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Flathead law: Past and present

Jerome Scott O'Neal

The University of Montana

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FLATHEAD LAW: PAST AND PRESENT

By

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INTRODUCTION

Within the discipline of anthropology, law is one of the most studied subjects. The study of legal anthropology is complicated by the fact that lawyers and jurisprudents use the same words and are often the same people. Therefore, an anthropologist must study law as a jurisprudent, because a jurisprudent deals with law as part of human culture, developed out of custom in somewhat the same way as does a social scientist. Insofar as the jurisprudent is a social scientist, he seeks to transcend the culture and understand it either philosophically or by comparing it with other cultures or both, thereby changing it indirectly (Bohannan, 1963:287). Jurisprudents are interested in what people do, and the way they see their actions; they are also interested in what they say they ought to do, and how well they think they actually manage to do what they ought to do (1963:287). Legal anthropology tends to fall into two categories: On the one hand, cultures are studied and their legal procedures are compared from one society to another; on the other, the basic axioms and postulates, the morals, religion and customs lying behind the laws are studied. The student of anthropological jurisprudence must not forget what Justice Holmes stated: "The life of law has not been logic. It has been experience. Experience means men living in a society" (Hoebel, 1954:6). The people in the law, their feelings and values must not be forgotten in a study of this kind.

In any study of legal theory and practice, the initial step involves the formation of a working definition. E. A. Hoebel, in The
Law of Primitive Man, provides us with such a definition:

A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognised privilege of so acting (1954:28).

Working from this definition, it is possible to develop a system of analysis, by which Flathead social control, more specifically, the aspect known as law can be studied. E. A. Hoebel points out in his book, The Law of Primitive Man, that before any study of this type is attempted, certain fundamental legal concepts such as power, authority, rights, and privileges must be understood to make a legal analysis. Paul Bohannan in his work, Social Anthropology, provides us with a description of what constitutes a legal situation, namely, breach, counteraction, and correction. These two works together offer theoretical and practical analyses that may be used toward a study of law, primitive and contemporary.

In my thesis, I will use the conceptual frameworks provided by Hoebel and Bohannan as a basis for my study of Flathead law. As added references, Hohfeld's Fundamentals of Legal Conceptions and the work of Landis and Lunley, two sociologists dealing with social control, are used. These men offer the basis for my theoretical concepts.

A student of jurisprudence must deal with certain primary tools. One of the basic concepts a student must understand is that there can be no such thing as a legal relation between a person and a thing. A legal issue must involve two people, so every legal situation is bilateral with rights, liability, power, and immunity entering into every case. As Hoebel states in The Law of Primitive Man, there are two questions in every legal case: Is the offense a legal case? If
so, is the defendant guilty? He also gives three requirements that one should look for in determining whether a case is legal; these are officiality, authority and regularity. When a person commits a crime, he is punished by officials given this authority, which in turn establishes regularity. Bohannan in his work, Social Anthropology, expresses a different view as to what constitutes a legal situation. He says there are three aspects to every case: First, the breach; second, the counteraction; then the correction. Bohannan calls these the event sequence:

Breach of Norm —— Counteraction —— Correction

These are aspects of all law, which varies from culture to culture; the smaller groups of people having a less elaborate type of law, namely, private law, wherein breaches are dealt with on a person to person basis. As a society grows, the law becomes more elaborate and complex. I will show how the Flathead proceed from a simple to a more complex type of law and it will be seen how acculturation and social change affect their legal system.

Now we must ask what type of law did the Flathead have, and what are its uses in their society. "Law is an aspect of social control. It is one of the major devices used by society to penalize behavior which varies too much from the selected norms" (Hoebel, 1954:481). Law is, therefore, an instrument in the shaping and maintenance of cultures, while religion, education, and ridicule should be included as other tools. All cultures face the problem of control, for it is necessary to have social control and an aspect of social control known as law to insure the order of a society. It is from this point that
the Flathead will be studied. Hoebel states that law performs four fundamental functions in a society:

1. The first is to define relationships among the members of a society, to assert what activities are permitted and what are ruled out, so as to maintain at least minimal integration between the activities of individuals and groups within the society.

2. The second is derived from the necessity of taming naked force and directing force to the maintenance of order. It is the allocation of authority and the determination of who may exercise physical coercion as a socially recognized privilege-right, along with the selection of the most effective forms of physical sanction in order to achieve the social ends which law serves.

3. The third is the disposition of trouble cases as they arise so that social harmony may be reestablished.

4. The fourth is to redefine relations between individuals and groups as the conditions of life change (1951:182).

I would like to make some remarks about law, and discuss culture, norm, and law. It is known that all man has culture and that it is unique to him alone. Norms and law are only two means used to obtain social control within a culture. Law must be distinguished from traditions and fashions, and more specifically, it must be differentiated from norm and from custom. A norm is a rule, more or less overt, which expresses "ought" aspects of relationships between human beings. This basically means what people ought to do. Custom is a body of such norms—including regular deviations and compromises with norms—that is actually followed in practice much of the time (Bohannan, 1967:45-47). It is habitual or usual course of action or any established practice of the people.

All social institutions are marked by "customs" and these "customs" exhibit most of the characteristics cited by any definition of
law. But there is one salient difference; whereas custom continues to inhere in, and only in, these institutions which it governs, law is specifically recreated by agents of society in a narrower and recognizable context—that is, in the context of the institutions that are legal in character and to some degree, at least, discrete from all others.

Just as custom includes norms, but is both greater and more precise than norms, so law includes custom, but is both greater and more precise. Law has the additional characteristic that it must be what Kantorowicz called "justiciable," by which he means that the rules must be capable of reinterpretation, and actually must be reinterpreted by one of the legal institutions of society so that the conflicts within nonlegal institutions can be adjusted by an "authority" outside of itself.

It is widely recognized that many peoples of the world can state more or less precise "rules" which are, in fact, the norms in accordance with which they think they ought to judge their conduct. In all societies there are allowable lapses from such rules and in most, there are more or less precise rules for breaking rules.

In order to make the distinction between law and other rules, it is necessary to look at legal institutions. A legal institution is a body by means of which the people of a society settle disputes that arise between one another and counteract any gross and flagrant abuses of the rules of at least some of the other institutions of society. Every ongoing society has legal institutions in this sense, as well as a wide variety of nonlegal institutions.
There are, thus, at least two aspects of legal institutions that are not shared with other institutions of society. Legal institutions, and often they alone, must have some regularized way to interfere in the malfunctioning of the nonlegal institutions in order to disengage the trouble-case. There must, secondly, be two kinds of rules in the legal institutions: those that govern the activities of the legal institution itself, and those that are substitutes or modifications or restatements of the rules of the nonlegal institutions that have been invaded.

In a final statement about law, I feel that it is very important to point out that there must be a breach of the law before it can be considered as law. A social norm does not have to be defied to remain a norm. The really fundamental *sine qua non* of law in any society—primitive or civilized—is the legitimate use of physical coercion by a socially authorized agent. The law has teeth, teeth that can bite if need be, although they need not necessarily be bared. Truly, as Jhering emphasized, "Law without force is an empty name," and more poetically, "A legal rule without coercion is a fire that does not burn, a light that does not shine" (Hoebel, 1954:26).

A. R. Radcliffe-Brown, a modern anthropologist who sees the importance of force as an aspect of law, describes law as "The maintenance or establishment of social order, within a territorial framework, by the exercise of coercive authority through the use, or the possibility of use, of physical force" (1954:26).

However, all force in society is not official and does not always enforce laws, thus making it coercion. When force is applied in a
nonofficial, nonregular and nonauthoritative manner, it is coercion, and it exists whenever some people deliberately restrict the choices that others may make in certain situations. The essentials of legal coercion are general social acceptance of the application of physical power, in threat or in fact, by a privileged party, for a legitimate cause, in a legitimate way, and at a legitimate time. This distinguishes the sanction of law from that of other social rules (1954:27). My thesis will include background and history of the Flathead Indians, a study of their early law, insofar as it can be extracted from the literature, the effects of Jesuits and Catholicism on the forms of early law, and some present day cases. The methods used were to consult works done on the law ways of other tribes and attempt to grasp an understanding of the basis of law, which would be applicable to this study. By reviewing works of early historians, the first understanding of Flathead law is grasped. Included is a synopsis of aboriginal Flathead culture with a particular emphasis on how the Flathead resolve disputes or violations of custom. Then I proceed to tell how the Flathead's original ways were modified by continued contact with the Jesuit fathers, and finally I end with an overall view of what the Flathead law has evolved into. Thus, the descriptions in this thesis cover the Flathead and their law from prehistoric to present times.
CHAPTER II

FLATHEAD HISTORY

Before my study of Flathead law begins, a general ethnographic picture of the Flathead culture will be presented.

The Flatheads controlled that portion of Montana in which lie the valleys of the Clark Fork of the Columbia and its tributaries, the Bitterroot, and the Flathead Rivers (Curtis, 1909:44). At the beginning of the historical period, horses were abundant among the Flathead and it is because of this abundancy that they were constantly harassed by less fortunate neighboring tribes who raided after the horses.

Traditions of migration among the Flathead refer to movements that were principally caused by war (Teit, 1930:316). Aggressive tribes, principally the Blackfeet, gradually put force upon the Flathead tribes until they eventually moved west of the mountains for a time. It was here that the Flathead found it necessary to join up with the Nez Perce and other neighboring Salishan tribes, in order to carry on their buffalo hunting expeditions into the plains. Even with this precaution of larger numbers, the trips were usually quite hazardous and costly because of the mountains to cross and the harassing Blackfeet. These trips brought the Flathead in contact with the Crow, Shoshoni, Mandan and Hidatsa, and from them, the Flathead and their allies received some articles of European trade.

Teit describes the Flathead as of medium stature, well-built and good-looking (1930:325). The ancient Flathead were noted to be
hospitable, liberal and courageous peoples, among whom lewdness of women is said to have been rare. Flatheads had most of the traits typical of the plains tribes and had many similarities to their material culture (1930:326). However, previous to the introduction of the horse, their material culture resembled that of the plateau area. Stonework was used mainly for arrows, knives, pipes, and spears, and occasionally for some mauls and pestals. Paints and dye were used extensively among their hidework as a means of decoration. Their basketry consisted of three types: Woven, bark, and coiled. Women made all of the baskets, mats and dressed all of the skins, while men concerned themselves only with the making of weapons and anything that dealt with the guardian spirit.

Teit also tells us that the subterranean house was not used by the Flathead and that the conical lodge was the common family dwelling (1930:332). This lodge was used by all people in the summer and by most in the winter months. Shelters of brush were sometimes used by hunters when they were seeking game in the mountains, away from the main camp. Along with the lodge, the circular house was often erected in large camps during the summer for dances and ceremonial use.

The people were generally fully clad, with most of their clothing made of skins (1930:332). Men's costumes consisted of a shirt, long leggings, a breech cloth and a headband, and in the winter, fur caps were often worn (1930:335-336). Another type of headgear that was prevalent among the Flathead was the feather bonnet, which existed in many sizes and shapes. The most common bonnet was known as the "Sioux" bonnet which was adopted from the Crow. The women wore a long
dress, short leggings, a belt and a cap or headband. The designs on their clothing were made with dyes, paint or beadwork, as done by the women, with elk's teeth or shells used for extra decoration. Early day designs in clothing were usually geometric, but there was a gradual transition to floral designs which are found in the later days among the Flathead.

The country occupied by the Flathead tribe was rich in all kinds of foods. Roots and berries were abundant, and in most places large quantities of camas and bitterroot were dug and highly valued. The double-curved bow was used by the Flathead in the pursuit of buffalo, and when the buffalo were not present, other game such as elk, antelope, and deer were sought. Moose and mountain sheep were also available to be hunted as food in this area. Generally speaking, the people occupied themselves chiefly as follows during the year: In the springtime, by digging certain roots, hunting, and fishing; in early summer, by fishing for trout and salmon, hunting, root digging; midsummer, root digging and berrying. There was only a little hunting in the late summer, with salmon fishing and berrying taking most of the time. In the early fall, buffalo hunting parties were formed and left on their hunting trips. There was very little hunting in the late fall and, finally, there was only hunting left in the winter. After the introduction of the horse, devices to take game such as nets, snares, and traps were abandoned, for the horse provided a faster means of catching small animals.

Prior to the horse, overland treks were made by foot with the people carrying necessary materials on their backs. Contrary to
popular ideas, most informants claim that dogs were not used for the purpose of transporting materials. At the introduction of the horse in 1600, the Flathead adapted immediately to packing, hunting and riding. All horse equipment was adopted from the Shoshoni, whom the Flathead met earlier while journeying to hunt buffalo. Besides the horse, the Flathead also used the canoe. The introduction of the horse also brought changes in the type of weapons used in warfare. Before the horse, there was some warfare, but not to the extent as after the horse. Now the bow and arrow, spears and clubs became the main weapons. The Flathead began taking scalps and had several war dances where they related their experiences.

Social organization of the Flathead tribes appeared to have been in general of the same kind as the Kutenai, Nez Perce, and the Shoshoni (1930:373-374). There were no privilege classes, clans or phratries; rather, each tribe formed a unit, the members being bound together by ties of blood, association, mutual interest, common country and dialect. Each tribe consisted of a number of bands, each making its headquarters at a definite locality, and of families, more or less closely related by blood. The bands, although having a definite headquarters, had a great range, and were quite nomadic. Each band had a chief and an assistant chief, who gave advice and generally looked after affairs. There was no central authority, except for the head chief, who kept the tribal pipe and other tribal property. Powers of the chief were mainly advisory and the sub-chief assisted him by leading root-digging parties or a buffalo hunt and played an important part in the general gathering of food and overseeing relations. There
was some method of ranking warriors in the band according to war experience and to exploits, and positions were assigned to them when tribes moved from place to place.

Many men among the Flathead had more than one wife, but monogamy was more common (1930:382). The mother-in-law taboo did not exist among the Flathead, as it did in many related tribes. When a young man reached puberty, he fasted, prayed and kept a vigil until he acquired a guardian spirit who gave him a song and a medicine bundle. When death came to one of the tribe, the underground burial was used, and if it was in strange country, no markings were left on the grave.

The Flathead believe that three worlds exist, one above the other; the middle world is that in which we live. A good chief rules the upper, while an evil chief rules the under world. The mythological tales of the Flathead are closely related to those of the plateau tribes and they also show some relationship to those of the plains tribes. The Coyote was the cultural hero, and the shaman was also present in all three. The ceremonies and dances were numerous, including some for war, hunting, harvest, marriage (1930:383).

The Flathead’s first contact with white men occurred in 1805, when members of the Lewis and Clark expedition came upon a Flathead village. The chance meeting took place at a village later known as Ross’s Hole, near the present town of Sula, Ravalli County, Montana. Although there were language barriers between the two parties, the Flathead did manage to impress their friendliness and hospitality upon the explorers by exchanging presents, willingly sharing their food, and trading horses to the whites. Lewis and Clark estimated the size of
the Indian village at thirty-three lodges (Sergeant Ordway reckoned forty), in which lived about four hundred persons, of whom eighty were men. Captain Clark said these Indians called themselves "Eoote-lash-Schute." Later Indian accounts of the meeting leave no doubt that they were the Flathead (Ewers, 1948:16).

The white man's contact with the Flathead had advantages for both sides, but the more important one to the Flathead was that it eventually brought the introduction of the gun. The Flathead finally found it possible to defend themselves successfully against their lifelong enemies, the Blackfeet, only after David Thompson of the Northwest Company opened direct trade with them, thus making it possible for them to acquire guns. They had previously defended themselves with stone-pointed lances and arrows, which had proved less than satisfactory against the firearms of their enemies. Once they had acquired firearms, however, they were able to score the first victory over their harassing neighbors in the summer of 1810.

The next year after their unexpected defeat, the Blackfeet asked the Flathead for peace, but the Flathead refused the offer, for they knew that it would not protect them from the allies of the Blackfeet, the Northern Blackfeet and the Atsina.

Although the Flathead became well armed in the following years, they remained the same hospitable and honest people of earlier times. In the accounts of "hard-boiled" traders, the Flathead were extravagantly praised for their friendliness, frankness, honesty, truthfulness, industry, courage, obedience to their chiefs, cleanliness and chastity of their women (1948:17). With all of these assets to their personalities
the Flathead had but one serious drawback, the fact that they were compulsive gamblers.

Many of the trader friends of the Flathead offered to aid in making peace with the Blackfeet, and in 1832, Captain Bonneville's offer was met with disapproval on the grounds that a state of open warfare, during which everyone was constantly alerted, was preferable to the false security of peace with an enemy that could not be trusted.

In 1853, the United States Government commanded Isaac I. Stevens to make a survey of western Montana (Ronan, 1890:35). He met with the Flathead and the meeting place was called Council Groves, near Missoula. It was here that the peace treaty, called the Hellgate Treaty, was signed. Much dispute over land existed until 1877, when the President took advantage of certain loopholes in the Hellgate Treaty and said that the Indians must be removed to the Jocko reservation. General Garfield was sent to enforce removal of the Indians to the reservation. Most of the Indians went to the reservation peacefully, but Charlo and his people refused to go at this time. In 1883, a special committee met with Charlo and after much discussion the old chief gave in and the remainder of his people went to the reservation, where they live today. Their reservation today is known as The Confederated Salish and Kutenai Indian Reservation. At present, about 250 full-bloods and 3000 other mixtures remain on the reservation. The agency and headquarters of the reservation are both located at Dixon, Montana.
CHAPTER III

EARLY FLATHEAD LAW

All of the early explorers who entered the Northwest praised the Flathead for their fairness and justice (Ewers, 1948:21). These early trappers reported that whipping was the chief means of criminal punishment and all of the literature available to me substantiates this as the means of punishment. Most early references are very brief and spotty on this subject, with the best records coming from the Jesuits, who will be discussed later in this chapter.

Cox, in his Adventures Along the Columbia River, states that the chief carried a long whip with a thick handle decorated with scalps and feathers. During a march or movement of the tribe, if anyone falls out of the ranks or commits any other breach of discipline, he immediately receives a whipping from the chief. The chief always acts with the most perfect impartiality and would punish one of his subordinates for disobedience of orders with as much severity as any other offender. Captain John Wyeth states that theft is almost unknown among the Flathead, "However, when it does occur, it is punishable by whipping" (Wyeth, 1905:6).

Curtis, another early explorer, states "whipping as a punishment for various offences such as adultery, theft, drunkenness, murder was introduced by a Spokan chief, Garry, after his return from the Red River School. It gradually spread among many of the Salishan tribes of the interior and is still enforced among the Kalispel" (Curtis,
Vol. VII:76). However, Turney-High in his 1937 article, "The Flathead Indians of Montana," in the American Anthropological Association Memoir 48, maintains that whipping was an aboriginal practice. From the research I have gathered, I agree with Turney-High, since Cox in 1832 and Wyeth in 1833 both observed whipping among the Flathead, and reference is made in other journals to it existing even before this time. Garry did not return from the Red River School until 1833.

Turney-High also states that only the chief was allowed to whip and he never delegated the task to anyone. Louisa McDermott, who did ethnographic work among the Flathead in her thesis, on the other hand, writes: "Offenders against the moral code were brought before the court. The accused were examined, and if found guilty were whipped by the chief or anyone he might delegate to administer the punishment" (University of Montana Microfilm #14318). I have found some cases where the whipping was done by those other than chiefs. Louisa McDermott mentions cases in her thesis, as does Rt. Rev. James O'Conner, Bishop of Omaha, Nebraska, in a conversation with an Indian, Baptiste, which is quoted later in this chapter. My informant from the Flathead Reservation, John B. Adams, also told me of instances where the chief delegated his power to whip.

For almost two hundred years, one of the most important symbols of the chieftainship was the whip, a long lash made of buckskin and loaded with buckshot (Turney-High, 1937:46). The chief used the whip to punish crimes that were committed among the Flathead, crimes such as horse thievery, slander, and theft. The chief was assisted at this task by a group of men known as "Grabbers," who were a type of police
force. The main job of this police force was usually to issue warnings and report crimes. For example, gossipers were usually let off with a warning or a stern lecture from this group. When a party was thought guilty of a crime, the chief called the person in and talked to him to determine guilt or innocence himself, and only in extreme cases did he ask for advice from the council of subchiefs. The person was always under somewhat of a tribal obligation to speak the truth, and the importance of this honesty is seen by noting that the Flathead use the same term meaning to lie to a chief while on trial, as the term used for lying to a priest while in confession (Turney-High, 1937:47).

After it was determined that a person was guilty, he was either reprimanded or put to a whip. In all of my sources, the whipping procedure followed the same pattern, and was taken quite seriously by both the offender and the onlookers. My informant, John B. Adams, told me that if you laughed at a person while he was being whipped you would be punished for it. The person to be whipped laid face down, some exposing their back, some not, and the whipping began. The number of lashes was determined by the type of crime, and the chief began administering the set number of lashes. When the punishment was completed, the offender stood up and shook hands with all those around, for he was to hold no malice toward those who punished him. If he refused to do this, he was laid down and punished again, in the same manner. This type of law among the Flathead was very effective, for people would often come up and ask to be punished for crimes they had committed of which no one had yet accused them. However, it is important to point out that the severity of the punishment was equal whether one came to
the chief of his own free will, or whether he was accused and brought by someone else. Informants told Turney High (1937:47), that one hundred lashes with a loaded whip laid on by a muscular chief was almost as bad as being killed, as the flogged was horribly bruised and often left unconscious. There were some cases of deaths; "Michelle's popularity was not increased by his severe punishment. He whipped female adulterers, common among the people, so severely as to cause the death of some of the women" (Ewers, 1948:51).

Reprimand was sometimes used as a means of formal social control. If a person became extremely obnoxious he might be called before the council. Turney-High states that the Indians often stood in terror before going into such a session. The council was seated in a circle, with painted face and feathers, with the chief at the head. The accused was knelt before these people and silence reigned as long as the chief wished. Then the chief broke the silence and delivered a long speech on the types of punishments. After sitting before this council and being verbally reprimanded by the chief's long speech, the accused usually reconsidered his previous deviant social action, and from there on was not so obnoxious. This type of reprimand was very useful among the Flathead in handling minor social disturbances and happenings in their society.

This aboriginal law way existed until the entrance of the white man, who instilled many changes that will be discussed in later chapters. The two basics of this early law were the whip and social reprimand, which understandably made the biggest impression on those witnessing the punishments. This type of social control was functional
because of the Flathead's nomadic existence, which made the punishment of jailing impractical. For these people, the whip was a very useful tool. A person could commit a crime, be whipped for it, and go back to his position in society within a matter of hours. The punishment was severe enough so that it did not promote crime, and was a very fast and effective means of control for these nomadic people. It is important to make the qualification that these were not the only types of social control among the Flathead, but only the most talked about and publicized. Upon further study, we find that gossip, ridicule, status, laughing, and magical powers were all used as means of social control to handle the general problems of social control in everyday life.

The fur trade had numerous effects on the Flathead, the first being contact with the Iroquois, who had left their homes in the east to seek furs in the west around 1825, and the second being a definite change in the life of the Flathead because of the religion that these Iroquois brought along. The first Christian traits were noted by fur traders among the Flathead in 1833, which shows the Iroquois effects.

Before the Iroquois came, the Flathead had regarded anything supernatural as having great power over war, and when Christianity was introduced to them, they felt that this was one of the strongest powers they had ever encountered. When they began winning battles over enemies they had previously been defeated by, they attributed it to the introduction of this new religion, and were even more eager to adopt it. They worked continuously and diligently to have a "black robe" come among them, so they could get closer to this strong Christian
religion. For many years after the coming of the Jesuits, the Flathead had an unusual blend of religion, as was reported by Wyeth and Bonneville in 1833 and 1834, respectively. They state that the Flathead offer daily prayers and observe the holidays of the Roman Catholic Church and considered Sunday a day of rest. However, the services consumed only a portion of the day and the remainder was spent indulging in horseracing and hand games, which they loved to play.

In response to the persistent requests for a black robe, Jesuit officials selected Father Pierre Jean De Smet, a Belgian priest, with two years' experience in missionary work among the Indians, to visit the Flathead and determine the feasibility of missionary work among this far western tribe. He journeyed from St. Louis to Green River (in present Wyoming) where a Flathead delegation met him on June 30, 1840. They guided him to the main Flathead-Pend d'Oreille camp at Pierre's Hole. He found the Flathead hospitable and inclined to embrace the black robes' religion. De Smet baptized nearly 600 of the Indians, including the aged chiefs of both the Flathead and Upper Pend d'Oreille tribes. He assured them that a resident missionary would be sent the following spring, and he returned to St. Louis, enthusiastic over the prospects of a permanent Flathead Indian mission.

Next spring, Father De Smet headed the little party entrusted with the inauguration of the first Catholic Mission in the great Northwest. It included two other priests, Fathers Nicholas Point and Gregory Mengarini, and three lay brothers. In the fall of 1841, they established St. Mary's Mission in the Bitterroot Valley.

For five years St. Mary's Mission appeared to prosper. Father De Smet was not content merely to convert the pagan Flathead to Christianity, and he initiated a series of fundamental changes in Flathead culture which he believed was necessary to improve the economic and social condition of the tribe (Ewers, 1948:19).

In 1846, De Smet went down river to St. Louis. Earlier that summer he had arranged a peace meeting among the Blackfeet and the Flathead and he was sure that there would be everlasting peace between these two tribes, and that his mission that he had founded among the Flathead
would be completely successful. However, four years later the mission was discontinued.

Many have speculated why this mission failed; they say that Father De Smet made promises that he could not keep. It has also been pointed out that many of the leaders of the Indians had died, and weaker Indian leaders took over who could not control those under them. With the weaker leaders in control, enforcement of rules was lax and a more confused state existed than when the enthusiastic leaders reigned. Catholic officials were forced to abandon the mission in the fall of 1850, because they felt that the work was not justified. On November 5, 1850, the mission property was sold to John Owen, an American trader who founded the trading post, Fort Owen (1948:22).

Many have questioned why St. Mary's Mission was a failure. When Father De Smet arrived, he was impressed by the brutality of the chiefly flogging and he discouraged this practice. This had a definite effect on the legal system among the Flatheads, for we can see as evidenced in early Catholic records that among the many causes of dissatisfaction that led to the closure of St. Mary's Mission in 1850, Father Accloti mentions the loss of influence among the chiefs following the abolishment of the punishment of the whip. One such chief was Victor. In the face of rising dissatisfaction with his leadership, he clung to the decision not to use the whip, and by the fall of 1852, he had become an insignificant chief with very little prestige.

I believe that we can also see that the same feelings existed among the Pend d'Oreille. When Alexander, chief of the Pend d'Oreille accompanied Father De Smet to Fort Vancouver in the spring of 1859, he
showed very little interest in the white man's mechanical inventions and industrial plants he saw in the principal towns of Oregon and Washington. He was much interested in the Portland prison and the severe methods of punishment of criminals he observed there. Immediately on his return to the reservation, Alexander assembled his people. He told them of the wonders of the white man's civilization, placing particular emphasis upon the white man's severe methods of criminal punishment, and concluded:

"We have neither chains nor prisons, and for want of them, no doubt, a great number of us are wicked and have deaf ears. As chief, I am determined to do my duty; I shall take a whip to punish the wicked; let all those who have been guilty of any misdemeanor present themselves. I am ready" (Ewers, 1948: 50).

The outcome of the affair was as follows:

The known guilty parties were called upon by name, many presented themselves of their own accord, and all received a proportionate correction. The whole affair terminated in a general rejoicing and feast (Ewers, 1948:50).

One of the best explanations of the feelings that existed between the Indians and the Jesuits is found in a conversation between Rt. Rev. James O'Connor and Baptiste about the use of the whip, as reported in the American Catholic Historical Records, Vol. 3, pp. 85-110, 1889-1891.

Baptiste--"Some of the white people, I am told, talk against our custom of whipping Indians. Our chief at the Bitterroot told us last year not to whip them, but to put them in prison. What then are we to do? All chiefs have given up whipping, but I continue to whip bad Indians. I have learned from the priest from the beginning that it was right to whip them and I shall never give up doing so. Many are opposed to me because of this. Having once taken God's hand, I will never let it go. I am sure the priest approved of my whipping bad Indians. I have always done the priest's bidding, even at the risk of my life. I love the church and am not afraid of my priest."
O'Connor—"For what crimes do you whip?"

Baptiste—"For adultery, abandonment of a wife by her husband, lying, stealing, slander, and disorderly conduct at church, gambling, and violent anger."

O'Connor—"You should not whip since your chief has forbidden you to do so."

Baptiste—"Are not all of these things sins? Is it not necessary to punish all sins with a lash? Should not these offences be punished? Is not the whip good?"

O'Connor—"Yes, when used by the proper authority and in proportion to the offence."

Baptiste—"Can I continue to whip?"

O'Connor—"Not until you become a chief or get the chief's authority to do so."

Baptiste—"Must the whip be abandoned?"

O'Connor—"Yes, if the chief requires it."

Baptiste here looked sad, but said resigningly:

"Then whipping is at an end?" But a bright idea occurred to him immediately, and he asked, "When put in prison, Indians will lie, profess sorrow for their offences, be pardoned and then do the same things over again. Don't believe what they say the second time. Well, then, I shall give up whipping. Must I obey the head chief and not obey God, Reverend?"

O'Connor—"When you obey the chief in matters like this, you obey God."

Baptiste—"I have opened my heart to you, but I have another question to ask. The two highest chiefs of our people have told me to act no more as a chief. The local chief here at the mission wishes me to act as such in his absence. Who should I obey?"

O'Connor—"The highest chiefs."

Baptiste—"If these men should go astray, am I to follow them?"

O'Connor—"Not when you are certain that what they ask is a sin."

Baptiste—"But they were wrong in abandoning the whip."

O'Connor—"You are mistaken, because everyone knows that the
chief is at liberty to whip or not to whip as he thinks best."

Baptiste—"But if the whip be abandoned, people will become bad, and priests will be sorry."

O'Connor—"The penal code of the Flathead provides for only two kinds of punishment: whipping and imprisonment for the offences already mentioned. I asked Baptiste how murder was punished in the tribe. He looked puzzled for a moment and said that no one charged with that crime had ever been brought before him."

I think there are many other facets in the case of the failure of the Jesuits with the Indians. One important fact that is not often pointed out is that the Indians could accept the Catholic religion and their religion, both at the same time, but the Jesuits would not stand for this; they tried to instill European culture in the place of the Indians'. Another reason for the failure is that De Smet liked to travel too much; he was a very strong and dynamic person and when he left his mission to Mengarini and Ravalli, who were very different in personality than he, this made a great deal of difference to the Indians. I think it can be summed up by saying that the Jesuits were inconsistent in their policies. Alcohol played a definite role in the social breakdown, and finally the changes that the Jesuits instilled upon the law ways changed the political structure of the Flathead themselves. The day of the strong leader was diminishing and when the Jesuits changed many of the ways of control, and then departed, it left a definite gap in the legal structure. These changes can quite notably be seen in a thesis done by Louisa McDermott, which shows an excellent relationship between the church and law. The main crimes that were punished during the Mission period were adultery, stealing, gambling, and disorderly conduct at church. It is important here to notice that two crimes have
been added to the crimes previously noted, disorderly conduct at church, and gambling. These were both brought about by the Jesuits, for the Indians liked to gamble very much and enjoyed the type of game involved in the gambling. Whipping was still used as a means of punishment, although the Jesuits tried to stop members of the tribe from doing this. The Indians believed that whipping wiped out all guilt and this belief lived on long after the introduction of Christianity. Often, Indians would insist on being whipped even after the priests had given them absolution. It is my contention that this is one of the reasons that the Jesuits wished to stop whipping, because the Indians felt that the whipping was more important than confession. Once they had been whipped, they did not have to confess to the crime. While the Flathead were still pagans, they believed the whipping wiped out the guilt of action for which it was inflicted, and long after their conversion, it was not an easy matter to convince some of them that they were obliged to confess sins for which they had already been punished. My informant told me that during the time when a person was being whipped, each time that the whip hit his back, he would yell out "Hail, Mary." Instead of the onlookers just standing around, they also yelled in prayer. One thing that can be said for this system of punishment was its impartiality. Once a young man accused of disorderly conduct brought the same charge against one of the judges, proved the case, and the judge received the same punishment as the previous offender.

The history of Flathead culture in the pre-reservation period (i.e., prior to 1891) is significant as a case history in American Indian acculturation (Ewers, 1948:27). Because the Flathead were
consistently friendly toward the whites, because they placed high value on a number of traits of character which white men identified as Christian virtues, because they showed an early interest in the Christian religion, the fur traders, missionaries, and early Government officials believed this tribe aspired to a civilization after the European pattern. No other western tribe appeared to offer such potentialities for rapid conversion to the white man's way of life. Yet Flathead history is one of obstinate resistance to acculturation. Their well-meaning white friends apparently failed to understand that the Flathead cherished certain original practices as traditional rights. Stubbornly they clung to their insistence on their right to hunt buffalo on the plains, despite the deadly opposition of the more powerful Blackfoot, and the kindly advice of their white friends, until the buffalo were gone. Persistently they asserted their right to remain in their beloved Bitterroot Valley homeland until their own poverty forced them to leave it. With equal courage they resisted efforts to introduce among them alien economic and social practices which were antithetic to their own cultural experience. No trait was more markedly characteristic of the Flathead than was their independence. However, the point must be made that the white man did have their effect on the Indian, as can be seen by their acceptance and use of tobacco, whiskey, and the white man's idea of God. As a people, the Flathead passionately desired to live their own lives and to make their own decisions.

Probably no one expressed more concisely the simple objectives of original Flathead life than did Father Mengarini, for many years their missionary, who wrote: "Generally the prayers of our Indians
consisted in asking to live a long time, to kill plenty of animals and enemies, and to steal the greatest number of the enemies' horses possible" (Ewers, 1948:27).
CHAPTER IV

FLATHEAD LAW IN THE PROCESS OF STRESS AND CHANGE

In 1855, the Flathead met with Governor Stevens near Missoula, at a site called Council Groves, and signed an agreement known as the Hellgate Treaty. Before coming to this meeting, the Indians had hoped that this meeting would solve some of the problems they were having with the Blackfeet, but instead, they were told by Governor Stevens of the Government's plan to place them on a reservation. After some deliberation, the proposal was signed, but the main trouble arose when it came to the selection of the reservation site. Leaders from the Flathead refused to consider any location other than their ancestral home in the Bitterroot Valley (Ewers, 1948:24). A compromise presented by Victor, the Flathead chief, finally made the treaty acceptable, and it was signed on July 16, 1855. Article XI of this treaty read:

It is moreover, provided that the Bitter Root Valley, above the Loo-lo fork shall be carefully surveyed and examined, and if it shall prove, in the judgment of the President to be better adapted to the general reservation provided for in this treaty, then such shall be set apart as a separate reservation for the said tribe. No portion of the Bitter Root Valley, above the Loo-lo fork, shall be opened to settlement until such examination is had and the decision of the President made known (Ewers, 1948:24-25).

Three and one-half years passed before the treaty was ratified by the Senate on April 18, 1859. This was a period of extreme hardship and embitterment for the Flathead. During this period, it was decided that the Jocko site was a better place for the reservation than the Bitterroot Valley. Also leading to this embitterment of the Flathead
was the fact that the Blackfeet treaty, which was submitted later than theirs, was already ratified by this time, and members of that tribe were receiving their payments. It must have seemed strange to the Flathead who were constantly friendly and aiding the Government that their arch enemies and constant trouble makers, the Blackfeet, were somewhat rewarded by this Government. Another factor that entered into this three and one-half year period, and even after the ratification, was the discovery of gold in Montana. Settlements sprouted up and the lands became occupied by whites searching for gold, and constantly encroaching on land held by the Indians. I think all of these factors had a definite effect on the Flathead; I believe they began to feel somewhat "boxed in" in their own land, and longed for their past way of life. This attitude can be seen when the Indian agent reported in 1876, three and a half decades after Father De Smet had shown the Flathead how to till the soil, that a majority still derived their subsistence from hunting, fishing, and root gathering, and continued to do so until the extinction of the buffalo between 1878 and 1879 (Ewers, 1948: 25). Because of an opening that had been left in the Hellgate Treaty, President Grant issued an executive order in 1871 for removal of all Indians to the reservation in the Jocko Valley. The Indians refused to go and General Garfield was sent to negotiate and remove them. After many liberal promises, and some questionable tactics on the part of government officials, Arlee, the second chief of the Flathead, signed the treaty. The head chief, Charlot, swore that he would never sign it, although his signature appeared on this document. From then on, the Government recognized Arlee as the head chief of the tribe, and he
and a few of his followers went to the Jocko reservation and began to receive government benefits. Charlot and his larger band did not go to the new reservation for many years, and then only after he became very old and after the extinction of the buffalo, and many social problems arose among his people, did he consent to going to the reservation in 1891. Charlot remained strong, even to his dying day. On the reservation he opposed the Indian courts, the Indian police and all changes in the dress and culture that the agents suggested (1948:26).

Dr. Carling Malouf, in *Historical Essays on Montana and the Northwest*, states: "Too often Indian history is written in terms of chiefs, agents, traders, battles, congressmen, or American Presidents." He goes on to say that this method of relating the history of the Indian does not actually give us information that is vitally important for our complete understanding of him, even though it does make for enjoyable reading in our textbooks in history. What we must learn are the problems that these chiefs had, and still have, to cope with and we must delve deep into the problems and find the causes.

One such problem was faced by the Flathead chief Charlot, when his Indians were evicted from the Bitterroot Valley in western Montana in 1891. The white man had tried to persuade Charlot to accept a reservation in a place other than the Bitterroot Valley, and after Charlot realized what a poor people his were becoming, he finally did promise to go to the reservation of the white man's choosing. He had watched his men go bad and his women go hungry, and saw a general disruption and breakdown in the Flathead family structure. A story is related in this article by Malouf about Ellen Pierre Bigsam and her family, one of
the more impoverished and disrupted of the Flathead families at this time. Ellen Bigsam's father, Louis Pierre, was an alcoholic, and found himself in such a state of anger at times that he would beat members of his family to the ground. His problems and personality show, in themselves, what the changing times brought to the Indian. Ellen relates that during the extremely cold winter the only food that her father could get would be taken to town by him and bartered for some liquor or used for gambling games. "Sometimes we had no blankets, no horses, no nothin'" (Smurr, 1957:226). When spring came, there was still much snow, and another old couple joined Ellen's family; Mrs. Coombs was the old lady who had taken on the responsibility of caring for the three children who had no father.

The symptoms of a society and its members in the process of a cultural revolution can be best exemplified by relating a passage directly from the story of Ellen Bigsam's family:

One day my mother told father, "When you go to town stop by and get a little coffee, and maybe a little flour." She gave him a pair of mocassins for use in trading. After he left we packed and started to ride on up the valley. We had gone about two miles when father, returning from town, caught up with us. One of the boys from the other family had been riding with him. When father got closer to us he jumped off his horse and took out his rifle and shot at mother. She was turned around in her saddle, facing backwards toward father, and the twins were across her horse in front of her saddle in their cradle boards, one on each side of the horse. They were not fastened down but were counterbalanced in their cradle boards. The rifle shot tore off the left braid of mother and the shock caused her to fall off the horse. The twins too fell from the horse in the boards and they began to cry. Then father got on his horse and rode up still closer, got off his horse, and beat mother. The little boy who had been riding with father got off his horse too and tied a rope to father's foot; then he got back on his horse and pulled him down and away from mother. The old couple then tied him up, and threw his rifle into the brush. He was left lying there in the snow and cold while all the others took off leaving him hollering and yelling.
Then father went back to the camp, got a horse, and came up after us. First he caught up with us kids. He asked, "Where is your mother?" I told him that I didn't know. I added, "Maybe she went over to that ranch." Then he told us, "Come on, let's get back to the camp." Father carried one of the twins on the horse while I carried the other. I kept falling down into the snow because I was so tired, but I kept going on. Suddenly he struck me across the face with his whip. It cut a long gash in my skin and it began to bleed.

Back down in camp father built a fire, and when this was done he started out to get his wife at the ranch. He found her and beat her down to the ground several times before they got back to camp. He would knock her down, then pick her up part way, and then knock her down again. This he did again and again. When he got her back into the tipi he knocked her to the ground again, and while she was on her back he sat on her. He took out his knife and threatened to stab her, finally he came down with the knife, blade first. Suddenly he turned it over actually striking her hard with the handle. This too he did again and again. Toward the last she was breathing slowly, and I thought she might even be dead. Father kept sitting on her and every time she started to breathe a little hard, he would strike her again.

Afterwards we sat by the fire and father built it up a little. He even made mother a little more comfortable. Evidently he was feeling much better after his orgy. He even fixed us a little supper (J. W. Smurr, 1957:226-229)

I am sure that Chief Charlot remembered this event and others like it when he finally decided to go to the reservation with his people. His people were losing their identity and all responsibility in life, as they wandered in the Bitterroot Valley after their numbers had dwindled to two hundred. They were a group who was continually trying to be changed by priests and white men who felt that they could lead a better life by these new rules. Maybe Charlot believed that by reuniting in the Jocko Valley, near Arlee, Montana, the Flathead could regain some of their unity and identity.

The Flathead was faced with one of the biggest changes of his life; He was now living on a reservation, trying to pursue an economic
means different from his forefathers, and was subjugated to a new type of law. Previously, whipping had been the major type of punishment among the Flathead. As we follow early reservation law, there was still some whipping, but then an installment of fines and the use of the jail took care of the majority of cases of offenses. There were many problems unique to the Flathead, and I will try to point out a few of these by presenting data from an Indian agent's reports and attempting to show his thoughts on the progress of the Flathead legal system. The agent writes on the 12th of February, 1886,

I had the honor of submitting to the Indian office a code of laws drawn up and submitted to me by the Indians in general council and approved for this reservation. A police force was organized and three judges were selected to enforce these laws. Culprits are sentenced to imprisonment, hard labor, and fines. The judges of the courts should also be paid for their services as well as the police so they can pay strict attention to their duties. At this time we have no provisions to furnish the police (Report of the Secretary of Interior, 1886:398-399).

In this quote the tribe is setting up the court and police force and no major problems have arisen, but if the report of 1889 is reviewed, a few of the problems are beginning to arise in Indian law. The agent reports about the court and the police:

This branch of the services did not give as good of satisfaction this year as in the past. Ever since the establishment of the court of Indian offences, authority has been assailed by the head chiefs of the tribes, who use their influence to break up the power of the judges to punish or sentence the Indians. This was caused through jealousy as the chiefs regarded the establishment of the courts as an infringement on their power. They exercised full power over the police who are mainly of their choosing. The agent and the Indians themselves are beginning to encounter some of the problems of their new legal system" (1889:231).

In 1890, it sounds as if the agent is making headway. He states:

The head chiefs are now reconciled to the authority of the judges and police, but they have been forced to this conclusion by the
arrest in August of the murderers and outlaws of the tribes by the sheriff of Missoula County and a possee of white men assisted by Indians on the reservation (1890:128).

We see a new problem arising as the agent states:

This year as well as last year the Indians point out that while an Indian is held to full penalty of the law and is being hunted down by armed white men, very little effort was being made by the authorities to bring white offenders against the Indians to court. The influence of the court at the present time is not of any great importance on this reservation (1890:129).

The agent reports in 1891:

Owing to the jealousy and prejudices among different bands and tribes and Indians of mixed blood on this reservation, our court of Indian offences and Indian police are neither efficient nor worthy of any praise. Some of the leaders openly avow that they are opposed to having a court of Indian offences or police to enforce the regulations of the reservation and that the reservation should be free from the law of the white man (1891:279).

The last report used here was given in 1893, where the agent comments about police and courts:

This branch of the service has not always given the satisfaction it should. The dwellers on this reservation are made up of so many bands and differing factors, extreme jealousy exists among all of them. When a policeman from one faction makes an arrest on a member of another faction serious disputes arise. The old chiefs of the tribe are opposed to the police and judges of the court. As in bygone days, they feel they should exercise the full power to punish their people and enforce regulations by means of the whip (1893:185).

In this chapter, I feel we have covered two important aspects of the story of Flathead law. There is a general change in the way of Flathead life, as pointed out in the article by Dr. Carling Malouf. The young people were not following the old ways of their fathers, although the beliefs and ideas were still present in their culture. Thus, there was a period of social disruption on the reservation, along with a change in the law. The old method of whipping remained, but not as a major means of control. The jail and the fine were now imposed upon
the Indian. Not only this, but the complete authoritarian system of the Flathead was challenged by the reservation way of life. Courts and police were appointed which challenged the power of the chiefs. The whip which was a symbol of authority and means of control in the chief's hand had lost its strength, and the old governing structure had broken down, and was replaced by a system that was inadequate for the Indian. Small jural groups were replaced by larger ones without traditional sanction, and jealousy and rejection of the law made for an inadequate legal system on the reservation.

I shall now give a list of cases taken from the tribal court record on the reservation from the periods of 1889 to 1908. It will be seen that the people who were continually praised by the white man for their morals and honesty, were gradually changing. I do not mean to imply that they were becoming immoral or flagrant law breakers, but rather that there was an incompatibility with their new legal system. In these cases the inconsistency of the courts will be seen and by looking at the difference in fines and punishment, it does not seem to be a very effective system.
### TOTAL NUMBER OF COURT CASES

**May 6, 1898, to December 8, 1908**

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<td>95 days jail</td>
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<tr>
<td>Drinking</td>
<td>1</td>
<td>15 days expulsion from</td>
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<td>reservation</td>
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<tr>
<td>Fighting</td>
<td>4</td>
<td>1½ days jail</td>
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<td>$6 fine</td>
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<td>$10 fine</td>
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<tr>
<td></td>
<td></td>
<td>$300 fine</td>
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<tr>
<td>Insulting a priest</td>
<td>1</td>
<td>$15 fine, 90 days jail</td>
</tr>
<tr>
<td>Murder</td>
<td>1</td>
<td>No punishment</td>
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<tr>
<td>Obscenus letters</td>
<td>1</td>
<td>90 days jail</td>
</tr>
<tr>
<td>Possessing whiskey</td>
<td>1</td>
<td>2 days jail</td>
</tr>
<tr>
<td>Rape</td>
<td>2</td>
<td>Lack of evidence; no fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>90 days jail</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Charge</th>
<th>Number of cases</th>
<th>Punishment</th>
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<tbody>
<tr>
<td>Robbery</td>
<td>1</td>
<td>107 days jail</td>
</tr>
<tr>
<td>Stealing whiskey</td>
<td>1</td>
<td>50 lashes</td>
</tr>
<tr>
<td>Seduction</td>
<td>1</td>
<td>31 days jail</td>
</tr>
<tr>
<td>Vandalism—destroyed school</td>
<td>2</td>
<td>45 lashes and 25 days jail</td>
</tr>
<tr>
<td>Whipping wife</td>
<td>1</td>
<td>$3 fine</td>
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</tbody>
</table>
The following will be twelve cases and punishments, taken as exactly stated in the original court record, which correspond to the preceding charts. They will give the reader some idea of how the cases were written up and a bit more insight into these cases:

Antoine Ne na na—50 lashes for getting drunk and being disorderly.

Lowie Lamose—45 lashes and 25 days in jail.

Antoni Kaiser—50 lashes for stealing a jug of whiskey and getting drunk.

Alex Parker—$5 fine for being drunk and disorderly.

One Eyed Riley—90 days for adultery.

Judgment for the $300 due on note signed by Joseph Blood to Mary McClure on account of breach of promise. Court said the amount must be paid by Joseph.

James Dupray—ordered off the reservation on account of drinking and misconduct.

Agate Ogden and Delamare Johns—sentenced to 4 days and 15 days, respectively, for adultery.

Combs and Joe LaMoose—whipped for being drunk. LaMoose to go free and Combs held in custody.

Louie Watmine—sentenced to 80 days in jail for gambling away a horse belonging to his grandmother.

Immanuel Curley—charged with selling a grey horse belonging to Baptiste Perrish. The court ordered that Imanuel pay Baptiste one good cow in payment for the horse.
We have viewed the legal situations of the Flathead in the past, and now must look at his present legal situation, and also how he lives and functions in accordance with his laws. The legal process on the reservation today has two distinct parts: The procedural and written, which encompass the written laws, the written codes, and the means by which they are enforced, and secondly, the function of law in the everyday life of the Flathead. The first part will now be discussed.

Federal and state authority on the Indian Reservation has arrived at its present position through many years of court decisions. However, there are two important acts that must be discussed before looking at these decisions. The first is the Dawes Act which took place in 1887. The 1800's were marked by settlement and development of the West. As this expansion developed, Indian land was needed and an ethical justification for taking it was found in the theory of assimilation. If the Indians would only adopt the ways of the civilized life, they would not need so much land and the surplus would be available to the settlers. This feeling was best expressed in the General Allotment Act, or the Dawes Act, of February 8, 1887. This act provided that at his discretion, the President could allot reservation land to the Indians, the title to be held in trust by the United States for twenty-five years. Full citizenship for the Indian would accompany the allotment. Heads of families were to receive 160 acres, with smaller amounts going
to other Indians (Hagan, 1961:111). It was also during this time that the tribes were considered wards of the nation. This was handed down in the Supreme Court case, U.S. vs. Kagama, 118 U.S. 375, 383 (1886). The Flathead were generally adverse to taking land under the Dawes Act because of the prejudice of several of their chiefs. They felt that much of the land would be sold to settlers, and would break up their reservation, which in fact is precisely what did happen. This general attitude toward the Indian existed up until the administration of Franklin Delano Roosevelt who appointed John Collier as his Commissioner of Indian Affairs. Collier was one of the first Indian Commissioners who really understood the Indian. He opposed assimilation and encouraged the Indian to strengthen his culture and renew his identity. This philosophy was best expressed in the Indian Reorganization Act of 1934. The new policy stopped the allotment of all Indian lands, gave the Indians an opportunity to organize self-government with tribal councils, and made it possible for tribes to borrow money from the Government for cooperative enterprises. Indian arts and culture were strengthened and encouraged (Spencer and Jennings, 1965:501). The Indians were given the option of rejecting or accepting this act, and were permitted to vote upon it. The Flathead voted to accept it and subsequently drew up a constitution and elected a tribal council. This began an era of self-government among the Flathead. One of the complicating factors of this act was the fact that the mixed-bloods outnumbered the full-bloods on the reservation, and thus they gained control of the tribal council purely by numbers in election. In the 1950's, there was a general movement by the United States Government to withdraw from
Indian businesses (Lurie, 1961:480). The idea of termination and turning over law and order jurisdiction to the states were put forth during this period. In the 1960's there were attempts to force assimilation and increase the rate of acculturation. The government wanted the Indians to become acculturated faster and expressed disappointment in the fact that many large segments of Indian culture still existed (Spencer and Jennings, 1965:503). Because of increasing population, reservations have grown too small, and relocation is entering into the picture. However, when Indians are relocated, and seek jobs for which they must have higher educations, programs must exist to raise the educational level of the Indians. Such is the one that exists at the present time on the University of Montana campus. These programs have had a definite effect on the Flathead, and must be considered before looking at the legal decisions handed down by courts that lay the basis for present forms of law and order on the Flathead Reservation.

The following are cases that provided the foundation for law and order for Indians of the United States, and contains specific cases concerning the Flathead. During the colonial period in our nation's history, Indian tribes were recognized and dealt with as distinct, independent political communities, qualified to exercise powers of self-government (Benge, 1960:223). The following rulings are from the decision of the United States Supreme Court in the case of Samuel A. Worcester vs. The State of Georgia, which was handed down in 1832. This was the first landmark case establishing the principle that makes law and order necessary powers of self-government and of an Indian tribe. These powers are not delegated to the Indian tribe by the
Federal Government, but rather are powers which the tribe has, inher-
ently, by reason of its original tribal sovereignty. Both Congress and
the Federal Courts have maintained the legal philosophy that a tribe
constitutes a sovereign dependent or independent nation, and this has
remained unchanged. The Worcester case contained the earliest complete
expression of this principle. In that case the state of Georgia, al-
legedly in an effort to destroy the tribal government of the Cherokee
nation, arrested and imprisoned a white missionary named Samuel Wor­
cester who was convicted in a state court and sentenced to imprisonment
at hard labor for living among the Indians. He took his case to the
Supreme Court, and they reversed the decision. John Marshall stated
that Mr. Worcester’s imprisonment was in violation of the Federal Con­
stitution, that Indian tribes were not subject to the laws of the state
of Georgia. Beginning with the Worcester case, the courts have uni­
formly held that state laws do not apply to Indians within their reser­
vation. This philosophy is the reason why it is necessary to have
Indian law and order and to maintain an Indian police force to enforce
their own laws.

Two important cases have carried this philosophy into Montana,
and more particularly onto the Flathead reservation. The first of
these is State ex rel Irvine vs. District Court, 125 Mont. 398, 239 P.
2d 272 (1951-52). James Hugh Irvine, a Flathead Indian who was a ward
of the Federal Government, was charged with the crime of burglary of a
grocery store located in the city of Ronan, in Lake County, Montana.
The State District Court sentenced him to ten year’s imprisonment in
the State Prison. After serving almost one year of his term, he appealed
his case to the Montana Supreme Court and they handed down the judgment that the sentence be vacated on the grounds that Irvine was an Indian and that the store which he was charged to have burglarized was situated within the Flathead Indian Reservation in Montana. That the state was lacking in jurisdiction to try or sentence him for the offense, because the exclusive jurisdiction of such a crime when committed by an Indian in Indian country belongs to the United States Government. It was conceded by both Irvine and the State that Irvine was an enrolled and allotted Indian and a member of the Flathead Indian tribe; that the city of Ronan and the store which was to have been burglarized were within the exterior branches of the Flathead Indian Reservation.

The court handed down the decision that the State District Court was without jurisdiction to try the petitioned Indian for offenses for which he was accused and convicted. Accordingly, the judgment of conviction and the sentence imposed were reversed and set aside as void, and Irvine was ordered to be released and discharged from custody. He was considered as not guilty of the crime without further trial. This case caused a great deal of controversy, for it was challenged that an Indian could commit any crime and not be punished by the state, or more simply, that there might be open season on robbery.

The next case is the State vs. McClure, 127 Mont. 531, 268 P. 2d 629 (1953-54). The defendants were first arrested by an Indian policeman, taken before the tribal council, and there accused and found guilty by a judge of the Flathead Indian Reservation Tribal Court, of violating their ordinance, 9-A, killing antelope on their reservation during a closed season. Each defendant was then fined $100 and released. They
were then arrested by county officials for having antelope in their possession and were fined $150 by Lake County. They then appealed their case to the Montana Supreme Court. The question presented here on this appeal is whether the defendants, as members of the Flathead Reservation and being wards of the Federal Government as far as state law is concerned, are entitled to hunt, kill, and take and possess game animals during the closed season on a parcel of land lying wholly within the exterior boundaries of the Flathead Indian Reservation.

The court found that the District Court was without jurisdiction to try the defendant Indians for alleged offenses for which they were accused and convicted. Accordingly, the judgment of conviction and sentence imposed by the District Court were reversed and set aside as void.

Today on the Flathead Reservation, jurisdiction over crimes is handled in two ways: The Federal Government has jurisdiction over the eleven major crimes which are tried in Federal Courts. These crimes are: Murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, larceny, and embezzlement. Crimes that are committed on the reservation, other than the above eleven, are handled by the tribal courts on the Flathead Indian Reservation. These courts came into existence under the Indian Reorganization Act of 1934, but the courts did not actually begin to function until 1937. The laws of these courts are those that were drawn up by the tribal council of the Confederated Salish and Kootenai Indian Tribe, and are supported by the courts that began to function in 1937. As we have seen, law and order on the Indian Reservation was
originally based on custom and tribal law. This type of law and order is often called "Home Rule." The tribal court has maintained jurisdiction over all crimes pertaining to Indians or non-Indians present on the reservation, classified as misdemeanors. One of the things that the Flathead have done to better aid their legal system, is to adopt state jurisdiction and state law, and the Flathead are the only reservation in Montana to have done this. It was made possible by Public Law 280, passed by the 83rd Congress in 1953, and was amended twice, its final revision stating that a state could assume jurisdiction over an Indian reservation without asking Congress (Biennial Report, 1965-66: 9). In Montana, however, the state cannot assume jurisdiction without the consent of the Indian tribes, and the Flathead are the only ones thus far to have given this consent to the state. This jurisdiction was accomplished on the Flathead Reservation by House Bill 55, which states:

HOUSE BILL NO. 55

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE ASSUMPTION OF CRIMINAL AND/OR CIVIL JURISDICTION OVER THE CONFEDERATED SALISH AND KOOTENAI INDIANS AND THEIR RESERVATION AND LAND AS AUTHORIZED BY FEDERAL LAW; PROVIDING THE TIME AND THE METHOD THEREOF, AND THE DUTY OF THE GOVERNOR WITH RESPECT THERETO."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian Reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953.

Section 2. Whenever the governor of this state shall receive from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes, community, band or group of Indians in this state, a resolution, expressing its desire that its people and lands be subject to the criminal
and/or civil jurisdiction of the state of Montana to the extent authorized by federal law and regulation, he shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to those Indians and their territory, or reservation in accordance with the provisions of this act; Provided, That he shall not issue such proclamation until such resolution has been approved in the manner provided for by the charter, constitution or other fundamental law of the Tribe or Tribes, if said document provides for such approval; Provided further that he shall not issue such proclamation until there has been first obtained the consent of the Board of County Commissioners of each county which encompasses any portion of the reservation of each tribe or tribes.

Section 3. Sixty days from the date of issuance of any proclamation of the governor as provided for by section 2 of this act, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and the criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

Section 4. Nothing in this act shall authorize the alienation, encumbrance or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band or community of any right, privilege or immunity afforded under federal treaty, agreement, statute, or Executive order with respect to hunting, trapping, fishing or the control, licensing or regulation thereof.

Section 5. Nothing in this act shall deprive, the Indian tribe, band or community from carrying on its age-old tribal dances, feasting or customary Indian celebrations or in any way to destroy the Indian culture.

Section 6. Any Indian tribe, community, band or group of Indians that may consent to come within the provisions of this act may, within two (2) years from the date of the Governor's proclamation withdraw their consent to be subject to the criminal and/or civil jurisdiction of the State of Montana by appropriate resolution, and within sixty days after receipt of such resolution, the Governor shall issue a proclamation to that effect.
I feel that the state jurisdiction is still confusing, and that it may still not be understood what effect this has upon the Indians, themselves, in the Indian court. I enter Ordinance 40 A, of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in order to add further clarity to the question of whether the state, the tribal court, or both bodies, concurrently, shall have jurisdiction over certain areas. The ordinance will tell which aspects of law the state has jurisdiction over, subject to the conditions and limitations of Section 2 of this ordinance. The conditions are as follows:

(a) Concurrent jurisdiction remains (where applicable with Federal Courts) with the tribal court and in the tribal government concerning all matters referred to in Section 1; and any matter initiated in either a state or Federal Government court or the tribal court shall be completed and disposed of in that court, and shall not be subject to re-examination in the courts of the other jurisdiction.

(b) No person, once convicted of a crime falling within the jurisdiction of the state or Federal Government, or the Tribes pursuant to this ordinance, shall be punished for the identical act in the courts of the other jurisdiction, but shall be accorded the benefit of the doctrine of former jeopardy as if the separate jurisdictions were one.

(c) All jurisdiction of the Confederated Tribes under their Constitution and Bylaws, and ordinances enacted pursuant thereto, and of the Federal Government under the United States Criminal Code, to the extent not expressly transferred by Section 1 hereof, remains in the Confederated Tribes and in the Federal Government respectively to the same extent as if this ordinance had not been adopted.

(d) In the event of any alleged violation of the Civil Rights of Tribal members by operation of this ordinance, the Tribal Council reserves the right to conduct an independent investigation of the alleged act; to seek redress in a court of competent jurisdiction; and to review the ordinance upon the validation of any such alleged offense.
The State of Montana has jurisdiction over the following legal areas regarding the Indians within the Flathead Reservation, subject to the above conditions:

(a) Compulsory School Attendance. (b) Public Welfare. (c) Domestic Relations (except adoptions). (d) Mental Health, Insanity, Care of the Infirm, Aged and Afflicted. (e) Juvenile Delinquency and Youth Rehabilitation. (f) Adoption Proceedings (with consent of the Tribal Court). (g) Abandoned, Dependent, Neglected, Orphaned or Abused Children. (h) Operation of Motor Vehicles upon the Public Streets, Alleys, Roads and Highways. (i) Laws of the State of Montana, and Ordinances and Regulations of a Criminal Nature Applicable with Incorporated Cities and Towns.

By sharing jurisdiction with the state, the Flatheads have received other benefits: A Job Corps camp has been placed upon their reservation, and many state services are made available to the Indian, as in the area of juvenile problems, where the Boys School at Miles City or the Girls Vocational School in Helena may be used to aid the Indians in correcting their problems, and any other state-owned agency may be used, such as the State Industrial Accident Board of Montana.

The Flathead are far ahead of most tribes in Montana in their enforcement of law. The codes that exist on the reservation today are very different from those that existed in the past. For all practical purposes, Indian courts and officers of the law perform their duties identically to those people who hold the same positions in our society. In the law of the Flathead we see only a few ties to the past in that some crimes are still being paid for by giving commodities to the court, and in the law against malicious gossip. These laws may be seen by referring to the appendix in this thesis. The legal system of the Flathead has done much to stop the old Indian way of life; it outlawed gambling at an early day, although it still does exist as in stick
games, invalidated Indian custom marriage and custom divorce, and has had a general deterring way on the past way of life.

The future of the Flathead looks bright, in comparison with other Indian tribes in Montana, even though a few problems do still exist. The high cost of law and order presents one of the largest problems today and in the future. The payment of officers, judges, and the construction and maintenance of jails is a huge financial burden on the tribe, and thus far, they have not received much cooperation from the counties surrounding the reservation or the state. The second problem that exists on the reservation is that of poverty and lack of education. If a person's social and economic life is inadequate, all of the enforcement and legal machinery that exists cannot prevent a crime, for punishment or fear of punishment is not a sufficient deterring factor to negate the strong social and economic forces that predispose the individual to wrongdoing. These two problems combined with the fact that there are many political and social differences existing between the full-bloods and the mixed-bloods that live on the reservation, leave the Flathead a challenging future, for his work is surely not finished. There are still minor problems that exist in the legal system itself; judges are often elected on the basis of personal popularity rather than ability or knowledge of legal procedures; alcoholism is still a troublesome problem to the Indian, both in a legal and corrective sense. The largest number of crimes that are committed on the reservation today are those of drinking to excess. According to Judge Newman of the Flathead Indian tribe, every Indian in Montana State Prison has either directly or indirectly been involved with alcohol
and has had an alcohol problem at one time or another. Facilities for correction or psychiatric help are not made available to the Indian, although they do exist in the state.

The description of the written and procedural aspect has been given. It has been shown what written codes the Flathead are governed by, what precedents they were based on, and how authority is shared by Federal, State, and Indian courts. Now the other aspect of the legal situation must be viewed as it is today, of how the Flathead as individuals and as a group function under the legal situation as it exists in their culture.

The Flathead have been involved in many periods of cultural change which have had direct and indirect effects on their everyday life, and in turn, on their legal situation. They are a unique cultural group because we can find no other Indian tribe in the United States which has so readily accepted certain aspects of the white man's culture, particularly that of religion, and yet upon further study, we can find that they have been able to remain extremely ethnocentric. The Flathead culture today is also unique because it contains subcultural groups, each separated by a certain degree of acculturation, thus each reacting differently to a legal situation. All three of these subcultural groups make up one large culture which has two unique aspects: That of being a minority, and that of being an Indian. Both of these facts lead to the legal situation. Thus, to understand the law, we must look at each individual and determine how much each one of these aspects has affected him in his reaction to certain legal situations, and beyond this, how all of these individuals as a group
form a reaction to a law which can be identified as the Flathead reaction.

The three subgroups that I will use are "Indian," "quasi Indian," and "quasi white." I would like to make the point at this time that these groups are not seen as points on a scale. All of the people I am studying are Flathead Indians, and there is much overlapping from one group to the other. I feel that there is enough grouping among the people, however, to warrant their divisionary grouping in order that a study can be made of their differing attitudes towards the legal system.

The first group I will discuss is the group I have arbitrarily called "Indian." I have not called them Indian because they are the only Indians, and the others are not, but because we find the old Flathead traits such as long hair, old religious practices and outlooks on life, present in their group. I found that their group tends to identify more with the past than any other group here discussed. Their position is very unique because of the many years of white contact, which has made it impossible for them to remain in the total old Indian way. Thus, this group has a subculture which is a combination of both the old and new ways. Because of their age, which is mostly over fifty-five years, and the fact that they have lived in a cultural time different from the present one, they have been definitely more influenced by the past. This group generally does not understand the law and has a feeling of mistrust and fear of people who hold authoritative positions with the law. When talking to informants, I found the comment regarding punishing one who has violated a law, to be that they did not want to sign a complaint, because they were afraid to turn the
person in. They felt that the law would not protect them from the person who they were turning in, were he to be revengeful. The group showed a natural incompatibility with the legal system, for they felt that it was not theirs, and even though they had a vote in the Indian Reorganization Act of 1934, they felt that the basic legal policies were established by the Bureau of Indian Affairs, rather than themselves. A number of the "full-blooded" Indians on the reservation are members of this first group, and as a result, they often act as a minority within a minority group. Many of my informants could be called "in-betweeners," in that they seemed to take certain events and incorporate aspects of the old way the new way in them. For example, the old people of this first group save personal articles in a large trunk to be distributed among the family after they have passed away; this being a Flathead custom from the old time. At the same ceremony, many Catholic prayers will be offered and a certain part of the ritual is taken from the Catholic church. Thus, we have the aspect of the past and of the present in the same ceremony. Another example of the mixed customs is that many of the special services that are performed on Easter and other holy days still contain certain Indian rituals. Indian aspects of the ceremony are performed at home before going to the church for the formal ceremony. Some shamanistic powers are found to still exist among this group. It was mentioned to me that one woman sought out a person with curing powers to cure her sick granddaughter. Nothing further on this subject was discussed, however.

In summary, this group generally does not understand the law and thus does not use it. They use the law rather as a threat to enforce
adherence to customs through private law. It seems quite evident that some of the reasons for the lack of understanding are that these people still carry the resentment of their parents, grandparents, and ancestors before them, toward the state and other systems of authority along with a feeling of mistrust that has existed ever since they were placed on the reservation. They were very displeased at that time, and still have the same feeling. Another reason is that these people are the most ethnocentric and feel that the old way is the best way. It is also evident that during the early 1930's and early days on the reservation, the people who filled the legal positions dealt quite harshly with every breach of law. This instilled a fear among the people, particularly among this group, toward the legal system itself. Many of these people share the idea that they are wards of the government and that no other legal system has control over them. This feeling became prevalent during the early 1900's and still exists today, even though it is untrue. Thus, although some acculturation has occurred among this group, and they have somewhat of an "in between" subculture, we can see many of the reasons why they are incompatible with the legal system.

The next subculture is that of the group I have designated as "quasi Indian." The reason I have used this term is because some of the old Indian customs can still be found within their culture, and yet they are unique because these people use them, meaning the customs, but do not actually believe in them. They are different from the group I have called "Indian" composed of older people and full-bloods, because they do not have an ethnocentric feeling about the old Indian way.
The "Indian" group actually believes that their old way is the best, and do try to perpetuate this in their own acculturated way, while the "quasi Indian" only uses it when they feel that it can help them in a protective way. An example is that often pre-marital unions will be indulged in by a member of this second group, and the plea of custom marriage will be used to rectify the action, while in fact they do not believe in custom marriage.

Within the "quasi Indian" group, there is the largest number of lawbreakers, and the lowest social and economic levels. This group has an incompatibility with the law, as does the first group, but they differ because this second group understands the law, but does not accept it for its legal worth. They say that the law is a good system, until it pertains to them. They are definitely in the greatest period of transition, for they show many of their parents' influences who are in the "Indian" group and older, and yet they are not accepted into the comparable acculturated white level. This group has the greatest lack of ambition and many seem to fit into the stereotyped class of the shiftless and easygoing Indian with a daily outlook of living on a day-to-day basis. They have the largest number of lawbreakers because their social and economic level is often so low that it is not enough to deter individuals from committing a crime. Secondly, there is no loss of status or face for a person who is put in jail because commitment of a crime is not looked down upon. Their attitude is that if you live on a day-to-day basis, it does not matter where you are tomorrow, if you are in a jail or a bar. Alcoholism has a definite effect on the Indian criminal rate, particularly in this group.
The third subcultural group is the "quasi white." Two subgroups of people are found within this group: One subgroup is the "white Indian" and the other is the "young Indian." The "white Indian" is that group which lives on the reservation and is almost totally acculturated. They have very little Indian blood, although this is not a significant factor, except that this means usually only one of their parents is even part Indian, the Indian grandparents often remote and far back in the family line; thus they have not been introduced to much past Indian culture. Consequently, they share a middle class white view of life. The second group within this third subculture, is that of the "young Indian" on the reservation. They share much the same outlook on life as the "white Indian" and have a much greater degree of acculturation than any of the other two groups that have been discussed. Because of this, the members of this third group feel differently about the Flathead legal system, than do the other groups, the "Indian" and the "quasi Indian" groups. I feel that it is important here to say that no matter how much these people are acculturated, they are still Indians. The "quasi white" group has the greatest compatibility with the legal system. These people are aggressive in life and strive to seek the better jobs; consequently, they often feel that the laws should be made stricter for protection of their families and personal property. They want to get away from the idea of the drunken Indian and the constant law-breaking Indian, stereotypes that have been tacked upon the reservation. They feel that by getting rid of this idea, they could gain status in the outside society. However, this group does not have total compatibility because private law still can
be found to exist among the members. This group is also unique because everything they do is stressed toward white middle class values, and they often negate their Indian side in everyday life; but when faced with a legal situation, they may point out that they are Indian and talk about the Indian culture, thereby seeking more lenient treatment. So there is a basic contradiction within their own group. They feel that the law should be made stricter for the Indians which they more often exclude themselves from, but when facing a legal situation, they say that they are Indian.

The three subcultural groups I have discussed are all part of the total Flathead culture, and are all Flathead Indians, thus being either directly or indirectly influenced by the past culture. Because there are these three variants, I feel that it is important to point this out since these things do have a definite effect on an individual when he views a legal situation. Thus far I have talked primarily of individuals and of small groups, but these are under a much larger influence, that of the Flathead culture. This culture has definite effects on the overall group and how they view the legal situation, and will now be my topic of discussion.

No cultural system is static, for external forces and environmental factors along with other forces cause cultures to change. It has been shown that the Flathead culture has had many outside influences, many from other Indian groups and many from the white society. In many aspects the Flathead have seemed to be more "white-acting" in their culture than any other Indian tribes, for they have readily sought the white man's religion and absorbed other facets of his society. Other
forces causing change among the Flathead have been forced upon them, such as being put on the reservation, which has resulted in their going from buffalo hunting to a group that leads a settled life. They did not seek to do this by their own choice, but because they were forced to do so. Some of the white values were forced upon the Indian people and this has been the cause of much trouble and dismay within Flathead society, for by changing their life and moving them onto the reservation, their everyday roles in life and opportunities change. They have lost their old means of social mobility, the chance for competitiveness, and many of their old ways of obtaining status. With the disappearance of hunting and warfare, many of the basic values such as bravery, generosity, fortitude and moral integrity are no longer operative because the means of securing them have been closed. Not only have we changed these systems and made many of them inoperative, but we have also added extreme forces from the outside for the Flathead to acculturate so that we can terminate him and absorb him within our own society. It would seem that under all of this constant pressure and change, the old Flathead culture would have vanished, and this Indian who seems to act and behave in many ways similar to the white man in his white society, would not have any ties to the past Indian way. However, this is not so, for many parts of the old Flathead culture still exist. I mentioned that these people are ethnocentric, and even though we find this to be more prevalent in the older group, which I have designated "Indian," it is an underlying factor within the whole Flathead culture. I would now like to show the old aspects and relate them to the law as it is today. The Flathead have a good
ideal legal system, but in fact, many problems still exist. To point this out, when I interviewed people from every group on the Flathead reservation, I found that a surprisingly large amount of private law does still exist. Each one of the subcultures has a different reason for using private law, but all use it. I found one old man, living in Hot Springs, who had a large amount of lumber stolen from him. He had his son-in-law contact the guilty person and threaten to turn him in to the authorities if the lumber was not returned. Upon this threat the person did return the lumber. In Arlee, I found a case where one man had gotten drunk and run into another person's car, and the owner of the car beat him up until he said he would pay for the damage. In Dixon, there was a young man of seventeen years of age who had some hubcaps and other motor accessories stolen from his car. He found out who did it, threatened the party, and the articles were returned. These are only three examples, but they point out that private law does still exist, and it exists in every group and in every level. The Flathead have always been very individualistic and have often handled things privately in their society throughout time. An example of this private law is that they have adapted to the present legal system by making a combination of both systems and handling it in a private manner. In the Flathead culture today, there are people within communities who have some of the powers that the chiefs had in olden days. Chiefs did not have an extremely large amount of power among the Flathead people, as they did among many other Plains Indians, but they did have powers concerned with travel, warfare, and food gathering. They were also advisers and because they were many times elders, they held positions of authority
and status among their groups. In the varying communities on the reservation, there can be found people who have this same status and offer advice. They play the same role as the chief did in the old days, in the advisory sense. An example of this is that the lady who is the secretary of the tribal court in Dixon, having no other real official authority other than secretary, is sought out by most of the people on the reservation concerning advice on legal matters. As in the old days, she holds quite a high position of respect in the eyes of the people on the reservation. This points out something important about the unique status system on the reservation, where the old Indian ways can still be seen; elders are quite respected and generosity is still valued. It was interesting for me to note that people who hold positions on the tribal council and other authoritative positions, do not often have as much status as those people who give advice and aid the Indian in making decisions. There is still an underlying fear and disgust that has existed among the Flathead ever since the white man put them on the reservation, towards the white system. When a person takes a job off of the reservation, or a position of authority such as judge or tribal councilman, the other people feel that he has "sold out" to the white man, or is looking down upon the average Indian, resulting in a loss of status for the individual. Another trait that we find among the Flathead is that people who have been in penal institutions do not often lose as much status on the reservation as a person who goes into the service or goes away to college. Influence from the old Flathead culture is evident when it is noted that the idea of promiscuity as related to adultery does not exist among the Flathead as it does in the white man's culture. In the olden days if a man and woman wanted
to become married, they lived together and had sexual intercourse, and this was not considered "bad"; it was a type of Flathead marriage. They could have the ceremony performed if they wished, and were often thought more of within the community if they did. This idea has carried over into the culture today, and even though the tribal code states that the Flathead custom marriage is not acceptable, it is still operative. One of my informants who had been married in the church said that when it only cost him four dollars to get married, why should he spend one hundred and fifty dollars to get divorced. "Why shouldn't I just go take another mate," which in fact he did, resulting in his arrest.

I have shown that the Flathead culture that exists today is a unique culture, and that there are many facets of the old Flathead way of life that still do exist today. The white man has taken the Flathead and tried to change his social and value system, thus starting the Flathead off with a natural incompatibility towards the white legal system which we tried to impose upon him. He has not been able to accept many of our laws that govern his old rules. He still practices custom marriage where it is an accepted idea on the reservation among his group; what will he do about a legal system that outlaws it? If most of the people in the Flathead culture feel that legal power is coercive power, and they distrust, are afraid, or do not understand the law, then a large amount of private law will exist, as in fact it does, without following any specific unwritten rule. The only common factor I could find among my cases was that the people used the law as a threatening agent for the guilty party; thus, in effect, the legal system was working in an unusual way for the authoritative factor was present, but the
regularity factor was absent. We also notice among the Flathead that the people who hold the legal authority are not often sought out for advice or respected; they are rather feared, for we see that the old seeking out of a person in the community is still practiced. The Flathead case truly is unique because he has a legal system designed for a middle class culture, with his actual culture that of a combination of Indian and white, combined together to make a totally different culture. As a result, neither one functions well. As he becomes more acculturated, he will become more adaptive to this system, but for many years there will still be many underlying subtleties which will hinder him. The Flathead draws his values from both past and present with the legal system aiming at the future.

In my introductory chapter I stated that there are three points that are found in law: Officiality, authority, and regularity. How do these appear in real law today? The authority of the chief has been split, and now we find it divided among community leaders and the tribal council. The attitude toward authority on the reservation is generally one of mistrust and fear, and that legal authority has coercive power, and it is recognized to have this power by most all members of the tribe. As far as regularity, all infractions of customs that are sanctioned by the legal, written procedures, are handled in the same regular ways by the courts, but as we have seen, many of the customs that are violated are never put under these legal procedures. They are handled under private law, which in fact is the law of threat on the reservation. By viewing these three aspects, the Flathead have a definite legal system, but one that is very complex and made more difficult by the problems of acculturation.
SUMMARY AND CONCLUSIONS

I believe that we may define three important phases in the development of the Flathead law: The first is the early phase; secondly, the Jesuit and pre-reservation phase, and thirdly, and finally, the reservation up to the present day. From my research, I would assume that as the Flathead became more mobile, and began to seek a nomadic way of life, they developed a new system of controlling individual behavior. This is when the whip was introduced. The whip also added to the chief's role of authority. Whipping seemed to be quite an effective means of punishment and control among the Flathead. There was no place for a jail or retention type of punishment among a nomadic people, and yet they must have some means of controlling individual behavior. Whipping seemed to be effective, because once a person was whipped for a crime, all guilt was abolished. This punishment was fast and expedient but was harsh enough so that it acted as a deterrent for criminal actions. This way of life remained until the Jesuits came among the Flathead. The Jesuits began a period of inconsistency which has carried through and even exists today among the Indians. A strong, dynamic personality would enter, and then might be followed by a person whose character was not accepted as readily by the Indians he worked with. An example is De Smet, who was followed at St. Mary's Mission by Mengarini, who the Indians never accepted as a leader, like they did De Smet.

The religious aspect of the Jesuits had some definite effect on the Indians, as we can see from the large proportion of Catholics that
exists on the reservation today. One of the most important effects that they had was that they began to break down the authoritative system of the Indian and tried to change the Indians way of life by trying to change him to agricultural ways of life, and trying to stop gambling and polygamy. The point should also be made that they opposed the whip for two reasons: First, because of its brutality, and secondly, and most important, because once the person was whipped for a crime, he did not have to confess in church. The chiefs, because of their high position, often became quite friendly with the Jesuits. As a result of this closeness, the Jesuits often asked the chiefs to stop whipping, because of the cruelty, or other conflicts with their beliefs. The chiefs often did this to show favor to their friends, the Jesuits, and the basic authoritative system was in trouble at this point.

These factors coupled with the introduction of alcohol, and whites playing upon the habits of the Indians, led to a period of general social disorder among the Flathead. These factors persisted up until the Indian was put on the reservation and grew up in this new environment. The Flathead now lived on the reservation and their whole mode of life had changed. They had been told to change their law ways, to give up gambling, and horse racing, and other means of recreation, and to change their chief way of subsistence. To replace these things, they were given the white man's law with the jail, seeds and plows to plant their fields, and nothing to replace their recreation. This, plus the fact that there are now two groups of people existing on the reservation, the older people who know only the old way of life, and the younger generation who have grown up in the process of this change,
led to a general incompatibility with the law. The "Indian" of my first group does not understand the law and makes no effort to use it to his benefit as a result. As far as he is concerned, except when he uses the white man's law as a threat in his private law, there is no law to be respected but his own. He only fears those connected with the white man's laws. The "quasi Indian" has complete disregard for the law on the reservation, and this group harbors the greatest number of lawbreakers. The "white Indian" on the other hand, has the highest regard for the legal system and the protection it can give him from lawlessness. This is the important fact as far as my thesis is concerned. Two factions exist on the reservation today, the full-bloods and the mixed-bloods, and they discourage harmony to solve the problems of law and order. The general inconsistency that was started by the Jesuits has been carried on by the Government and its constantly changing policies.

In summary, the Indian is gradually coping with these problems. These individualistic people are finally beginning to pull together, for the white man is even closing in on him on the reservation. Problems of schooling and legal jurisdiction are being met and solved, but it will be many years before the Flathead will have a legal system that will function as well in his present day of life, as the one he had in his earliest day. Let us give the Indian hope for the future.
REFERENCES CITED


Ordinance of the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, Montana, No. 36-A (Revised). Adopted May 23, 1962.


The Flathead Tribal Court Records, Confederated Salish and Kootenai Indian Reservation, Dixon, Montana. (May 6, 1898 to December 8, 1908).

Informants used were:

John B. Adams
Robert Adams
Judge Joseph E. Newman

All three of these informants are members of the Confederated Salish and Kootenai Indian Tribes, from the Confederated Salish and Kootenai Indian Reservation, Dixon, Montana.
ORDINANCE OF THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA

LAW AND ORDER

Chapter 1

RESERVATION COURT

Section 1: Establishment of Court:

An Indian Court is established to be known as the Tribal Court of the Flathead Reservation, and the Council will by Ordinance define and establish a Law and Order Code for the maintenance of law and order and the administration of justice among the people of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

Section 2: Jurisdiction:

The Court shall have jurisdiction over enforcement of offenses against Tribal Council Ordinances which are promulgated under authority of Article 6, Section 1, Paragraph L, of the approved Constitution and by-laws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, or the enforcement of any other ordinances which the Tribal Council may see fit to place under the jurisdiction of this court which they have heretofore at this time or at any future time, enacted under the provisions of their approved Constitution.

The lawful jurisdiction of the Flathead Tribal Court shall be concurrent and not exclusive with respect to any offenses over which Federal and State courts may have lawful jurisdiction.

It shall be the duty of the said Tribal Court of the Flathead Reservation to order delivery to the proper authorities of the State or Federal Government, or of any other Tribe or reservation for prosecution, any offender there to be dealt with according to law or regulations authorized by law where such authorities consent to exercise jurisdiction lawfully fixed in them over the said offender.

For the purpose of the enforcement of these regulations an Indian shall be deemed to be any person of Indian descent who is a member of the Confederated Salish and Kootenai Tribes or any person of Indian descent who is a member of any recognized Tribe under Federal Jurisdiction. The Flathead Reservation shall be taken to include all territory within the original reservation boundaries, including fee patented lands, roads, bridges, water, and lands used for Agency purposes, including townsites, incorporated towns and cities, as well as all alienated lands within the original boundaries of said reservation.

Section 3: Appointment of Judges:

The Tribal Court of the Flathead Reservation shall be presided over by one Chief Judge, whose duties shall be regular and permanent, and three associate Judges, who shall be called to service when occasion requires. The Chief Judge shall be compensated on a monthly basis either from Federal funds or Tribal funds, or determined by the Council.
The associate Judges may be compensated on a per diem basis and at such rates as the Council may provide.

Each Judge shall be selected and recommended for appointment by a confirmation vote of two-thirds of the Tribal Council and such selection referred to the Commissioner of Indian Affairs for final approval.

Each Judge shall hold office for a period of two years, unless sooner removed for cause, or by reason of the abolition of the said office, but shall be eligible for reappointment.

A person shall be eligible to serve as a Judge of the Tribal Court of the Flathead Reservation only if he is a member of the Confederated Salish and Kootenai Tribes and is under the Jurisdiction of said court and (2) has never been convicted of a felony, or, within one year then last past, of a misdemeanor, and such other qualifications as the Council may stipulate.

No judge shall be qualified to act as such in any case where he has any direct interest, or wherein any relative by marriage or blood, in the first or second degree, is a party.

Section 4: Removal of Judges:

It is further provided that any judge of the Tribal Court of the Flathead Reservation may be suspended, dismissed or removed, for cause upon the recommendation of the Tribal Council and the approval of the Commissioner of Indian Affairs.

Section 5: Court Procedure:

The sessions of the Tribal Court of the Flathead Reservation for the trial of cases shall be held by the Chief Judge, or in the case of his disability, by one of the Associate Judges selected for the occasion by the associate judges.

The time and place of court sessions and all other details of the judicial procedure not prescribed by Tribal ordinances shall be laid down in Rules of Court approved by the Tribal Council of the Flathead Reservation.

It shall be the duty of the judges of the Tribal Court of the Flathead Reservation to make recommendations to the Tribal Council for the enactment of or amendment of such Rules of Court in the interest of improved judicial procedure.

Section 6: Appellate Proceeding:

All judges of the Tribal Court of the Flathead Reservation, excepting the Trial Judge, shall sit together at such times and at such places as they may find proper and necessary for the dispatch of business, or to hear appeals and judgments made by any judge at the trial sessions.

There shall be established by Rules of Court, limitations, if any, to be placed upon the right of appeal both as to the type of cases which may be appealed and as to the manner in which appeals may be granted according to the needs of the Flathead Reservation. In the absence of such Rules of Court any party aggrieved by a judgment may appeal to the full court upon giving notice of such appeal at the time of judgment and upon giving proper assurance to the trial judge, through the posting of a bond, or in any other manner, that he will satisfy the judgment if it is affirmed. In any case where a party has perfected his right to
appeal, as established herein or by Rule of Court, the judgment of the trial judge shall not be executed until after disposition of the case by full court. The appellate court shall within a reasonable period of time render judgment upon the case by a majority vote.

Section 7: Juries:
In any case coming before the Tribal Court where a substantial question of fact is raised, the defendant may demand a jury trial.

The Tribal Council each year shall prepare a list of eligible jurors. Such eligible jurors shall be residents of the Flathead Reservation, members of the Confederated Salish and Kootenai Tribes.

A jury shall consist of six residents of the Reservation selected from the list of eligible jurors by the judge. Any party to the case may challenge not more than three members of the jury panel so chosen.

The judge shall instruct the jury in the law governing the case and the jury shall bring a verdict for the complainant or the defendant. The judge is hereby required to render judgment in accordance with the verdict and existing law. A verdict may be rendered by a majority vote. Each juror who serves upon a jury shall be entitled to a reasonable fee, to be set by the Tribal Council, per day his services are required by Court, and also a reasonable mileage allowance, to be set by the Tribal Council, per mile. These monies to be paid from any funds at the disposition of the court.

Section 8: Witnesses:
The Chief Judge, or the Associate Judges of the Tribal Court of the Flathead Reservation, shall have the power to issue subpoenas for the attendance of witnesses either on their own motion or on the request of the Police Commissioner, or any of the parties to the case, which subpoena shall bear the signature of the Judge issuing said subpoena.

Each witness answering such subpoena shall be entitled to a reasonable fee, set by the Tribal Council, per day for each day his services are required in court. A witness failing to obey such a subpoena shall be deemed guilty of an offense against the Tribal Court of the Flathead Reservation and shall be subject to the penalty provided by the ordinance for disobedience to the lawful orders of the court.

Service of such subpoenas shall be made by a duly authorized police officer.

Witnesses who testify voluntarily shall be paid by the party calling them, if the court so directs, together with their actual traveling and living expenses incurred in the performance of this function.

Section 9: Professional Attorneys:
Any Indian charged with an offense, or in Civil Action, at his option and expense, may be represented in Tribal Court by professional legal counsel, or, by a member of the Tribe. Any professional attorney appearing before the Tribal Court must be a member in good standing of the Montana Bar Association. Any member of the Tribe proposing to represent another member of the Tribe, before the Tribal Court, must be of good moral character and must not have ever been convicted of a felony, or of a misdemeanor for a year last past his proposed appearance before the Tribal Court.
Section 10: Clerks:

The Tribal Council shall detail and appoint a clerk of Court who shall render assistance to the court, to the Police force of the reservation, and to the individual members of the tribe in the drafting of complaints, subpoenas, warrants and commitments, and to the preparation of documents incidental to the lawful functions of the Court. Such a clerk shall be encumbered with the further duty to attend and keep a written record of all proceedings of the court, empowered to administer oaths of witnesses, to collect all fines paid, and deposit them as required by ordinance, law or regulation, and to make an accounting thereof to the disbursing agent of the reservation and to the Tribal Council.

Section 11: Records:

Each Tribal Court of the Flathead Reservation shall be required to keep for inspection by duly qualified officials a record of all proceedings of said court, which records shall reflect the title of the case, the names of all the witnesses, the date or dates of the hearing, or trial, by whom conducted, the findings of the court or jury, and judgment, together with any other facts or circumstances deemed of importance to the case. A record of all such proceedings shall be kept in the Agency Office as required by the United States Code, Title 35, Section 200.

Section 12: Copies of Laws:

The Bureau of Indian Affairs may be requested to provide the Tribal Court of the Flathead Reservation with copies of all Federal and State laws and regulations applicable to the conduct of the Indians within the Flathead Reservation.

A reference in this ordinance or any other ordinance promulgated under the authority contained in Article 6, Section 1, paragraph (1) of the Constitution and by-laws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation to the word "Court", shall be interpreted to mean the Tribal Court of the Flathead Reservation.

Section 13: Complaints:

No complaint filed in the Tribal Court of the Flathead Reservation shall be valid unless it shall bear the signature of the complainant or complaining witness, witnessed by a duly qualified judge of the Flathead Court of the Flathead Reservation.

Section 14: Warrants to Apprehend:

Every judge of the Tribal Court of the Flathead Reservation shall have authority to issue warrants to apprehend, said warrants to be issued at the discretion of the Court only after a written complaint shall have been filed bearing the signature of the complaining witness.

Such warrant shall be served by a duly qualified member of the Indian Police or other Police Officer of the United States Indian Service. No warrant to apprehend shall be valid unless it bears the signature of a duly qualified judge of the Tribal Court of the Flathead Reservation.

Section 15: Arrests:

No member of the Indian police shall arrest any person for any offense defined by Tribal Council ordinances, regulation, or by Federal
Law, except when such offenses shall occur in the presence of the arresting officer, or he shall have reasonable evidence that the person arrested has committed such an offense, or the officer shall have a warrant authorizing him to arrest such person.

Section 16: Search Warrants;

Every Judge of the Tribal Court of the Flathead Reservation shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of said court.

No warrant of search and seizure shall be issued except upon a duly signed and written complaint based upon reliable information or belief that a crime has been committed. No warrant for search or seizure shall be valid unless it contains the name of the person or property to be searched and describes the article or property to be seized, and bears the signature of a duly qualified judge of the Tribal Court of the Flathead Reservation.

Warrants of search and seizure written under the authority of this ordinance shall be served only by members of the Indian Police, Special Officers, or other Police Officers of the United States Indian Service.

No policeman shall search or seize any property without a warrant unless he shall know or have reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense. Unlawful search or seizure shall be deemed trespass and punishable in accordance with ordinances enacted by the Flathead Tribal Council.

Section 17: Commitments:

No Indian shall be detained, jailed or imprisoned under ordinances passed by the Flathead Tribal Council or under Federal regulations so invoked for a longer period than 36 hours, unless there be issued a commitment bearing the signature of a duly qualified judge of the Tribal Court of the Flathead Reservation.

There shall be issued for each Indian held for trial in excess of 36 hours a temporary commitment and for each Indian held after sentence a final commitment on such forms as may be acceptable and approved by the Tribal Council.

Section 18: Bail or Bond;

Every Indian charged with any offense before the Tribal Court of the Flathead Reservation, may at the discretion of the judge of said court of the Reservation be admitted to bail. Bail shall be by cash or two reliable members of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, who shall appear before a judge of the Tribal Court of the said reservation, where complaint has been filed, and there execute an agreement in compliance with the forms provided therefor and made and adopted by the Tribal Council as an acceptable form for use in carrying out the provisions of the ordinance. In no case shall a bond specified in the agreement exceed twice the maximum penalty set by Tribal Council ordinances for violation of the offenses for which the accused is charged.
Section 19: Definition of Signature:

The term "Signature," as used in all Tribal Council ordinances providing for the maintenance of law and order and the establishment of justice, shall be defined as the written signature, or the witnessed thumb print or mark of any individual.

Section 20: Relations with the Court:

Upon the approval of the Bureau of Indian Affairs the Superintendent and employees of his regular staff, particularly those who are engaged in social service, health and educational work, be detailed to assist the Tribal Court of the Flathead Reservation upon its request in the preparation and presentation of the facts and in the proper treatment of individual offenders.

Chapter 2

CIVIL ACTIONS

Section 1: Jurisdiction:

The Tribal Court of the Flathead Reservation shall have jurisdiction of all suits wherein the defendant is a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, or subject to the jurisdiction of this Court, and of all other suits between members and non-members which are brought before the Court by stipulation of both parties.

No judgment shall be given on any suit unless defendant has received notice of such suit and ample opportunity to appear before the Court in his defense. Evidence of receipt of the notice shall be kept as part of the record of the case, and that in all civil suits the complainant may be required to deposit with the clerk of the court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

Section 2: Laws Applicable in Civil Actions:

In all civil cases the Tribal Court of the Flathead Reservation shall apply any laws of the United States as may be applicable, any authorized regulations of the Interior Department, and any ordinance or custom of the Tribe not prohibited by such Federal Laws. If any doubt arises as to the customs and usages of the Tribe the Court may request the advice of the law enforcement committee of the Confederated Salish and Kootenai Tribal Council as to these customs and usages and accept them.

Any matters that are not determined by this process to be traditional customs and usages of the Tribe, or found to be covered by applicable Federal Law, authorized regulations, or Tribal ordinances of the Flathead Reservation, shall be decided by the Tribal Court of the Flathead Reservation according to the laws of the State of Montana.

Section 3: Judgment in Civil Actions:

In all civil cases judgments shall consist of an order of the Court awarding money damages to be paid to the injured party, or directing the
surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

Where the injury was deliberately inflicted, the judgment shall impose an additional penalty, which penalty may either run in favor of the injured party or in favor of the Tribe. Where injury was inflicted as a result of any accident, or where both the complainant and the defendant were at fault, the judgment shall compensate both the injured parties for a reasonable part of the loss he has suffered.

Section 5: Payments of Judgments from IIM:

Whenever the Tribal Court of the Flathead Reservation shall have ordered payment of money damages to an injured party and the losing party refuses to make such payments within the time set for payment by the Court, and when the losing party has sufficient funds to his or her credit at the Agency Office to pay all or part of such judgment, the Superintendent may certify to the Secretary of the Interior the records of the case and the amount of available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the Secretary from the account of the delinquent party.

A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Tribal Court of the Flathead Reservation to distribute decedent's estates.

Chapter 3
DOMESTIC RELATIONS

Section 1: State Court:

All Indian marriages and divorces must be consummated in accordance with the State Law of Montana except that no common-law marriages shall be recognized within the original bounds of the Flathead Reservation.

Indian custom marriages and Indian custom divorces are from this time on illegal and will not be recognized as lawful marriages or divorces among the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

The Tribal Court of the Flathead Reservation shall have concurrent jurisdiction to hear, pass upon, and approve applications for adoption among members of the Confederated Tribes.

Upon proper showing and decision by the Court such adoption shall be binding upon all concerned and hereafter only adoptions so approved by the Court shall be recognized.

Upon written consent of the Court adoption proceedings affecting members of the Confederated Salish and Kootenai Tribes of the Flathead Reservation may be taken up and consummated in the State Courts.

The Tribal Court of the Flathead Reservation shall have concurrent jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of said child.

A judgment of the Court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determinations.
of inheritance by the Department of the Interior or by the Tribal Court
of the Flathead Reservation.

When any member of the tribe dies, leaving property other than an
allotment, or other trust property subject to the jurisdiction of the
United States, any person claiming to be an heir of the decedent may
bring a suit in the Tribal Court of the Flathead Reservation to have
the Court determine the heirs of the decedent and to divide among the
heirs such property of decedent. No determination of heirs shall be
made unless all possible heirs known to the Court, to the Superintendent
and to the claimant shall have been notified of the suit and given full
opportunity to come before the Court and defend their interests. Pos­
sible heirs who are not residents of the reservation under jurisdiction
of the Court must be notified by registered mail and a copy of the notice
must be preserved in the record of the case.

When any member of the Tribe dies, leaving a will disposing only of
property other than an allotment or other trust property subject to the
jurisdiction of the United States, the Tribal Court shall, at the re­
quest of any person named in the will, determine the validity of the
will after giving notice to appear in court to all persons who might
be heirs of the decedent. A will shall be deemed by the Court to be
valid if the decedent had a sane mind and understood what he was doing
when he made the will and was not subject to any undue influence, and
if the will was made in accordance with State Law.

If the Court determines the will to be validly executed, it shall
order the property described in the will to be given to the persons
named in the will or their heirs.

Chapter 4

SENTENCES

Section 1: Nature of Sentences:

Any person who has been convicted by the Tribal Court of the Flathead
Indian Reservation of violations of any provision of any ordinance pro­
mulgated by the Confederated Salish and Kootenai Tribal Council shall
be sentenced by the Tribal Court of the Flathead Reservation to work
for the benefit of the Tribe for any period found by the Court to be
appropriate, but the period fixed shall not exceed the maximum period
set for such offense by such ordinances and shall begin to run from the
day of the sentence. During the period of sentence the convicted Indian
may be confined in the Agency jail if so directed by the Indian Court.

The work to be done by such convicted Indian shall be under the
supervision of the Tribal Court, or of a committee of the Tribal Council
as the Court may provide. Whenever any convicted Indian shall be unable
or unwilling to work, the Court shall in its discretion sentence him to
prison for the period of his sentence or to pay a fine equal to $2.00
a day for the same period. Such fine shall be paid in cash or in com­
mmodities, or in any other way as directed by the Court. Failure to pay
such fines as directed and within the period provided shall be deter­
mined an offense against the Court and shall be punishable under the
terms of any applicable ordinance or Tribal Council authorization.
In addition to any other sentence the court may require an offender who has inflicted injury upon the person or property of an individual to make restitution or to compensate the party injured, through the surrender of property, the payment of money damages, or the performance of any other act for the benefit of the injured party.

In determining the character and duration of the sentence which shall be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, and whether the offense was malicious or willful and whether the offender has made efforts to make amends, and shall give due consideration to the extent of the defendant's resources and the needs of his dependents. The penalties to be invoked shall be consistent with Tribal Council ordinances and authorities.

Section 2: Probation:
Where sentence has been imposed on an Indian who has been convicted of any offense, the Tribal Court of the Flathead Reservation may in its own discretion suspend the sentence imposed and allow the offender his freedom on probation, provided he signs a pledge of good conduct during the period of the sentence upon a form provided in accordance with the ordinance and approved by the Tribal Council. Any Indian who shall violate his probation pledge shall be required to serve his original sentence plus additional one-half of such sentence as penalty for the violation of his pledge.

Section 3: Parole:
An Indian who shall have, without misconduct, served one-half the sentence imposed shall be eligible for parole. Parole shall be granted only by a judge of the Tribal Court of the Flathead Reservation and upon the signing of the form provided therefor and approved by the Tribal Court.

Section 4: Juvenile Delinquency:
Whenever any Indian under the age of 18 years is accused of committing one of the offenses of this Code, or covered by a Tribal Council ordinance, the Judge of the Tribal Court of the Flathead Reservation may in his discretion hear and determine the case in private and in an informal manner, and if the defendant is found guilty, may, in lieu of sentence place such delinquent for a designated period under the supervision of a responsible person selected by him, or take such other action as he may deem advisable under the circumstances.

Section 5: Deposit & Disposition of Fines:
All monies collected for fines imposed for the commission of offenses against ordinances passed by the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, or imposed under the Code established by said Tribal Council under proper ordinance for Indian Tribal offenses, shall be in the nature of an assessment for the support of the Tribal Court of the Flathead Reservation, and for such other expenses as the Tribal Council may decide. Such expenses shall include the payment of fees provided for in these regulations to jurors and to witnesses answering subpoenas or to counsellors, court officials and expenses and support of Indian Police.
The fines assessed shall be paid over by the clerk of the court to the Treasurer of the Confederated Salish and Kootenai Tribes of the Flathead Reservation and deposited by him in the official disbursing account in a special account entitled "Tribal Court Fines" and to be handled in the same manner as voluntary deposits under Individual Indian Moneys and to be withdrawn in accordance with Tribal Council instructions.

The Tribal Council authorizes the clerk of the Court to draw orders upon these funds to be countersigned by the judge of the Court and the Tribal Treasurer for payment of specified fees to jurors, witnesses, counsellors or other disbursement if provided for by Tribal Council resolutions or instructions and that these funds are applicable for all purposes in connection with the maintenance of law and order and the administration of justice on the Flathead Reservation.

Whenever a fine is paid in commodity the commodity shall be turned over to the clerk of the court to hold or, if the Tribal Council directs, to be disposed of in such the same manner as are Court fines and the proceeds are available for the same purposes as provided for disbursements of said funds.

These funds may be used for any and all purposes in connection with the maintenance of law and order and the administration of Justice by the Tribal Court of the Flathead Reservation, or by the Tribal Council.

Chapter 5

CODE OF INDIAN TRIBAL OFFENSES

Section 1: Assault:
Any Indian who shall attempt or threaten bodily harm to another person through unlawful force or violence shall be deemed guilty of assault, and upon conviction thereof shall be sentenced to labor for a period not to exceed ninety (90) days or a fine of not less than $10.00 or more than $180.00, or both, and, if so determined by the Court, furnish a peace bond in cash in an amount to be designated by the Court.

Section 2: Assault and Battery:
Any Indian who shall willfully strike another person or otherwise inflict bodily injury, or who shall by offering violence, cause another to harm himself shall be deemed guilty of assault and battery and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months and/or a fine not to exceed $300.00.

Section 3: Carrying Concealed Weapons:
Any Indian who shall go about in public places armed with a dangerous weapon concealed upon his person, unless he shall have a permit signed by a Judge of the Tribal Court of the Flathead Reservation, and countersigned by the Superintendent of said Reservation, or his authorized representative, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, and/or a fine not to exceed $300.00; and, the weapons so carried may be confiscated by the Court.
Section 4: Abduction
Any Indian who shall willfully take away or detain another person against his will or without the consent of the parent or other person having lawful care or charge of him, shall be deemed guilty of abduction and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months and/or a fine of not to exceed $300.00.

Section 5: Illegal Possession
Any Indian who, without the consent of the owner or lawful possessor thereof, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed, at or from any building or place at or from any installation or locality, the property of another person and keep, or use, or cause to be kept or used, said property for his own property, or for the purpose of another, shall be sentenced to labor for a period not to exceed ninety (90) days, or a fine of not to exceed $180.00, or by both such fine and imprisonment.

Section 6: Embezzlement
Any Indian who shall, having lawful custody of property not his own, appropriate the same to his own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement and upon conviction thereof, shall be sentenced to labor for a period not to exceed six months, and/or a fine not to exceed $300.00.

Section 7: Fraud
Any Indian who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures obtain any money or other property of value, shall be deemed guilty of fraud and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, and/or a fine not to exceed $300.00.

Section 8: Forgery
Any Indian who shall, with intent to defraud, falsely sign, execute, or alter any written instrument, shall be deemed guilty of forgery and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, and/or a fine not to exceed $300.00.

Section 9: Receiving Stolen Property
Any Indian who shall receive or conceal or aid in concealing or receiving any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, robbery, or burglary, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, and/or a fine not to exceed $300.00.

Section 10: Extortion
Any Indian who shall willfully, by making false charges against another or by any other means whatsoever, extort or attempt to extort any monies, goods, property, or anything else of any value, shall be deemed guilty of extortion and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, and/or a fine of $300.00.
Section 11: Breach of the Peace:
Any Indian who shall within the confines of the original boundaries of the Flathead Reservation engage in fighting in a public place, disturb or annoy any public or religious assembly, or otherwise breach the peace, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed three months, and/or a fine not to exceed $150.00.

Section 12: Indecent Exposure:
Any Indian who shall within the confines of the original boundaries of the Flathead Reservation engage in any act of indecent exposure, public indecency, or immorality, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed three (3) months, and/or a fine not to exceed $150.00.

Section 13: Disorderly Conduct:
Any Indian who shall within the confines of the original boundaries of the Flathead Reservation appear in a public or private place in an intoxicated and disorderly condition shall be deemed guilty of disorderly conduct and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, and/or a fine not to exceed $300.00.

Section 14: Traffic Violations:
To the extent the State of Montana and its political subdivisions may not have jurisdiction thereof, the use of all roads and highways within the Flathead Reservation by Indians, including members of the Confederated Salish and Kootenai Tribes, shall be subject to the laws and regulations of the State of Montana as hereinafter set forth. Such Sections of the Revised Codes of Montana, 1947, and amendments thereto, are hereby adopted as a part of the Official Code of Ordinances of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana. Minor changes in wording as may be necessary to make subject Sections applicable to the Official Code of Ordinances of the Confederated Tribes are approved.

All persons subject to the provisions of the Official Code of Ordinances of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, who operate motor vehicles on roads and highways within the Flathead Reservation must possess at all times a valid Montana Driver's License and all vehicles operated by such persons, both on and off the Reservation, must display a currently valid vehicle license plate as required and issued by the State of Montana.

Section 15: Malicious Mischief:
Any Indian who shall maliciously disturb, injure or destroy any livestock or other domestic animal or other property, shall be deemed guilty of malicious mischief and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, and/or a fine not to exceed $300.00.

Section 16: Trespass:
Any Indian who shall go upon or pass over any cultivated or enclosed lands of another person and shall refuse to go immediately therefrom on the request of the owner or occupant thereof or who shall willfully and
knowingly allow livestock to occupy or graze on the cultivated or enclosed lands of another person shall be deemed guilty of an offense and upon conviction shall be punished by a fine not to exceed Fifty Dollars ($50.00) and/or shall be sentenced to labor for a period not to exceed thirty (30) days.

Section 17: Injury to Public Property:
Any Indian who shall, without proper authority, use or injure any public property of the Tribe, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, and/or a fine not to exceed $300.00.

Section 18: Maintaining a Public Nuisance:
Any Indian who shall act in such a manner or create a situation which may be adjudicated a general nuisance, or permit his property to fall into such a condition as to injure or endanger the safety, health, comfort, or property of his neighbors, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a fine not to exceed Twenty-five Dollars ($25.00) and may be required to remove such nuisance when so directed by the Court.

Section 19: Liquor Violations:
Any Indian who shall manufacture, purchase, transport, or possess any wine, beer, ale, whiskey, or any article whatsoever which produces alcoholic intoxication, for the purpose of sale or resale, trade or barter, without an appropriate Federal and/or State licenses or permits or violates any ordinance or regulation duly passed and authorized by Tribal Council for the purpose of regulating the possession and use of intoxicants, or any Indian under the age of 21 years who shall possess or use any wine, beer, ale, whiskey, or any article whatsoever which produces any intoxication, or any minor who shall appear in any public or private place while under the influence of intoxicating liquor to any degree, shall be deemed guilty of an offense, and upon conviction thereof, may be sentenced to labor for a period not to exceed ninety (90) days, and/or a fine not to exceed $150.00.

Section 20: Cruelty to Animals:
Any Indian who shall torture or cruelly mistreat any animal, shall be deemed guilty of an offense and shall be sentenced to labor for a period not to exceed thirty (30) days, and/or a fine not to exceed $50.00.

Section 21: Game Violations:
Any enrolled Indian of the Confederated Salish and Kootenai Tribes or any Indian under the jurisdiction of this Court, who shall sell, trade, give away (to a non-member), or offer for sale or trade any game fish, game bird or game animal or part thereof; or protect any non-Indian person from any violation of existing State game laws in force and effect; or shall fail to report, to the proper authorities, any Indian who sells or attempts to sell any game bird, game fish or game animal, or parts thereof; or violates any rules or regulations as provided by Ordinances approved by the Tribal Council for the conservation
of the fish and game of the reservation, shall be deemed guilty of an
offense and upon conviction thereof shall be sentenced to labor for a
period not to exceed six (6) months and/or $300.00.

The Flathead Reservation shall be closed to Hunting of any game
animals to non-member Indians, and non-Indians, unless permitted by
ordinance by the Tribal Council.

Section 22: Gambling:
Any Indian who shall violate any law, rule or regulation adopted
by the Tribal Council for the control or regulation of Traditional
games of Chance on the Reservation, shall be deemed guilty of an offense
and upon conviction thereof shall be sentenced to labor for a period
not to exceed thirty (30) days, and/or a fine not to exceed $50.00.

Section 23: Adultery:
Any Indian who shall have sexual intercourse with another person,
either of such persons being married to a third person, shall be deemed
guilty of adultery and upon conviction thereof shall be sentenced to
labor for a period not to exceed six (6) months, and/or a fine not to
exceed $300.00.

Section 24: Bastardy:
Any Indian who shall be found by the Court to be the male parent of
any illegitimate child upon the complaint of either the mother thereof
or of the Tribal Council, shall be deemed guilty of bastardy, and upon
conviction thereof, shall be sentenced to labor for a period not to
exceed six (6) months, and/or a fine not to exceed $300.00, and may be
charged with the maintenance of the child in such sums and in such
manner as the Tribal Court may direct.

Section 25: Illicit Cohabitation:
Any Indian who shall live or cohabit with another as man and wife
not then and there being married shall be deemed guilty of illicit
cohabitation and upon conviction thereof shall be sentenced to labor
for a period not to exceed ninety (90) days, or a fine of $180.00 or
both such fine and imprisonment.

Section 26: Prostitution:
Any Indian who shall practice prostitution, or who shall knowingly
keep, maintain, rent or lease, any house, room, tent, or other place for
the purpose of prostitution shall be deemed guilty of an offense and
upon conviction thereof shall be sentenced to labor for a period not to
exceed six (6) months, and/or a fine not to exceed $300.00.

Section 27: Venereal Disease:
Any Indian who shall infect another person with venereal disease
shall be deemed guilty of an offense, and upon conviction thereof, shall
be sentenced to labor for a period not to exceed three (3) months and/or
a fine not to exceed $150.00. The Tribal Court of the Flathead Reserva-
tion shall have authority to order and compel the medical examination
and treatment of any person charged with violation of this section or
found afflicted with any communicable disease.
Section 28: Failure to Support Dependent Persons:
Any Indian who shall, because of habitual intemperance or gambling
or for any other reason, including habitual laziness, refuse or neglect
to furnish food, shelter, or care to any person dependent upon him,
including any dependent children born out of wedlock, shall be deemed
guilty of an offense and upon conviction thereof shall be sentenced to
labor for a period not to exceed three (3) months, and/or a fine not to
exceed $150.00, and must be charged with the maintenance of such depend­
ents in such sums and in such manner as the Tribal Court directs.

Section 29: Failure to Send Children to School:
Any Indian who shall, without good cause, neglect or refuse to send
his or any child of school age, under his care to school shall be deemed
guilty of an offense and upon conviction thereof shall be sentenced to
labor for a period not to exceed sixty days (60), and/or a fine not to
exceed $100.00.

Section 30: Contributing to the Delinquency of a Minor:
Any Indian who shall willfully contribute to the delinquency of any
minor shall be deemed guilty of an offense and upon conviction thereof
shall be sentenced to labor for a period not to exceed six (6) months
or a fine not to exceed three hundred dollars ($300.00).

Section 31: Bribery:
Any Indian who shall give or offer to give any money, property or
services, or anything else of value to another person with corrupt
intent to influence another in the discharge of his public duties or
conduct, and any Indian who shall accept, solicit or attempt to soli­
cit any bribe, as herein defined, shall be deemed guilty of an offense
and upon conviction thereof shall be sentenced to labor for a period
not to exceed six (6) months, and/or a fine not to exceed $300.00, and
may be required by the Tribal Council to forfeit any Tribal Office
held by such person.

Section 32: Perjury:
Any Indian who shall wilfully and deliberately, in any judicial pro­
ceeding in any Tribal Court of the Flathead Reservation, falsely swear
or interpret, or shall make a sworn statement or affidavit, knowing the
same to be untrue, or shall induce or procure another person to do so,
shall be deemed guilty of perjury and upon conviction thereof shall be
sentenced to labor for a period not to exceed six (6) months, and/or a
fine not to exceed three hundred dollars ($300.00).

Section 33: False Arrest:
Any Indian who shall wilfully and knowingly make, or cause to be
made, the unlawful arrest, detention or imprisonment of another person,
shall be deemed guilty of an offense, and upon conviction thereof shall
be sentenced to labor for a period not to exceed six (6) months, and/or
a fine not to exceed three hundred dollars ($300.00) or both.

Section 34: Resisting Lawful Arrest:
Any Indian who shall wilfully and knowingly, by force or violence,
resist or assist another person to resist a lawful arrest, shall be
deemed guilty of an offense and upon conviction thereof shall be sen­
tenced to labor for a period not to exceed six (6) months, and/or a
fine not to exceed $300.00.

Section 35: Refusing to Aid Officer:
Any Indian who shall neglect or refuse, without good cause, when
called upon by any Indian Police or other police officer of the United
States Indian Service, to assist in the arrest of any person charged
with or convicted of any offense or in securing such offender when
apprehended, or in conveying such offender to the nearest place of
confinement shall be deemed guilty of an offense, and upon conviction
thereof shall be sentenced to labor for a period of ninety (90) days,
and/or a fine not to exceed $180.00.

Section 36: Escape:
Any Indian who, being in lawful custody, for any offense, shall
escape or who shall permit or assist or attempt to permit or assist
another person to escape from lawful custody shall be deemed guilty of
an offense and upon conviction thereof shall be sentenced to labor for
a period not to exceed six (6) months, and/or a fine not to exceed
$300.00.

Section 37: Disobedience to Lawful Orders of Court:
Any Indian who shall wilfully disobey any order, subpoena, warrant,
or command duly issued, made or given by the Tribal Court of the Flat­
head Reservation or any officer thereof, shall be deemed guilty of an
offense and upon conviction thereof shall be fined in an amount not
exceeding $180.00 and/or sentenced to labor for a period not to exceed
three (3) months.

Section 38: Violation of an Approved Tribal Ordinance:
Any Indian who violates an ordinance promulgated
by the Tribal
Council and legally in force, shall be deemed guilty of an offense and
upon conviction thereof shall be fined in an amount not exceeding $180.00
or sentenced to labor for a period not to exceed three (3) months.

Section 39: Curfew:
Every unmarried Indian under the age of 17 years shall be subject
to curfew regulations throughout the Flathead Reservation. From June
1 to September 1, the curfew shall be 11:00 P.M.; and from September 2
to May 31, the curfew shall be 10:00 P.M., or shall conform to the laws
of the various municipalities throughout the reservation. Parents or
guardians of children under the age of 17 are responsible for curfew
regulations. Exceptions are permitted if the child is under the imme­
diate supervision of adult, parent, or guardian, during meetings and
gatherings; or may attend authorized school functions without such
supervision.
Any Indian parent or guardian, whose children fail to obey the
curfew regulations, shall be deemed guilty of an offense and upon con­
viction thereof shall be sentenced to labor not to exceed 30 days and/or
a fine not to exceed $50.00.
Section 10: Default:
Any Indian who shall fail to repay the funds loaned him by the Tribe in keeping with the loan agreement as originally approved or amended, or who shall improperly use such funds shall be deemed guilty of default. Upon conviction thereof he may be ordered by the court to liquidate all or sufficient of his property to repay the loan in full. The officers in charge of such liquidation shall conform to the loan agreement and will otherwise be at the discretion of the Court.

Section 11: Sanitation and Public Health:
Any Indian who shall violate any rules or regulations enforced by the Department of Public Health, as adopted by Tribal Council Ordinance, shall be guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 90 days, and/or a fine not to exceed $150.00.

The Judge of the Tribal Court, may in his discretion take any action deemed necessary, under the circumstances to safeguard the health or well being of any community, family or person.

Section 12: Christmas Tree Harvest Violations:
Any Indian who violates any provisions set forth by an ordinance adopted by the Tribal Council to regulate the cutting and harvest of Christmas trees, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, and/or a fine not to exceed $300.00; and in addition shall surrender to the court his or her permit to participate in future tree harvest during the current season.

It is further provided that any person convicted of any violation of the regulations provided for the harvest of Christmas Trees shall not participate in any manner in the harvest of Christmas trees during the current season. Any trees found to be cut in violation, and seized by the Tribal Court, shall be sold or disposed of in a manner prescribed by the Tribal Court, and the proceeds deposited in the Tribal Court fines account.

Section 13: Malicious Gossip:
Any Indian who shall defame or attempt to defame the character of any person, by uttering slanderous remarks, by malicious gossip, or in any way make false accusations against another person by or through false rumors or malicious gossip shall be guilty of an offense and upon conviction thereof sentenced to labor for a period not to exceed three (3) months, and/or a fine not to exceed $180.00.