohol is a problem in Indian country, however defined, today. Indian alcohol problems need to be solved not by reference to past problems, stereotypes, and myths, but by dealing with the current knowledge of alcohol abuse within the structure of the tribal community. The history of Indian prohibition has shown what has not worked and why. The tribe must determine what will work for its members. Laws need to be adopted that fit the tribe's view and interpretation of alcohol policies. Laws that do not reflect the local community and culture will not be effective. Tribal members need to determine whether prohibition will work in their geographic area or will create more problems, or whether alcohol abuse can be ended by other means. It has been shown that laws can be interpreted to meet a desired goal of the interpreter whether

judge, court, or legislature. The policymakers should work to make clear their goals. The Indian interpretation of alcohol policy should be the one used, as it will best serve the needs of the tribal members.

#### NOTES

1. Malcolm D. Holmes and Judith A. Antell, "The Social Construction of American Indian Drinking: Perceptions of American Indian and White Officials," *Sociological Quarterly* 42 (2001): 151.

2. Ibid.

3. Ibid.

4. John W. Frank, Roland S. Moore, and Genevieve M. Ames, "Historical and Cultural Roots of Drinking Problems among American Indians," *American Journal of Public Health* 90, no. 3 (2000): 344. However, see Laurence Armand French, *Addictions and Native Americans* (Westport: Praeger, 2000), who claims that "psychoactive agents" were in use among tribes prior to European contact but were used under strict cultural controls.

5. Philip A. May, "The Epidemiology of Alcohol Abuse among American Indians: The Mythical and Real Properties," *American Indian Culture and Research Journal* 18, no. 2 (1994): 121.

6. "Whiteclay Protestors Plead Innocent to Beer Charges," *Lincoln [Nebraska] Journal Star*, 18 July 2002; Don Walton, "Dean Calls Out Johanns over Whiteclay Issue," *Lincoln Journal Star*, 21 August 2002; Butch Habin, "Seven Whiteclay Protesters Plead Guilty, Get \$100 Fines," *Lincoln Journal Star*, 25 September 2002; "Those at Hearing Conclude No Easy Answers for Whiteclay," *Lincoln Journal Star*, 9 October 2002.

7. Thomas Jefferson to the Senate and House of Representatives, 27 January 1802, in *A Compilation of the Messages and Papers of the Presidents 1789-1897*, ed. J. D. Richardson (New York: Bureau of National Literature, Inc., 1897), 1:322-23.

8. Ibid.

9. *US Statutes at Large* 2 (1802): 139, 146.

10. *US Statutes at Large* 2 (1802): 139, 140.

11. *US Statutes at Large* 3 (1822): 682, 689.

12. Ibid.

13. *Sundry Goods, Wares and Merchandises, The American Fur Company v. United States*, 27 US 358 (2 Pet. 358), 367 (1829).

14. *US Statutes at Large* 4 (1832): 564.

15. *Report of the Commissioner of Indian Affairs*, 1833. Congressional Serial Set, vol. 254, H. doc. 1, no. 11 (Washington, D.C.: Gales and Seaton, 1833), p. 192.

16. Ibid., p. 172.

17. *US Statutes at Large* 4 (1834): 729, 732.
18. *Ibid.*, p. 729.
19. *Report of the Commissioner of Indian Affairs*, 1835. Congressional Serial Set, vol. 286, H. doc. 2, no. 10 (Washington: Blair and Rives, 1853), p. 263.
20. *Report of the Commissioner of Indian Affairs*, 1836. Congressional Serial Set, vol. 301, H. doc. 2, no. 11 (Washington: Blair and Reeves, 1836), p. 391.
21. *Report of the Commissioner of Indian Affairs*, 1839. Congressional Serial Set, vol. 363, H. doc. 2, no. 2 (Washington: Blair and Reeves, 1839), p. 469.
22. *Ibid.*, p. 499.
23. *US Statutes at Large* 9 (1847): 203, sec. 3.
24. *Report of the Commissioner of Indian Affairs*, 1853. Congressional Serial Set, vol. 710, H. doc. 1 (Washington: Robert Armstrong, 1839), p. 262.
25. *Report of the Commissioner of Indian Affairs*, 1861. (Washington, D.C.: Government Printing Office, 1861), p. 16.
26. *Ibid.*, p. 155.
27. *Ibid.*, p. 70.
28. *US Statutes at Large* 12 (1862): 338, 339, sec. 20.
29. *Congressional Globe*, 37th Cong., 2d sess., 1861-62, pt. 1:479.
30. *Ibid.*, p. 481.
31. *US Statutes at Large* 4 (1834): 729, 732; see also *US Statutes at Large* 12 (1862): 338, 339.
32. *Congressional Globe*, 37th Cong., 2d sess., 1861-62, pt. 1:385.
33. *Ibid.*, p. 480.
34. *US Statutes at Large* 16 (1871): 544, 566.
35. *US Statutes at Large* 12 (1862): 392.
36. *Report of the Commissioner* (note 25 above), p. 26.
37. *Report of the Commissioner of Indian Affairs*, 1869 (Washington D.C.: Government Printing Office, 1870), p. 305.
38. *Ibid.*, p. 404.
39. *Report of the Board of Indian Commissioners* (Washington D.C.: Government Printing Office, 1870), pp. 37-38.
40. *Ibid.*
41. *Sixty-first Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior* (Washington, D.C.: Government Printing Office, 1892), pp. 488-89.
42. *Ibid.*, p. 337.
43. *Annual Report of the Department of the Interior for the Fiscal Year Ended June 30, 1897: Report of the Commissioner of Indian Affairs* (Washington, D.C.: Government Printing Office, 1897), p. 257.
44. *Ibid.*, p. 175.
45. *Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Fiscal Year Ended June 30, 1917* (Washington, D.C.: Government Printing Office, 1917), p. 22.
46. *Sixty-first Annual Report* (note 41 above), p. 489.
47. *Annual Report of the Department of the Interior* (note 43 above), p. 291.
48. *United States v. Seveloff*, 2 Sawy. 311, 316-17 (District Court, District of Oregon, 1872).
49. *Ibid.*
50. *Opinions of the Attorneys General*, ed. A. J. Bentley (Washington, D.C.: Government Printing Office 1875; Buffalo: Dennis and Co., Inc., 1952), 14:290.
51. *Ibid.*, pp. 293-94.
52. *United States v. Forty-three Gallons of Whiskey, etc.*, 93 US 188 (1876).
53. *Ibid.*, p. 195.
54. *Bates v. Clark*, 95 US 204 (1877).
55. *Ibid.*, p. 208.
56. *US Statutes at Large* 24 (1887): 388.
57. *Sixty-first Annual Report* (note 41 above), p. 495.
58. *US Statutes at Large* 29 (1897): 506.
59. *Annual Report of the Department of the Interior* (note 43 above), p. 57.
60. *Farrell v. United States*, 110 Fed. 942 (Circuit Court of Appeals, Eighth Circuit, 1901).
61. *Ibid.*, p. 950.
62. *Matter of Heff*, 197 US 488 (1905).
63. *Ibid.*, p. 509.
64. *US Statutes at Large* 28 (1894): 286, 330.
65. *Dick v. United States*, 208 US 340 (1908).
66. *Ibid.*, p. 354.
67. *Perrin v. United States*, 232 US 478 (1914).
68. *United States v. Nice*, 241 US 591 (1916).
69. *Ibid.*, p. 597.
70. *Ibid.*, p. 601.
71. *Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Fiscal Year Ended June 30, 1916* (Washington D.C.: Government Printing Office, 1916), p. 61.
72. *In re McDonough*, 49 Fed. 360 (District Court, District of Montana, 1892).
73. *Ibid.*, p. 362.
74. *United States v. Ellis*, 51 Fed. 808 (District Court, Western District of Arkansas, 1892).
75. *Ibid.*, p. 813.
76. *Ibid.*, p. 810.
77. *Sixty-first Annual Report* (note 41 above), p. 259.
78. *Ibid.*, pp. 103-4.
79. *Sixtieth Annual Report of the Commissioner of Indian Affairs* (1891), p. 315.
80. *Sixty-first Annual Report* (note 41 above), p. 524.
81. House, 52d Cong., 1st sess. (1892), rpt. 1866.
82. *US Statutes at Large* 27 (1892): 260.
83. *Sarlls v. United States*, 152 US 570 (1894).
84. *Ibid.*, p. 572.
85. *Ibid.*, pp. 576-77.

86. *US Statutes at Large* 41 (1924): 253.
87. *US Statutes at Large* 48 (1934): 1245.
88. *Ibid.*
89. *Annual Report of the Secretary of the Interior, Fiscal Year Ended June 30, 1946* (Washington D.C.: Government Printing Office, 1946), pp. 381-82.
90. House, Miscellaneous Reports IV, 81st Cong., 1st sess., 1949, H. Rpt. 938, p. 2.
91. *Congressional Record*, 81st Cong., 1st sess., 95, pt. 8:10515.
92. *Ibid.*, p. 10517.
93. *Ibid.*, pp. 10515, 10517.
94. *Ibid.*, pp. 10516, 10517.
95. *Ibid.*, p. 10518.
96. *Congressional Record*, 81st Cong., 1st sess., 95, pt. 15:A5489.
97. *Congressional Record*, 81st Cong., 1st sess., 95, pt. 8:10516.
98. *Ibid.*
99. House, Miscellaneous Reports III, 83d Cong., 1st sess., 1953, H. Rpt. 775, p. 2.
100. *Ibid.*, p. 3.
101. *Congressional Record*, 83d Cong., 1st sess., 99, pt. 8:10801.
102. French, *Addictions and Native Americans* (note 4 above), p. 24.
103. Holmes and Antell, "Social Construction of American Indian Drinking" (note 1 above).